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**KEEPING BAD PRORATION LANGUAGE
 FROM OBSTRUCTING HOME PLATE**
**ESTABLISHING THE "NEW NORMAL:"
 PUBLIC ACT 357**


By:
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PA 357 of 2004 (Senate Bill 1112) amends the General Property Tax Act to shift the county operating millage from winter collection to summer collection over a three year phase-in, beginning July, 2005.

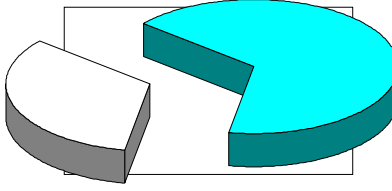
This accelerated tax collection will reportedly save the State \$182.1 Million in Fiscal Year 2004-05.




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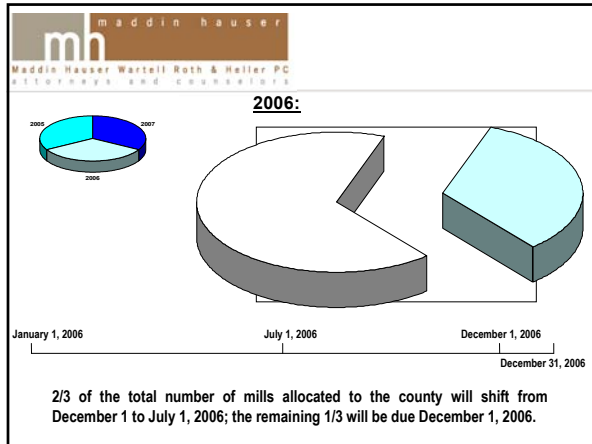


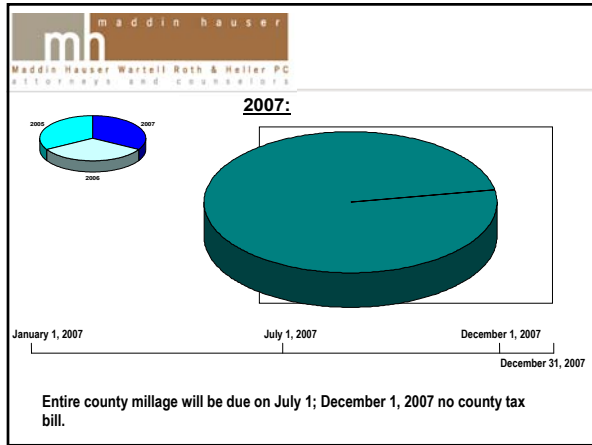
2005:



January 1, 2005
July 1, 2005
December 1, 2005
December 31, 2005

The phase-in will shift 1/3 of the total number of mills allocated to the county from December 1 to July 1, 2005; the remaining 2/3 will be due December 1, 2005.






ALTERNATIVE PRORATION METHODS

"Due Date" Method:
 Current Example:

- \$12,000 County tax bill due December 1, 2004.
- Closing on February 1, 2005
- $\$12,000 \div 12 \text{ months} = \$1,000/\text{month}$
- February 1, 2005 through November 30, 2005 = 10 months
- $10 \text{ months} \times \$1,000/\text{month} = \$10,000 \text{ Credit to Seller}$

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ALTERNATIVE PRORATION METHODS

"Due Date" Method:
Future Example:

- \$12,000 County tax bill due July 1, 2007.
- Closing on February 1, 2008
- $\$12,000 \div 12 \text{ months} = \$1,000/\text{month}$
- February 1, 2008 through June 30, 2008 = 5 months
- 5 months X \$1,000/ month = **\$5,000 Credit to Seller**

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ALTERNATIVE PRORATION METHODS

"Due Date" Method:
DURING PHASE IN PERIOD (2005):

- \$12,000 County tax bill due 1/3 July 1, 2005 and 2/3 December 1, 2005.
- Closing on February 1, 2006
- \$4,000 due July 1, 2005
 $\$4,000 \div 12 \text{ months} = \$333/\text{month}$
- \$8,000 due December 1, 2005
 $\$8,000 \div 12 \text{ months} = \$667/\text{month}$
- February 1, 2006 through June 30, 2006 = 5 months @ \$333/ mo
February 1, 2006 through November 30, 2006 = 10 months @ \$667/ mo
- 5 months X \$333/ month = **\$1,665 Credit to Seller**
10 months X \$667/ per month = **\$6,670 Credit to Seller**
Total Credit to Seller at Closing **\$8,335**


