

[CIRCULAR NO. 2018-007, April 11, 2018]

GUIDELINES ON THE WARRANTS OF DISTRAINT, LEVY, AND/OR GARNISHMENT

Adopted: 22 March 2018

Date Filed: 11 April 2018

Pursuant to Section 22 (b) in relation to Section 4 (a) [1] of Republic Act No. 1161, as amended by Republic Act No. 8282, otherwise known as the Social Security Act of 1997 (SS Act), and in accordance with the Social Security Commission Resolution No. 310-Series of 2017 duly approved by the President of the Republic of the Philippines, through a Memorandum from the Executive

Secretary (MFES) dated 24 January 2018, the following Guidelines are hereby issued:

I. POLICY

The contributions payable under the SS Act in cases where an employer refuses, neglects, or fails to pay the same shall be collected by the Social Security System (SSS) in the same manner as taxes are made collectible under Republic Act No. 8424, otherwise known as the Tax Reform Act of 1997, as amended.

II. COVERAGE

These Guidelines shall cover all delinquent or non-compliant employers subject to compulsory SS coverage under Section 9 of the SS Act, who are under legal obligation to deduct and to remit both employee and employer shares of contributions' delinquency, penalties, including liability for damages, if any, against whom final assessment notices have been issued.

III. PURPOSE

These Guidelines aim to strengthen and complement existing policies with the adoption of a sound and uniform collection system through the summary and additional remedies of warrants of distraint, levy, and/or garnishment on properties of delinquent or non-compliant employers for collection of due and demandable social security contributions thereby enhancing the effectiveness and efficiency in the assessment, collection and enforcement capabilities of the SSS in keeping with its social and corporate goals.

IV. DEFINITION OF TERMS - As used in these Guidelines, the following terms shall mean, as follows:

A. **Social Security System (SSS)** - A corporate body created by the SS Act charged with the duty to implement and enforce its provisions and the rules and regulations promulgated by the SSC;

B. **Social Security Commission (SSC)** - A governing body that directs and controls the SSS which has rule-making and adjudicatory functions, as well as other expressed and implied powers provided under the SS Act;

C. **Contributions** - The amount due and demandable from the employer, including penalties for delayed and late payments, under the SS Act;

The penalty of three percent (3%) per month shall continue to run from the date the contribution falls due until fully paid;

D. **Damages** - The amount assessed against an employer who misrepresents the true date of employment of an employee member or who remits to the SSS contributions which are less than those required in the SS Act or fails to remit any contributions due prior to the date of contingency, resulting in a reduction of benefits in accordance with Section 24 of the SS Act;

E. **Assessment** - A written demand to pay unpaid contributions, penalty liabilities and damages, i.e. Preliminary Assessment Notice (PAN) and Final Assessment Notice before Seizure (FANS);

F. **Final and Executory Assessment** - An assessment made by the SSS of contributions and damages under the SS Act shall become final and executory:

1. Employer fails to comply with FANS and no written Protest is filed within the prescribed period;
2. No petition is filed before the SSC within fifteen (15) days after receipt of the Notice of Resolution denying the Protest.

The assessment that has become final and executory bars the delinquent employer from disputing the assessment.

G. **Warrant** - A legal document issued by duly authorized officials of the SSS or the SSC authorizing such person to carry out an action with legal force and effect.

H. **Distraint** - It is the seizure of any goods, chattels or effects, shares of stocks, securities, debts and credits and other personal/movable properties.

1. **Actual Distraint** - The seizure and taking of physical control and possession of personal/movable properties of the delinquent employer.
2. **Constructive Distraint** - The act of listing

down the personal/movable properties of delinquent employer in the notice of constructive distraint directing the employer or any person having possession or control of such property/ies not to dispose the properties distrained without the express authority of the concerned SSS official.

It may be resorted to if the delinquent employer is retiring from any business, or is intending to leave the Philippines or to remove his property therefrom or to hide or conceal his property or to perform any act tending to obstruct the proceedings for collecting the contributions and damages due or which may be due from the delinquent employer.

I. **Levy** - The seizure of real/immovable properties, any rights or interest thereto, of a delinquent employer;

J. **Notice of Levy** - A written notice to levy real property addressed to the Provincial/City/Municipal Assessor in the case of untitled real properties, or to the Register of Deeds of the place where it is situated in case of titled real properties, for annotation of the same on the Tax Declaration or the Certificate of Title;

K. **Garnishment** - A proceeding in the nature of an attachment by means of which monies, bank accounts and interests in and rights thereto, of the delinquent employer in the custody or control of a third person.

V. CONTRIBUTIONS, PENALTIES AND DAMAGES ASSESSMENT

A. The following shall be presumed to be the monthly contributions payable by, and due from, the employer to the SSS for each of the unpaid month/s, to wit:

1. The amount based on the last complete record of monthly contributions paid by the employer;
2. The average of the monthly contributions paid during the past three (3) years as of the date of assessment; or
3. The amount based on all records and documents available to the SSS.

The SSS shall not be barred from determining, computing and collecting the true and correct contributions due the SSS even after full payment, nor shall the employer be relieved of its liability under the SS Act.

B. The delinquent employer shall also pay damages under Section 24 of the SS Act, equivalent to the difference between the amount of benefit to which the employee-member or his/her beneficiary is entitled had the proper contributions been remitted to the SSS and the amount payable on the basis of the contributions actually remitted. If the employee-member or his/her beneficiary is entitled to pension benefits, the damages shall be equivalent to the accumulated pension due as of the date of settlement of the claim or to the five (5) years' pension whichever

is higher, including dependents' pension.

VI. PROCEDURAL HIGHLIGHTS

A. ASSESSMENT

1. Letter of Authority (LOA) and Preliminary Assessment Notice (PAN)

The SSS Branch Office (BO)/Large Account Department (LAD) concerned, through its duly authorized Accounts Officer (AO), shall prepare and serve a Letter of Authority (LOA) and a Preliminary Assessment Notice (PAN) to the delinquent employer.

The PAN shows the amount of the contributions, penalties due, and damages, if any, and the period of delinquency.

2. Final Assessment Notice (Before Seizure)

a. If the delinquent employer fails to comply with the PAN within fifteen (15) days from receipt thereof, the BO/LAD concerned shall prepare and serve a Final Assessment Notice Before Seizure (FANS).

b. If the delinquent employer still fails to comply after the lapse of fifteen (15) days from receipt of the FANS, the assessment shall become final and executory.

c. The BO/LAD concerned shall forward the employer account, together with its recommendations, for the issuance of the appropriate warrant by the Division, Group, Sector Heads/PCEO, as the case may be.

B. PROTEST

The employer may protest or dispute the FANS by filing a written Request for Reconsideration or Request for Reconciliation to the issuing BO/LAD within fifteen (15) days from receipt of the FANS.

A Protest disputing a FANS shall be in the form of either a:

1. **Request for Reconsideration** seeking re-evaluation of an assessment on the basis of existing records without need of additional evidence;
2. **Request for Reconciliation** seeking re-evaluation of an assessment on the basis of newly discovered or additional evidence.

The concerned BO/LAD shall evaluate the Protest and forward the employer's account records together with its recommendation to the BO/LAD Division, Group, Sector Head/PCEO, as the case may be, for resolution.

The filing of a Protest shall interrupt the running of the period for the finality of the assessment.

C. RESOLUTION OF PROTEST

The BO/LAD Division, Group, Sector Head/PCEO shall evaluate the recommendations of the BO/LAD and resolve the Protest within ten (10) days from receipt thereof.