



INFORMATIONAL NOTICE MISCELLANEOUS TAX 2013-01

Issued: January 02, 2013

Pennsylvania Department of Revenue Guidelines for Collection and Administrative Bank Attachment Required by Act 85 of 2012

Per the Tax Reform Code of 1971 as amended by Act 85 of 2012, Section 3003.22 (m) (72 P.S. § 10003.22(m)), the Pennsylvania Department of Revenue ("Department") issues the following guidelines:

- Tax Collection Procedures – A tax liability arises when a taxpayer files a tax return, but fails to remit the amount due. A tax return can also be created by the department if a taxpayer fails to file a tax return when required to do so. After the liability is established, the taxpayer is issued an assessment notice (in some cases a billing notice may be issued to a taxpayer prior to the issuance of an assessment notice). The taxpayer is afforded 90 days to contest the assessment by filing an appeal with the department's Board of Appeals.

Assuming the taxpayer is not under federal bankruptcy protection, once a taxpayer's appeal rights expire, the taxpayer is sent a collection or dunning notice. If the taxpayer fails to respond to the collection or dunning notice within a reasonable amount of time, the department's Delinquent Tax Call Center ("Call Center") will attempt to contact the taxpayer via telephone. If the Call Center is unable to contact the taxpayer, the Call Center will take steps to locate better contact information for the taxpayer. If the Call Center is successful in reaching the taxpayer, the taxpayer may satisfy the liability via payment in full, or may arrange for a deferred payment plan ("DPP") if the taxpayer cannot pay the entire liability. The taxpayer is afforded roughly 90 days to pay in full or to establish a DPP.

If the Call Center is unsuccessful in locating the taxpayer after exhausting all available avenues, or if the taxpayer refuses to pay in full or establish a DPP, the department has several other enforcement tools at its disposal. Initially, prior to using these other enforcement tools, the department will file a lien against the taxpayer for the amount of tax, interest, penalty, and lien filing fee due. Depending on the size and nature of the liability, the case may be referred directly to a third party collection agency. The case is also reviewed to determine if wage garnishment is an appropriate alternative collection tool. Otherwise, the case is referred to the appropriate district office for an enforcement agent to continue collection efforts. The enforcement agent will contact the taxpayer via telephone, through notices to appear at the district office, and by visiting the taxpayer's business location or residence (depending on the type of case).

If the enforcement agent is unable to successfully collect the liability or establish a DPP and the taxpayer has a sales tax license, the department will revoke the taxpayer's sales tax license.

The taxpayer has 90 days to file an appeal of the revocation of a sales tax license with the Board of Appeals. If no appeal is filed, or the appeal is resolved in the department's favor, the enforcement agent will continue to pursue collection of the liability. If the enforcement agent is still unable to successfully collect the liability or establish a DPP after the revocation of the sales tax license, the enforcement agent will issue a summary offense citation to the taxpayer (also known as an Act 46 of 2003 citation) for offering tangible goods and services without possessing a valid sales tax license. The citation is filed and heard before a magisterial district judge. If the citation process does not result in resolution of the case through a full payment or a DPP, or if the taxpayer does not have a sales tax license, the department may elect to utilize administrative bank attachment if the case meets the necessary selection criteria.

If administrative bank attachment is unsuccessful or not appropriate for the case, the department may refer the case to a third party collection agency, or the Office of Attorney General.

- Rights and Remedies Available to Taxpayers – After the issuance of an assessment, the taxpayer is afforded an appeal period to contest the assessment (*i.e.* to request a reassessment). Taxpayers file this appeal with the Board of Appeals. In addition to contesting the assessment, taxpayers have six months from the date of payment of the tax due to pay and petition the Board of Appeals for refund. Taxpayers may propose a compromise to the Board of Appeals during the appeal process. As noted previously, a taxpayer may contest the revocation of a sales tax license with the Board of Appeals.

If the taxpayer's appeal with the Board of Appeals is not successful, the taxpayer may appeal to the Board of Finance and Revenue. If the taxpayer's appeal to the Board of Finance and Revenue is not successful, the taxpayer may appeal to the Pennsylvania Commonwealth Court. Taxpayers who are unsuccessful at Commonwealth Court may further appeal to the Pennsylvania Supreme Court.

