

## COUNTY OF MERCER

### Rules and Regulations for Compliance with the Local Taxpayers Bill of Rights

#### Introduction

The Local Taxpayers Bill of Rights, enacted as part of Act 50 of 1998 (hereinafter the "LTBR"), requires that every political subdivision levying an Eligible Tax adopt regulations governing the administration and collection of the tax, and setting forth a process for handling appeals from decisions on assessments and refunds. This document provides the regulations required by the LTBR. The Disclosure Statement also required by the LTBR is provided in a separate document, which is available upon request of the Tax Administrator.

#### Definitions

**Appeals Board.** The Board of the governing body in Executive Session.

**Assessment.** The determination by the Tax Administrator of the amount of underpayment by a taxpayer.

**Eligible Tax.** Any of the following taxes specified within the term "eligible tax" under the LTBR, including interest and penalties provided by law, when levied by the governing body of the Local Government, but specifically not including any real estate tax:

- (a) Any tax authorized or permitted under the Act of December 31, 1965 (P.L. 1257, No. 511), known as the Local Tax Enabling Act or Act 511.
- (b) Any per capita tax.
- (c) Any occupation, occupation assessment or occupation privilege tax.
- (d) Any tax levied on income.
- (e) Any tax measured by gross receipts.
- (f) Any tax on a privilege.
- (g) Any tax on amusements or admissions.
- (h) Any tax on earned income and net profits.

**Local Government.** County of Mercer

**Local Taxpayers Bill of Rights.** Subchapter C of Act 50 of 1998 of the Pennsylvania General Assembly, 53 Pa.C.S.A. §8421-8428.

**Overpayment.** Any payment of tax which is determined in the manner provided by law not to be legally due.

**Petition.** The Petition for Appeal and Refund described in Section 103 below.

**Tax Administrator.** The employee, agent, appointed tax collector, elected tax collector, tax collection agency or other person to whom the governing body of the Local Government has assigned or delegated responsibility for the audits, assessment, determination or administration of an Eligible Tax. Under the LTBR, this Tax Administrator is also referred to and defined as the local taxing authority. In the case of the Local Government, the Tax Administrator is the Chief Clerk.

**Taxpayer.** An individual, partnership, association, corporation, limited liability company, estate, trust, trustee, fiduciary or any other entity subject to or claiming exemption from any Eligible Tax or under a duty to perform an act for itself or for another under or pursuant to the authority of an Eligible Tax levied by the Local Government.

**Underpayment.** The amount or portion of any Eligible Tax determined to be legally due in the manner provided by law for which payment or remittance has not been made.

**Voluntary Payment.** A payment of an Eligible Tax made pursuant to the free will of the taxpayer. The term does not include a payment made as a result of distraint or levy or pursuant to a legal proceeding in which the Tax Administrator is seeking to collect its delinquent Eligible Taxes or file a claim therefor.

#### **101. Requirements for Requests for Taxpayer Information**

- (a) Minimum time periods for taxpayer response
  - (1) The taxpayer shall have at least thirty (30) calendar days from the mailing date to respond to requests for information by the Tax Administrator. The Tax Administrator shall grant a reasonable extension upon written application explaining the reason(s) necessitating the extension, which must amount to good cause. If the Tax Administrator denies a request for extension, the Tax Administrator must inform the taxpayer in writing of the basis for the denial and that the taxpayer must immediately provide the requested information. If the Tax Administrator grants an extension request, he must notify the taxpayer in writing of the amount of extension granted. Generally, an extension will not exceed thirty (30) calendar days in length, and may be less, depending on the circumstances.
  - (2) The Tax Administrator shall notify the taxpayer of the procedures to obtain an extension in its initial request for information. Please refer to the notice explaining the Request for Extension of Time to Provide Information attached as Schedule 1.
  - (3) The Tax Administrator shall take no lawful action against a taxpayer for the tax year in question until the expiration of the applicable response period for submission of the information requested, including extensions. For example, the Tax Administrator may not engage in any collection efforts until after expiration of the response period. After expiration of the

response period, the Tax Administrator may engage in collection efforts permitted by the LTBR and discussed in Section 113 below.

