

TAX REFORM CODE OF 1971 - OMNIBUS AMENDMENTS

Act of Nov. 27, 2019, P.L. 651, No. 90

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Session of 2019

No. 2019-90

HB 17

AN ACT

Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An act relating to tax reform and State taxation by codifying and enumerating certain subjects of taxation and imposing taxes thereon; providing procedures for the payment, collection, administration and enforcement thereof; providing for tax credits in certain cases; conferring powers and imposing duties upon the Department of Revenue, certain employers, fiduciaries, individuals, persons, corporations and other entities; prescribing crimes, offenses and penalties," in sales and use tax, further providing for exclusions from tax; in general provisions, further providing for administrative bank attachment for accounts of obligors to the Commonwealth and providing for collection of assessed taxes and for criminal tax prosecutions.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 204 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, is amended by adding a clause to read:

Section 204. Exclusions from Tax.--The tax imposed by section 202 shall not be imposed upon any of the following:

* * *

(73) The sale at retail or use by a financial institution of canned computer software directly utilized in conducting the business of banking. For the purposes of this clause, the following words and phrases shall have the following meanings:

"Directly utilized in conducting the business of banking" includes the purchase of canned computer software by a financial institution to be used in transactions with customers and service providers. The term does not include the purchase of canned computer software by entities, other than a financial institution, such as holding companies and subsidiaries of a financial institution.

"Financial institution" means an institution doing business in this Commonwealth subject to the tax imposed by Article VII or XV.

Section 2. Section 3003.22 of the act is amended to read:

Section 3003.22. Administrative Bank Attachment for Accounts of Obligors to the Commonwealth.--(a) **The following shall apply:**

(1) Except as prohibited by Federal or State law, a financial institution doing business in this Commonwealth shall, upon request, and not more often than quarterly, undertake reasonable efforts to provide a report containing identifying information and asset information as the department may specify for any obligor as identified by the department by name and Social Security number, Federal employer identification number or other taxpayer identification number. The report and information shall be in the form and format as prescribed by the department pursuant to subsections (e) and (p).

(2) The department shall provide information identifying the obligors for which financial institutions are required to provide reports under paragraph (1) in a standard and generally utilized electronic machine readable format. If requested by a financial institution, the department shall coordinate the requests and the submission of reports under this section with similar procedures utilized for data exchanges under 23 Pa.C.S. § 4304.1 (relating to cooperation of government and nongovernment agencies).

(3) Reports providing identifying and asset information under this subsection shall be provided to the department within thirty days of receipt of requests for reports from the department, unless the department for good cause extends the deadline for providing reports.

(b) The department and financial institutions are authorized to enter into agreements for the purpose of carrying out the provisions of this section, which may modify the procedures contained in the department's guidelines as otherwise provided by subsection (p).

(c) The following shall apply:

(1) Information transmitted, provided or collected pursuant to this section shall be confidential and may be used by the department solely for official purposes relating to the administration and collection of taxes.

(2) Information transmitted, provided or collected pursuant to this section by a financial institution or the institution's agents and sent to the department shall not constitute a breach of confidentiality and this section shall not impose additional confidentiality requirements upon a financial institution.

(3) The department shall establish procedures to review, on at least a quarterly basis, whether information collected pursuant to this section continues to be needed to collect delinquent taxes and, upon a determination that the information is not needed, to require the permanent expungement of the information from the department's records and the records of any person to which the information has been made available, including any automated data exchange utilized by the department. Within seven days following the receipt of new reports and information under subsection (a), all previous information collected pursuant to this section shall be permanently expunged from the records of the department and the department's representatives, including any automated data exchange utilized by the department.

(4) Any employe or agent of the department, or an automated data exchange who divulges or retains information in a manner not provided in this subsection, or lacks good faith for a disclosure not authorized under this section, commits a misdemeanor of the third degree and, upon conviction, shall be sentenced to pay a fine of up to one thousand dollars (\$1,000) per violation and costs and shall be subject to a term of imprisonment of not more than one year, or both.

