

MCCREARY, VESELKA, BRAGG & ALLEN, P.C.
ATTORNEYS AT LAW
P.O. BOX 1269
ROUND ROCK, TEXAS 78680-1269

HB 1597 – New Legislation on Installment Payment Agreements
Effective September 1, 2013

Section 33.02 of the Tax Code was amended by House Bill 1597 effective September 1, 2013. The provisions of section 33.02 govern the installment payment of delinquent taxes. There are new special provisions for installment payment agreements, particularly on residence homesteads.

These provisions apply to a written installment payment agreement entered into after September 1, 2013. Installment payment agreements entered into prior to September 1, 2013 are not affected by the new law.

1) Provisions of Section 33.02 Pertaining to Residence Homesteads

Upon request of a property owner who owes delinquent taxes on a residence homestead, the property owner is entitled to an installment payment agreement unless the property owner has entered into an installment payment agreement in the preceding 24 months. The Tax Collector may not refuse this request.

2) Installment Payment Agreements Not Required On Non-Residence Homestead Accounts

The Tax Collector still has discretion as to whether or not to enter into an installment payment agreement on non-residence homestead properties.

3) Provisions of Section 33.02 Pertaining to ALL Installment Payment Agreements

If the Tax Collector enters into an installment payment agreement on a residence homestead, or any other property, the required terms of the installment payment agreement for delinquent taxes are as follows:

- (a) The installment payment agreement must extend for a period of 12 months and may not extend for a period of more than 36 months. The Tax Collector does have discretion as to the length of the installment payment

agreement between 12 and 36 months depending upon the particular circumstances associated with the delinquent account.

(b) The installment payment agreement must provide for payments to be made in equal monthly installments.

(c) The installment payment agreement must be in writing.

4) Provisions of Section 33.02 Pertaining to Penalty and Interest on Residence Homesteads

Penalties under Tax Code, sections 33.01(a) or 33.07 do not accrue after the date a property owner enters into an installment payment agreement on their residence homestead. Penalties which accrue prior to the date of the installment payment agreement remain due, and are frozen at the amount due on the date the agreement is entered.

Because installment payment agreements can only be entered into for the payment of delinquent taxes, the initial 6% penalty will accrue in February of the first year of delinquency and section 33.01(a) penalties will continue to accrue each month thereafter until such time as a written installment payment agreement is signed.

Interest accrues at the rate prescribed by Tax Code, section 33.01(a), and is unaffected by the existence of an installment payment agreement.

5) Provisions of Section 33.02 Pertaining to Penalty and Interest on Non-Residence Homestead Properties

Penalties and Interest accrue at the rate prescribed by Tax Code, section 33.01 or 33.07 and are unaffected by the existence of an installment payment agreement on non-residence homestead property.

6) Result of a Default of an Installment Payment Agreement on Residence Homesteads on the Accrual of Penalties

If a property owner fails to make a payment required under the installment payment agreement on residence homestead property, the penalty provided by Tax Code, sections 33.01(a) & 33.07, accrues on the unpaid balance as if the owner had not entered into the agreement.

7) Installment Payment Agreement Abates Litigation, Sale or Seizure of Property

During the pendency of an Installment Payment Agreement the property may not be seized or sold, nor may a lawsuit be filed to collect a delinquent tax on the property that is subject to the agreement. Legal action on a pending lawsuit or judgment is abated during the term of the payment agreement.

8) Required Notice Upon Default To Property Owners Listed On The Tax Roll

Section 33.04 now requires that if a property owner is in breach of an installment payment agreement on ANY property, the Tax Collector must deliver a notice of delinquency to the person who is in breach of the agreement and to any other owner of an interest in the property whose name appears on the delinquent tax roll.

This notice must be delivered prior to seizing or selling the subject property or initiating litigation to collect the balance of the delinquent taxes on the property which was the subject of the installment payment agreement.

Section 33.04 does not specify how long the Tax Collector must wait after the delivery of the notice of delinquency before seizing or selling the property or filing suit. We recommend waiting a reasonable period of time, but no fewer than 21 days.

9) Effect of Installment Payment Agreement on Section 33.07 Penalties for Residence Homestead

House Bill 1597 did not address the accrual of section 33.07 penalties. Our interpretation of the law is that section 33.07 penalties do not apply to a residence homestead property that is the subject of an installment payment agreement on July 1, of the year in which the tax becomes delinquent. However, if the property owner defaults on the installment payment agreement, section 33.07 penalties accrue on the unpaid balance as if the owner had not entered into the agreement.

Section 33.07 penalties which accrue prior to the date of the installment payment agreement remain due, and are frozen at the amount due on the date the agreement is entered unless the property owner defaults. If the property owner defaults on the installment payment agreement, section 33.07 penalties accrue on the remaining unpaid balance as if the owner had not entered into the agreement.

May notices required by section 33.07 should be delivered without regard to the existence of an installment payment agreement.

10) Provisions of 33.04 Pertaining to All Notices of Delinquency

All notices of delinquency must contain the following statement in capital letters:

“IF THE PROPERTY DESCRIBED IN THIS DOCUMENT IS YOUR RESIDENCE HOMESTEAD, YOU SHOULD CONTACT THE (NAME OF TAXING UNIT) REGARDING A RIGHT YOU MAY HAVE TO ENTER INTO AN INSTALLMENT AGREEMENT DIRECTLY WITH THE (NAME OF TAXING UNIT) FOR THE PAYMENT OF THESE TAXES.”

Ironically, the notice of delinquency required to be delivered upon breach of the installment payment agreement must contain this language, even though the Tax Collector will not be required to enter into another installment agreement on a residence homestead for 24 months following the date the breached installment agreement was signed.

If you have any questions, or want to discuss application of this law to a specific situation, please contact your MVBA attorney.