



WEISS SEROTA HELFMAN  
COLE & BIERMAN

AT THE CROSSROADS OF BUSINESS, GOVERNMENT & THE LAW

**MEMORANDUM**

To: Elizabeth Hertz, Deputy City Attorney and Margaret Carland, Deputy City Attorney

From: Lori Smith-Lalla, Esq. *Lori Smith-Lalla*

Date: January 24, 2020

Re: Delinquent Taxes on Properties held under Receivership in the case of Securities and Exchange Commission v. EB5 Asset Manager, LLC, and Lin Zhong a/k/a Lily Zhong. (the "SEC Action")

---

This memorandum is in response to your questions regarding certain properties currently held by a court appointed receiver (the "Receiver") in the SEC Action referenced above (the "Subject Properties") located in the City of Port St. Lucie (the "City").

**BACKGROUND:** The Subject Properties are located within the City and within a Community Redevelopment Area (the "CRA") of the City. The Subject Properties are held by a receiver appointed pursuant to the SEC Action. In addition, the SEC Action provides in paragraph 15 of the Order, that during the period of the receivership, all persons, including creditors, banks, investors, or others, with actual notice of the Order, are enjoined from filing a petition for relief under the United States Bankruptcy Code without prior permission from this Court, or from in any way disturbing the assets or proceeds of the receivership or from prosecuting any actions or proceedings which involve the Receiver or which affect the Subject Properties. All of the Subject Properties have delinquent taxes, some have tax certificates held by individuals and some have tax certificates held by St. Lucie County (the "County"). The Receiver has indicated that it is interested in selling the Subject Properties to third parties or to convey the Subject Properties to the City.

**QUESTIONS PRESENTED:** The following questions have been presented in connection with the delinquent taxes:

1. Can the delinquent taxes be cancelled prior to the sale of the Subject Properties to private third parties?
2. If the Receiver conveys the Subject Properties to the City, can the delinquent taxes be cancelled?

3. If not, is it possible for the City to obtain the Subject Property free from the lien of the delinquent taxes?

**ANSWERS:** The following are short answers to the questions posed above.

1. No. Taxes and collection of delinquent taxes are statutory, therefore the only authority that the taxing authorities have to compromise taxes are set forth in Florida Statutes. There are no statutes allowing for a cancellation of delinquent taxes when a property is held by a private party.

2. Not entirely. Although property, when held by a municipality and used for a public purpose is exempt from taxes in the future, all delinquent taxes are still valid but unenforceable while such property is held by a city for a municipal purpose.

3. Yes, it is possible for the City to obtain the Subject Properties eventually, free and clear of all delinquent tax liens. However, the City must allow the Subject Properties to make their way through the Tax Certificate and Tax Deed process as discussed below.

**DISCUSSION:**

Under Florida Statutes, the imposition, process for appeal, collection of both current property taxes and delinquent property taxes are set forth under Chapters 192 through 197. There is no statutory provision allowing for the cancellation of ad valorem property taxes when the property is owned by private parties. In many instances, the Florida Statutes provide for the payment of taxes prior to the distribution of property, such as Section 197.217 with respect to the judicial sale of property. The cancellation of tax certificate held by a county under Section 197.446, requires the landowner to pay the full amount of taxes that could have been lawfully assessed against the property prior to setting aside or cancellation of any tax certificate held by a county.

In the instance when a property is acquired between January 1 and November 1 of any year by a governmental unit exempt from the payment of ad valorem property taxes by *any means* other than condemnation for use exclusively for federal, state, county or municipal purposes, Section 196.295(1), Florida Statutes, requires that the taxpayer (owner of the property being conveyed to the governmental unit) place in escrow with the county tax collector an amount equal to the current taxes prorated to the date of transfer of title. This allows for a proration of the taxes due while the property is held by a private taxpayer and the remaining taxes due for that current year shall stand cancelled. Not only shall the current taxes be paid into escrow, subsection (2), of 196.295, Florida Statutes also requires the payment of all taxes due from prior years.

As provided above, if the Receiver conveys the Subject Property to the City for municipal purposes under the SEC Action, the Receiver would not only be required to prorate the current year taxes, but also pay all taxes due from prior years.

If the Receiver was to convey the Subject Property to the County for county purposes or the City for municipal purposes under the SEC Action, Section 196.28, Florida Statutes, gives the authority to the county pursuant to resolution of the board of county commissioners to cancel and discharge any and all liens for delinquent or current taxes that are held or owned by the county or the state. However, according to the Attorney General, stated in AGO 95-18, the county may not undertake to cancel or discharge liens for taxes owed to any taxing authority other than the county or state. Any other taxes owed to any other governmental entity would be required to be paid by the Receiver for the Subject Properties in accordance with Section 196.285(2), Florida Statutes.

If the County does not cancel and discharge the lien of the taxes as provided for in Section 196.28, or such taxes are not paid by the Receiver, the City would not be required to pay the taxes, the lien of such taxes shall remain valid, until paid or the statute of limitations runs. The lien of the taxes would remain valid, but unenforceable against the City, so long as the property is owned and used by it for municipal purposes. See AGO 074-199 and 073-183. If the City were to acquire the Subject Property, and such liens are not lawfully extinguished or paid by the Receiver and the City subsequently sold the Subject Properties, the tax lien would be enforceable against the new owner.