(d) A financial institution shall be entitled to payment from the department in the amount of two hundred fifty dollars (\$250) per quarter for conducting data matches pursuant to this section.

(e) The department, in consultation with associations representing financial institutions, shall develop proposed guidelines and the department shall publish final guidelines for the department's data matching processes and uses for the collection of information required under this section, which shall be conducted no more frequently than on a quarterly basis. The department may designate an agent for the collection of

information under this section from the financial institutions, which may include an automated data exchange organization who shall have the authority to enter into agreements for the manner of providing information exchanges as the agent and financial institution may agree. The guidelines shall not be subject to review under section 205 of the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law, section 204(b) of the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act, or the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act.

(f) Provided that an obligor has not entered into and is in compliance with a deferred payment plan with the department, the department may order the attachment and seizure of funds in an obligor's account that the department reasonably believes to hold property subject to a **tax** lien recorded in favor of the Commonwealth for tax, interest, additions or penalties due to the Commonwealth. Upon receiving seized funds, the department shall apply the amount seized to the obligor's **tax** lien obligation.

[(b)] (g) (1) If the department has a reasonable belief that an obligor's account holds property subject to a **tax** lien in favor of the Commonwealth, the department may order the attachment of funds in the obligor's account by sending a notice to the financial institution.

(2) The notice given to a financial institution attaching an account of the obligor shall be sent by an electronic format or any other reasonable manner as agreed to by the department and the financial institution.

(3) The notice shall include all of the following:

(i) The name of the obligor.

(ii) The amount of the Commonwealth's **tax** lien, including interest and penalty accrued up to forty-five days after the date of notice.

(iii) The current or last known address of the obligor.

(iv) The Social Security number, Federal employer identification number or other taxpayer identification number of the obligor.

(v) An order to immediately attach one or more accounts held by the financial institution in the name of the obligor for an aggregate amount equal to the lesser of the amounts in all accounts or the Commonwealth's **tax** lien.

[(c)] (h) (1) Upon receipt of the notice described in subsection [(b)] (g), the financial institution shall, by the end of the fifth business day following the date of the notice, attach one or more of the accounts of the obligor held by the financial institution for an aggregate amount equal to the lesser of:

(i) the total of the amounts in all the accounts of the obligor held by the financial institution as of the date of attachment; or

(ii) the amount stated in the notice.

Upon the attachment and until the financial institution receives further notice from the department or on order of a court, as provided in this section, the financial institution may not allow any activity to reduce the amounts in any of the accounts below the amount of the attachment.

(2) Within five days after date of notice to the financial institution described in subsection [(b)] (g), the financial institution shall inform the department that the financial institution has complied with the attachment order and shall specify the aggregate amount attached pursuant to the order.

(3) Financial institution fees for costs are allowable as follows:

(i) The financial institution may assess a reasonable administrative fee against the accounts or the obligor in addition to the amount attached. An administrative fee may include a fee permitted to be assessed under an agreement between the obligor and the financial institution in connection with the early withdrawal of a certificate of deposit attached under this section.

(ii) In the case of insufficient funds to cover both the fee authorized by subparagraph (i) and the amount identified in the notice under subsection [(b)] **(g)**, the financial institution may first deduct the fee from the amount attached and retain it from the amount seized and forwarded to the department as provided in this section.

(iii) A financial institution shall not be required to reimburse fees assessed against an account or an obligor as a result of the department instituting an action under this section or as otherwise permitted by law or authorized by contract even if there is a successful challenge or relief is granted under subsection (j).

[(d)] **(i)** (1) Except as otherwise provided in paragraph (3), no later than five business days after the date of the notice in subsection [(b)(2)] **(g) (2)**, the department shall send a notice to the obligor by first class mail to the obligor's current or last known address and may attempt to deliver personal notice to the obligor.

(2) The notice shall contain the following information:

(i) The address of the department.

(ii) The telephone number, address and name of a contact person at the department.

(iii) The name and Social Security number, Federal employer identification number or other taxpayer identification number of the obligor.

