

# **Department of Revenue to Discontinue Collection Notices**

## **UPDATE**

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Prior to January 2006, where a taxpayer failed to pay taxes, penalties and interest, the Department of Revenue notified the taxpayer of the delinquency before issuing and recording a State Tax Execution (also known as State Tax Lien and State Tax Fi. Fa.). In January 2006, the Department of Revenue announced that it would no longer issue such "Collection Notices." Citing recent system improvements and increases in Department efficiencies, the Department stated that such information (previously shown on the Collection Notice) is now shown on the Official Assessment and Demand for Payment.

This change in procedure may appear to be of little consequence. However, as discussed below, the Collection Notice provides a last opportunity for taxpayers to avoid exposure on the Department's web site and it gives taxpayers a final chance to pay before a sharp increase in the liability.

Generally, where an Official Assessment is not appealed within 30 days, or, if the Official Assessment is upheld in a tax appeal, the State Revenue Commissioner can issue a State Tax Execution (or fi. fa. or lien), with which collection action can begin. O.C.G.A. § 48-3-1. Unlike county tax commissioners, the State Revenue Commissioner is not required to notify a taxpayer prior to issuing a State Tax Execution. See O.C.G.A. § 48-3-3. In the past, however, the Department sent a Collection Notice prior to issuing the State Tax Execution. A Collection Notice informed the delinquent taxpayer (1) that the matter has been referred to the "field" for immediate collection, (2) that payment must be made at once, (3) that if payment is not made a 20% collection fee

will be added (on top of tax, penalty and interest) and (4) that a State Tax Execution will be issued and recorded in the Superior Court and collection action will be taken by garnishment, levy or attachment. The Collection Notice gave the delinquent taxpayer a final opportunity to pay the delinquent tax, penalty and interest before the onerous 20% collection fee was added to the tax debt. Not to be confused with other penalties, the 20% collection fee is authorized by the amnesty statutes found at O.C.G.A. § 48-16-1, *et seq.* Under the provision, the State Revenue Commissioner may impose an additional collection fee of 20% of any deficiency assessed after December 31, 1990. O.C.G.A. § 48-16-10(a). The Collection Notice has now been removed from the process. This means that the 20% collection fee will be added to the debt, and the taxpayer will be responsible for knowing that his failure to pay the debt will result in the issuance of the State Tax Execution and the 20% collection fee, points which are now provided in the Official Assessment. The elimination of Collection Notice also raises the question of whether the Department, or, perhaps, the General Assembly, should also change the way it notifies taxpayers of assessments of. Currently, notices of assessment are sent by first-class mail, which is permitted by law. The notice provisions contained in the State Tax Code give the State Revenue Commissioner flexibility regarding notices. In particular, assessment notices must be sent to the taxpayer's last known address as shown on the records of the department. See O.C.G.A. § 48-2-45(a)(2), (b). But the notice need only be sent by first-class mail; overnight mail and certified mail is not mandatory. See O.C.G.A. § 48-2-45(a)(2), (b). Still, if the notice is sent by first-class mail and is "returned" then the notice must be made by personal service. See O.C.G.A. § 48-2-45(c). As shown above, the Collection Notice can be critical for a taxpayer who wants to pay the debt before the matter is recorded on the General Execution Docket. It is now relegated to the Department's archives and will no longer be issued. Practitioners should be aware of this policy change and advise clients accordingly.

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