GUIDANCE DOCUMENT #4 April 13, 2020

Suspension and Modification of Tax Deadlines and Collection Efforts

On April 1st Governor Lamont released Executive Order 7S ("EO 7S"), supplemented by Executive Order 7W ("EO 7W"), issued on April 9th, which established two programs designed to offer support to eligible taxpayers who have been affected by COVID-19:

- Deferment Program;
- Low Interest Rate Program

Under EO 7S.6 these programs are **available to taxpayers in a municipality**, as defined in C.G.S. §7-148; in other words: towns, cities and boroughs, whether created by statute, ordinance, charter, or special act, whether consolidated or unconsolidated. EO 7W.1 expanded the coverage of EO 7S.6 to "….all taxes and water, sewer, or electric charges[1] for which a municipality, as defined in section 7-148 of the general statutes, collects for Quasi-Municipal Corporations, including but not limited to the following[2]:

- Villages
- School, Sewer, Fire, Lighting, Special Services or Special Taxing Districts
- Beach or Improvement Associations
- Regional Water or Resources Recovery Authority
- Any other political subdivision of the state or of any municipality having the power to make appropriations or to levy assessments or taxes

There are several general rules. Municipalities are **required to:**

- **participate in one or both** of these programs; and,

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[1] According to the OPM Guidance **EO 7S.6 applies to**: "…unescrowed taxes on real estate, motor vehicles, and personal property as well as unescrowed municipal water, sewer, and electric charges." At the same time **the EO does not apply to**: "…trash and sanitation charges, landlord rental fees, fines, and other kinds of municipal assessments, penalties, and charges regardless of when they come due. It also does not apply to water, sewer, and electrical charges by private providers. All of these taxes and charges must therefore be paid normally".

[2] EO 7W.1 states: "Every quasi- municipal corporation which collects its own taxes or water, sewer, or electric charges and is located wholly within a municipality shall offer the same program or programs that the municipality offers, must accept the status of the taxpayer as determined by the municipality."

- **notify the Secretary of the Office of Policy and Management ("OPM") prior to <u>April 25, 2020</u>** which program or programs it elects to participate in[3].

The **determination** of which program or programs will apply in a municipality is **made by the legislative body** or, if the legislative body is the town meeting, by the Board of Selectmen.

OPM has issued several documents pertinent to EO 7S

- OPM Guidance entitled "Executive Order No. 7S - Explanation of Purpose and Intent," which will be woven into this guidance ("OPM Guidance").

- Application for Municipal Tax Relief Deferral Program; and,

- Municipality Program Election

Are Refunds Required For Any Prior Payment on Taxes Due During the Period? According to question #7 of the OPM Guidance, neither program requires any municipality to refund any payment, regardless of when it was made or how it was affected by either Program. If a payment is made which exceeds the correct amount due as affected by either Program, the normal overpayment procedures in General Statutes 12-129 apply.

1. <u>Executive Order 7S (Section 6a.) – Deferment Program ("Extended Grace Period"):</u> EO 7S.6a creates the deferment" program. The OPM Guidance refers to this program as follows

> "…an extended grace period program. What is 'deferred' is not a tax but rather the last day to pay without interest. **The deadline is deferred, not the tax**. Eligible taxpayers….are entitled to **defer their payment deadline until 90 days from the tax due date, instead of the usual 30 days** (emphasis in OPM Guidance)".

[3] Note: Under EO 7W.1 quasi-municipal corporations, which do not collect the taxes and fees, shall not be subject to the notification requirement to the Secretary of the Office of Policy and Management under Executive Order No. 7S Section 6. On the other hand, "Every quasi-municipal corporation which collects any taxes or water, sewer, or electric charges and is located in multiple municipalities shall make its own determination as to which program or programs it shall elect, which may be either uniform for the whole quasi-municipality or be the same as those chosen by the respective forum municipalities, and shall provide the notice to the Secretary of the Office of Policy and Management as required for municipalities under Executive Order No. 7S Section 6. The provisions of Executive Order No. 7S, Section 6 regarding tax deferral and interest-rate reduction programs to offer support to eligible taxpayers, businesses, nonprofits and residents who have been economically affected by the COVID-19 Pandemic shall apply to benefit assessments under Connecticut General Statute Section 16a-40g."

In effect, the program "…effectively deals…the last day to pay by ninety (90) days" only for those who apply for the program[4].

