

CHAPTER 104**(HB 510)**

AN ACT relating to delinquent taxes.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 67C.123 is amended to read as follows:

- (1) The tax structure, tax rates, and level of services in effect in the city of the first class and its county upon the adoption of a consolidated local government shall remain in effect after the adoption of the consolidated local government and shall remain the same until changed by the newly elected consolidated local government council.
- (2) ***All delinquent taxes of the former city of a first class in a consolidated local government shall be filed with the county clerk and shall be known as certificates of delinquency and shall be governed by the procedures set out in KRS Chapter 134 except that the certificate of delinquency on tax bills of the former city of the first class do not have to be advertised as set out in KRS 134.440 and may be paid or purchased directly from the clerk under the provisions of KRS 134.480 without a sheriff's sale pursuant to KRS 134.450.***
- (3) Notwithstanding the provisions of KRS 67C.115(2), all contracts, bonds, franchises and other obligations of the city of the first class and of the county in existence on the effective date of a consolidated local government shall continue in force and effect as obligations of the consolidated local government and the consolidated local government shall succeed to all rights and entitlements thereunder. All conflicts in the provisions of the contracts, bonds, franchises, or other obligations shall be resolved in a manner that does not impair the rights of any parties thereto.

Section 2. KRS 67C.115 is amended to read as follows:

- (1) Upon the successful passage of the question to consolidate a city of the first class and its county, all ordinances and resolutions of the previously existing city of the first class and all ordinances and resolutions of the county shall become effective ordinances and resolutions of the consolidated local government until repealed, modified, or amended in accordance with the following order of precedence:
 - (a) If a city ordinance conflicts with a county ordinance, the county ordinance shall prevail and shall become effective countywide; and
 - (b) If a city ordinance addresses a subject matter not addressed by a county ordinance, the city ordinance shall become effective countywide; and
 - (c) If a county ordinance addresses a subject matter not addressed by a city ordinance, the county ordinance shall become effective countywide.

Notwithstanding paragraph (a) of this subsection and in the event a uniform land development code has not been jointly adopted by the city and county prior to the effective date of a consolidated local government, the historic preservation and landmarks ordinances, and the zoning regulations of the city adopted pursuant to KRS Chapter 100, shall prevail and become effective countywide.

- (2) Ordinances and resolutions of either the city of the first class or its county in existence on the effective date of a local government consolidation which conflict with other provisions of this chapter shall be void. Except as provided in KRS 67C.123(3)~~(2)~~, any ordinance, resolution, or order in effect in a city of the first class or its county on the date a

consolidated local government takes effect shall expire five (5) years from that date unless amended or reenacted by the consolidated local government.

- (3) All ordinances of the city and county creating agencies and boards and interlocal agreements shall survive and be deemed reenacted by the council. All members may serve the balance of the terms to which they were appointed and until their successors are appointed and duly qualified according to law.
- (4) For purposes of this section, a conflict shall be deemed to exist between ordinances or resolutions, or the provisions of this chapter, where any rights, remedies, entitlements, or the enforcement thereof cannot reasonably be reconciled.
- (5) The county attorney shall serve as the legal advisor and representative to the consolidated local government and except for those duties pertaining to fiscal court set forth in KRS 69.210, the county attorney shall retain and exercise all other duties, powers, and rights delegated to that office by law.
- (6) Wherever the words "county judge" or "county judge/executive" appear in any resolution or ordinance in existence in a city of the first class or in a county containing a city of the first class as of the effective date of the establishment of a consolidated local government, they shall be deemed to mean the mayor of the consolidated local government.

