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Refunding 3rd and 4th Quarter 2018 Property Tax Payments made on or before December 31, 2017

Following [recent IRS guidance](#) on the deductibility of prepaid 2018 property taxes, there have been instances where taxpayers are seeking refunds of payments made toward third and fourth quarter 2018 property taxes. As the permissibility of such refunds is an issue of first impression, the Division has promulgated the following guidance after consultation with the Attorney General's Office:

There is no statute that specifically authorizes, or forbids, refunds of third and fourth quarter 2018 taxes that were paid in December 2017 before being billed. Although N.J.S.A. 54:4-69 requires that payments made in the "current year" that are in "excess of the tax or assessment levied" must be refunded "on or before December first of the current year," typically such a refund does not occur until a determination is made that the tax is not owed in that year and that an actual overpayment exists.

The question of whether payment of third and fourth quarter 2018 taxes qualifies as a payment in "excess of the tax or assessment levied" when the assessment levy has not yet happened is ultimately one for the tax collector, chief financial officer, and municipal attorney to interpret and provide guidance to their governing body. If a municipality wishes to permit refunding payments toward unbilled third and fourth quarter 2018 property taxes, the governing body should adopt a resolution specifically authorizing the refund of such payments as a matter of policy (on the basis that the payment is in "excess of the tax or assessment levied," which is unknown at this stage). No individual refund should be authorized by the governing body except upon written request by a taxpayer.

In instances where there is a contract for sale on a property, the Division recommends that municipalities authorize refunds of tax quarters not yet billed (or several months in the distance) when such refunds are requested, as failure to do so could place an undue burden on the purchasing party,

When a mortgage company has made a payment on a quarter that has already been paid by the property owner, a municipality should refund the mortgage company their payment.

Municipalities that do not choose to authorize refunds of unbilled third and fourth quarter 2018 property taxes should require the taxpayer to request in writing either: 1) a refund of any overpayment once the third and fourth quarters have been billed; or 2) application of the overpayment amount toward 2019 property taxes.

Municipalities should consult with their auditors and municipal attorneys on whether or not to require a W-9 from taxpayers seeking refunds and issue a 1099 to each taxpayer receiving a refund.

Finally, the Division reminds municipalities that there is no statutory authorization to charge a fee for refunding property tax payments.

Approved: Timothy J. Cunningham, Director