What taxes are covered? This program covers "…any real estate taxes, personal property or motor vehicle taxes, or municipal water, sewer, electric rates, charges or assessments."

Different Applications Depending on the Due Date of Taxes. The deferment begins on the date on which such tax or charge becomes due and payable. EO 7S.6a applies to any tax or charge that becomes due and payable between *March 10, 2020 and July 1, 2020 ("Eligibility Period")*. Thus, the program applies to taxes bill installments due on[5]:

- April 1, 2020
- July 1, 2020

The following chart for **semiannual and annual towns** is based upon the OPM Guidance[6]:

Installment Due	Usual Grace Date 30 Days	Deferred Grace Date 90 Days
July 1, 2020	August 3, 2020[7]	October 1, 2020

In other words, if you pay on or before October 1, 2020, the taxpayer pays only the tax and no interest, because the grace date was extended.

The following chart for **quarterly billing towns** or towns with other charges during the Eligibility Period

Installment Due	Usual Grace Date 30 Days	Deferred Grace Date 90 Days
April 1, 2020	May 1, 2020	July 1, 2020

Who are "Eligible" taxpayers, businesses, nonprofits, and residents? Again, according to the OPM Guidance "eligible…covers everybody" that can "attest to or document significant economic impact by COVID-19, and/or those

[4] According to question #3 of the OPM Guidance.
[5] EO 7W.1b sets forth a clarification of time ",,,(b)ecause interest on past due taxes and water, sewer, or electric charges are calculated by the month, not by the day, and principal is typically due on the first of the month, not the tenth, the ninety (90) day periods referred to in Executive Order No. 7S, Section 6 are amended to three (3) months, and the references to due dates and delinquency dates on or prior to March 10 are amended to April 1."
[6] The Deferment Program does not cover taxes that are already "past due." For example, the taxes due on January 1, 2020 includes the Eligibility Period; however, since this is a "grace period extension and the period passed on February 1, 2020, it does not qualify. As the OPM Guidance states: "It is not an amnesty or waiver of interest or other charges on taxes that are already delinquent."
[7] August 1, 2020 falls on a Saturday.

that document they are providing relief to those significantly affected by COVID-19." The Applications for Municipal Tax Relief Deferral Program requires the following Eligibility attestations:

<table>
<tr><td>Resident</td><td>Standard: Household suffered a reduction in income of at least 20% due to COVID-19.

• Since March 10, 2020, applicant has been either (1) furloughed without pay; (2) had hours significantly reduced; or, (3) been unemployed, resulting in a 20% reduction in household income.
• Proof of Residency: Copy of driver's license, utility bill or other proof of residence.</td></tr>
<tr><td>Business/ Non-Profit</td><td>Standard: Business is expected to decrease, at least, 30% in the period March – June 2020 versus March – June 2019, at this property (emphasis added).

• Proof of Ownership: Business license, utility bill, Secretary of the State listing, other proof of ownership.</td></tr>
</table>

Breadth of the Program. EO 7S.6a. and the OPM Guidance, thereunder, states that "Municipalities may extend eligibility to other categories of taxpayers, businesses, nonprofits and residents, upon approval of the legislative body or by the Board of Selectmen in towns where the town meeting is the legislative body." In other words, a municipality may "…'open up' the extended grace period to others not specifically mentioned in the EO. For example, a municipality could decide to offer the extended grace period to ALL taxpayers, period, without distinction. This is a decision up to the towns. If a municipality decides to "open up" the eligibility, the need for applications may be moot."

When do Applications have to be submitted? According to the OPM Guidance: "Deferment Program applications and any required documentation or related information must be submitted to the municipality no later than July 1, 2020 in any manner the municipality specifies, which may be in person, by mail and/or electronically. Each municipality shall utilize the guidance provided by the Office of Policy and Management for determining eligibility."

2. Executive Order 7S (Section 6b): Low Interest Rate Program. Section 6b of Executive Order 7S ("EO 7S.6b") sets forth another option municipalities may consider, either on its own or in tandem with the deferment program. Instead of deferring or extending the grace period with "no interest at all" EO 7s.6b "addresses the rate of interest that is to be charged on a delinquent or past due bill[8]."

Unlike the deferment program, the low interest rate program "…**does not require taxpayers to qualify based upon eligibility criteria[9]"**. Although there are issues for landlord eligibility, discussed below. According to the OPM Guidance: "This program provides a 'window' of 90 days from the due date where taxpayers would be able to pay at a reduced interest rate. They would not have an extended grace period, but they would be paying significantly less interest if they pay late."

