

**DEPARTMENT OF FINANCE**  
**DIVISION OF REVENUE**

Statutory Authority: 29 Delaware Code, Section 8303(7) and 30 Delaware Code, Section 558 (29 Del.C. §8303(7) & 30 Del.C. §558)

**FINAL**

**ORDER**

**Regulations Governing Tax Refund Intercept Claims of Other States**

**I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

Pursuant to 29 Del.C. § 8303(7), the Delaware Department of Finance (the "Department"), through its Division of Revenue ("Revenue"), proposed to adopt regulations on the tax refund intercept claims of other states. The regulations establish procedures for Revenue and other State Claimant Governments to follow in connection with the program, including a certification process and a notice and opportunity for an administrative hearing prior to offsetting against a state tax refund.

**II. FINDINGS OF FACT**

The Department finds that the proposed regulation is necessary to implement 30 Del.C. §558 and facilitate the process for other State Claimant Governments to refer debts for collection under the tax refund intercept program. The Department finds that the proposed regulation should be adopted as submitted. Notice of the proposed regulation and a Regulatory Flexibility Analysis and Impact Statement as required under 29 Del.C. Ch. 104 were published in the *Register of Regulations* on September 1, 2023. The Department provided the public with an opportunity to submit written comments for 30 days concerning the proposed regulation and did not receive written comments.

**III. DECISION AND EFFECTIVE DATE OF ORDER**

The Department adopts the regulations as proposed. The effective date of this Order shall be ten (10) days following its publication in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** this 3rd day of October 2023.

**Department of Finance**  
Richard J. Geisenberger  
Secretary of Finance

**Regulations Governing Tax Refund Intercept Claims of Other States**

**1.0 Authority and Purpose**

- 1.1 The Secretary is authorized under 29 Del.C. §8303(7) to establish and promulgate regulations as the Secretary may deem necessary to govern the administration and operation of the Department.
- 1.2 This regulation establishes policies and procedures for the intercept program set forth in 30 Del.C. §558.

**2.0 Definitions**

The following words and terms, when used in this regulation, have the following meaning:

- "Claimant government" has the meaning ascribed to it in 30 Del.C. §558(b)(1)a and 30 Del.C. §558(b)(10).
- "Debtor" means a person, organization, or entity who owes a debt to a claimant government.
- "Department" means the Delaware Department of Finance.
- "Director" means the individual appointed to serve as Director of Revenue pursuant to 29 Del.C. §8303(2)b.
- "Program" refers to the intercept program authorized under 30 Del.C. §558.
- "Refund" has the meaning ascribed to it in 30 Del.C. §558(b)(1)b.
- "Revenue" means the Delaware Division of Revenue, a division of the Delaware Department of Finance.

**"Secretary"** means the individual appointed to serve as Secretary of the Delaware Department of Finance pursuant to 29 **Del.C.** §8302(a).

**"Tax debt"** has the meaning ascribed to it in 30 **Del.C.** §558(b)(1)c.

**"Taxing official"** has the meaning ascribed to it in 30 **Del.C.** §558(b)(1)d.

**"Taxpayer"** has the meaning ascribed to it in 30 **Del.C.** §558(b)(1)e.

### **3.0 General Provisions**

- 3.1 This regulation applies only to tax debts owed to a claimant government.
- 3.2 A claimant government is not precluded from using other debt collection procedures available under applicable law. Debt collection procedures may be used separately or in conjunction with the program.
- 3.3 The Director shall ensure that claimant governments are not provided with or given access to tax returns or information from tax returns, including the amount of income or particulars set forth or disclosed in a report or return required under Title 30 of the Delaware Code and information on a federal return or report which is required to be attached to or included in a State tax return, except to the limited extent necessary to administer the program. Access to tax information granted by the Director shall be on a need-to-know basis to perform program related duties and shall be memorialized in writing. Claimant governments shall take necessary steps to protect tax information from inadvertent disclosure and unauthorized access.
- 3.4 The Director shall have the authority under 30 **Del.C.** §558(b)(8) to enter into agreements with taxing officials of claimant governments relating to:
  - 3.4.1 Procedures and methods to be employed by a claimant government with respect to the operation of the program;
  - 3.4.2 Safeguards against the disclosure or inappropriate use of personally identifiable information regarding the taxpayer obtained or maintained in the administration of the program; and
  - 3.4.3 A referral threshold amount.

