

Data Match for Financial Institutions - State Debt Recovery

Act 399; Effective 6/17/13

HB 629 by Reps. Chris Broadwater and Ted James (and 11 other co-sponsors) creates an Office of Debt Recovery (ODR) within the Louisiana Department of Revenue (Department) that will be responsible for the collection of taxes payable to the Department, and may be responsible for the collection of delinquent debts, accounts, or claims due on behalf of all other state "agencies" that refer delinquent debt to the ODR for collection. "Agencies" are defined as entities which are authorized to perform any function of state government in the executive branch.

The Act requires all debts owed to state agencies to be referred to either the attorney general's office or to the ODR for collection. State agencies that do not have a contract with the attorney general's office for debt collection on or before January 1, 2014 shall refer all delinquent debts to the ODR for collection when the debt is final and has been delinquent for 60 days. "Delinquent debt" is defined as a final debt that is 60 days or more past due. "Final" means the amount due is no longer negotiable and that the debtor has no further right of administrative and judicial review.

The Act requires the Department to charge the debtor a fee not to exceed 25% of the total delinquent debt that becomes final and collectable. The Act authorizes the ODR to submit a request for the suspension, revocation or denial of any type of professional or other license, permit or certification to the entity or body that governs, regulates or issues them. See La. R.S. 47:1676.

The provisions of the Act relevant to banking deal with the creation of a financial institution data match system to assist the ODR and Department in collecting delinquent state tax and non-tax debt. Although LBA does not like the idea of additional requirements for banks to police their customers, we recognized early on that this legislation had widespread support, especially in light of the state's budget woes and constant search for new revenues. It has been widely reported that this Act could result in \$200 million in new state revenues over five years. We also were told by the Department that without a data match system to efficiently find and collect unpaid debts, other potentially more burdensome methods would be pursued. For instance, the Department has told us that in recent years they have significantly increased the amount of paper levies they send to banks in a geographic area where they believe a debtor may have an account. These are basically fishing expeditions with the hope of finding a debtor account. As a result, banks waste time responding to these levies even when they do not have that debtor as a customer. The Department indicated that the number of paper levies generated would likely continue to greatly increase without data match in place because the Department was looking at technology to reduce time and expense while greatly increasing the volume of levies produced.

In addition to philosophical concerns and concerns with the alternative collection procedures being contemplated by the Department, LBA had concerns with the initial language proposed in the bill and we wanted to ensure that the data match program, if passed into law, would be conducted in the same manner as is currently being done for the collection of past due child support. For many years, state law (in accordance with a federal mandate) has required financial institutions to conduct data match with the Department of Children and Family Services (DCFS) to assist in the payment of child support obligations.

LBA worked with the authors and the Department to prevent this Act from imposing additional cost and burden on financial institutions. After lengthy discussions throughout the session, all of our suggested amendments were adopted and the final product should result in most banks and thrifts not having any additional work or costs to comply with the Act. If additional costs are incurred by an FDIC insured institution, the legislation allows for those costs to be recovered from the Department.

The bill provides that a financial institution or its processor shall provide to the Department or the ODR the name, record address, social security number or other taxpayer identification number, other

identifying information and an average daily account balance for the most recent 30 day period, for each calendar quarter for each account owner who maintains an account at such institution and who the office purports is a tax or non-tax debtor.

For purposes of the data match provisions of this Act, a “tax debtor” shall be an individual against whom an assessment or judgment for state taxes payable has become final and is currently enforceable in accordance with law. A “non-tax debtor” shall be an individual against whom an assessment or judgment for a debt owed to the state has become final and is currently enforceable in accordance with law. An “account” shall mean any money held in the name of an account owner, individually or jointly with another, including but not limited to a deposit account, demand account, savings account, negotiable order of withdrawal account (NOW account), share account, member account, time certificate of deposit, or money market account. An account shall not include money held by a financial institution where the tax or non-tax debtor is listed in a capacity other than owner, such as custodian, tutor or agent.

The Act provides that if a financial institution or its processor has a current data match system developed or used to comply with the child support data match system provided for in R.S. 46:236.1.4, the financial institution or its processor may use that system to comply with the provisions of this Act. The ODR shall not require a financial institution or its processor to change their data match system or file format established under R.S. 46: 236.1.4 in order to comply with this Act.

The Act provides that for Louisiana domiciled financial institutions having no branch offices outside the state, the ODR or its data match vendor shall ensure that compliance with both the provisions of this Act and R.S. 46:236.1.4 may be accomplished with a single data match file. In other words, Louisiana domiciled institutions having no branch offices outside the state, or their processor, shall not be required to process multiple data match files to comply with this Act.

Financial institutions may, but are not required to, disclose to their depositors or account holders that the department or the ODR has the authority to request and receive certain identifying information provided for under this Act for state tax and non-tax debt collection purposes.

The Act provides clear protection from civil and criminal liability for financial institutions, including its directors, officers, employees, attorneys, accountants, or other agents as a result of providing account information to the Department or ODR in compliance with a request under the Act. The Act also requires the Department, ODR and their designated vendor for the data match program to keep all information received from financial institutions pursuant to this Act confidential, and prohibits any employee, agent or representative of the Department, ODR and their designated vendor from disclosing that information to any other third-parties.

The Act provides that the Department or ODR shall pay a participation fee to each financial institution that actually receives a data match request file. The participation fee to a financial institution shall be for their actual costs incurred for conducting the data match and otherwise complying with the provisions of the Act. Actual costs incurred for complying with the Act shall be the total cost incurred by the financial institution to process all data match request files under R.S. 46:236.1.4 and this Act minus the costs incurred to process data match request files under R.S. 46:236.1.4. In order to receive the participation fee under this section, the financial institution must be FDIC insured.

In order to receive the participation fee under this Act, a financial institution must show it incurred costs under R.S. 46:236.1.4 and this Act. The Department or ODR may require a financial institution to submit paperwork such as invoices and other documentation to substantiate the costs that have been incurred. After actual costs are established by a financial institution through submitted paperwork, the ODR shall automatically remit payment to the financial institution on a quarterly basis without the financial

institution having to resubmit additional paperwork each quarter thereafter. However, the office may request additional paperwork from a financial institution on a periodic basis, not to exceed once every two years, to verify their actual costs in complying with this Act.

The Act also provides that if a financial institution assesses a fee to its customer for processing a state tax or state non-tax levy received from the ODR or the Department, the fee shall be collected by the financial institution from the proceeds of the customer's account before any account proceeds are remitted to the ODR or the Department to satisfy the state tax or state non-tax levy. This provision was added at the specific request of LBA to ensure that costs to financial institutions for processing levies can be recovered before any account funds are remitted. This will prevent situations where insufficient funds are available for the financial institution to collect its contractually agreed to fee. This provision will also provide incentive to the ODR and Department to only send levy requests on accounts that have sufficient funds to pay both the obligation owed to the state and the financial institution's fee.

The Act provides that the Department or ODR shall generally conduct the data match program on a quarterly basis, but allows them to conduct data match with a particular financial institution less frequently than every quarter if they follow certain notification procedures provided for in the Act. See La. R.S. 47:1677.

Finally, the Act amends the records disclosure provisions in the banking code to give banks and thrifts clear authority to comply with the data match provisions contained in this Act. See La. R.S. 6:333(B)(intro paragraph) and (F)(18).