(iv) The current or last known address of the obligor.

(v) The total amount of the Commonwealth's **tax** lien owed by the obligor, including interest and penalty accrued up to forty-five days after the date of notice.

(vi) The date the notice is being sent.

(vii) A statement informing the obligor that the department has ordered the financial institution to attach the amount of the Commonwealth's **tax** lien owed by the obligor from one or more of the accounts of the obligor.

(viii) For each account of the obligor, the name of the financial institution that has been given notice to attach amounts as required by this section.

(ix) A statement that the order may be challenged or relief from the order requested in accordance with subsection [(e)] **(j)**.

(x) A statement informing the obligor that unless a timely challenge is made by the obligor, the financial institution or an account holder of interest under subsection [(e)] **(j)**, the department shall notify the financial institution to seize the amount attached by the financial institution and forward it to the department.

(3) The department shall not be required to send the notice described under this subsection if, prior to the time that the notice must be sent, the department and the obligor agree to an arrangement under which the obligor will pay amounts owed under the Commonwealth's **tax** lien.

[(e)] **(j)** (1) An obligor, the financial institution or an account holder of interest may challenge the actions of the

department under this section by filing a [motion] **petition** with the court of common pleas within ten days of the date of the notice sent under subsection [(d)] **(i)**.

(2) An obligor, the financial institution or an account holder of interest may challenge or seek relief from the actions of the department based on:

(i) a mistake as to any of the following:

(A) The identity of the obligor.

(B) The ownership of the account.

(C) The contents of the account.

(D) The amount of the **tax** lien obligation due.

(ii) the exclusion of the account from attachment under this section;

(iii) the failure of the department to properly record the **tax** lien upon which the attachment is based;

(iv) the failure of the department to send notice to the obligor of the assessment or determination of the tax, interest, penalties or addition to tax upon which the attachment is based;

(v) severe economic hardship;

(vi) a request for spousal relief from joint liability; or

(vii) any other good cause.

(3) Except as provided in paragraph (2)(iv), an 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 **tax** lien against the obligor.

[(f)] **(k)** (1) If a timely challenge or request for relief is not made by the obligor, the financial institution or an account holder of interest under subsection [(e)] **(j)**, the department shall direct the financial institution to:

(i) seize the amount attached by the financial institution and forward it to the department;

(ii) reduce the amount attached by the financial institution to a revised amount as stated by the department, seize the revised amount and forward it to the department and release the balance of the account; or

(iii) release the amount attached by the financial institution.

(2) The department may direct a financial institution to seize and forward attached funds before the time for filing a timely challenge under subsection [(e)] **(j)** upon agreement among the department, the obligor and, in cases where the department is aware of an account holder of interest, the account holder of interest.

[(g)] **(1)** (1) If a determination is made by the court, pursuant to a challenge or request for relief under subsection [(e)] **(j)**, that the account of the obligor should not have been attached, the department shall notify the financial institution, in the manner specified in subsection [(b)(2)] **(g) (2)**, to release the amount attached by the financial institution.

(2) If a determination is made by the court, pursuant to a challenge or request for relief under subsection [(e)] **(j)**, to reduce the amount attached by the financial institution, the department shall notify the financial institution, in the manner specified in subsection [(b)(2)] **(g) (2)**, to revise the amount as stated by the department, to seize and forward the revised amount to the department and to release the balance of the account attached by the financial institution.

(3) If a determination is made by the court, pursuant to a challenge or request for relief made under subsection [(e)] **(j)**, that the attachment by the financial institution was proper, the department shall notify the financial institution,

in the manner specified in subsection [(b)(2)] **(g)(2)**, to seize the amount attached by the financial institution and forward it to the department.

[(h)] A financial institution that complies with an order and notice from the department under this section shall not be criminally or civilly liable to any person, including the department, the obligor or any account holder of interest, for any of the following:

- (1) disclosing information to the department under this section;
- (2) attaching an account as directed by the department;
- (3) sending any amount seized to the department;
- (4) wrongful dishonor or any other claim relating to the attachment and seizure of any account as ordered by the department; or
- (5) any other action taken in good faith to comply with the requirements of this section.