The following chart shows the effect of the low interest rate program:

	Statutory Interest	EO 7S.6b Interest
Per Month	1.5%	.25%
Per Annum	18%	3%

Interest is calculated from the due date of the tax, for a period of ninety (90) days only.

The following chart for **semiannual and annual towns** is based upon the OPM Guidance:

Installment Due	Grace Period 30 Days	Lower Interest Period 90 Days from Due Date
July 1, 2020	August 3, 2020[10]	October 1, 2020
	No interest for 30 days	.25% per month for delinquent taxes paid during that period

[8] OPM Guidance, which also indicates that "Any tax, or municipal water, sewer, or electricity charge that comes due at any time between March 10, 2020 and July 1, 2020, inclusive, can be covered by this plan" (See, 7S.6b(i)). The Guidance repeats: "The plan covers any real estate, motor vehicle or personal property tax, and any municipal water, sewer or electric rate, charge or assessment." The plan covers any real estate, motor vehicle or personal property tax, and any municipal water, sewer or electric rate, charge or assessment."
[9] OPM Guidance.
[10] August 1, 2020 falls on a Saturday.

In other words, if you pay on or before October 1, 2020, the taxpayer pays only the tax payment subject to interest of .25% per month as opposed to the usual interest of 3% per month. On October 2nd and thereafter, the statutory rate would, again, apply to the remaining delinquent tax owed.

The following chart for **quarterly billing towns** or towns with other charges during the Eligibility Period

Installment Due	Grace Period 30 Days	Lower Interest Period 90 Days from Due Date
April 1, 2020	May 1, 2020	.25% per month for delinquent taxes paid during that period

On or after July 2nd the statutory interest would be charged on the remaining delinquent tax. It should be noted that the EO states "that if there is a case where any tax, charge etc. is already subject to an interest rate that is less than 3% per year, then that lower rate will apply instead[11]."

Past Due Charges Delinquent on March 10, 2020. In the event a tax bill "…was already delinquent on or before March 10, 2020" EO 7S.6b (ii) states that "…it shall be subject to .25% per month, 3% per year interest for a period of 90 days from the EO (until July 1, 2020) only[12]." Thus, OPM concludes "…April 1, 2020 (the date of the EO) to July 1, 2020, the delinquent taxpayer pays .25% per month or portion thereof instead of the normal 1.5% per month – but ONLY on those last three months, and only if they are making a payment."

Interest Rate Returns to 18% Per Year. The low interest rate programs ends under the following circumstances:

- "On July 2, 2020, unless this EO is extended or other directives are subsequently given, the 'window' closes[13]."
- "Following the 90 days, the portion that remains delinquent shall be subject to interest and penalties as previously established[14]."
- "If a taxpayer has made a partial payment between April 1 and July 1, 2020, but has not paid in full"[15].

11 OPM Guidance..
12 OPM Guidance.
13 OPM Guidance (emphasis included by OPM).
14 EO 7S 6b.
15 OPM Guidance.

- If a taxpayer has not made any payment at all during that time, they lose the benefit of the 'window' and all of their interest is calculated at the rate of 1.5% per month from the due date, as if the opportunity for the reduced rate had not ever existed.

3. Executive Order 7S (Section 6c): Eligibility of Landlords.

EO 7S.6c establishes the following eligibility criteria for landlords or taxpayers that that rent or lease to commercial, residential, or institutional tenants or lessees[16] ("Landlord"):

Deferment/Grace Period
The Landlord must provide documentation to the municipality that: • the property being taxed has, or will, suffer a significant income or revenue[17] decline, or; • commensurate forbearance was offered to the tenants or lessees[18].
Low Interest Rate Program
The Landlord must offer "commensurate forbearance" to tenants or lessees upon their request[19].

What is "commensurate forbearance? According to the answer to question #4 on the OPM Guidance, "commensurate forbearance" for purposes of the tax deferment and low interest programs means, either:

- deferral of 25% of rent (approximating the property tax portion of rent) for the ninety (90) days from the due date;
- deferral of one month's rent to be paid over the 90 day period; or
- forbearance substantially similar to (a) or (b) as determined by the tax collector.