(b) Requests for prior year tax returns

- (1) Except as provided in Subsection (b)(2), an initial inquiry by the Tax Administrator regarding a taxpayer's compliance with any Eligible Tax may include taxes required to be paid or tax returns required to be filed no more than three years prior to the mailing date of the notice.
- (2) The Tax Administrator may make an additional subsequent request for a tax return or supporting information if, after the initial request, the Tax Administrator determines that the taxpayer failed to file a tax return, underreported income or failed to pay a tax for one or more of the tax periods covered by the initial request. Generally, however, the Tax Administrator should not make routine requests for additional prior year returns. Notwithstanding the foregoing, the limitations in Subsection (b)(2) above on subsequent requests for prior year returns shall not apply if the Tax Administrator has sufficient information to indicate that the taxpayer failed to file a required return or to pay an Eligible Tax which was due more than three years prior to the date of the notice. Thus, in situations involving failure to file a required return or to pay a required Eligible Tax, the Tax Administrator shall, in his discretion, have the ability to request prior year returns due more than three (3) years prior and supporting information.
- (3) Use of Federal or State tax information. The Tax Administrator may require a taxpayer to provide copies of the taxpayer's Federal individual income tax return if the Tax Administrator can demonstrate that the Federal tax information is reasonably necessary for the enforcement or collection of tax and the information is not available from other available sources or the Pennsylvania Department of Revenue. The Tax Administrator may also require a taxpayer to provide copies of the taxpayer's state individual income tax return.

**102. Notice of Basis of Underpayment**

The Tax Administrator must notify the taxpayer in writing of the basis for any underpayment that the Tax Administrator has determined to exist with respect to any Eligible Tax. The purpose of this notification is for the taxpayer to understand the exact reason why the Tax Administrator believes an underpayment exists. This notification from the Tax Administrator shall be written in a manner calculated to be understood by an average person. The notification must include:

- (a) The tax period or periods (usually measured in calendar years) for which the underpayment is asserted.
- (b) The amount of the alleged underpayment of the Eligible Tax detailed by tax period.
- (c) The legal basis (including any statutory or case law citations) upon which the Tax Administrator has relied to determine that an underpayment of an Eligible Tax exists.
- (d) An itemization of the changes made by the Tax Administrator to a return or report filed by the taxpayer that results in the determination that an underpayment exists. A copy of any revised return or report in the Tax Administrator's file must be provided to the taxpayer.

### **103. Petitions for Appeals of Assessments or Refund of Taxes Paid**

- (a) Filing of Petitions. A taxpayer has the legal right to challenge an assessment or denial of a refund claim under the LTBR. However, a taxpayer has a right to one appeal only. If a taxpayer loses an assessment appeal, the taxpayer is not entitled to a second refund appeal after paying the tax. In addition, no administrative appeals are provided for other decisions, including but not limited to the denial of an extension of time to provide information or the modification or termination of an installment agreement. The LTBR requires political subdivisions to establish appeals procedures. In order to begin the appeals process, the taxpayer must file a complete and timely petition (the "Petition"). A Petition is timely filed if the letter transmitting the Petition is postmarked by the United States Postal Service or actually received on or before the final day on which the Petition is due. Receipts from carriers other than the United States Postal Service are not accepted as proof of timely filing. Deadlines for filing a petition are as follows:
  - (1) Petitions challenging the denial of a refund shall be filed within three years after the due date for filing the report or return as extended or one year after actual payment of the tax, whichever is later. If no report or return is required, the Petition shall be filed within three years after the due date for payment of the Eligible Tax or within one year after actual payment, whichever is later.
  - (2) Petitions for reassessment of tax shall be filed within ninety (90) days of the date of the assessment notice which has been sent to the taxpayer by the Tax Administrator.

- (b) The Tax Administrator shall make available a form of Petition for Appeal and Refund attached as Schedule 2.
- (c) Contents. Any Petition filed under Section 103(a)(1) shall
  - (1) state the legal basis for claiming the refund or disagreeing with the Tax Administrator's assessment;
  - (2) state the tax period or periods (i.e., years) to which it pertains;
  - (3) state the amount of the claim and the type of Eligible Tax detailed by tax period;
  - (4) include all supporting documentation and calculations;
  - (5) provide the name, address and telephone number of the taxpayer's representative, if any;
  - (6) include a statement certifying that the facts in the Petition are true and correct, under penalty of perjury, and that the Petition is not filed for purposes of delay; and
  - (7) include such other information (essentially identification) as is reasonably requested by the Tax Administrator on the Petition for Appeal and Refund provided to taxpayer.
- (d) The taxpayer shall have his or her Petition decided by the governing body acting in executive session based solely on the Petition and record (including information on file and information submitted by the taxpayer). No hearing, oral testimony or oral argument is required, but can be requested by the taxpayer. The governing body may choose to grant a hearing in its sole discretion.