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ALTERNATIVE PRORATION METHODS

"Due Date" Method:
DURING PHASE IN PERIOD (2006):

- \$12,000 County tax bill due 2/3 July 1, 2006 and 1/3 December 1, 2006.
- Closing on February 1, 2007
- \$8,000 due July 1, 2006
 $\$8,000 \div 12 \text{ months} = \$667/\text{month}$
- \$4,000 due December 1, 2006
 $\$4,000 \div 12 \text{ months} = \$333/\text{month}$
- February 1, 2007 through June 30, 2007 = 5 months @ \$667/ mo
February 1, 2007 through November 30, 2007 = 10 months @ \$333/ mo
- 5 months X \$667/ month = **\$3,335 Credit to Seller**
10 months X \$333/ month = **\$3,330 Credit to Seller**
Total Credit to Seller at Closing **\$6,665**




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PLANNING ALTERNATIVES




“Fiscal Year” Method:

FACTS:

- \$12,000 County tax bill based on Fiscal year January 1 to December 31 paid on July 1, 2005.
- Closing on February 1, 2006
- $\$12,000 \div 12 \text{ months} = \$1,000/\text{month}$
- February 1, 2006 through December 31, 2006 = 11 months @ $\$1,000/\text{mo}$
- 11 months X $\$1,000/\text{month} = \$11,000$ credit to Seller





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THE NEW NORMAL?

A suggestion:

All real property taxes against the Premises, of whatever nature and kind, which have become due and payable on or before the Closing Date shall be paid and discharged by Seller. Real property taxes which became (or become) due on or within the 365 days preceding the Closing Date shall be prorated on the so-called due date basis on the basis of a 365 day year (the due date of the Summer tax bill being July 1, and the due date of the Winter tax bill being December 1); provided, however, that **the County portion of any tax bill due on July 1 as a result of PA 357 of 2004 shall be prorated on the so-called fiscal year basis** (the said fiscal year of such County taxes being January 1 to December 31 of the year following such July 1 tax bill). All tax prorations shall presume that Purchaser is the owner of the Premises on the Closing Date.





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SITUATIONS IN WHICH THIS LEGISLATION MUST BE CONSIDERED

- Tax Proration Method in Purchase Agreements
- Tax Proration Methods in Leases; First/Last Months' Rent
- CAM and Tax Reconciliation Dates in Leases
- Tax Due Dates in Leases
- Underwriting Deals on the Expense Side
- Prefunding Tax Reserves in Loan Transactions



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TYPICAL LANDLORD FORM TRIPLE NET LEASE

Tenant agrees to pay to Landlord, as additional rental hereunder, its proportionate share of all taxes and assessments which have been or may be levied or assessed during the Term hereof, against the land and buildings presently and/or at any time during the Term of this Lease comprising the Shopping Center.

Tenant's proportionate share of all of the aforesaid taxes and assessments levied or assessed for or during the Term hereof, as determined by Landlord, shall be paid in monthly installments on or before the first day of each calendar month, in advance, in an amount estimated by Landlord. In the event Landlord is required under any mortgage covering the Shopping Center to escrow real estate taxes, Landlord may, but shall not be obligated to, use the amount required to be escrowed by the mortgagee as a basis for its estimate of the monthly installments due from Tenant hereunder.

For the calendar years in which this Lease commences and terminates, Tenant's liability for its proportionate share of any taxes and assessments for such years shall be subject to a pro rata adjustment based on the number of days of said calendar year during which the Term of this Lease is in effect. A copy of a tax bill or assessment bill submitted by Landlord to Tenant shall at all times be sufficient evidence of the amount of taxes and/or assessments assessed or levied against the property to which such bill relates. Prior to or at the commencement of the Term of this Lease and from time to time throughout the Term hereof, Landlord shall notify Tenant in writing of Landlord's estimate of Tenant's monthly installments due hereunder.