Section 3. KRS 134.420 is amended to read as follows:

- (1) The state and each county, city, or other taxing district shall have a lien on the property assessed for taxes due them respectively for ten (10) years following the date when the taxes become delinquent, and also on any real property owned by a delinquent taxpayer at the date when the sheriff offers the tax claims for sale as provided in KRS 134.430 and 134.440. This lien shall not be defeated by gift, devise, sale, alienation, or any means except by sale to a bona fide purchaser, but no purchase of property made before final settlement for taxes for a particular assessment date has been made by the sheriff shall preclude the lien covering the taxes. The lien shall include all interest, penalties, fees, commissions, charges, *costs, reasonable attorney fees*, and other expenses incurred by reason of delinquency in payment of the tax bill *or certificate of delinquency* or in the process of collecting ~~either~~, and shall have priority over any other obligation or liability for which the property is liable. The lien of any city, county, or other taxing district shall be of equal rank with that of the state. When any proceeding is instituted to enforce the lien provided in this subsection, it shall continue in force until the matter is judicially terminated. Every city of the third, fourth, fifth, and sixth class shall file notice of the delinquent tax liens with the county clerk of any county or counties in which the taxpayer's business or residence is located, or in any county in which the taxpayer has an interest in property. The notice shall be recorded in the same manner as notices of lis pendens are filed, and the file shall be designated miscellaneous state and city delinquent and unpaid tax liens.
- (2) If any person liable to pay any tax administered by the Revenue Cabinet, other than a tax subject to the provisions of subsection (1) of this section, neglects or refuses to pay the tax after demand, the tax due together with all penalties, interest, and other costs applicable provided by law shall be a lien in favor of the Commonwealth of Kentucky. The lien shall attach to all property and rights to property owned or subsequently acquired by the person neglecting or refusing to pay the tax.
- (3) The lien imposed by subsection (2) of this section shall remain in force for ten (10) years from the date the notice of tax lien has been filed by the secretary of the Revenue Cabinet,

or his delegate with the county clerk of any county or counties in which the taxpayer's business or residence is located, or any county in which the taxpayer has an interest in property.

- (4) The tax lien imposed by subsection (2) of this section shall not be valid as against any purchaser, judgment lien creditor, or holder of a security interest or mechanic's lien until notice of the tax lien has been filed by the secretary of the Revenue Cabinet or his delegate with the county clerk of any county or counties in which the taxpayer's business or residence is located, or in any county in which the taxpayer has an interest in property. The recording of the tax lien shall constitute notice of both the original assessment and all subsequent assessments of liability against the same taxpayer. Upon request, the Revenue Cabinet shall disclose the specific amount of liability at a given date to any interested party legally entitled to the information.
- (5) Even though notice of a tax lien has been filed as provided by subsection (4) of this section, and notwithstanding the provisions of KRS 382.520, the tax lien imposed by subsection (2) of this section shall not be valid with respect to a security interest which came into existence after tax lien filing by reason of disbursements made within forty-five (45) days after the date of tax lien filing or the date the person making the disbursements had actual notice or knowledge of tax lien filing, whichever is earlier, provided the security interest:
- (a) Is in property which:
1. At the time of tax lien filing is subject to the tax lien imposed by subsection (2) of this section; and
 2. Is covered by the terms of a written agreement entered into before tax lien filing; and
- (b) Is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

Section 4. KRS 134.500 is amended to read as follows:

- (1) ***Certificates of delinquency***~~[Uncollectible tax claims]~~ shall bear interest at twelve percent (12%) per annum simple interest from the date the certificate of delinquency is issued. A fraction of a month is counted as an entire month. The ***five dollar (\$5)*** sheriff's~~[add-on]~~ fee, ***the advertising costs provided in Section 3 of this Act***~~[provided in KRS 134.430]~~, the clerk's add-on fee provided in KRS 134.480, and the county attorney's add-on fee provided in this section shall be ***included in***~~[excluded from]~~ the interest calculation~~[except]~~ in counties containing cities of the first class or consolidated local government ***and shall be excluded in other counties, except upon adoption of an ordinance by a county to include in the interest calculation the fees provided for in Section 3 of this Act, the clerk's add-on fee provided in KRS 134.480, and the county attorney's add-on fee provided in this section.*** All tax bills on omitted property that were not turned over to the sheriff in time to be collected or to make the sale provided for in KRS 134.430 and 134.440 shall also be submitted to the fiscal court but shall be carried over as a charge against the sheriff at the time he ***or she*** makes ***the***~~[his]~~ next regular settlement.
- (2) The cabinet shall be responsible for the collection of certificates of delinquency and delinquent personal property tax bills; however, the cabinet shall first offer the collection duties to the county attorney, unless the cabinet determines that the county attorney has previously failed to perform collection duties in a reasonable and acceptable manner. Any county attorney desiring to perform the duties associated with the collection of delinquent

tax claims shall enter into a contract with the cabinet on an annual basis. The terms of the contract shall specify the duties to be undertaken by the county attorney. These duties shall include but are not limited to the following actions:

- (a) Within fifty (50) days after the issuance of a certificate of delinquency to the state, county, and taxing district, the county attorney or the Revenue Cabinet shall cause a notice of the purchase to be mailed by regular mail to the property owner at the address on the records of the property valuation administrator. The notice shall advise the owner that the certificate is a lien of record against all property of the owner, and bears interest at the rate of twelve percent (12%) per annum, and if not paid will be subject to collection by the county attorney as provided by law.
 - (b) The county attorney shall file in the office of the county clerk a list of the names and addresses to which the notice was mailed along with a certificate that the notice was mailed in accordance with the requirements of this section.
 - (c) All notices returned as undeliverable shall be submitted to the property valuation administrator. The property valuation administrator shall attempt to correct inadequate or erroneous addresses and, if property has been transferred, shall determine the new owner and the current mailing address. The property valuation administrator shall return the notices with the corrected information to the county attorney prior to the expiration of the one (1) year tolling period provided in KRS 134.470.
 - (d) Within ninety (90) days after the expiration of the one (1) year tolling period provided in KRS 134.470, the county attorney shall cause a notice of his intention to enforce the lien to be mailed to all owners whose tax bills remain delinquent. No second notice shall be required for addresses previously determined to be undeliverable and for which the property valuation administrator has not provided corrected information.
 - (e) Failure to mail the notices shall not affect the validity of the claim of the state, county, and taxing district. The postal cost of mailing the notices shall be added to the certificate of delinquency and, upon collection, the county attorney shall be reimbursed for the postage. The county attorney shall deliver at the same time a list of the owners whose tax bills remain delinquent to the property valuation administrator. The property valuation administrator shall review this list in accordance with the provisions of KRS 132.220 to establish that the properties on the list can be identified and physically located.
- (3) The county attorney who enters into a contract with the cabinet shall have a period of two (2) years after the expiration of the one (1) year tolling period provided in KRS 134.470 to collect delinquent tax bills or to initiate court action for their collection. At the expiration of the two (2) years the cabinet may assume responsibility for all uncollected bills except those with pending court action.
 - (4) The county attorney who enters into a contract with the cabinet and performs his *or her* duties in respect to the certificate of delinquency and delinquent personal property tax bills shall be entitled to twenty percent (20%) of the amount due each taxing unit, whether the tax claim is voluntarily paid or is paid through sale or under court order, and the fee shall be paid to him by the county clerk when making distribution, as provided in KRS 134.480. This fee shall be added to the amount of the tax claims and paid by the persons paying the tax claims. They shall not be paid by the taxing districts or deducted from the taxes due the taxing districts. This fee shall be waived if the certificate of delinquency is paid by the taxpayer only within five (5) days of the sheriff's sale. If more than one (1) county attorney

renders necessary services in an effort to collect a tax claim, the attorney serving the last notice or rendering the last substantial service preceding collection shall be entitled to the fee. When the county attorney's office, in an effort to collect a certificate of delinquency, or delinquent personal property tax bills files a court action which is litigated by the taxpayer, an additional county's attorney fee equal to thirteen percent (13%) of the total tax plus ten percent (10%) penalty, may be added to the certificate or the bill and shall become part of the tax claim.