[(i)] A financial institution shall not be required to reimburse fees assessed against an account or an obligor as a result of the department instituting an action under this section or as otherwise permitted by law or authorized by contract even if there is a successful challenge or relief is granted under subsection (e).

[(j)] (1)] **(m) A person, government agency or financial institution shall not be subject to any civil or criminal liability for providing, reporting or matching information and data or encumbering or surrendering assets under this section. The immunity provided under this subsection shall not apply to any person or agent of a government agency or financial institution who knowingly supplies false information under this section.**

(n) The following shall apply:

- (1) The department may impose a penalty upon a financial institution that willfully fails to comply or respond to, or refuses to process without reasonable cause, a request by the department for information pursuant to subsection (a).**
- (2) The department shall provide a financial institution twenty-five days' notice and a hearing before the Board of Finance and Revenue prior to imposing a penalty under paragraph (1). The penalty shall be in an amount equal to fifty dollars (\$50) for each record not provided and the total penalty imposed on any financial institution for all such failures during any calendar year shall not exceed ten thousand dollars (\$10,000).**

(3) If, under the provisions of this section, a financial institution fails to attach accounts as required in a timely manner or fails to forward the proper amount of funds attached to the department at the time and in the manner required by this section, the financial institution may be subject to a penalty of five per cent 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.

[(2)] **(4) The penalty imposed by this section shall be assessed, enforced, administered or collected under the provisions of Article II.**

[(k)] **(o) This section shall not be construed to prohibit the department or any other Commonwealth agency from requesting information or collecting obligations due from an obligor in any other manner authorized by law.**

[(1)] No financial institution may be required to notify an obligor or an account holder of interest of a request for information under this section by the department or a court.

(m)] **(p)** Prior to **requesting information or** attaching an account under this section, the department shall develop guidelines:

(1) describing its tax collection procedures;

(2) describing the rights and remedies available to taxpayers;

(3) describing acceptable formats of information reports between the department and financial institution pursuant to subsection (b);

(4) describing the manner in which accounts must be disclosed by the financial institution completing the reports;

[(3)] **(5)** disclosing the circumstances in which the department may attach an account under this section;

[(4)] **(6)** describing the policies regarding spousal relief and severe economic hardship relief;

[(5)] **(7)** advising financial institutions of the requirements of this section; and

[(6)] **(8)** describing the department's policies and procedures used to attach and seize accounts under this section.

(q) Accounts, funds and property subject to attachment under this section shall not include the following:

(1) An account subject to a security interest, control agreement or pledged security for a loan or other obligation.

(2) Money or property deposited to an account after the time that a financial institution initially attaches the account.

(3) An account that a financial institution has a present right to exercise a right of setoff either under an agreement between the financial institution and the obligor or otherwise under applicable law.

(4) An account that has an account holder of interest named as an owner on the account.

(5) An account to which an obligor does not have an unconditional right of access.

(6) An account that may not be attached under Federal law.

[(n)] **(r)** As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Account." [(1)] Any of the following:

[(i)] **(1)** 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 account.

[(ii)] **(2)** Funds paid toward the purchase of shares or other interest in an entity as described in paragraphs (1) and (2) of the definition of "financial institution."

[(iii)] **(3)** Funds or property held by a depository institution as described in paragraph (3) of the definition of "financial institution."

[(2)] The term shall not include any of the following:

(i) An account subject to a security interest, control agreement or pledged security for a loan or other obligation.

(ii) Funds or property deposited to an account after the time that a financial institution initially attaches the account.

(iii) An account that a financial institution has a present right to exercise a right of setoff either under an agreement between the financial institution and the obligor or otherwise under applicable law.

(iv) An account that has an account holder of interest named as an owner on the account.

(v) An account that an obligor does not have an unconditional right of access.

