

## BUDGET POLICY AND REPORTING MANUAL

<i>date</i> 4/1/93	<i>subject</i> <b>STATE AGENCY COLLECTION METHODS</b>	<i>item</i> K-031
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### A. Purpose and Scope

This item establishes policies and procedures prescribed by the Director of the Budget for all State agencies regarding State agencies' collection methods for non-tax debt.

To collect accounts receivable effectively, it is important to implement and maintain a structured and consistent process. Generally, the collection process will begin with a bill, and prompt payment from a debtor is facilitated by a timely bill that clearly provides all pertinent information about the account. Even with effective billing practices, not all accounts will be paid in a timely manner. In the event of non-payment, State agencies should initiate a series of letters and/or telephone contacts to remind the debtor of the past-due account and to request immediate and full payment.

### B. Billing Invoice/Notice

A billing invoice or notice is the debtor's initial written notification that the debt is due. Efficient accounts receivable management requires that agencies issue bills to debtors as soon as possible after a good or service has been provided or the transaction has been measured.

There are several forms of billing notices a State agency may use to notify an individual or business that a specific amount is due by a specific date. These include:

1. A billing invoice or notice which a State agency issues;
2. A coupon book that contains a series of billings (generally monthly bills). Each coupon specifies the amount due and the due date and other information conveyed on a single bill; and
3. A contract that specifies a date by when payment must be received.

A billing invoice must be dated and:

1. Specify a due date, which is five days after the bill is dated;
2. Define timely payment as payment in full on or before the 30th day following the debtor's receipt of the billing invoice or notice;
3. Inform the debtor that interest (at the underpayment rate applicable on the billing date) or a \$10 late payment charge, whichever is greater, will be imposed on a debt or the outstanding part of a debt if payment is not received on or before the 30th day following the debtor's assumed receipt of the billing invoice or notice;

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4. Inform the debtor that any calculated interest charges will be assessed from the due date;
5. Inform the debtor that State agencies may assess collection fee charges for the cost of processing, handling, and collection of such debt, if payment is not received within 90 days of the debtor's receipt of the billing invoice or notice;
6. Inform the debtor that State agencies may assess a charge for dishonored checks;
7. State that the debt may be referred to a private collection agency or the Attorney General's Office or certified to the Department of Taxation and Finance; and
8. Incorporate language about the debtor's due process rights and opportunities for dispute.

It is imperative that a billing invoice clearly states a debtor's due process rights.

Agencies that are required to offer the opportunity for a State Administrative Procedure Act (SAPA) or SAPA-like hearing should inform the debtor of the necessary steps to invoke such an opportunity, including whether a request for a hearing should be made in writing. Any deadline for requesting such a hearing must be clearly stated with the word "DEADLINE" or similar language plainly stated, preferably in bold-face type or italics.

It is preferable that a notice of deadline for invoking a SAPA or SAPA-like procedure is contained in a separate, one or two sentence paragraph. This approach ensures that this important information is prominent.

For debts that do not require a SAPA or SAPA-like hearing, billing notices should still inform the debtor that they have an opportunity to present defenses. The notice should be clear and unambiguous about when the debtor must request a hearing and how the debtor must make such a request.

The following are model billing invoices or notices.

Model #1 is an example of a bill for which a \$10 late payment charge would be assessed if full payment was not paid by the specified due date.

Model #2 is an example of a bill for which a calculated interest charge (greater than \$10) would apply if full payment was not paid by the specified due date.

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**Model Billing #1 — First Bill**

**AGENCY LETTERHEAD**  
January 1, 1993

**THIS IS A BILL INVOICE OR NOTICE  
FROM THE STATE OF NEW YORK**

[Debtor Name]  
[Debtor Address]  
[Soc. Sec. No./EIN No.]