**104. Appeals Board/Hearing Officer**

- (a) The decision by the governing body acting in executive session shall be based solely on the Petition and record. Decisions on Petitions shall be issued within sixty (60) days of the date a complete and accurate Petition is received. Failure to act within sixty (60) days shall result in the Petition being deemed approved.
- (b) Any person aggrieved by a decision under this Section 104 who has a direct interest in the decision shall have the right to appeal to the Court of Common Pleas of the County of Mercer vested with the jurisdiction of local tax appeals by or pursuant to 42 Pa.C.S. §5571(b).

- (c) Decisions by the governing body in executive session shall be made according to principles of law and equity.

#### **105. Conduct of Appeals/Hearings**

- (a) A taxpayer may or may not choose to be represented by a taxpayer representative. The taxpayer representative may be a lawyer, certified public accountant, accountant or other tax advisor possessing appropriate tax training to represent taxpayers in tax appeals. The taxpayer must submit a written authorization to use a taxpayer representative. However, a simple letter signed by a taxpayer authorizing representation will be accepted as authorization. Such authorization shall include the representative's name, address and telephone number.
- (b) Copies of notices or communications may be sent by the Tax Administrator or other representative of the political subdivision to the taxpayer's representative. However, the original notice or communications will always be sent directly to the taxpayer. Action taken by the taxpayer's authorized representative (for example, requesting an extension of time or submitting factual information) shall have the same force or effect as if taken directly by the taxpayer.
- (c) The governing body's final decision shall be in writing and signed by the governing body. The final decision shall be mailed to the taxpayer, with a copy also mailed to the taxpayer's authorized representative (if any).

#### **106. Refunds**

- (a) A taxpayer who has paid an Eligible Tax may file a written request for refund or credit. A request for refund shall be made within three years of the due date, as extended, for filing the report or tax return, or one year after actual payment of the tax, whichever is later. If no report is required, the request shall be made within three years after the due date for payment of the tax or within one year after actual payment of the tax, whichever is later.
- (b) A tax return filed by the taxpayer showing an overpayment shall be deemed to be a written request for a cash refund unless otherwise indicated on the tax return.
- (c) A request for refund under this Section 106 shall not be considered a Petition under Section 103 and shall not preclude a taxpayer from submitting a Petition under Section 103.

- (d) For amounts paid as a result of a notice asserting or informing a taxpayer of an underpayment, a written request for refund shall be filed within one year of the date of payment.

### **107. Disclosure Statement and Taxpayer Notice**

Any taxpayer contacted by the Tax Administrator regarding the assessment, audit, determination, review or collection of an Eligible Tax will receive a Taxpayer Notice. The Notice shall be incorporated into any other correspondence sent to a taxpayer by the Tax Administrator regarding the assessment, audit, determination, review or collection of tax. The Notice shall be substantially in the following form:

You are entitled to receive a Disclosure Statement that sets forth a written explanation of your rights with regard to the assessment, audit, determination, review, appeal, enforcement, refund and collection of any local taxes by calling the Tax Administrator, Chief Clerk, at 724-662-3800, Extension 2512 during the hours of 8:30 a.m. and 4:30 p.m. on any weekday other than a holiday.

You may request a copy in person, by telephone or by mailing a request to the following address: Office of the Chief Clerk, 103 Courthouse, Mercer, Pennsylvania 16137.

The Disclosure Statement will be made available to taxpayers upon request at no charge to the taxpayer, including mailing costs. In general, the Tax Administrator will make reasonable efforts to supply all taxpayers with a copy of the Disclosure Statement.

### **108. Interest on Overpayment**

- (a) General rule. All overpayments of an Eligible Tax made to the Local Government shall bear simple interest from the date of overpayment of such Eligible Tax until the date of resolution.
- (b) Interest rate. Interest on overpayments shall be paid at the same rate as the Commonwealth of Pennsylvania is required to pay pursuant to Section 806.1 of the Act of April 9, 1929 (P.L. 343, No.176), known as the Fiscal Code (72 P.S. §1 et seq.) As of December 1998, this interest rate is currently 9% annually (.00247% daily).
- (c) Exceptions to payments of interest.
  - (1) No interest shall be paid if an overpayment is refunded or applied against any other Eligible Tax, interest or penalty due to the Local Government within seventy-five (75) days after the last date prescribed for filing the report or tax return of the tax liability or within seventy-five (75) days after the date the return or report of the liability due is filed, whichever is later.

