

TESTIMONY ON HB 3655

BY: Jim Markee

Representing: Oregon Collectors Association

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I am Jim Markee representing the Oregon Collectors Association in opposition to HB 3655. I have attached a copy of ORS 293.233, which this bill repeals, along with the Department of Administrative Services' administrative rules regarding exemptions for account assignment to private collection agencies.

The administrative rules provide for adequate opportunity to exempt accounts from assignment to a private collection agency when it is in the best interest of the State. These rules and ORS 293.233, together act as a check and balance when a state agency seeks an exemption to assignment of delinquent accounts.

It would simply not be in the best interest of the state to allow agencies to choose to not use all available resources in the collection of liquidated and delinquent accounts without benefit of oversight.

Additionally, the new language in subsection 8 of section 2, found on page 2, line 24 seems to be in conflict with other sections of the bill. Literally read, it would only allow assignment of an account if it had not had a payment in one year. This would be in conflict with subsection 4 of section 2 of the bill.

We would recommend a more thorough study of Oregon's entire accounts receivable process, with an eye toward reducing the \$100 million annual growth in receivables.

293.233 Exemption of accounts from assignment to private collection agency; rules. (1)

A state agency may use rules adopted by the Oregon Department of Administrative Services for exempting liquidated and delinquent accounts from assignment to a private collection agency. The state agency shall provide documentation and justification for exempting liquidated and delinquent accounts from assignment.

(2) The Oregon Department of Administrative Services shall adopt rules governing the procedure that a state agency may follow in exempting a liquidated and delinquent account from assignment, including but not limited to adequacy of the documentation and justification that a state agency is required to provide under this section. [1999 c.1092 §4]

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| OREGON ACCOUNTING MANUAL | | Number 35.40.10.PO |
| Oregon Department of Administrative Services State Controller's Division | Policy | Effective Date October 12, 2006 |
| Chapter | Accounts Receivable Management | .1 OF .4 |
| Part | Account Assignments | |
| Section | Assignments and Exemptions | Approval Signature on file at SCD |

Authority ORS 291.015
 ORS 293.231
 ORS 293.233
 ORS 293.250
 ORS 293.590

Purpose and Applicability

- .101 This policy provides criteria to determine when Mandatory Collection Agency Transfer (MCAT) accounts, which are liquidated and delinquent accounts receivable, are subject to assignment to either the Department of Revenue Other Agency Accounts Unit or a private collection firm or may be exempted from assignment. This policy also provides information on how an agency may request an exemption from the assignment timeframe statutorily placed at 90 days. The provisions of this policy do not affect or limit the authority of an agency to assign accounts to a private collection firm.

Definitions

- .102 Account - a debt relationship between a state agency and an individual or an entity, which may include multiple obligations and time periods.
- .103 Consensual Security Interest - an enforceable interest in real or personal property voluntarily created by a debtor to secure an obligation to pay a debt (i.e., a mortgage, trust deed, security agreement, or pledged securities).
- .104 Delinquent (account) - receivable for which payment has not been received by the due date.
- .105 Hardship - adverse circumstances, which significantly reduce a debtor's ability to pay. Examples include, but are not limited to, interruptions of income due to family or medical emergencies, job layoff or job skill retraining, long-term/permanent disability, social security, public assistance, or terminal illness.
- .106 Imprisoned - currently incarcerated.
- .107 Litigation - a dispute is in "litigation" when it:
 - a. Has been referred to the Department of Justice;
 - b. Is in the administrative appeal or hearing process; or
 - c. Is in arbitration, mediation, or in the state(s) or federal court system, including bankruptcy.
- .108 Liquidated (account) - see OAM 35.30.30.PO for a complete definition.

- .109 Mandatory Collection Agency Transfer Account (MCAT account) - an account that is:
- a. Liquidated,
 - b. Delinquent, and
 - c. Not prohibited by law from being transferred to a collection firm.
- .110 Public Assistance - as defined in ORS 411.010, means all types of assistance administered by or in accordance with the provisions of federal and state laws. Examples include, but are not limited to, medical assistance, food stamp assistance, old-age assistance, temporary assistance for needy families, aid to the blind, general assistance, and aid to the permanently and totally disabled.

MCAT Accounts

- .111 The MCAT eligibility date of an MCAT account is the latter of any of the following dates that apply to the account:
- a. The first day the account became both liquidated and delinquent;
 - b. The date the account was referred to the Department of Revenue Other Agency Accounts (OAA) Unit for collection services pursuant to ORS 293.250; or
 - c. The date an exemption under paragraph .114 has expired.
- .112 If no payments have been received on an MCAT account during any 90-day period following the MCAT eligibility date for that account, the agency must review the account for assignment to the OAA Unit or a private collection firm currently under contract with the State of Oregon. The 90-day period is not applicable to Department of Revenue or Employment Department accounts, which have one year from the later of the date of liquidation or the date of last payment. The 90-day period also does not apply to agencies that have been granted a time period exemption from the State Controller's Division (SCD) as per paragraph .119.
- a. Unless the account is subject to an exemption under paragraph .114, the agency must refer the account for outside collection. If the review of the account arises from an MCAT eligibility date based on a referral to the OAA Unit or the expiration of an exemption exercised by the OAA Unit, then the account must be offered for assignment to a private collection firm. Otherwise, the agency may refer the account to either the OAA Unit for collection pursuant to ORS 293.250 or to a private collection firm.
 - b. If an agency exercises the option available in paragraph .114 to exempt an account, no further action is required of the agency under this policy unless the agency determines that the exemption no longer applies. If the agency determines that an exemption no longer applies, the agency must establish a new MCAT eligibility date and proceed with collection of the account. If an account has been referred to the OAA Unit for collection, the OAA Unit may exercise an exemption.
- .113 Before an account may be written off using the procedures authorized by ORS 293.240, the account must be referred to a private collection firm, unless the account is prohibited by law from assignment to a private collection firm or the agency has exempted the account from assignment as provided in paragraph .114.
- .114 An agency may exempt from assignment to a private collection firm any MCAT account that:
- a. Is secured by a consensual security interest in real or personal property.
 - b. Is a court judgment that includes restitution or a payment to the Department of Justice Crime Victims Assistance Section.