— E X A M P L E —

a	b	c	d	e	f
	OSC Agency Code			Accounts Receivable Code	
Fund	Agency	Amount Due	Account Number	003	Explanation
GF	Dept. of Education	\$60.00	12345678	License Fee	One-Year Nursing License

**g Full payment of \$60.00 is due and owing upon receipt (January 6, 1993).**  
**h Amount Due - If paid by February 5, 1993** ..... \$60.00  
**i Amount Due - If paid after February 5, 1993 and before March 7, 1993** ..... \$70.00  
 (\$60.00 + \$10.00 late payment charge)

*\*\*Section 18 of State Finance Law authorizes State agencies to charge the greater of \$10.00 or interest computed at the underpayment rate charged by the Commissioner of Taxation and Finance. Consequently, interest could exceed the \$10.00 late payment charge. Interest shall be computed at the rate of [insert underpayment rate in effect on the date of billing] from the due and owing date.*

**Please take notice:** If payment is not received by [insert applicable date] within 30 days after the date of this notice, this agency is authorized to pursue other collection alternatives.

State agencies may refer past-due accounts to a private collection agency, or the New York State Attorney General's Office. Further, Section 171-f of the State Tax Law authorizes State agencies to certify a past-due legally enforceable debt to the New York State Department of Taxation and Finance for collection by offset of tax overpayments or other payments due from the State. In addition, State agencies are authorized to charge a collection fee, up to 22 percent of the outstanding debt, on accounts that are more than 90 days past-due. Section 19 of State Finance Law allows State agencies to charge a [insert applicable returned check charge] for dishonored checks or like instruments.

**[Insert language concerning how debtors may invoke their relevant due process rights.]**

If you have any questions regarding this bill you may call [Agency Contact] at [phone number].

**Please make checks payable to:  
[Name of agency and address]**

*\*Agency counsel should approve any standard billing invoice or notice that the agency will send to its debtors.*

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**Model Billing #2 — First Bill**

**AGENCY LETTERHEAD**

January 1, 1993

**THIS IS A BILL INVOICE OR NOTICE  
FROM THE STATE OF NEW YORK**

[Debtor Name]  
[Debtor Address]  
[Soc. Sec. No./EIN No.]

— EXAMPLE —

a	b OSC Agency Code	c	d	e Accounts Receivable Code	f
Fund	Agency	Amount Due	Account Number	003	Explanation
SRO	Dept. of EN CON	\$3,000.00	876543	Regulatory Fee	On-Site Monitoring

**g Full payment of \$3,000.00 is due and owing upon receipt, (January 6, 1993).**

**h Amount Due - If paid by February 5, 1993** ..... \$3,000.00

**i Amount Due - If paid after February 5, 1993  
and before March 7, 1993** ..... \$3,000.00+ [insert interest amount]

*\*\*Section 18 of State Finance Law authorizes State agencies to charge the greater of \$10.00 or interest computed at the underpayment rate charged by the Commissioner of Taxation and Finance. Interest shall be computed at the rate of [insert underpayment rate in effect on the date of billing] from the due and owing date.*

**Please take notice:** If payment is not received by [insert applicable date], this agency is authorized to pursue other collection alternatives.

State agencies may refer past-due accounts to a private collection agency or the New York State Attorney General's Office. Further, Section 171-f of the State Tax Law authorizes State agencies to certify a past-due legally enforceable debt to the New York State Department of Taxation and Finance, for collection by offset of tax overpayments or other payments due from the State. In addition, State agencies are authorized to charge a collection fee, up to 22 percent of the outstanding debt, on accounts that are more than 90 days past-due. Section 19 of State Finance Law also allows State agencies to charge a [insert applicable returned check charge] for dishonored checks or like instruments.

**[Insert language concerning how debtors may invoke their relevant due process rights]**

If you have any questions regarding this bill you may call [Agency Contact] at [phone number].

**Please make checks payable to:  
[Name of agency and address]**

*\*Agency counsel should approve any standard billing invoice or notice that the agency will send to its debtors.*

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### EXPLANATION OF AGENCY BILLING

- a. **Fund**  
Enter the abbreviated Fund initials (e.g., GF, SRO, etc.).
- b. **Agency Code**  
Enter the State Comptroller's 5-digit agency code.
- c. **Amount Due**  
Enter the original amount due to the State agency from a debtor. This amount will not include interest or a late payment charge, collection fees, or a returned check charge.
- d. **Account Number**  
Enter the number assigned by the agency to the specific account. Generally, the account number should be the debtor's Social Security Number or Employer Identification Number.
- e. **Accounts Receivable Identification Code**  
Enter the appropriate code for the category of accounts receivable:

