

House Committee on Revenue

February 24, 2015

HB 2089 Currently Not Collectible Status

Summary

House Bill 2089 creates a “currently not collectible” status for debt owed the State of Oregon. Requires the Department of Revenue to administer a process to allow individuals to apply for “currently not collectible” status on behalf of all agencies and private collection agencies.

General Comments

(Page 1, line 12):

As drafted, the bill applies to “debt owed a state agency under ORS 1.197, 293.231 or 293.250” however no debt is owed to the state under these statutes. Rather these statutes require state agencies and the Judicial Department to send their accounts to either the Department of Revenue (Other Agency Accounts section) or to a Private Collection Firm.

It is unclear if the bill intends to require any debt that is being collected by any agency of the state to be placed in currently not collectible status. If that is the intent, we suggest the following language:

The Department of Revenue or another state agency, or a private collection agency, collecting a debt owed a state agency ~~under ORS 1.197, 293.231, or 293.250~~ may not attempt to collect a debt owed a state agency from an individual who is placed on currently not collectible status under this section.

If the intent of the bill is to require only debt that is collected by a private collection agency or the Department of Revenue (Other Agency Accounts section) to be placed in currently not collectible status then we suggest the following language:

The Department of Revenue or another state agency, or a private collection agency, collecting a debt ~~owed a state agency~~ under ORS 1.197, 293.231, or 293.250 may not attempt to collect a debt owed a state agency from an individual who is placed on currently not collectible status under this section.

The bill in its current form would cause the Department of Revenue (Other Agency Accounts section) or a Private Collection Agency to return the debt to the assigning agency. It is unclear whether the state not actively collecting on certain accounts would cause any unintended affects (e.g. federal funding issues, increased A/R which could lower the state’s credit rating, less collections to the general fund, etc.)

Administrative concerns

The broad nature of the income that could qualify an individual for this status makes it unclear to us how many accounts would be impacted. Additionally, we have heard concerns from other state agencies (Department of Human Services, Department of Justice, and Oregon Employment Department) as well as the Oregon Judicial Department regarding this bill. The types of debts these agencies collect are generally debts that are due to overpayment of some sort of benefit, unpaid child support, and court debts. It is very possible that this population of debtors would qualify for suspended collections under this bill.

It is unknown how large this population of applicants would be. In 2013, there were 572,000 personal income taxpayers that had the listed protected income, and 86,000 taxpayers had open liabilities for tax year 2013. This information is of limited use because it only applies to personal income tax debt and not the debt of other agencies or the Judicial Department. It is especially difficult for the Department of Revenue to quantify this number because many debtors who receive welfare benefits or child support payments are not required to file tax returns because their only source of income is not taxable.

Any debtor who believes they qualify for “currently not collectible status” may apply to the Department of Revenue for relief. This process would need to be customized for the unique circumstances of the individual and may often require analysis of taxpayer financial information similar to a financial audit. Processing each request for relief may take one FTE several days of analysis to reach a recommendation on repayment ability and type of relief (if any) to be granted.

The Department will need to hire additional staff to administer this program, or alternatively, divert current collection staff to focus on processing relief requests for all state agencies, including the Judicial Department. This may require programming to create and track “currently not collectible” status cases, and may increase phone calls and mail volume. A fiscal impact has not yet been determined.

The bill does not provide for an appeal or review of Revenue’s decision to deny the requested relief. Typically, Department of Revenue appeals are heard through the Oregon Tax Court, but it is unknown whether these denials should be heard through the Office of Administrative Hearings because it relates to collections under ORS Chapter 18.

Additionally, the requirement to include specific language in every notice we issue to a debtor would require changes to multiple notices that may or may not be sent to an existing debtor. Currently, we may issue a request for information related to our ability to process a tax return, and that letter is sent to a debtor. It doesn’t relate to the collections of the account, but something entirely separate. It is unclear if we would have to add the designated language to these types of notices as well.

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Conforming changes

- The department will need to be able to report this as debt that is currently not collectible on the LFO report required under ORS 293.229. Otherwise, it will continue to be reported in our A/R balances that would appear to be currently collectible. We would also want to be sure that we wouldn't be required to turn the account to a Private Collection Firm if the suspension lasts longer than one year under ORS 293.231. Suggested language:

ORS 293.231

(9) Notwithstanding subsection (1) of this section, a state agency may, at its discretion, choose not to offer for assignment to a private collection agency a liquidated and delinquent account that:

- (a) Is secured by a consensual security interest in real or personal property;
- (b) Is a court-ordered judgment that includes restitution or a payment to the Department of Justice Crime Victims Assistance Section;
- (c) Is in litigation, including bankruptcy, arbitration and mediation;
- (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, who receives public assistance as defined in ORS 411.010 or who receives medical assistance as defined in ORS 414.025;
- (g) Is owed by a debtor who is imprisoned;
- (h) Is less than \$100, including penalties; ~~or~~
- (i) Would result in loss of federal funding if assigned; or
- (k) Is owed by a debtor who qualifies for currently not collectible status under section XXX of this 2015 Act.

- If collections are suspended for this group, we would want to clarify whether the debt continue to accrue penalties and interest.
- Under current law and as this concept is drafted, this concept would not affect our ability to offset a tax refund due the debtor. In other words, if the individual who is in currently not collectible status files an income tax return and requests a refund, the department would still apply it to the individual's outstanding debt.
- If collections activities are suspended for a taxpayer who meets the criteria in this concept, we would want to ensure that department liens stay in place. This ensures that the department would still be able to collect this debt if the taxpayer no longer meets the criteria for suspended collections activities. Also, if it stays in place, in the event that they sell real property while in suspended status, we would still be notified of the sale. We would want to ensure that we could still receive the proceeds, if any, of any sale.
- We would like clarity on whether the taxpayer would be able to make voluntary payments. There are taxpayers who would qualify under the criteria listed, but have assets they've

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accrued over their lifetime with which they could still choose to pay the debt, even though their current income levels qualify under this concept.

- We envision there would be an application process (established by rule) for taxpayers to submit information to qualify similar to our current Settlement Offer process in which we could validate the information needed to qualify for this program. It is unclear whether the Judicial Department (as part of the Judicial Branch of government) would be bound by the administrative rules adopted by the Department of Revenue, an Executive Branch agency.
- The department would also want clarity on the following situations:
 - Changes of circumstances and the ability to remove a debtor from currently not collectable status if they no longer qualify for currently not collectable status;
 - Joint debt when only one debtor is receiving protected income; and
 - New debt owed by the individual (would it impact their status?).

As additional information, the IRS places taxpayers into a “Currently Not Collectable” status when the following criteria are met, however they do not share whether a debtor is in this status:

1. Taxpayer has no assets
2. Taxpayer has no equity in assets
3. Taxpayer has no disposable income; income minus allowable expenses is zero

(Internal Revenue Manual, Part 5 Collecting Process, Chapter 16 Currently Not Collectable)

For more information about this testimony, contact Deanna Mack 503-947-2082.