(vi) An account that can not be attached under Federal law.]
"Account holder of interest." A person, other than an obligor of an account, who asserts an interest in an account based upon ownership, possession of a security interest, lien or judgment.

"Asset information." Account balances and account identifying information provided by a report requested under subsection (a).

"Department." The Department of Revenue of the Commonwealth.

"Financial institution." Any of the following:

(1) A depository institution as defined in section 3(c) of the Federal Deposit Insurance Act (64 Stat. 873, 12 U.S.C. § 1813(c)).

(2) A Federal credit union or State credit union as defined in section 1752(1) of the Federal Credit Union Act (48 Stat. 1216, 12 U.S.C. § 1752(1)).

(3) A benefit association, safe deposit company, money market mutual fund or similar entity doing business in this Commonwealth that holds property or maintains accounts reflecting property belonging to others.

"Identifying information." Name, record address, Social Security number of an individual or other taxpayer identification number.

"Obligor." Any of the following:

(1) An entity engaged in a business whose property is subject to a Commonwealth tax lien or liens totaling at least one thousand dollars (\$1,000).

(2) An individual operating as a sole proprietor whose property is subject to a Commonwealth tax lien or liens totaling at least one thousand dollars (\$1,000).

(3) A shareholder, member or partner of a pass-through entity whose property is subject to a Commonwealth tax lien or liens totaling at least one thousand dollars (\$1,000).

(4) A corporate officer or other responsible individual who has been assessed pursuant to the provisions of section 225 or 320 and whose property is subject to a Commonwealth tax lien or liens totaling at least one thousand dollars (\$1,000).

"Pass-through entity." A partnership as defined in section 301(n.0) or a Pennsylvania S corporation as defined in section 301(n.1).

"Tax lien."

(1) A lien recorded as provided by law to reflect a final tax liability. A tax lien may be recorded only after:

(i) an assessment or similar determination that a taxpayer has a tax liability is issued by the department;

(ii) the assessment or similar determination under subparagraph (i) is issued in the manner required by law; and

(iii) the appeal rights to the assessment or similar determination have expired, the liability was sustained through the appeals process or the taxpayer failed to provide an appeal bond if required to do so by the department as authorized by law.

(2) A tax lien does not include a statutory lien that has not been recorded in accordance with paragraph (1).

Section 3. The act is amended by adding sections to read:

Section 3003.23. Collection of Assessed Taxes.--(a) The following shall apply:

(1) For a tax administered by the Department of Revenue, except under Article XXI, the Department of Revenue may collect the tax owed if collection commences within ten years of the date the settlement, determination or assessment of the tax becomes final. For nonfiled returns, the Department of Revenue shall induce the filing of a return or settle, determine or assess the tax liability of a nonfiled tax period within ten years of the tax return due date. The filing of a tax lien shall not extend the ten-year period to collect a tax.

(2) Paragraph (1) shall not affect the Department of Revenue's ability to set off tax overpayments by the taxpayer against any taxes and other obligations owing the Commonwealth by the taxpayer or to set off tax liabilities owed to the Commonwealth with moneys owed the taxpayer by the Commonwealth within the applicable collection period.

(b) The following shall apply:

(1) The Department of Revenue shall have no time limitation to collect taxes in the following cases:

(i) For trust fund tax liabilities a taxpayer either collected or withheld, as an agent of or in trust for the Commonwealth, but wilfully failed, grossly neglected or refused to remit to the Commonwealth notwithstanding whether the taxpayer filed a return.

(ii) If a taxpayer files a false and fraudulent tax return or report.

(iii) If a taxpayer wilfully fails to file a tax return or report as required by law.

(iv) If a taxpayer attempts to evade or defeat a tax.

(v) For a tax offense for which a taxpayer has been criminally charged and convicted in which tax liabilities remain unpaid.

(vi) For liabilities of eligible taxes unknown to the Department of Revenue that have not been extinguished under subsection (a) prior to the commencement of the tax amnesty period of a subsequently enacted or approved tax amnesty program administered by the Department of Revenue.