(2) Interest is not required to be paid on taxpayer overpayments of interest or a penalty(ies).

(d) Acceptance of refund check. The taxpayer's acceptance of a refund check from the Tax Administrator or political subdivision shall not prejudice any right of the taxpayer to claim any additional overpayment and interest thereon. Tender of a refund check by the Local Government shall be deemed to be acceptance of the check by the taxpayer for purposes of this Subsection 108(d).

(e) Definitions. As used in this Section 108, the following words and phrases shall have the meanings given to them in this Subsection (e): "Date of overpayment" shall mean the later of the date paid or the date the tax is deemed to have been overpaid as follows:

(1) Any tax actually deducted and withheld at the source shall be deemed to have been overpaid on the last day for filing the report for the tax period, determined without regard to any extension of time for filing.

(2) Any amount overpaid as estimated tax for the tax period shall be deemed to have been overpaid on the last day for filing the final report for the tax period, determined without regard to any extension of time for filing.

(3) An overpayment made before the last day prescribed for payment shall be deemed to have been paid on the last day.

(4) Any amount claimed to be overpaid with respect to which a lawful administrative review or appellate procedure is initiated shall be deemed to have been overpaid sixty (60) days following the date of initiation of the review or procedure.

(5) Any amount shown not to be due on an amended income or earned income and net profits tax return shall be deemed to have been overpaid sixty (60) days following the date of filing of the amended income tax return.

"Date of resolution" shall mean the date the overpayment is refunded or credited as follows:

(1) For a cash refund, a date preceding the date of the refund check by not more than thirty (30) days.

(2) For a credit for an overpayment:

(i) the date of the Tax Administrator's notice to the taxpayer of the determination of the credit; or

- (ii) the due date for payment of the Eligible Tax against which the credit is applied, whichever first occurs. For a cash refund of a previously determined credit, interest shall be paid on the amount of the credit from a date ninety (90) days after the filing of a request to convert the credit to a cash refund to a date preceding the date of the refund check by not more than thirty (30) days, whether or not the refund check is accepted by the taxpayer after tender.

#### **109. Abatement of Certain Interest and Penalty**

- (a) Errors and delays. The purpose of this provision is to provide, in the discretion of the Tax Administrator, a mechanism to abate (i.e., reduce) interest and/or penalties where an underpayment is the result of an error or delay in performance by a representative of the Tax Administrator. Accordingly, in the case of any underpayment, the Tax Administrator, in its discretion, may offer to abate all or any part of the interest relating to an Eligible Tax for any period for any one or all of the following reasons:
  - (1) Any underpayment of an Eligible Tax finally determined to be due, which is attributable in whole or in part to any error or delay by the Tax Administrator in the performance of a ministerial act. For purposes of this paragraph, an error or delay shall be taken into account only if no significant aspect of the error or delay can be attributed to the taxpayer and after the Tax Administrator has contacted the taxpayer in writing with respect to the underpayment of tax finally determined to be due or payable.
  - (2) Any payment of an Eligible Tax to the extent that any error or delay in the payment is attributable to an officer, employee or agent of the Tax Administrator being erroneous or dilatory in performance of a ministerial act. The Tax Administrator shall determine what constitutes timely performance of ministerial acts performed under this Subsection (a).
- (b) Abatement of any penalty or excess interest due to erroneous written advice by the Tax Administrator. The Tax Administrator shall abate any portion of any penalty or excess interest attributable to erroneous advice furnished to the taxpayer in writing by an officer, employee or agent of the Tax Administrator acting in the officer's, employee's or agent's official capacity if:
  - (1) The written advice was reasonably relied upon by the taxpayer and was in response to a specific written request of the taxpayer; and
  - (2) The portion of the penalty or addition to tax or excess interest did not result from a failure by the taxpayer to provide adequate or accurate information to the Tax Administrator. Notwithstanding the foregoing, it

shall be in the sole discretion of the Tax Administrator whether or not to provide written tax advice to a taxpayer. Taxpayers shall not have any right to compel the Tax Administrator to provide written tax advice.

