

**ACT 32 TAX COLLECTION AGREEMENT STARTUP STEPS:****KKAG Checklist of TCC/Tax Collector Steps Under Act 32 Tax Collection Agreement**

Preliminary Comments: Act 32, § 507(d), 53 P.S. § 6924.507(d), requires each tax collection committee (“TCC”) that appoints a third-party tax collector to enter a written tax collection agreement with the appointed Collector. This checklist is based on the default deadlines and requirements in the PASBO Act 32 Sample Tax Collection Agreement (“TCA”). This checklist does not take into account changes made to the TCA form by specific TCCs. For example, some TCCs have accelerated use of the tax collector services under the TCA to January 2011, which also advances many of the TCA deadlines. ***Each TCC should consult its solicitor to tailor this checklist to reflect variations between the PASBO TCA and the tax collection agreement as signed by the new Collector.***

This checklist is not intended as an exhaustive checklist of all TCC and tax collector responsibilities. It simply provides a reference for TCCs to ensure that key TCA steps are taken.

Three Initial TCC Steps

Each TCC should take the following 3 initial TCC steps in preparing to administer the TCA:

1. **Familiarize.** The first key step is to delegate to one or more TCC officers or management committee members responsibility to become familiar with TCA key terms such as: (1) Types of taxes that will be collected under the TCA. (2) The term of the TCA. (3) Initial bond amount. (4) Fund segregation requirements. (5) Tax distribution frequency. (6) Tax Collector commission rate. (7) Whether or not the Collector is entitled to retain investment earnings or Act 192 delinquent collection costs. (8) Who is obligated to pay legal costs for enforcement steps against employers and taxpayers. (9) Any other TCA provision that addresses an issue important to the TCC.

2. **Transition Plan.** The second key step is to work with the Tax Collector to develop a transition plan as required under Act 32 § 515(b)(2), 53 P.S. § 6924.515(b)(2), and TCA § 13(j). Among other things, the transition plan should provide a timetable for: (1) TCC collection of copies of all previously adopted tax enactments, including those relating to taxes other than earned income tax that will be collected under the TCA. (2) Taxing authority adoption of new earned income tax enactments to conform to Act 32. (3) New Collector delivery of financial statements, and initial year CPA selection if not stated in TCA. (4) TCC approval or selection of the bank in which the Collector will deposit tax funds. (5) New Collector delivery of the bond



and certificate of insurance by TCA deadlines – and TCC review of the bond and certificate of insurance. (6) TCC adoption of: TCC Tax Collector Interest Payment/Claim Policy; TCC Taxpayer Interest and Penalty Abatement Policy; TCC Tax Appeal Board Regulations; TCC Tax Regulations; and TCC Unidentified Funds Policy. (7) TCC review and comment on drafts of Collector's individual taxpayer, payroll service, other collector, and employer outreach plan, including transition advertisements, employer notices, individual notices, and forms attached to such notices. (8) TCC and Tax Collector steps to ensure collection of pre-Act 32 delinquent tax – and pre-Act 32 out-of-jurisdiction employer tax remittances. (9) If the TCC bylaws provide that Taxing Authority TCC budget shares will be deducted by the Tax Collector from tax receipts and paid by the Collector directly to the TCC, TCC notification of the Collector of the shares of the TCC annual budget that the Collector must deduct from each Taxing Authority's distributions. (10) TCC implementation of an Information Exchange Agreement between TCC and Pennsylvania Department of Revenue. (11) TCC steps required for collection of LST or other taxes, such as contracts with Taxing Authorities. (12) TCC consultation with new Collector as to its progress in gathering tax records from prior tax collectors. (13) New Collector steps to ensure collection of pre-Act 32 out-of-jurisdiction amounts, and also delinquent tax. (14) Taxing authority closeout steps with old collector, including: final reports and payments to taxing authorities; transfer of unidentified or future funds to new Collector; monitor open legal proceedings; final year financial statements; and any other items required by old tax collection agreement.

