



The Collection Process

Procedures of the NYS Tax Department to Enforce Collection of Finally Fixed Tax Liabilities

New York State's Taxpayers' Bill of Rights, found in Article 41 of the Tax Law, requires the Tax Department to furnish taxpayers with nontechnical statements that explain taxpayers' rights and the department's obligations with respect to audits; the procedures for taxpayers to seek review of adverse decisions of the department, claim refunds, and file complaints; and the procedures the department may use to enforce tax liabilities. This publication gives an overview of the legal enforcement procedures the department may use to collect your tax debt if you fail to pay, or make arrangements to pay, an assessed tax liability.

When you have exhausted your rights to appeal your tax liability in the department, the Division of Tax Appeals, and the courts, collection of the liability is turned over to the Tax Compliance Division, the collection unit of the department. The Tax Compliance Division will initially attempt to obtain full payment from you or, in certain circumstances, may negotiate an installment payment agreement, previously known as a deferred payment agreement.

If you are severely financially distressed, you may also decide to submit an offer in compromise to the department. However, the department will not necessarily accept the offer submitted. For example, in most cases, you must be insolvent (your liabilities exceed your assets), and the department's ability to fully collect the liability must be in doubt. For more information on offers in compromise, see Publication 220, *Offer in Compromise Program*.

Installment payment agreements

If you are financially unable to pay the full amount of your liability all at once, you may qualify for an installment payment agreement. (To apply, call the department at 518 457-5434.) An installment payment agreement is somewhat similar to those employed in many retail establishments for the purchase of goods and services.

Under the department's installment payment agreement, you are allowed to pay off your total tax liability in monthly installments. However, your agreeing to pay your tax debt through an installment plan does not put a cap on the total amount you owe. Until your tax liability is satisfied, interest and any penalty will continue to accrue on any unpaid balance.

To qualify for an installment payment agreement, you must complete a financial statement and supply other information to substantiate your present financial condition and your present inability to make full payment. Also, you must file returns and pay all future taxes as they become due. If you do not pay any new liabilities on time, you will be in default under the agreement. After the department gives you notice, collection action may then resume on the liability under the payment agreement, or the department may modify or terminate the agreement.

Whether or not you enter into a payment agreement, the department may also file a tax warrant with the County Clerk and the Secretary of State. The warrant helps protect the interests of the state and secures

the debt. The warrant ensures the department's priority over the taxpayer's subsequent creditors. The nature of the tax warrant and its impact are described below.

The department may terminate an installment payment agreement at any time without notice if it believes collection of the tax pursuant to the agreement is in jeopardy. However, the department may only terminate or modify an installment payment agreement upon at least 30 days prior notice, explaining the reason for its actions, in the following situations:

- if the information you supplied before entering into the agreement is found to be inaccurate or incomplete;
- if your financial condition changes significantly;
- if you fail to pay an installment payment or any other tax liability when due; or
- if you fail to supply the department with updated information regarding your financial condition when requested to do so by the department.

If you do not satisfy your full tax liability or negotiate an installment payment agreement, or if an offer in compromise is under review, withdrawn, or rejected, any or all of the following activities may be used to collect your tax liability.

Tax warrant

A tax warrant may be filed against you. A warrant is the equivalent of a legal judgment against you and creates a lien against your real and personal property when filed. The warrant is a public record, on file at your County Clerk's office and with the Secretary of State. It publicly acknowledges that you owe New York State taxes and may adversely affect your credit rating. It may make it difficult for you to get a loan or buy or sell real property. A warrant remains on file with the County Clerk and the Secretary of State until the tax liability is satisfied or the warrant expires.

A filed tax warrant secures the state as a lienholder of your personal and real property and empowers the department to use certain collection procedures.

Levy

A levy is a legal seizure of your property. The department will provide you with a notice of the types of property that are exempt from levy. Most frequently, a levy is made on bank accounts, and requires a bank to remove money from your account and send it to the department. A levy can also be made on money that any third party owes you, such as a loan or rent owed to you. If you are a business taxpayer, a levy can be made on the cash in your register. Property will not be levied on if the department estimates that the expenses to levy and sell the property are greater than the expected sale proceeds.

Income executions

An income execution is a type of levy that may be issued against your wages. Under an income execution procedure, subject to certain income thresholds, you will be asked to voluntarily submit a fixed amount of your wages, up to 10% of your gross earnings, to the department. If you do not voluntarily pay this amount within 20 days of receiving the department's notice and continue to pay this amount until the debt is satisfied, your employer will then be ordered to take up to 10% of your gross wages, subject to certain income thresholds, directly out of your paycheck and pay it to the department on your behalf. The income execution remains in effect until the outstanding tax liability is satisfied.

Seizures and sales

Your real or personal property that is not exempt by law may be seized and sold at a tax auction. The department will only seize an item if it believes that the proceeds from the sale will exceed the fair market value of that property and cover the estimated expenses for the seizure and sale.

During a seizure, tax compliance agents may have the locks changed at your place of business, denying you access to your place of business and your business assets. Alternatively, agents may remove all of the merchandise at your business and store it elsewhere until the sale.