Individual taxpayers issued assessments for personal income tax may contact the Taxpayer Rights Advocate ("Advocate") office for assistance in resolving their liabilities. The Advocate has broad powers to assist taxpayers. For additional information regarding the Advocate please visit:

http://www.portal.state.pa.us/portal/server.pt/community/taxpayers'_rights_advocate/13152.

Taxpayers are advised, either verbally or in writing, of the availability of deferred payment plans to pay their liability over time. The department makes every attempt to be flexible with the terms of the DPP. The department attempts to ensure that the taxpayer is not burdened with a DPP that is not financially feasible, or that will take so long to fulfill that it causes the taxpayer to incur unnecessary interest charges.

If a taxpayer receives a notice of attachment from the department, the taxpayer is afforded 10 days to file a petition with the county court of common pleas where the taxpayer resides, or in the case of an entity where the entity is located, to halt the attachment.

The department will not utilize bank attachment against any member of the U.S. Armed Forces, including members of the PA National Guard that are on federal active duty status, that are on active duty to avoid violations of the federal Soldiers' and Sailors' Civil Relief Act.

For additional information on the rights and remedies available to taxpayers, please see the department's disclosure statement on the department's and taxpayers' rights and obligations at:

http://www.portal.state.pa.us/portal/server.pt/document/628125/rev-554_pdf.

- Circumstances for Administrative Bank Attachment – The use of administrative bank attachment is for:
 - Entities that are engaged in business and have property subject to the department's lien or liens in excess of \$1,000;
 - An individual operating as a sole proprietor and have property subject to the department's lien or liens in excess of \$1,000;
 - A shareholder, member or partner of a pass-through entity and have property subject to the department's lien or liens in excess of \$1,000; or
 - A corporate officer or other responsible individual who has been assessed and have property subject to the department's lien or liens in excess of \$1,000.

The Department will only select a case for administrative bank attachment if:

- The liability has been assessed;
- The appeal rights have expired or if the liability has been sustained through the appeals process;
- The taxpayer has defaulted on a duly executed DPP or declined to execute a DPP;
- A lien has been filed; and
- The taxpayer has been advised of all potential enforcement actions, including administrative bank attachment.

Additionally, if the liability is for sales tax, the department may revoke the sales tax license and issue an Act 46 of 2003 citation prior to utilizing administrative bank attachment.

The department will not pursue an administrative bank attachment if the taxpayer files for federal bankruptcy protection. The department will promptly stop any such attachment proceedings once the department is notified of a bankruptcy petition filing.

- Policies Regarding Spousal Relief and Severe Economic Hardship – Taxpayers assessed for personal income tax, may contact the Advocate for spousal relief. In addition, Act 85 provides for spousal relief of the attachment by petitioning the court of common pleas within 10 days of receiving the attachment notice from the department.

If a taxpayer is facing severe economic hardship due to an inability to pay the liability in full, the department will provide relief via a DPP. In addition, the department will enter into a compromise due to severe economic hardship upon the acceptance of an accurate and timely completed *Statement of Financial Conditions* if this document establishes hardship to the satisfaction of the department.

- Notification to Financial Institutions – The department must have a reasonable belief that a specific financial institution is maintaining an account or accounts for an obligor. An account is defined as:
 - Funds from a demand deposit account, checking account, negotiable order of withdrawal account, savings account, time deposit account, money market mutual fund account or certificate of deposit;
 - Funds paid toward the purchase of shares or other interest in a depository institution as defined in Section 3 (c) of the Federal Deposit Insurance Act, Title 12 U.S.C. Section 1813 (c);
 - Funds paid toward the purchase or other interest in a federal or state credit union as defined under Section 1752(i) of the Federal Credit Union Act, Title 12 U.S.C. Section 1752 (i); or
 - Funds or property held by a benefit association, safe deposit company, money market mutual fund or similar entity doing business in Pennsylvania that holds or maintains accounts reflecting property belonging to others.

A financial institution is defined as:

- A depository institution as defined in Section 3 (c) of the Federal Deposit Insurance Act, Title 12 U.S.C. Section 1813 (c);
- A federal or state credit union as defined under Section 1752(i) of the Federal Credit Union Act, Title 12 U.S.C. Section 1752 (i); or
- A benefit association, safe deposit company, money market mutual fund or similar entity doing business in Pennsylvania that holds or maintains accounts reflecting property belonging to others.