Although every one of these transition items is important, the outreach plan and new tax enactments are especially important – in order to ensure legal compliance and avoid transition problems and potential disruption of the flow of tax distributions. *See also page 7 below on Transition Deadlines.*

3. **Calendar.** The third key step is to create an annual calendar listing the various deadlines for tax collector action and for required TCC duties under the TCA. For example, to make sure tax distributions are made on time and in expected amounts, the TCC should monitor distributions, including docketing the calendar to check with the Collector prior to the date on which the first tax distribution is due, and to check with Taxing Authorities and the Collector during the first several months of collection under the new TCA.



Specific Steps Under TCA.

The following are specific steps required under the TCA.

1. **Updated Tax List [TCA § 2(f)].** *By October 1 (annual deadline):* TCC update Exhibit A tax list as to tax other than EIT collected.

2. **Tax Collector Financial Statement Deadlines [TCA § 4(c)].**
 - a. *By April 30 (annual deadline beginning in 2011 or 2012):* Tax Collector must deliver to the TCC and each Taxing Authority a certified public accountant audit report with financial statements that complies with TCA § 4(c). If the TCA requires the Tax Collector to deliver a SAS 70 audit report, the Collector must also deliver this by April 30 of each year. TCC and TCC auditor review, determine compliance with TCA and address any issues arising from review.

 - b. *By September 1 (annual deadline):* Tax Collector must deliver a copy of the annual audit report to DCED.

 - c. *Repeat process each year.*

[*Comment:* With respect to Tax Collector financial statements: (1) In order to enable the TCC to monitor Tax Collector financial strength, internal controls, and accuracy of tax reports and distributions, it is extremely important that TCCs receive both Collector internal business financial statements (including the balance sheet and income statement); and also tax fund financial statements (including balance sheet and cash flow statements). (2) The TCA gives TCCs the flexibility to require delivery of Tax Collector financial statements for the year preceding the year during which the Tax Collector begins collecting tax under the TCA. If a TCC requires such financial statements, the content of these financial statements will differ from the content of the financial statements the Tax Collector will deliver for years during which the Tax Collector collects tax under the TCA. (3) The TCA also requires the Collector to deliver financial statements for the year during which the TCA expires or is terminated by the April 30 following such year. (4) Very importantly, if the TCC has included provisions on confidentiality of Collector internal business financial statements provided separately from tax funds financial statements, the TCC should comply with all provisions of the TCA, including rules related to Right-to-Know requests, and advising those who receive copies of the financial statements of the confidentiality.]

2. **Initial Year CPA Selection Deadlines [TCA § 4(c)].**
 - a. *By January 1, 2011:* If CPA for 2012 is not named in the TCA, Tax Collector notifies TCC of proposed CPA for 2012 calendar year, including background information per TCA § 4(c)(5).



- b. **By May 1, 2011:** If TCC disapproves of CPA, TCC notifies Tax Collector.
- c. **By September 30, 2011:** If TCC disapproves of CPA, TCC and Tax Collector endeavor to reach agreement on 2012 calendar year CPA. If such agreement cannot be reached, TCC must give written notice to Collector on or before October 30, 2011 if TCC wishes to terminate TCA.

[**Comment:** The Initial Year CPA Selection Deadlines above apply only for those TCCs that have chosen the “Initial Year CPA Option 2” in the TCA, instead of specifying the 2012 calendar year CPA in the TCA.]

3. **Future Year CPA Selection Deadlines [TCA § 4(c)].**

- a. **By May 1 (annual deadline beginning first year during which tax collected under TCA):** Tax Collector notifies TCC of any intended change in the CPA for the following calendar year, including background information per TCA § 4(c)(5).
- b. **By September 1 (annual deadline beginning first year during which tax collected under TCA):** TCC must notify Tax Collector if the TCC disapproves of current CPA or future year tax collector-proposed CPA.
- c. **By September 30 (annual deadline beginning first year during which tax collected under TCA):** If TCC disapproves of tax collector-proposed CPA, the TCC and Collector endeavor to reach agreement on CPA for following calendar year. If such agreement cannot be reached, TCC must give written notice to Tax Collector on or before October 30 if TCC wishes to terminate TCA.