### **4.0 Request for Intercept**

- 4.1 Referral threshold. No single tax debt owed to a claimant government may be referred to Revenue for intercept under the program if the tax debt amount is less than \$100.00. Revenue and the claimant government may agree to a higher threshold amount in writing.
- 4.2 Authority to certify tax debt and request intercept. A taxing official may certify to the Director the existence of a tax debt owed to a claimant government and request that the Director withhold a refund to which the taxpayer is entitled. A taxing official may not certify or request the Director to withhold a refund, unless the laws of the claimant government extend a like comity for the collection of a tax debt owed to this State as required by 30 **Del.C.** §558(b)(2)b.
- 4.3 Referral requirements. When a taxing official refers a tax debt to Revenue for intercept, the taxing official must provide:
  - 4.3.1 The full name of the taxpayer and, if required by the Director, the taxpayer's address;
  - 4.3.2 The taxpayer's Social Security number or federal tax identification number;
  - 4.3.3 The amount of the tax debt; and
  - 4.3.4 A detailed statement for the applicable taxable year showing tax, interest, and penalty; or data that sufficiently describes the tax debt in the Director's discretion.
- 4.4 Certification. When a taxing official refers a tax debt to Revenue for intercept, the taxing official shall certify to the Director that:
  - 4.4.1 The debtor exhausted all rights to administrative remedies and appeals related to the tax debt;
  - 4.4.2 The debtor's rights to applicable administrative remedies and appeals lapsed;
  - 4.4.3 The claimant government determined the assessment of tax, interest, and penalty to be final and enforceable; and
  - 4.4.4 The claimant government determined that the tax debt is more than the referral threshold specified in this regulation or more than the amount specifically agreed to in writing by Revenue and the claimant government.
- 4.5 Noncompliance. Revenue may reject a referral that does not comply with the requirements of this regulation.
- 4.6 Post-referral obligations. After referring a tax debt to Revenue, the claimant government shall promptly notify Revenue and make the appropriate correction of the referral if:
  - 4.6.1 The claimant government determines that an error has been made with respect to the information transmitted to Revenue;

- 4.6.2 The claimant government receives a payment on account of a tax debt referred for intercept; or
- 4.6.3 The claimant government determines that the tax debt amount is otherwise incorrect.

## **5.0 Intercept Procedures**

- 5.1 Upon referral of a tax debt under this regulation, Revenue will compare tax refund records with records of tax debts referred for intercept.
- 5.2 For purposes of this regulation, a match for a tax refund owed to a debtor will occur when the taxpayer identifying number and name are the same as the taxpayer identifying number and name of a debtor submitted by the claimant government.
- 5.3 After a match, the Director shall promptly take reasonable steps to notify the taxpayer of a claimant government's request for intercept and include a copy of the certification by the taxing official. The Director shall also promptly take reasonable steps to notify the taxpayer of the right to challenge the proposed intercept by filing a written protest.
- 5.4 The taxpayer's written protest must include detailed reasons for the taxpayer's opposition of the intercept and supporting documents. The taxpayer must hand deliver or mail the written protest to the Director so that the Director receives it no later than 30 days from the date of the notice.
- 5.5 If a taxpayer files a timely protest, the Director shall:
  - 5.5.1 Suspend the proposed intercept;
  - 5.5.2 Impound the claimed amount of the taxpayer's refund;
  - 5.5.3 Pay the unclaimed amount of the refund to the taxpayer;
  - 5.5.4 Send a copy of the protest and supporting documents to the claimant government for a determination of the merits of the protest in accordance with the laws of that state; and
  - 5.5.5 Pay the impounded amount to the taxpayer if the claimant government fails to recertify to the Director within 45 days of the date of the protest that the claimant government reviewed the issues raised by the taxpayer, the taxpayer exhausted the administrative and judicial remedies provided under the laws of the state of the claimant government, and the final tax debt amount.
- 5.6 Subject to the taxpayer's rights of notice and protest, the Director shall pay the entire refund or the amount certified to the claimant government, whichever is less. The Director shall pay a refund in excess of the certified amount to the taxpayer.
- 5.7 If more than 1 claimant government has a debt against the taxpayer, Revenue will remit payments in order of priority as determined by the Director.
- 5.8 If a refund is less than the certified amount, the Director shall withhold amounts from subsequent refunds due to the taxpayer provided the claimant government shall withhold subsequent refunds of taxpayers certified to the claimant government by the Director.
- 5.9 The Director shall take reasonable steps to notify the taxpayer that the refund has been reduced and the amount of the reduction.
- 5.10 Joint tax returns. If a match relates to a joint personal income tax, the Director shall promptly take reasonable steps to notify a non-debtor taxpayer of a claimant government's request for intercept and the right to challenge the proposed intercept.
  - 5.10.1 The non-debtor taxpayer must hand deliver or mail a written protest to the Director so that the Director receives the written protest no later than 30 days from the date of the notice.
  - 5.10.2 The non-debtor taxpayer's written protest must include a detailed description of the taxpayer's reasons for a proper share of the refund and supporting documents.
  - 5.10.3 The non-debtor taxpayer may attempt to make the required showing to the Director's satisfaction by providing documentation to establish a right to a portion of the refund based on income reported by the non-debtor taxpayer on the joint return.
  - 5.10.4 If the non-debtor taxpayer files a timely protest and makes the required showing, Revenue shall remit the proper share of the tax refund to the non-debtor taxpayer and apply the balance of the refund in the manner prescribed in subsections 5.5 and 5.6.
- 5.11 In the event the debtor is due a refund with a non-debtor due to filing Married Filing Combined Separate on 1 return, the Director shall regard a taxpayer as entitled to separate refunds based upon the taxes due and prior payments of a taxpayer individually. The intercept contemplated in this regulation shall not be applicable to a separate refund due to the non-debtor taxpayer. The intercept provisions shall apply to a separate refund due to the debtor taxpayer.
- 5.12 Revenue has made reasonable attempts to notify a taxpayer if Revenue uses the current address information contained in Revenue's records related to a tax return.

5.13 Revenue will advise a claimant government of the names and addresses of the debtors from whom debts were collected and of the amounts collected from the debtors. Revenue will not advise as to the source of payment from which the amounts were collected.

**27 DE Reg. 334 (11/01/23) (Final)**