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ANOTHER LANDLORD SAMPLE

Tenant agrees to pay as Additional Rent for the Building, Tenant's proportionate share of all real and personal property taxes and assessments, water and sewer tap in or connection charges, general and special, and all other governmental impositions which may be levied upon the Land, the Building or any part thereof, or income generated therein (other than net income taxes), whether or not now customary or within the contemplation of the parties hereto, until the termination of the original terms and of any extended term of this Lease. All of such taxes, assessments, and other impositions shall be paid by Tenant to Landlord within fifteen (15) business days after Landlord has submitted a statement to Tenant showing in reasonable detail, the computation of the amount due Landlord. Taxes and assessments for the first and last year of the term shall be prorated between Landlord and Tenant so that Tenant will be responsible for any such tax or assessment attributable to the period in which Tenant has possession of the building in the year in which the Lease commences or is terminated. The so-called "due-date" method of proration shall be used, it being presumed that taxes and assessments are payable in advance.

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SAMPLE FROM NATIONAL TENANT (PIZZA CHAIN) LEASE

Real Estate Taxes.

Tenant agrees to pay Landlord its proportionate share of the real estate taxes and special or general assessments which shall be levied against the Shopping Center each year (the "Taxes"). Landlord may invoice Tenant monthly, in advance, for Tenant's prorata share of the estimated Taxes for each calendar year.

Tenant shall reimburse Landlord for its proportionate share of Taxes. If the Taxes are due in installments, Tenant shall pay Landlord (i) no sooner than thirty (30) days before the last day on which the Taxes can be paid without incurring interest or penalty, and (ii) no sooner than thirty (30) days after Landlord has furnished Tenant with a copy of the tax bill, other official notices necessary to determine the tax rate, and a copy of Landlord's computations establishing any amounts payable by Tenant, whichever date is later. Within ten (10) days after receipt of Tenant's written request therefor, Landlord shall furnish Tenant with such additional substantiating evidence in support of that computation as Tenant may reasonably require.

For calendar years in which this Lease begins and ends, Tenant's liability for its proportionate share of Taxes shall be subject to a further adjustment based on the actual number of days Tenant occupied the Premises.

Notwithstanding anything herein to the contrary, Landlord may invoice Tenant monthly, in advance, for Tenant's prorata share of the estimated Taxes for each calendar year

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NATIONAL DRUG STORE CHAIN FORM LEASE

From and after the commencement date, Tenant shall pay all real estate taxes and its share of special assessments **that may be levied or charged against the Leased Premises during the term of this Lease.** Taxes for fractional calendar years of the lease term, being the first and last years, shall be prorated between Landlord and Tenant. In the event Landlord and Tenant are unable to have the Leased Premises segregated as a separate tax lot, Landlord agrees to obtain estimates of values for the Leased Premises from the Tax Assessor's records and Tenant, upon receipt of evidence satisfactory to Tenant from Landlord thereof, agrees within thirty (30) days thereafter to reimburse Landlord for that portion of the taxes assessed against the tax lot of which the Leased Premises form part based upon the value of the Leased Premises.


Landlord agrees to provide Tenant upon request by Tenant any notices of real estate tax assessment on the Leased Premises and/or Shopping Center and Common Facilities in advance of any applicable appeal date so that Tenant will have sufficient time to process an appeal of such assessment after affording the Landlord the first opportunity to do so. Tenant at its expense shall have the right to contest the amount or validity of all or part of the taxes for which it is required to reimburse Landlord pursuant to any provision of this Lease, and for that purpose, Tenant shall have the right to file in the name of Landlord all such protests or other instruments, and institute and prosecute proceedings it may deem necessary for the purpose of such contest.

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PREFUNDING TAX RESERVES FOR LENDERS

Current Practice Example:

- \$12,000 County tax bill due December 1, 2004.
- Loan Closing January 31, 2004.
- Standard Loan Documents required tax escrow to be fully funded thirty days prior to date on which taxes are due, therefore, lender must have collected \$12,000 in tax escrow not later than November 1, 2004.
- If loan closed on January 31, 2004 and first loan payment was due March 1, 2004, **borrower deposited \$3,000** at closing and \$1,000 per month from March 1, 2004 through November 1, 2004 in order to satisfy the lender's tax reserve requirements.




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PREFUNDING LOAN TAX RESERVES

Example after PA 357:

- \$12,000 County tax bill due and payable July 1, 2007.
- Loan Closing January 31, 2007.
- Lender must have \$12,000 in tax escrow not later than June 1, 2007.
- If loan closes on January 31, 2007 and first loan payment is due March 1, 2007, **borrower must deposit \$8,000 at closing** and \$1,000 per month from March 1, 2007 through June 1, 2007 in order to satisfy the lender's reserve requirements.



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QUESTIONS???

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