- c. Is in litigation.
- d. Is a student loan owed by a student who is attending school.
- e. Is owed to a state agency by a local or state government or by the federal government.
- f. Is owed by a debtor who is hospitalized in a state hospital as defined in ORS 162.135 or who is on public assistance.
- g. Is owed by a debtor who is imprisoned.
- h. Is less than \$100 including penalties.
- i. Would, if assigned, result in a loss of federal funding or a loss of funding under a federal program.
- j. Would constitute a hardship if assigned, and assignment would be inconsistent with an agency goal.
- k. Is secured by a non-consensual lien against specific real or personal property identified by the agency.
- l. Is secured by a bond.
- m. Is one of multiple accounts owed to the agency by the same debtor, any one of which accounts has received a payment within the preceding 90-day period, including accounts created and paid at the same time.
- n. Is within the scope of an agency specific exemption approved under paragraph .116.
- o. Would result in the referral of a monetary penalty, fee, or tax under ORS Chapters 825 or 826 related to a motor carrier operating authority unless the closing audit of the motor carrier operating authority is final.
- p. Arises when a wage garnishment has been served on the debtor's employer and no funds are available to the agency because a wage garnishment or order to withhold earnings of higher priority currently prevents any funds from being applied to the agency debt.
- q. Arises from an administrative or judicial support order, judgment, or decree.
- r. Is owed by a corporation that is not, and for the foreseeable future, will not be engaged in any income-producing activity, and there are no assets from which the debt could be collected.

.115 When an agency determines an MCAT account can be exempt from assignment to a private collection firm (based on the criteria in paragraph .114), the agency should document their conclusions on OAM form 75.35.01.FO, Agency Documentation for Self-Exempting Accounts (or equivalent). This form is not required to be filed with SCD, but may prove useful to explain the reasoning for exempting accounts in the event of an inquiry or in response to an audit of the agency's liquidated and delinquent accounts.

.116 In addition to the specifically enumerated subparagraphs "a" through "r" of paragraph .114, an agency may request SCD to approve one or more agency specific exemptions. A request for an agency specific exemption from assignment must be submitted on OAM form 75.35.02.FO, Request for Exemption from Assignment. This form should be used to:

- Propose and explain the type of account to be exempted;
- Identify the exemption as permanent or temporary; and
- Explain the necessity or legal condition that requires the exemption.

Such exemption may not be used by the agency until approved by SCD. In its written approval of the request, SCD may specify that the exemption is for a limited duration, and if so, the agency's right to use the exemption terminates upon expiration of the limited duration period.

- .117 For the purposes of this policy, a state agency shall be deemed to have offered an account for assignment if the agency offers the account to collection firms through standard methods at a generally acceptable industry rate for the type of account, and no collection firm expresses interest in the account as offered.
- .118 Notwithstanding paragraph .117, no offer for assignment shall be made contrary to applicable state or federal laws or regulations governing offers for assignment.

Request for Exemption From 90-day Timeframe

- .119 To request an exemption from the 90-day turnover timeframe required in ORS 293.231, an agency must complete OAM form 75.35.11.FO, Exemption From 90-day Turnover Request. When approved, the exemption request will permit either a 180-day turnover period or a 365-day turnover period. This exemption is not permanent and will be filed and reviewed bi-annually by SCD. The current requirement is that all agencies, except the Department of Revenue and Employment Department, turnover their liquidated and delinquent accounts that meet the MCAT eligibility and have not received a payment within 90-days from the liquidation date or the date of the most recent payment. The form requires agencies to prepare and submit the following information:
- a. The agency's preferred timeframe turnover period of either a 180-day period or a 365-day period;
 - b. Identify if the exemption is for a specific program, or programs, or for all agency accounts. Identify the "type of account" and "fund category" as they are designated in the Legislative Fiscal Office (LFO) Report on Liquidated and Delinquent Accounts;
 - c. Information pertaining to accounts receivable (dollars) collected, dollar amount of accounts receivable, liquidated and delinquent account balances and collections, and the cost of collections as of the most recent fiscal year ended June 30. This information can be found in the agency's accounting records, which needs to match what was reported in the statewide Comprehensive Annual Financial Report (CAFR); the LFO Report on Liquidated and Delinquent Accounts; and through the analysis of cost data in agency expenditure reports and accounting data;
 - d. Requested attachments to the form pertain to program(s) description(s) with statutory and Oregon Administrative Rule citations, number of FTEs and job classifications, a copy of the agency's collection policies and procedures, methods for computing the allowance for doubtful accounts, a list of payment methods accepted, a list of special tools the agency has available to collect accounts and if necessary, an explanation of special circumstances and how this time exemption is different than a statutory exemption granted by law. Links to the agency web sites that offer this information may be provided in lieu of the paper or electronic documents.
- .120 Requests for the exemption from the 90-day turnover timeframe must be made to the SCD by November 21. Each approved request will be valid for a two fiscal year period, beginning with the next fiscal year. For example: A request in November 2006 will become effective for the fiscal year July 1, 2007 through June 30, 2009. Such exemption may not be used by the agency until approved by SCD. In the SCD's written approval of the request, the SCD may specify that the exemption is for a limited duration, and if so, the agency's right to use the exemption terminates upon expiration of the limited duration period.