Levying Merchant Accounts

Credit Cards and other 3rd Party Payment Processors

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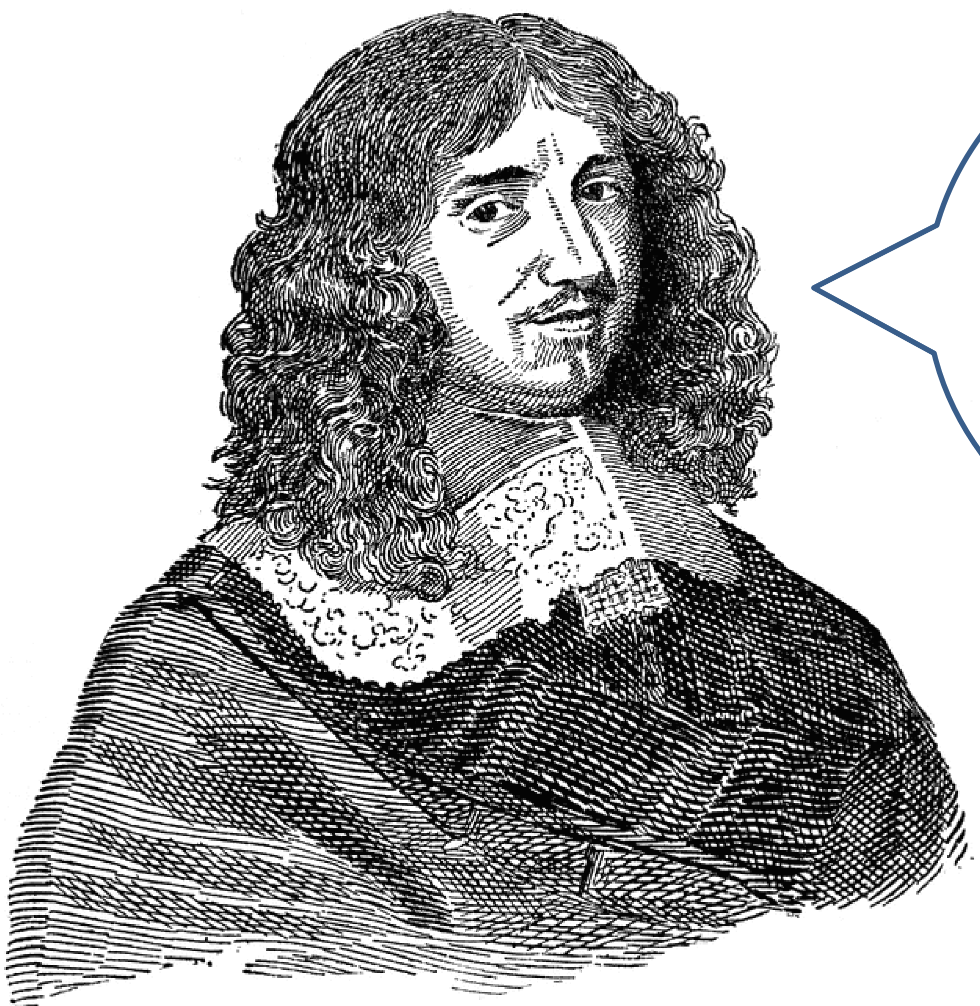
The Colbert Principal



The art of taxation consists in so plucking the goose as to obtain the largest amount of feathers with the least possible amount of *hissing*.

Jean-Baptiste Colbert,
French King Louis XIV's Minister of Finances 1665 to 1683

Escalation of Actions
Business Accounts

- Notices and letters
- Phone calls
- Field visits
- Bank account attachment
- Lottery retailer license/ corp. charter suspension
  - Proposed ABC Permit compliance check
- ***3rd party payment processor / credit card levy***
- Physical levy of business assets and inventory
- Criminal charges if willfulness is determined
- Transfer liability to successor business or responsible persons

Merchant Account Garnishment

- 105-242(b)
  - ***Attachment and Garnishment***. - Intangible property that belongs to a taxpayer, is owed to a taxpayer, or has been transferred by a taxpayer under circumstances that would permit it to be levied upon if it were tangible property is subject to attachment and garnishment in payment of a tax that is due from the taxpayer and is collectible under G.S. 105-241.22. Intangible personal property includes bank deposits, rent, salaries, wages, property held in the Escheat Fund, and ***any other property incapable of manual levy or delivery***. G.S. 105-242.1 sets out the procedure for attachment and garnishment of intangible property.

Levying Merchant Accounts – Third Party Payment Processors

- PayPal™ and American Express™ process their own transactions
- About 200 different companies process Visa ™, MasterCard ™ and Discover ™ payments
- States and the IRS have only recently begun trying to levy merchant accounts
- It was difficult to determine who processed a merchant’s credit card payments
- 1099K has enabled tax agencies to utilize this tool

1099K

- Latest addition to the "1099" series of informational returns required by IRS
- Part of the *Housing Assistance Tax Act of 2008*
- Requires third party payment processors to report transaction totals to the IRS
- Primarily used to improve income tax compliance
- Is part of the Fed/State data exchange beginning June 2013
- Allows NCDOR to know who processes a business's credit card transactions

Advantages

- Creates an urgency for business to resolve matter
- Unlike physical asset seizure:
  - Process is completely private ... No media
  - Garnishments can be easily released if an agreement is reached between NCDOR and the debtor business
  - Much less expensive for NCDOR
  - Much less invasive for the debtor business
  - Funds collected can be easily refunded to the taxpayer if necessary
  - Normally, the business can continue to operate

- Meets the Cobert Principal test:
  - More feathers with less hissing

Challenges

- Knowing where to send the garnishment
  - 1099K access helps resolve this
  - Interviews with business owner early in collection process can aid in making determination
- Process is new to payment processors
  - The States and the IRS are just beginning to use this tool
- Jurisdictional issues
- Debit cards are processed differently than credit cards
- Does not work for cash based businesses

Additional Points

- Has no impact on consumers
  - The business cannot charge consumers a second time for payments garnished
- Works very well with hotels, restaurants, and Internet based retailers other businesses that are dependant on 3rd party payment transactions

Questions?

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