4. **Bond Delivery Deadlines [TCA § 4(d)].**

- a. **By September 30, 2011:** Tax Collector delivers to TCC a bond that complies with TCA § 4(d) and Act 32 § 509(d), 53 P.S. § 6924.509(d).
- b. **By October 30, 2011:** Tax Collector delivers to each Taxing Authority a copy of the bond.
- c. **April 1 (annual deadline – beginning in 2012 for TCCs that have accelerated; beginning in 2013 for all other TCCs):** Bond must be increased or decreased to the highest amount of Tax and Related Amounts the Tax Collector held during the prior year under the TCA, and amended bond delivered to TCC.
- d. **May 1 (annual deadline – beginning in 2012 for TCCs that have accelerated; beginning in 2013 for all other TCCs):** Tax Collector delivers to each Taxing Authority copy of amended bond.



[*Comment:* Regarding tax collector bonding under the TCA: (1) It is critical that TCCs carefully review the bond delivered by the Tax Collector to ensure the bond complies with the detailed requirements of the TCA and does not include inappropriate exclusions. Many bonding companies have endeavored to insert exclusions that are inappropriate and seriously diminish the value of the bond to the TCC. (2) If any monthly report shows the highest amount held by the Collector during the prior month was more than 10% greater than the amount of the bond in effect at the time of the report, the Collector has 30 days from the date of the report to increase the bond amount to the highest amount held during the prior month. (3) TCCs should docket the calendar to include the expiration date of the bond and to ensure a new bond is in place prior to expiration. (4) The bond must continue in force until six (6) months after the end of the term of the TCA in an amount that is at least twenty-five (25%) percent of the bond amount required immediately prior to the end of the TCA.]

5. **Collector Office Within TCD [TCA § 4(e)].** *Prior to Commencement Date:* Collector establishes office within TCD at location satisfactory to TCC.
6. **Unidentified Tax Funds Policy [TCA § 4(g)(5)].** *Prior to Commencement Date:* TCC in consultation with Collector adopts TCC Unidentified Funds Policy.
7. **Deductions for Amounts Owed TCC [TCA § 4(h)].** *Prior to Commencement Date:* If TCC bylaws provide for Collector to deduct Taxing Authority budget shares owed to TCC, TCC give written notice to Collector of amount to be deducted from Taxing Authority distributions for payment to TCC.
8. **Tax Collector Fee Approvals [TCA § 4(m)(7)(vi)].** *Prior to Commencement Date (Before 1/1/2011 for TCCs that have accelerated; before 1/1/2012 for TCCs that have not accelerated):* TCC approves Collector Act 192 fee list for delinquent collection expense and other items to be charged to delinquent taxpayers.
9. **Taxpayer Interest and Penalty Abatement Policy [TCA § 4(p)].** *Prior to Commencement Date:* TCC in consultation with Collector adopts Taxpayer Interest and Penalty Abatement Policy.
10. **Tax Enactments [TCA § 5(b)].** *Prior to Commencement Date (1/1/2012 for TCCs that have not accelerated):* TCC provides or causes Taxing Authorities to provide to Collector a copy of each new tax enactment (and provide a copy of any future enactment or amendment promptly after adoption).
11. **Tax Collector Financial Institution Approval [Deposit and Investment Policy § 6].** *Prior to Commencement Date:* TCC approves bank or other financial institution used by Tax Collector.



12. **Certificate of Insurance Delivery Deadline [TCA § 8(d)].**

- a. ***Prior to Commencement Date (1/1/2012 for TCCs that have not accelerated):*** Tax Collector delivers to the TCC Certificates of Insurance reflecting the requirements set forth in TCA Exhibit B: Collector Minimum Insurance Requirements.
- b. TCC docket calendar to obtain new certificate prior to expiration date.