- (5) If a county attorney chooses not to contract for these collection duties or if a county attorney fails to perform the duties required by the contract, the cabinet shall assume responsibility for the collection process. In the performance of those duties, the cabinet shall have all the powers, rights, duties, and authority with respect to the collection, refund, and administration of the amount due on the certificate of delinquency conferred generally upon the cabinet by Kentucky Revised Statutes including, but not limited to, KRS Chapters 131, 134, and 135. The twenty percent (20%) fee that would have otherwise been paid to the county attorney shall be paid to the cabinet for deposit in the delinquent tax fund provided for under KRS 134.400.
- (6) Any action on behalf of the state, county, and taxing districts authorized by this section or by KRS 134.470, 134.490, or 134.540 shall be filed on relation of the secretary, and the petition may be sent to the cabinet, which may require revision in instances where it deems revision or amendment necessary. The cabinet shall advise the county attorney in all actions, and may send him *or her* special assistance when the secretary deems assistance necessary. A copy of the judgment shall also be sent to the cabinet. If the cabinet sends assistance to a county attorney who contracts to prosecute the suits or proceedings, the county attorney shall be entitled to his *or her* full fee. On the same day that suit is filed, the county clerk shall be given notice of its filing. Costs incident to the suit shall become a part of the tax claim.
- (7) The cabinet may make its delinquent tax collection databases and other technical resources, including but not limited to income tax refund offsetting, available to the county attorney upon request from the county attorney. The county attorney seeking assistance shall enter into any agreements required by the cabinet to protect taxpayer confidentiality, to ensure database integrity, or to address other concerns of the cabinet.
- (8) The county attorney may, at any time after assuming collection duties, enter into an agreement with the delinquent taxpayer to accept installment payments on the delinquent tax bill. The agreement shall not waive the county attorney's right to initiate court action or other authorized collection activities if the taxpayer does not make payments in accordance with the agreement.

Section 5. KRS 134.460 is amended to read as follows:

- (1) Certificates of delinquency shall bear interest from the date of issuance until collected at the rate of twelve percent (12%) per annum simple interest. A fraction of a month is counted as an entire month. ***The total amount of the certificate of delinquency, the clerk's add-on fee provided in KRS 134.480, and the county attorney's add-on fee provided in Section 2 of this Act shall be included in the base for the interest calculation.***
- (2) Certificates of delinquency shall be prima facie evidence that:
 - (a) The property represented by the certificate was subject to taxes levied thereon, and was assessed as required by law.

- (b) The tax bill was valid and correct in all respects.
- (c) The taxes were not paid at any time before the issuance of the certificate.

Section 6. KRS 134.500 is amended to read as follows:

- (1) A ***certificate of delinquency***~~[Uncollectible tax claims]~~ shall bear interest at twelve percent (12%) per annum simple interest from the date the certificate of delinquency is issued. A fraction of a month is counted as an entire month. The ***total amount of the certificate of delinquency***~~[sheriff's add-on fee provided in KRS 134.430]~~, the clerk's add-on fee provided in KRS 134.480, and the county attorney's add-on fee provided in this section shall be ***included in the base for***~~[excluded from]~~ the interest calculation~~[except in counties containing cities of the first class or consolidated local government]~~. All tax bills on omitted property that were not turned over to the sheriff in time to be collected or to make the sale provided for in KRS 134.430 and 134.440 shall also be submitted to the fiscal court but shall be carried over as a charge against the sheriff at the time he makes his next regular settlement.
- (2) The cabinet shall be responsible for the collection of certificates of delinquency and delinquent personal property tax bills; however, the cabinet shall first offer the collection duties to the county attorney, unless the cabinet determines that the county attorney has previously failed to perform collection duties in a reasonable and acceptable manner. Any county attorney desiring to perform the duties associated with the collection of delinquent tax claims shall enter into a contract with the cabinet on an annual basis. The terms of the contract shall specify the duties to be undertaken by the county attorney. These duties shall include but are not limited to the following actions:
 - (a) Within fifty (50) days after the issuance of a certificate of delinquency to the state, county, and taxing district, the county attorney or the Revenue Cabinet shall cause a notice of the purchase to be mailed by regular mail to the property owner at the address on the records of the property valuation administrator. The notice shall advise the owner that the certificate is a lien of record against all property of the owner, and bears interest at the rate of twelve percent (12%) per annum, and if not paid will be subject to collection by the county attorney as provided by law.
 - (b) The county attorney shall file in the office of the county clerk a list of the names and addresses to which the notice was mailed along with a certificate that the notice was mailed in accordance with the requirements of this section.
 - (c) All notices returned as undeliverable shall be submitted to the property valuation administrator. The property valuation administrator shall attempt to correct inadequate or erroneous addresses and, if property has been transferred, shall determine the new owner and the current mailing address. The property valuation administrator shall return the notices with the corrected information to the county attorney prior to the expiration of the one (1) year tolling period provided in KRS 134.470.
 - (d) Within ninety (90) days after the expiration of the one (1) year tolling period provided in KRS 134.470, the county attorney shall cause a notice of his intention to enforce the lien to be mailed to all owners whose tax bills remain delinquent. No second notice shall be required for addresses previously determined to be undeliverable and for which the property valuation administrator has not provided corrected information.
 - (e) Failure to mail the notices shall not affect the validity of the claim of the state, county, and taxing district. The postal cost of mailing the notices shall be added to the