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[16] OPM Guidance: "The application forms provided by OPM have more detail about this section and contains specific sections to be completed by landlords.

[17] OPM Guidance.

[18] According to question #4 of the OPM Guidance: "Landlords are subject to auditing and may be asked by their municipality to provide their tenants' names and contact information, or other information identified by the municipality to confirm eligibility."

[19] According to question #4 of the OPM Guidance: "For the Low Interest Program, there is no documentation requirement for ease of administration, but landlords are subject to auditing and should not take advantage of this program unless they pass along to the tenants commensurate forbearance, when requested.

"Commensurate forbearance" is the common "eligibility" requirement for both programs.

4. **Executive Order 7S (Section 6d): Escrow Payments.** This EO 7S.6d requires financial institutions and mortgage servicers holding property tax escrows on behalf of borrowers to continue to make property tax payments to the municipality as long as the borrower is either current on their mortgage or is in a forbearance or deferment program with the mortgage lender. This requirement is effective regardless of whether the property owner is eligible for or participating in either the deferment program or the low interest rate program established under EO 7S.6a or b.

According to the OPM Guidance EO 7S.6d states that an individual taxpayer's eligibility for either program is irrelevant if the taxes on the property are paid on their behalf by an escrow agent, financial institution, mortgage service agent or bank. In other words, "…escrow agents are still expected to remit tax payments on behalf of their customers according to the regular timetable"; that is by August 3 for semiannual and annual towns. However, the EO does not address what the expectation is if the borrower is not current or in such a program.

5. **Executive Order 7S (Section 6e): Liens Remain Valid.** In short, any tax liens which have been or will be filed, recorded, continued or released shall remain valid. As stated in the OPM Guidance "(n)othing in the EO affects ANY PROVISION of the Connecticut General Statutes relating to the continuing, recording and releasing of property tax liens."

- Tax collectors still rely on the existence of the inchoate lien as of the date of assessment.

- Intent to lien notices are to be sent.

- Lien continuing certificates are still to be filed in the land records on the regular timetable.

- Liens are still to be released according to the regular timetable.

- The "…precedence and enforcement of taxes, rates, charges and assessments shall remain applicable to any deferred tax, rate, charge or assessment or installment or portion thereof."

OPM takes the position that "…Even if a tax is deferred according to the program (extended grace period granted) the priority/precedence of that property tax remains in effect, is not lessened or reduced by virtue of participation in the extended grace period program, and will be subject to normal collection enforcement procedures once the 'deferment' (extended grace period) has concluded."

6. **Executive Order 7S (Section 11): Non-Judicial Liens.** Section 11 of Executive Order 7S ("EO 7S.11") prohibits a municipality or other entity from conducting a tax sale until at least thirty (30) days after the end of the declaration of emergency. Tax sales for which notices had been filed prior to March 10, 2020 are to be adjourned by the tax collector to a date to be determined by the tax collector. The adjournment shall be to a date no earlier than thirty (30) days after the end of the declaration of emergency. If a tax sale had been conducted prior to March 10, 2020, the six month redemption period is extended by the number of days during which the public health emergency exists. Redemption interest during the pendency of the public health emergency shall accrue at three percent (3%) per annum.

According to the OPM Guidance EO 7S.11 "…postpones all pending tax sales and redemption deadlines":

- Effective on April 1, 2020, any upcoming tax sales are automatically postponed for the duration of the emergency and can be rescheduled by the tax collector no sooner than thirty (30) days after the Governor declares the emergency has ended.

- Tax sale notices which went out before the EO remain valid.

- Adjournment notices can go out by first-class mail in the meantime, but the return-receipt notices and newspaper advertising required by General Statutes 12-157(a) should not be resumed until the new auction date is known, and their timing will be calculated from the new date."

- Any six-month redemption deadline pending at the time the EO was signed, which was 9:00 p.m. on April 1, 2020 are extended.

- The length of the extension is equal to the number of days that the emergency is in effect, which will be March 10, 2020 through until whatever date the Governor declares it has ended.

- The interest rate the purchaser earns during the extended portion of the redemption period is 0.25% per month but remains at 1.5% per month for the regular part of the redemption period. The EO does not reinstate any redemption period which had already expired.

- This means any tax sale conducted before October 2, 2019 is not affected by EO unless its redemption period was extended by a bankruptcy filing or other law.

- Deeds and affidavits can still be recorded for tax sales whose redemption deadlines expired before then.