13. **Transition Deadlines [TCA § 13].** ***On or before November 1, 2011:*** (1) Per TCA § 13(b), Tax Collector publishes advertisement listing the Collector's contact information, website address, and other information to help ensure taxpayer communications and payments are directed to the correct tax collector. (2) Per TCA § 13(c), Collector provides notice to all employers in the TCD listing all information included in the advertisement under TCA § 13(b) and including tax returns and other forms. (3) Per TCA § 13(d), Collector provides notice to all individuals residing in the TCD and all entities having a place of business in the TCD that pay or are believed to owe Tax, with such notice listing the information included in advertisement under TCA § 13(b) and including tax returns and other forms. ***See also page 1 above on Transition Plan.***

[***Comment:*** For TCCs that have accelerated, transition advertising, employer notice, and individual notice deadlines have already passed. For all other TCCs, the TCA requires employer notices to be sent on or before November 1, 2011. However, experience with those TCCs that have accelerated Act 32 has proven that reaching out to employers as early as possible to explain the Act 32 employer withholding and remittance rules helps to ease the transition to these rules. As part of the transition plan, TCCs that have not accelerated should instruct the Collector to send employer notices and take other outreach steps far in advance of November 1, 2011.]

14. **Distribution Deadlines [TCA § 4(g)].** ***Commencement Date:*** Collector distribute by end of last business day of each week all tax and related amounts held at the end of the prior week and identified as legally due to each Taxing Authority.

15. **Reporting Deadlines [TCA § 4(i)].**

- a. ***Twenty Days After End of Each Calendar Month (monthly deadline beginning month after first month during which tax collected under TCA):*** Tax Collector delivers to TCC and Secretary of each Taxing Authority for which Tax was collected by Collector during prior month a monthly report for the prior month listing all information required under TCA §§ 4(i)(1) and (2). ***Make sure all required information is included in reports. Also, address whether modification of bond amount appropriate per TCA § 4(d)(1)(ii).***



- b. **February 1 (annual deadline beginning February 1 after first year during which tax collected under TCA):** Tax Collector delivers to the TCC and Secretary of each Taxing Authority for which Tax was collected by Collector during prior year an annual report listing all information required under TCA § 4(i)(3).

- c. **November 1 (annual deadline):** Tax Collector provides to the TCC and Secretary of each school district for which Collector collects Tax under the TCA the Sterling Act tax credit information school districts must provide to PDE under Act 1 and TCA § 4(d)(5).

[**Comments:** KKAG has learned of some problems related to Tax Collector reporting and commissions, including: (1) At least one collector started issuing monthly reports that did not include all information required by the TCA. It is important that TCCs review monthly reports to verify that the reports include all information required by the TCA. (2) One collector convinced some TCCs to include a vague provision similar to the following in the TCA: “Collector will ... initiate claims against tax collectors for other tax collection districts for Tax or Related Amounts owed ... and shall retain an amount equal to the amount set forth in the schedule of costs of collection established as reasonable by the Act 192 Resolution.” Provisions similar to this are a problem for various reasons. First, filing claims against collectors for other areas is a routine process because the collector for the place of employment often does not have sufficient information to forward tax funds to the collector for the place of residence until the collector for the place of residence receives a tax return and W-2 from the individual taxpayer and forwards this information as part of a claim to the collector for the place of employment. Second, Act 192 applies to charges imposed by a tax collector against an individual taxpayer or employer who does not pay tax when due; it does not apply to claims filed against other collectors, whether routine or otherwise. Nevertheless, KKAG understands the collector that drafted this TCA provision interprets it as allowing a 10% charge to be imposed on amounts collected as a result of even routine claims filed against other collectors, in lieu of the normal commission rate of less than 2%. As an initial matter, TCCs should avoid including such vague language in the TCA. In addition, if the TCA has such a provision, it is critical that the TCC address this issue with the collector by requiring a mutually agreed written statement of the circumstances, if any, when charges beyond the normal commission rate will be charged as a result of claims filed against other collectors. It is also critical that the TCC require a separate statement on monthly reports of amounts charged above the normal commission, whether at the 10% rate or otherwise – and that TCCs monitor these extra charges.

