MEMORANDUM

To: **Executive Committee Members of the Berks County Earned Income Tax Collection Bureau**

From: **Solicitor Jason Confair, Esq.**

Date: **February 17, 2016**

Re: **School District and Municipal Authorization of Fees Charged by Collection Agencies**

As discussed during the past few Executive Committee meetings, the Berks County Earned Income Tax Collection Bureau intends to implement a new delinquent tax collection program. One aspect of the program will include the Bureau's engagement of one or more third-party collection agencies to collect small value delinquent tax accounts from employers and individual taxpayers. It is simply cost-prohibitive for the Bureau to dedicate the upfront resources necessary to pursue those small value delinquent accounts.

At the December 17, 2015 Executive Committee meeting, Executive Director Steve Love explained that a collection agency has offered to collect delinquent tax accounts for a 25% fee that the Bureau would pay "out-of-pocket." The Executive Committee asked Mr. Love to see whether he could obtain a commitment from a collection agency to "pass through" all collection fees to delinquents so that the Bureau does not have to pay fees out-of-pocket. Mr. Love has obtained such a commitment from Arcadia Recovery Bureau, LLC.

There is a statute known as the "Municipal Claims and Tax Liens Act" that provides rules on whether fees that are paid by government agencies to collection agencies can be passed through to and collected from delinquents. Although it is not entirely clear whether the Municipal Claims and Tax Liens Act applies to collection of delinquent local earned income tax, it most likely does. Under the Municipal Claims and Tax Liens Act, each school district and municipality must take "legislative action" to approve of collection fees imposed by agencies that collect delinquent tax on behalf of the school district or, as the case may be, municipality.

In the past, there has been class action litigation in which collection agency fees for delinquent taxes have been challenged as unauthorized. The most recent of those class actions was resolved favorably, but took 11 years, untold legal expense, and a final decision by the Pennsylvania Supreme Court. There is also a public relations aspect as well. We want to be certain no newspaper or taxpayer advocate group can credibily make the argument that the Bureau has authorized the imposition of "illegal" fees on delinquents. Given those considerations, the prudent course of action is for each school district and municipality to formally approve the fees assessed by collection agencies engaged by the Bureau to collect delinquent tax.

Enclosed with this Memorandum is a form that school districts can use to adopt resolutions and municipalities can use to adopt ordinances approving any fee charged by a collection agency that is equal to or less than 25% of the amount collected. The authorization is open-ended so that the Bureau has the flexibility to engage different collection agencies, so long as no such agency charges more than 25% of the amount collected. Please have the school district or municipality(s) you represent:

1. Use the form to develop a simple enactment authorizing collection agency fees in an amount not to exceed 25% of the amount collected.

2. Check with its respective solicitor to determine whether any advertising or other legal requirements apply to adoption of the enactment.

3. Send a copy of the adopted enactment to Mr. Love's attention at the Bureau.

Thank you in advance for your assistance with this matter. While having the school districts and municipalities adopt enactments is somewhat of a nuisance, it is better to be safe than sorry given the potential consequences.

Resolution/Ordinance Form – Collection Agency Fees

[Drafting Note: This form was prepared by the Berks County Earned Income Tax Collection Bureau. The Bureau intends to engage one or more third-party collection agencies to pursue delinquent employers and taxpayers that owe relatively small amounts. The Bureau has decided to do so because it is cost prohibitive for the Bureau to dedicate the upfront resources necessary to pursue those small amounts. The Bureau will be structuring its arrangements with collection agencies such that the agencies recover their fees directly from delinquent employers and taxpayers. Under the Municipal Claims and Tax Liens Act, 53 P.S. § 7101 et seq., a collection agency may recover its fees directly from employers and taxpayers so long as the school district or municipality served by the agency takes "legislative action" to approve the fees. The purpose of this form is to provide school districts and municipalities with a template to be used in adoption of a resolution or, as is the case for municipalities, an ordinance approving the fee of any collection agency engaged by the Bureau, provided the fee does not exceed 25% of the amount collected.]

[_____ SCHOOL DISTRICT]

[_____ TOWNSHIP]

[_____ BOROUGH]

[_____ CITY]

[RESOLUTION] [ORDINANCE] AUTHORIZING COLLECTION AGENCY FEES

[RESOLVED, by the Board of School Directors of _____ School District, under authority of the Local Tax Enabling Act, the Municipal Claims and Tax Lien Act, and other applicable law, as follows:]

[ENACTED, by the _____ of _____, under authority of the Local Tax Enabling Act, the Municipal Claims and Tax Lien Act, and other applicable law, as follows:]

Section 1. **Definitions.** The following terms shall have the meanings set forth herein:

a. Collector. The Berks County Earned Income Tax Collection Bureau.

b. Enactment. This [Resolution] [Ordinance].

c. Governing Body. **[The Board of School Directors of _____ School District.]** **[The _____ of _____.]**

d. Tax. All local earned income taxes, other taxes, penalties, interest, and costs that the Collector collects on behalf of the Taxing Authority under the Local Tax Enabling Act, 53 P.S. § 6924.101, *et seq.*, or other statutory law.

e. Taxpayer. An employer or taxpayer that is liable for Tax.

f. Taxing Authority. **[_____ School District.]** **[_____ Township.]** **[_____ Borough.]** **[_____ City.]**

Section 2. **Authorization.** The Taxing Authority acknowledges the Collector may engage one or more third-party collection agencies to pursue and collect delinquent Tax in situations where the amount of delinquent Tax owed is relatively small and it is therefore cost-prohibitive for the Collector to dedicate the upfront resources necessary to pursue such delinquent Tax. The Taxing Authority hereby approves of

the imposition on and collection of a fee from any delinquent Taxpayer by any third-party collection agency engaged by the Collector, provided such fee does not exceed twenty-five percent (25%) of the amount of Tax collected from any such Taxpayer.

Section 3. **Notice.** Promptly after adoption of this Enactment, the Taxing Authority will provide a copy of the Enactment to the Collector. If the Taxing Authority later rescinds, limits, or changes the scope of, the authorization set forth in this Enactment, then the Taxing Authority will immediately notify the Collector.

Section 4. **Severability.** The provisions of this Enactment are severable and if any of its provisions are ruled invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect or impair any of the remaining provisions of this Enactment. It is declared to be the intention of the Governing Body that this Enactment would have been adopted if such invalid or unconstitutional provision had not been included.

Section 5. **Adoption.** This Enactment is adopted and enacted _____ _____, 2016.

ATTEST:

[Insert Taxing Authority Name]

_____
Secretary

By: _____

Title: _____