(2) The collection expiration date shall be tolled for the time when any of the following events are pending, plus one year:

(i) During a bankruptcy or proceeding during which the taxpayer's assets are in the control or custody of an administrative body, court or duly appointed guardian, receiver or trustee.

(ii) The period during which a taxpayer's offer-in-compromise is under consideration by the Department of Revenue.

(iii) The duration of an installment agreement or deferred payment plan between the taxpayer and the Department of Revenue.

(iv) The duration, from commencement through final determination, of a proceeding which constitutes a tax appeal or which opposes a collection action before an administrative tribunal or court of law or in which the taxpayer has filed a lawsuit or brought a cause of action against the Department of Revenue.

(v) The duration of a taxpayer's military service for which the taxpayer is eligible for and has received a Federal extension.

(vi) For a period of time as the taxpayer and the Department of Revenue may agree, in writing, to extend the collection expiration date.

(c) As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Tax." A tax, interest, addition to tax, penalty, fee and other cost, including the cost of collection.

Section 3003.24. Criminal Tax Prosecutions.--(a) A person shall not be prosecuted, tried or punished for an offense under a tax statute administered by the Department of Revenue except if prosecution is instituted within three years after the commission of the offense.

(b) If the period under subsection (a) has expired, a prosecution may be instituted for:

(1) An offense a material element of which is either fraud or a breach of fiduciary obligation within one year after the discovery of the offense. This paragraph shall not extend the period under subsection (a) otherwise applicable by more than two years.

(2) The offense of wilfully attempting to evade or defeat a tax or the payment of a tax within one year after the discovery of the offense. This paragraph shall not extend the period under subsection (a) otherwise applicable by more than three years.

(c) In addition to a criminal offense identified in the tax statutes administered by the Department of Revenue, a person may be prosecuted for an offense provided for under 18 Pa.C.S. (relating to crimes and offenses), relating to misconduct under the tax statutes, if the prosecution is instituted within five years after the commission of the offense.

(d) In addition to the imposition of a fine and imprisonment and if a taxpayer has been convicted of a tax-related offense under a statutory provision, the defendant taxpayer shall be ordered and required to pay the Department of Revenue restitution of each tax liability for which a conviction has been entered. The amount of restitution shall be the taxes, interest and penalties accrued through the date of payment.

Section 4. The following apply:

(1) The addition of section 204(73) of the act shall apply to the sale at retail or use of canned software on or after the effective date of this section.

(2) The addition of sections 3003.23 and 3003.24 of the act shall not relieve a person of a tax, interest, addition to a tax, penalty, fee and other cost payable by the person on the effective date of this section.

(3) If a court of competent jurisdiction holds that a tax, interest, addition to tax, penalty, fee and other cost or money payable to the Commonwealth, or any officer or agency of the Commonwealth, cannot be settled, assessed or collected under the procedure provided by the addition of sections 3003.23 and 3003.24 of the act, the matters shall continue to be settled or assessed and collected under the laws in force prior to the effective date of this section.

(4) The following apply to the addition of section 3003.23 of the act:

(i) For a settlement, determination or assessment issued before the effective date of this section, the ten-year collection period shall begin on the effective date of this section or when the settlement, determination or assessment becomes final, whichever is later.

(ii) For a tax return due and not filed as of the effective date of this section, the ten-year period applicable to a nonfiled return shall begin on the effective date of this section.

(iii) For a tax return due and not filed as of the effective date of this section, the ten-year period

applicable to a nonfiled return shall begin on the effective date of this section.

(5) A tax lien created prior to January 1, 2021, shall not be impaired, shall remain in full force and effect and shall retain the priority under the provision imposing the tax lien, without the necessity of refileing or revival, until January 1, 2031.

Section 5. This act shall take effect as follows:

(1) The addition of section 3003.23 of the act shall take effect January 1, 2021.

(2) The amendment of section 3003.22 of the act shall take effect in 60 days.

(3) The remainder of this act shall take effect immediately.

APPROVED--The 27th day of November, A.D. 2019.

TOM WOLF