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## Coates' Canons Blog: New Federal Rules for Bank Account Attachments

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Article: <https://canons.sog.unc.edu/new-federal-rules-for-bank-account-attachments/>

This entry was posted on March 29, 2011 and is filed under Finance & Tax, Property Taxes

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[Update: In 2013 the federal government issued new regulations concerning this issue. See this blog post for more details.]

Bank accounts are prime targets for tax collectors thanks to the quick and easy attachment procedures in the Machinery Act that are available for the collection of *any* local tax. But what happens when a bank account contains Social Security benefits or other federal payments that are exempt from attachment? Is the entire account off limits? If not, who determines how much of the account can be attached?

Thanks to a lack of clear statutory guidance, confusion often reigns. Tax collectors, banks, and taxpayers routinely haggle over when, where, and how exempt benefits can be attached if they are mingled with other funds.

New federal rules that take effect May 1 should eliminate much of this confusion. Happily for tax collectors, banks will now have the obligation to identify and protect exempt federal benefits. But tax collectors will need to be concerned about some timing issues after the new rules are implemented.

Before analyzing the new rules, here's a quick primer on attaching benefit payments. A number of state and federal benefit payments are exempt from *pre-payment* attachment, meaning a tax collector may not send a notice of attachment to the payor agency and demand that the benefits be paid directly to the tax office rather than to the taxpayer. Benefits exempt from pre-payment attachment include Social Security, military veteran, and federal retiree benefits as well as state public assistance payments, unemployment compensation, and teacher and local government employee retirement benefits. (See this bulletin for a complete list.)

A subcategory of these benefits are also exempt from *post-payment* attachment, meaning a tax collector may not be able to attach the benefits even after a taxpayer receives a benefit payment and deposits it into his or her bank account. Benefits exempt from post-payment attachment include Social Security benefits, federal retiree benefits, and state unemployment compensation.

Until the new federal rules arrived, nobody really knew what to do when exempt benefits were mingled with other funds. Only one of the exempt benefits—state unemployment compensation—explicitly loses its protection from attachment when mingled with other funds in the recipient's bank account. For the others, the law failed to provide clear guidance. As a result, attachment procedures for mingled accounts vary from county to county and from bank to bank.

The new federal rules offer much needed clarity. They place responsibility for identifying and protecting exempt federal benefits squarely on the shoulders of the banks.

Within two business days of receiving a notice of attachment, the bank must conduct an account review to determine if any exempt federal benefits were deposited into the attached account during a "lookback period" that covers the previous two months.

If no exempt benefits were deposited during the lookback period, the bank must freeze the entire account and process the attachment as usual. If exempt benefits were deposited during the lookback period, the bank must protect the total amount of those deposits from attachment. Any funds in excess of the protected amount must be frozen from taxpayer access and be provided to the tax collector as usual.

For example, assume the tax collector from Carolina County serves Big Bank with a notice of attachment on May 15 for an

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account held by Tom Tarheel. Tom owes \$2,000 in delinquent taxes to Carolina County.

Big Bank conducts the account review on May 16, meaning the lookback period runs from May 15 to March 15. It learns that Tom received two monthly automatic deposits from the Social Security Administration of \$2,000, for a total of \$4,000 in exempt benefits during the lookback period. At the time of Big Bank's review, Tom's account held \$5,000.

Big Bank must protect and maintain Tom's access to \$4,000. The additional \$1,000 must be frozen and turned over to the tax collector before the end of the 10-day response period under NCGS 105-368.

This new procedure should be welcome relief for tax collectors used to haggling with taxpayers whenever the issue of exempt federal benefits arose. But it also creates a timing concern for tax collectors.

After the new rules take effect, banks will no longer freeze attached accounts immediately upon receiving notices of attachment. The rules prohibit the bank from freezing any funds in the attached account until *after* the account review is completed, which can take up to two business days from receipt of the attachment notice. During that time the taxpayer must retain access to the attached account.

With the advent of 24/7 banking, a two-business-day delay could give the taxpayer ample time to withdraw all funds from the attached account and avoid the attachment entirely. To prevent that result, tax collectors should now wait two business days after giving notice to banks before giving notice to delinquent taxpayers.

I'll end with a shameless plug for an upcoming SOG event: if you work with attachments and garnishments please join us for a **webinar on Wednesday, April 6 at 10 am**. You'll be able to learn the nuts and bolts of the process from a panel of experts without leaving your desk. [Click here to register](#).

## Links

- [canons.sog.unc.edu/?p=7140](https://canons.sog.unc.edu/?p=7140)
- [www.gpo.gov/fdsys/pkg/FR-2011-02-23/pdf/2011-3782.pdf](http://www.gpo.gov/fdsys/pkg/FR-2011-02-23/pdf/2011-3782.pdf)
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