#### **110. Application of Payments.**

Unless otherwise specified by the taxpayer, all voluntary payments of an Eligible Tax shall be prioritized by the Tax Administrator in the following order:

- (a) Tax.
- (b) Interest.
- (c) Penalty.
- (d) Any other fees or charges.

#### **111. Installment Agreements**

The Tax Administrator has the discretion to enter into written agreements with any taxpayer under which the taxpayer is allowed to satisfy liability for tax in installment payments if the Tax Administrator determines that the installment agreement will facilitate collection.

- (a) Extent to which installment agreements remain in effect.
  - (1) Except as otherwise provided in this Subsection (a), any installment agreement entered into by the Tax Administrator under this Section 111 shall remain in effect for the term of the agreement.
  - (2) The Tax Administrator may terminate any prior installment agreement entered into under this Section 111 if:
    - (i) information which the taxpayer provided to the Tax Administrator prior to the date of the installment agreement was inaccurate, false, erroneous or incomplete in any manner, determined in the reasonable discretion of the Tax Administrator; or
    - (ii) The Tax Administrator reasonably believes and has determined that collection of the Eligible Tax under the installment agreement is in jeopardy.
  - (3) If the Tax Administrator finds that the financial condition of the taxpayer has significantly changed, the Tax Administrator may unilaterally alter, modify or terminate the installment agreement, but only if the following conditions are satisfied:

- (i) the Tax Administrator provides a notice of its findings to the taxpayer no later than thirty (30) days prior to the date of change of the installment agreement; and
  - (ii) the notice given by the Tax Administrator to the taxpayer provides the reasons why the Tax Administrator believes that a significant change, justifying a change to the installment agreement, has occurred.
- (4) The Tax Administrator may unilaterally and without notification alter, modify or terminate an installment agreement entered into by the Tax Administrator under this Section 111 if the taxpayer fails to do any of the following:
  - (i) pay any installment at the time it is due under the installment agreement;
  - (ii) pay any other liability relating to an Eligible Tax at the time the liability is due;
  - (iii) provide a financial condition update as requested by the Tax Administrator.
- (5) No administrative appeal is permitted in the event of an alteration, modification or termination of an installment agreement. However, an appeal may be made to the Court of Common Pleas of this county.
- (b) Prepayment permitted. Nothing in this Section 111 shall prevent a taxpayer from prepaying in whole or in part any Eligible Tax under any installment agreement with the Tax Administrator.

**112. Confidentiality of Tax Information.**

Any information obtained by the Tax Administrator or governing body, or any of their respective officers, agents, legal counsel, financial accountants, or employees as a result of any audit, assessment, return, report, investigation, hearing, appeal or verification of a taxpayer shall be confidential tax information. It shall be unlawful, except for official purposes or as provided by law, for such persons to:

- (a) Divulge or make known in any manner any confidential information obtained through any audit, return, assessment, investigation, report, appeal, hearing or

verification of a taxpayer to any person other than the taxpayer or the taxpayer's authorized representative.

- (b) Permit confidential tax information or any book containing any abstract or particulars thereof to be seen or examined by any person other than the taxpayer or the taxpayer's authorized representative.
- (c) Print, publish or make known in any manner any confidential tax information of a taxpayer.

An offense under this Section 112 is a misdemeanor of the third degree and, upon conviction thereof, a fine of not more than \$2,500 and costs, or a term of imprisonment for not more than one year, or both, may be imposed on the offender. If the offender is an officer or employee of the Tax Administrator, the officer or employee shall be dismissed from office or discharged from employment.

### **113. Collections.**

If after the decision of an appeal, or if no appeal is requested by a taxpayer, the Tax Administrator may engage in efforts to collect any Eligible Tax determined to be legally due. Such efforts may include, but shall not be limited to, obtaining additional information, auditing taxpayer records, compromising the amount of tax, interest, or penalty owed, obtaining liens on the taxpayer's property, or obtaining wage attachments, levies and seizures of the taxpayer's property. As provided in Section 111 of these Regulations, the Tax Administrator may enter into a written installment agreement with the taxpayer if the Tax Administrator determines that an installment agreement will facilitate collection. The Tax Administrator also reserves the right to seek criminal prosecution of a taxpayer in appropriate circumstances.