Additional tax collector reporting requirements include: (1) Tax Collector obligation to continue to provide, after termination of the TCA, monthly reports as set forth in TCA §§ 4(i)(1) and (2) until the tax collector has filed a final monthly report accounting for all funds held by the tax collector in its capacity as the Tax Collector for the TCC. (2) Tax Collector obligation to provide an annual report as set forth in TCA § 4(i)(3) for the final year during which the Tax Collector is required to file monthly reports.]



16. **Collection Maximization Deadlines [TCA § 4(l) and (m)].**

- a. ***Prior to Commencement Date:*** In order to allow Tax Collector legal counsel to prosecute criminal prosecutions against nonfilers or employers who fail to pay withheld tax and other offenses, Tax Collector legal counsel should obtain written consent from the county district attorney pursuant to Pennsylvania Rule of Criminal Procedure 454(c).
- b. ***Prior to Commencement Date:*** TCC enters into information exchange agreement with Pennsylvania Department of Revenue.
- c. ***Commencement Date:*** If no information exchange agreement between TCC and Pennsylvania Department of Revenue exists, Tax Collector provides written notice to TCC to enter into such agreement.
- d. ***Dialogue with Taxing Authorities (annual requirement):*** Tax Collector is required annually to ask each Taxing Authority that levies Tax: (a) whether the Taxing Authority wishes to receive, review, and comment on the Collector's list of employers; (b) that the Taxing Authority provide a list of new employers known to the Taxing Authority.
- e. ***List Comparisons (annual requirement):*** Tax Collector is annually required to compare its individual taxpayer list and employer list against Pennsylvania Department of Revenue lists and county real estate tax duplicate or other lists of employers and individual taxpayers.
- f. ***By January 1, 2014 (every 2 years requirement):*** Tax Collector completes survey of TCD employers by traveling every road within TCD ***or using technology that provides comparable benefits.***
- g. ***Mass Mailings and Amnesty Programs (periodically as appropriate):*** Tax Collector considers and implements amnesty programs and mass mailings.
- h. ***Taxpayer Mailing (annual requirement):*** Tax Collector mails tax return forms to all known employers and individual taxpayers within TCD except those who have previously indicated to Collector that they intend to receive and/or access their tax return forms or information electronically and file and/or report electronically.
- i. ***August 1 (annual requirement beginning first year during which tax collected under TCA):*** Tax Collector examines and reconciles all tax returns received by Collector on or before May 1.



[*Comments:* (1) The TCC should regularly meet with the tax collector to review tax collection information, discuss shortcomings with the Collector's performance, and discuss strategies to improve tax collection. (2) The TCA provides TCCs with flexibility to decide how to enforce the Collector requirements set forth in (d) through (g) above. Some TCCs may wish to establish a certain date by which the Collector will perform these requirements. Other TCCs may wish to simply docket the calendar to consult with the Collector to make sure these steps are being taken on a timely basis.]

17. **Evaluate/Monitor Tax Collector Performance.**

- a. Establish procedures to monitor and enhance performance of Tax Collector, including:
 - (1) Tax fund safety oversight items, such as: financial statements; CPA selection; bond; insurance; Tax Collector financial institution; deposit and investment permissibility and collateralization; Tax Collector financial strength; tax records; and Tax Collector compliance with Act 32 and TCA.
 - (2) Tax revenue oversight.
 - (3) Involve TCC auditor in the oversight process.
 - (4) Establish at minimum an annual formal evaluation, including annual evaluation meeting with Tax Collector, and more frequent periodic dialogue meetings.
 - (5) Mark calendar for date at least one year before TCA expiration date to decide on renewal or new RFP process.