

McGinty, Hitch, Person, Anderson & Revore, P.C.

MEMORANDUM

TO: CHARLOTTE CITY COUNCIL

FROM: THOMAS M. HITCH, CITY ATTORNEY

RE: **PENALTIES AND INTEREST ASSESSED AGAINST
ERIC JOHNSON AT 851 CHADS WAY, CHARLOTTE, MI**

DATE: September 16, 2022

The purpose of this memorandum is to discuss the legal issues as it relates to the request by Eric Johnson to waive the late penalties and interest charges related to the payment of his 2021 winter tax bill. The tax bill included the taxes assessed by each taxing unit, along with any special assessments also levied by the taxing units. Mr. Johnson has stated that the tax payment was mailed a number of days in advance of the due date but due to the delay in the delivery by the U.S. Postal Service, it was not received until after the due date. As the Council is aware, Mr. Johnson is requesting a waiver of his late fees, making the request pursuant to MCL 211.44(4), which provides that the governing body of a local property tax collecting unit may waive all or part of the property tax administration fee or the late penalty charge, or both.

The late fee assessed was authorized and provided for in the above-cited statute, MCL 211.44. The City has, for many years, imposed the penalty which provides for a 3% penalty. At MCL 211.44(3), the statute provides that the local property tax collecting unit (i.e. Charlotte) shall add a property tax administration fee of not more than 1% of the total tax bill per parcel, and a late penalty charge equal to 3% of the tax, if those taxes are "returned as delinquent", as provided under MCL 211.78(a)(2).

In determining when a delinquency occurs by the City, it is not based upon the mailing date, such as Federal income taxes, but upon whether the tax was received by the due date. At MCL 211.78(a)(2), it provides in pertinent part:

"On March 1 in each year, taxes levied in the immediately preceding year that remain unpaid shall be returned as delinquent for collection."

These provisions are applied uniformly, to all properties for which the tax payments have not been made by March 1 of each year. The tax roll of delinquent property taxes, with the assessed

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late fees, is sent back to the County Treasurer for collection. Further, the City can no longer receive payments for a year in which the taxes are determined to be delinquent, and all payments must be made to the County Treasurer. This prohibition is set forth in the property card for 851 Chads Way (Exhibit 1).

As a background, and something for which is little understood, under the General Property Tax Act, the County makes good (i.e. funds to the local taxing unit) all taxes returned as delinquent. Counties throughout the State have what is known as a "County revolving fund" in which the County bonds in order to fund the unpaid delinquent real property taxes returned by the local treasurers to the County (personal property taxes are not part of this process). The County then collects the payments made by the delinquent taxpayer, but more importantly, pays the City the amount of delinquent taxes assessed.

The other point to recognize, is that, like all manner of collection of penalties and interest, those penalties and interest are collected first before the delinquent taxes. For each parcel, the County Treasurer makes an accounting to the City Treasurer regarding each individual parcel, showing the application of the payment, when received.

In this case, the payment was received after March 1 and it was so reflected by the County Treasurer. Attached to this email is the accounting prepared by the County and submitted to the City. (Exhibit 2). The City collects taxes as a general proposition on July 1 (summer taxes). In this case, however, because of the City fire assessment, a portion of that winter tax payment did go to the City. In the attachment, you will see what was billed to Mr. Johnson and what was paid. You will note that for City fire assessment, the City is still owed \$6.06. That represents its portion of the remaining tax that is uncollected. After adding up the shortfall for all of the taxing units, there remains \$41.42 in taxes that are unpaid as it pertains to 851 Chads Way. That small amount continues to incur a 1% penalty per month.

Thus, it can be seen, that there is no tax penalty to waive. It has already been collected by the City and the shortfall, while in the amount of the late fee, is the tax that remains unpaid. Given that, the City is in no position whatsoever to waive the \$41.42 balance owing by Mr. Johnson. That amount is the tax unpaid, of which \$35.36 of it belongs to the other taxing jurisdictions for which the City collects taxes. It is not, and has not been, a "City late fee" since the delinquent tax roll was returned to the County Treasurer.

It is therefore my opinion that the City can take no action whatsoever relative to this late fee collected on March 1, 2022.

As a final point, the question remains whether the City should consider waiving late fees for all taxpayers or whether it should try to operate on a postmark date system. Tax Code does provide for the use of the postmark date as the date of payment at MCL 211.44(b), which provides in pertinent part:

"Sec. 44b. For purposes of determining the date payment of the tax is received

under this act, the date of a United States postal service postmark may be considered the date of receipt. However, a tax payment shall not be considered received prior to 7 calendar days before the date of actual receipt.”

Even this, though, is not a true postmark system. A tax payment shall not be considered “received” prior to 7 days before actual receipt of the payment. It usually turns out to be a 7 day grace period.

In researching this issue, I conferred with Sandra Osborn, the Assistant City Assessor, who advised that a number of years ago, the City tried to handle tax payments using the postmark, rather than the date the tax was actually received. She advised that it was a disaster. The problems of hand-sorting were unduly burdensome, but the biggest issue was what was evidenced in this case. That is, the tax roll is set as of March 1 in each year, based upon the State-mandated deadline of tax payments paid before that date. It is extremely difficult, for a variety of reasons regarding fairness and insuring integrity in tax collection, to change the tax roll. It is not permitted, under law, to modify the tax rolls unless fitting into specific provisions for the summer and December Boards of Review, or as ordered by the Michigan Tax Tribunal. City Treasurers have no authority to modify the tax roll, once the tax roll is turned over to the County.

Mr. Johnson was free to challenge this late fee payment by taking the appeal to the Michigan Tax Tribunal. The time period for filing tax appeals is very short (35 days) and that option is long passed. The start date to take an appeal would be the date in which the County issued the initial delinquent tax statement to Mr. Johnson. Mr. Johnson had an avenue in which to challenge the validity of the late fee, but apparently did not do so.

I strongly recommend that the City not waive its late fees. Those late fees help offset the costs associated with the City’s obligation as a collecting tax unit to maintain tax records for all of the taxing authorities within the City. I further recommend it not use the postmark for determining the timeliness of the payment.

I will be present at the City Council meeting to discuss these issues.

TMH:cf