After a seizure, the department will advise you of the date of the intended sale. At any time before the sale begins, the property will be released and returned to you if you fully pay the tax, penalty, and interest owed, along with the expenses the department incurred in the seizure and the preparation for the sale.

You have the right to request that any seized property be sold within 60 days of the request or within some longer specified period. Your request will be honored unless it is in the state's best interest to retain the property for a longer period, in which case you will be notified.

Your property will be sold for at least the fair market value of such property sold in an auction sale in accordance with Civil Practice Laws and Rules, taking into account the condition of the property, the type of sale, and anticipated expenses. If the highest bid for the property is less than such fair market value, the offering may be canceled and rescheduled at another time.

Once your assets are sold at public auction, the department will send you an accounting of the disbursement of sale proceeds. If the proceeds exceed your debt and the department's expenses, the surplus will be returned to you.

Offsets

Any payment the state may owe you for goods or services you sold or provided to any state agency or instrumentality may be withheld and instead applied against any tax liability you owe to the state. Thus, rather than receiving payment from the state for the goods or services, your payment may be automatically diverted to the Tax Department and applied against your existing liability. If any payment due you is the subject of this kind of offset, we will send you prior written notification about the money that will be sent to the Tax Department to cover your tax liability.

Also, under certain circumstances, any New York State tax refund due you may be offset to pay unpaid tax liabilities, or it may be sent to another state agency to which you owe money. That state agency will first notify you and then apply your refund to your debt.

If you have a past due and clearly enforceable New York State, city of New York, or city of Yonkers income tax debt, it will be referred to the U.S. Department of the Treasury Offset Program. Your federal income tax refund, up to the amount of your debt, will be paid to this department.

Release of levy

The department will release a levy on all or part of your property, and send you notice of the release, if:

- you pay the underlying liability or it becomes unenforceable by lapse of time;
- releasing the levy will facilitate collection of the liability;
- you enter into an installment payment agreement that specifically provides for release of the levy;
- the fair market value of the seized property exceeds your tax liability, and release of part of the property can be made without hindering timely collection of your liability; or
- the department determines that the levy is creating an economic hardship due to your financial condition.

If the department seizes property essential to your trade or business, we will determine expeditiously whether the property can be released on the grounds stated above.

If we release the levy on your property, we are not prohibited from future levy of the property if it is necessary to collect your tax liability.

If property is wrongfully levied on, the department may return the property seized, money equal to its fair market value or the amount of money seized, with interest.

Responsible person assessments

For certain taxes (e.g., sales and compensating use taxes, withholding tax, and the automotive fuel excise tax), so called *responsible persons* of a business may be held personally liable for the business debts. You may be deemed a *responsible person* if:

- you are an officer, director, or employee of a corporation or dissolved corporation, or employee of a partnership or sole proprietorship who was under a duty to act for the business to comply with the relevant provisions of the Tax Law; or
- you complete the tax returns or maintain the books and records for a business.

If the department issues a responsible person assessment against you and you do not agree with it, you have 90 days from the issuance of the assessment to file an appeal or request a conciliation hearing. The appeal entitles you to a hearing to present any information you may have to refute the assessment. A full explanation of your rights to protest an assessment will be included with the original assessment document.

Once a responsible person assessment is final, all collection methods available to the department can be used against the responsible person's assets. You can be personally assessed for the full amount of the tax the business owes, including interest and penalties, even if there are other persons involved who may be similarly assessed. In most cases, responsible person tax debts cannot be discharged by bankruptcy of the business.

Trust accounts

If you are a business taxpayer owing sales and compensating use taxes or withholding taxes, the department may require you to establish a *trust account* with a bank for depositing taxes as they are collected from customers or withheld from employee wages. The trust account will help ensure that the taxes due are available when the tax returns are due.

The department will require you to set up a trust account when your past performance indicates chronic tax delinquencies.

Revocation or Suspension of a Certificate of Authority

The department may revoke or suspend your *Certificate of Authority* to collect sales taxes for willful failure to comply with certain requirements of the Tax Law, such as willfully failing to file a return or to pay tax. If your *Certificate of Authority* is revoked or suspended, you will be prohibited from engaging in any business in New York State for which a *Certificate of Authority* is required. If you try to remain in business with a revoked or a suspended certificate, or start a new business without a required certificate, civil and criminal penalties may be imposed.

If the department institutes a *Certificate of Authority* revocation or suspension proceeding, you will be notified of the proceeding and of your rights during each step of the process. The process may be stopped at any time if circumstances warrant it, such as if you satisfy your liability.

Representation

You may represent yourself or designate another person to represent you before the department. If your representative contacts the department without you, he or she must file Form POA-1, *Power of Attorney*, beforehand. You can get power of attorney forms by calling 518 457-5431, or from our Web site at www.tax.ny.gov.

Licenses and collateral

Your right to engage in certain businesses (e.g., terminal operator) may be curtailed by cancellation or suspension of your license if taxes are not paid. Any bond or other collateral you may have posted for issuance of a license may be liquidated and applied to your tax debt. If a bond is canceled, you must obtain a new bond before you can resume the business activities for which a bond is required.