certificate of delinquency and, upon collection, the county attorney shall be reimbursed for the postage. The county attorney shall deliver at the same time a list of the owners whose tax bills remain delinquent to the property valuation administrator. The property valuation administrator shall review this list in accordance with the provisions of KRS 132.220 to establish that the properties on the list can be identified and physically located.

- (3) The county attorney who enters into a contract with the cabinet shall have a period of two (2) years after the expiration of the one (1) year tolling period provided in KRS 134.470 to collect delinquent tax bills or to initiate court action for their collection. At the expiration of the two (2) years the cabinet may assume responsibility for all uncollected bills except those with pending court action.
- (4) The county attorney who enters into a contract with the cabinet and performs his duties in respect to the certificate of delinquency and delinquent personal property tax bills shall be entitled to twenty percent (20%) of the amount due each taxing unit, whether the tax claim is voluntarily paid or is paid through sale or under court order, and the fee shall be paid to him by the county clerk when making distribution, as provided in KRS 134.480. This fee shall be added to the amount of the tax claims and paid by the persons paying the tax claims. They shall not be paid by the taxing districts or deducted from the taxes due the taxing districts. This fee shall be waived if the certificate of delinquency is paid by the taxpayer only within five (5) days of the sheriff's sale. If more than one (1) county attorney renders necessary services in an effort to collect a tax claim, the attorney serving the last notice or rendering the last substantial service preceding collection shall be entitled to the fee. When the county attorney's office, in an effort to collect a certificate of delinquency, or delinquent personal property tax bills files a court action which is litigated by the taxpayer, an additional county's attorney fee equal to thirteen percent (13%) of the total tax plus ten percent (10%) penalty, may be added to the certificate or the bill and shall become part of the tax claim.
- (5) If a county attorney chooses not to contract for these collection duties or if a county attorney fails to perform the duties required by the contract, the cabinet shall assume responsibility for the collection process. In the performance of those duties, the cabinet shall have all the powers, rights, duties, and authority with respect to the collection, refund, and administration of the amount due on the certificate of delinquency conferred generally upon the cabinet by Kentucky Revised Statutes including, but not limited to, KRS Chapters 131, 134, and 135. The twenty percent (20%) fee that would have otherwise been paid to the county attorney shall be paid to the cabinet for deposit in the delinquent tax fund provided for under KRS 134.400.
- (6) Any action on behalf of the state, county, and taxing districts authorized by this section or by KRS 134.470, 134.490, or 134.540 shall be filed on relation of the secretary, and the petition may be sent to the cabinet, which may require revision in instances where it deems revision or amendment necessary. The cabinet shall advise the county attorney in all actions, and may send him special assistance when the secretary deems assistance necessary. A copy of the judgment shall also be sent to the cabinet. If the cabinet sends assistance to a county attorney who contracts to prosecute the suits or proceedings, the county attorney shall be entitled to his full fee. On the same day that suit is filed, the county clerk shall be given notice of its filing. Costs incident to the suit shall become a part of the tax claim.

- (7) The cabinet may make its delinquent tax collection databases and other technical resources, including but not limited to income tax refund offsetting, available to the county attorney upon request from the county attorney. The county attorney seeking assistance shall enter into any agreements required by the cabinet to protect taxpayer confidentiality, to ensure database integrity, or to address other concerns of the cabinet.
- (8) The county attorney may, at any time after assuming collection duties, enter into an agreement with the delinquent taxpayer to accept installment payments on the delinquent tax bill. The agreement shall not waive the county attorney's right to initiate court action or other authorized collection activities if the taxpayer does not make payments in accordance with the agreement.

Approved April 9, 2004