Accounts or funds that fall into the following categories are not subject to attachment:

- An individual or other entity, other than the obligor that owes the collectible state taxes, is listed as a part-owner on the account prior to the attachment order being received by the financial institution;

- Funds or property deposited into an account subsequent to the date the financial institution attaches the account;
- An account in which a financial institution has a present right to exercise a setoff either under an agreement executed by the financial institution and the obligor or otherwise under applicable law;
- An account in which an obligor does not have an unconditional right of access;
- An account subject to a security interest, control agreement, or pledged as security for a loan or obligation, or subject to a lien or judgment that was effective prior to the financial institution receiving notice to the proposed administrative attachment; or
- Any account that is specifically exempted from attachment under any currently applicable federal statutory or regulatory provision.

Financial institutions that receive an administrative bank attachment order will be provided with clear instructions regarding their compliance with Act 85. Notice to the financial institution will include:

- The name of the obligor;
- The amount of the commonwealth's lien(s) with interest and penalty calculated to 45 days from the attachment notice date;
- A statement to the financial institution ordering the attachment of the obligor's account(s);
- The date the attachment order was issued;
- The last known address of the obligor; and
- The social security or employer identification number of the obligor.

In addition, the department will notify financial institutions in writing through trade groups or to individual financial institutions regarding policies and procedures for administrative bank attachment.

- Policies and Procedures to Attach and Seize Accounts – The department will follow the collection procedures detailed above. After other less invasive measures to collect have failed, the department will notify financial institutions in writing or electronically depending on the financial institution's preference. Within 5 business days, the department will notify the taxpayer via First Class U.S. Postal Service that the department has ordered a financial institution to attach the taxpayer's account(s). This notice will include:
 - The address of the department;
 - A point of contact at the department, with contact information;
 - The social security or employer identification number of the obligor;
 - The last known address of the obligor;
 - The amount of the commonwealth's lien(s) with interest and penalty calculated to 45 days from the attachment notice date;
 - The date the attachment order was issued;
 - A statement by the department that a financial institution has been ordered to attach one or more of the obligor's accounts;

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- The name of the financial institution that has been issued the attachment order; and
- A statement that the administrative bank attachment order may be appealed with instructions on how the appeal is to be filed.

The taxpayer is afforded 10 days to appeal to the court of common pleas where the taxpayer resides or in the case of entity where the entity is located. A copy of the appeal notice must be served via first class mail, postage prepaid, under a certificate of service to the department's legal offices at the following address:

Pennsylvania Department of Revenue
Office of Chief Counsel
Bankruptcy/Collections Unit
10th Floor Strawberry Square
4th & Walnut Streets
Harrisburg, PA 17128

Telephone Number: 717-787-1382

The motion will be promptly assigned to a department attorney.

If either the department or the obligor believes that the order of the court of common pleas entered after a motions hearing should be appealed, then such an order must be timely appealed to Commonwealth Court by the party that feels aggrieved by the order handed down by the court of common pleas judge.

A challenge to the administrative bank attachment order must be based on one or more of the following grounds:

- A mistake of fact regarding the identity of the obligor, the ownership of the account, and the contents of the account; the amount of the lien obligation due;
- The exclusion of the account from attachment because the account is outside the type of account that can be attached by the department;
- The failure of the department to properly record the lien(s) upon which the attachment is based;
- The failure of the department to notify the obligor of the liability;
- Severe economic hardship that would result due to the execution of the administrative bank attachment order;
- Request for spousal relief from the joint liability; or
- Other good cause.

The obligor, the financial institution, or an account holder of interest may not challenge the actions of the department based on a mistake or error in the original assessment underlying a lien against the obligor.



If no appeal is taken, the department will order the financial institution to seize and remit funds to the department in a manner agreed to by the financial institution and the department. The financial institution will first deduct its fee from any seized funds, and will then remit the remaining funds to the department. The department will apply the forwarded funds to the liability under a lien or liens, and will apply the funds first to tax, then interest, then penalty, and then lien filing fee.

A financial institution is not required to notify obligors that the department has ordered an account or accounts to be attached. In addition, a financial institution is not required to reimburse fees assessed against an account or an obligor as result of the department issuing an administrative bank attachment order in error. However, a financial institution that does not honor a valid administrative bank attachment order will be subject to the penalty provisions included in Act 85, which is five percent of the amount of funds which should have been attached or forwarded for each month or fraction thereof from the date the funds should have been attached or forwarded to the date the funds are attached or forwarded. The total amount of the penalty shall not exceed fifty per cent of the proper amount of funds which should have been attached or forwarded.