In fact, the Attorney General's Office has stated in AGO 90-97 that, where a municipality acquires properties through foreclosure and there are delinquent taxes or prorated current ad valorem taxes due and the taxpayer did not place an amount equal to the taxes in escrow, the tax collector may, pursuant to Section 197.432 and 197.502 proceed to sell tax certificates and process applications for tax deeds on the real property acquired by the municipality. In the case discussed in AGO 90-97, the city in its foreclosure proceedings did not notice the county or the tax certificate holders, therefore the foreclosure deed would take subject to the tax liens. The Attorney General office in this opinion was advising the tax collector on its duties and did not address the enforceability of the tax certificate or tax deed against the city. However, in the case of *Kostecos v. Johnson*, 85 So. 2d 594 (Fla. 1956) the Florida Supreme Court held that the lien of tax certificates and tax deeds while remaining valid during the time that a property is held by a governmental entity for a governmental purpose, such lien is unenforceable so long as the property remains with the governmental entity. If the property is sold to a private party, such property would be subject to such tax lien.

The only process by which the City may acquire title to the Subject Property, and be free from the lien of the delinquent taxes is through the tax certificate and tax deed process. Currently in our case, the tax certificate and tax deed process is suspended due to the injunction by the Court under the SEC Action on any proceedings which affects the property held by the Receiver without prior permission from the Court.



Typically under Section 197.432, Florida Statutes, there is a sale of tax certificates to the general public annually. The tax certificate will be issued to the bidder who will pay the taxes, interest, costs and charges and will demand the lowest rate of interest, not in excess of the maximum rate of interest. If there are no bidders for a tax certificate, then the tax certificate will be issued in the name of the county and will accrue interest at the statutory rate.

Pursuant to Section 197.482, Florida Statutes, seven years after the date of issuance of a tax certificate, if a tax deed has not been applied for, and *no other administrative or legal proceedings has existed of record*, (as in the case of the SEC Action), the tax certificate is null and void and shall be cancelled. Since there is an injunction under the SEC Action, time has been tolled from the date of the order. Any tax certificates issued on the Subject Properties prior to that date which have not yet reached seven years, such time period will be extended for those tax certificates on a day for day basis. Once the Court agrees to release the Subject Properties from the injunction under the SEC Action, the seven year time period will begin to run again from the date of the release.

Generally, a tax certificate holder may apply for a tax deed, in accordance with Section 197.502, Florida Statutes, any time after two (2) years have elapsed since April 1 of the year of issuance of the tax certificate and before the cancellation of the certificate. A tax certificate holder that applies for a tax deed, other than a county, must at the time of application pay all amounts required for redemption or purchase of all other outstanding tax certificates, plus interest, and any other delinquent or current taxes and interest, plus costs of issuance of the tax deed.

A county for is required to apply for a tax deed on all county held tax certificate on property valued at \$5,000 or more, and may apply on properties valued at less than \$5,000. The application for a tax deed is to be made two (2) years after April 1 of the year in which the tax certificate was issued. Upon application, the county shall only have to deposit the applicable fees and costs, but does not have to cover the cost of all other tax certificates and delinquent or current taxes owing.

The opening bid for a tax deed on county held tax certificates for nonhomestead property shall be the sum of the value of all outstanding tax certificates, plus omitted taxes, delinquent taxes, current taxes and fees and costs paid by the county, plus interest. The opening bid on individual held tax certificates shall be, in addition to the amount paid by the certificate holder to apply for the tax deed, the amount required to redeem the applicant's tax certificate, all costs paid by the applicant, any subsequently sold tax certificates and current taxes if due.

If there are no bidders at the public sale or if the individual certificate holder fails to timely pay the costs of resale or fails to pay amount due for issuance of the tax deed, the county clerk shall enter the property the "lands available for taxes" and shall notify the county that the property is available for purchase. During the first ninety days that the property is on the lands available for taxes list, the county may purchase the land at the



opening bid. Thereafter, any other person or governmental entity may purchase the land for the opening bid.

Three years after the day the property was offered for public sale, the property shall escheat to the county in which it is located, free and clear of all taxes. All tax certificates, accrued taxes and liens of any nature against the property shall be deemed canceled as a matter of law and no further legal force and effect. Pursuant to Section 197.592, Florida Statutes, lands acquired by any county for delinquent taxes, which have not been previously sold, acquired for infill housing, and which are located within the boundaries of an incorporated municipality of the county shall be conveyed to the governing board of the municipality in which the land is located. Such lands conveyed to the municipality shall be freely alienable, without regard to third parties. Liens of record held by the county on such parcels conveyed to a municipality shall not survive the conveyance of the property to the municipality.

Although it could take as much as 5 years to acquire the Subject Properties through the tax deed and escheatment process, such lands will be freely alienable by the City without the lien of delinquent taxes.