001	Goods and Services
002	Penalties and Fines
003	Licenses, Permits and Fees
004	Damages
005	Education
- f. **Explanation**  
Enter an explanation for debt.
- g. **Due and Owing — Payment Date**  
Enter full amount due, and specify the date that is five days after the date of the notice date — day 6.
- h. **Amount Due - If Paid By a Specified Date**  
Enter the original amount due, and specify the date that represents 30 days after the due and owing date. This specified date represents day 36 from the original invoice/notice date.
- i. **Amount Due - If Paid 1 to 30 Days After the Specified Date**

! If late payment charge, enter principal amount + \$10.00 late payment charge;  
or

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- ! If calculated interest exceeds the late payment charge, enter principal + assessed interest amount.

**NOTE: Principal and late payment/interest charge should be shown separately.**

The agency should provide the debtor with a portion of the billing notice or a separate invoice to return with the debtor's payment. The following information should be included:

- ! Debtor name
- ! Debtor address
- ! Debtor's Social Security Number or EIN
- ! Account number
- ! Amount due
- ! Due date
- ! Space for address correction

### C. Due Process Requirements

This section establishes minimum standards and basic parameters to which State agencies must adhere in order to ensure that debtors, whether individuals or businesses, are guaranteed procedural fairness when agencies collect non-tax debt subject to Chapter 55 of the Laws of 1992.

It is important to note that due process is a constitutional safeguard guaranteeing procedural fairness to an individual or business before an agency proceeds with actions to collect past-due debts.

Due process does not have a fixed meaning. The extent of due process that must be afforded a debtor must be determined by the nature of the debt, the level of potential impact upon the debtor and the administrative or statutory requirements to which such debt is subject.

1. Due Process Requirements Of A Past-Due Legally Enforceable Debt Subject to Section 171-f of State Tax Law.

In order for agencies to meet due process requirements regarding past-due legally enforceable debt as provided for in Tax Law, State agencies must take one of the following actions:

- a. Obtain a judgment (a determination of a court of law), which under the majority of instances will be obtained on behalf of the agency by the Attorney General; OR
- b. Make a final administrative determination. Such a determination can be made

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in one of three different ways, depending on the nature of the debt and the statutes which are applicable to its collection:

i. State Administrative Procedure Act (SAPA) Hearing

Agencies must provide the debtor an *opportunity* to be heard through an adjudicatory proceeding which follows the provisions set forth by Article three of the State Administrative Procedure Act (SAPA) when required. This SAPA hearing requirement is *only* necessary if statutes or rules and regulations of the particular agency require this type of hearing for resolution of this type of debt.

The *opportunity* for a formal SAPA hearing must be made clear to a debtor, but if the debtor does not avail her/himself of this appeal process within a period of time set forth in law, rules and regulations or agency procedures, then the agency *may* proceed with collection efforts and can consider that the due process requirements of a past-due legally enforceable debt have been fulfilled. An actual hearing does not have to occur. Before the agency can certify the debt to the Department of Taxation and Finance, however, it must also fulfill certain notification requirements (see Item K-052).

or

ii. An Adjudicatory Proceeding Which Resembles A SAPA Hearing

Agencies must provide the debtor an *opportunity* to be heard through an adjudicatory proceeding which closely resembles a SAPA hearing in its substance and procedures. This SAPA-like hearing requirement is *only* necessary if statutes or rules and regulations of the particular agency require this type of hearing for resolution of this type of debt or if in a unique case, the nature of the debt is such that the agency's counsel has determined that such a hearing is necessary.

This SAPA-like proceeding should have an impartial body acting in the capacity of administrative judges. An impartial body may include hearing officers of the agency. A debtor should be permitted to make a formal presentation of her/his issues of dispute, and an agency representative should be prepared to refute the debtor's arguments with documented information. The pronouncement of an administrative judgement should be considered final and meeting the debtor's due process requirements with regard to past-due legally enforceable debt.

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The *opportunity* for a formal SAPA-like hearing must be made clear to a debtor, but if the debtor does not avail her/himself of this appeal process within a period of time set forth in law, rules and regulations or agency procedures, then the agency may proceed with collection efforts and consider that the due process requirements of a past-due legally enforceable debt have been fulfilled. An actual hearing does not have to occur. Before the agency can certify the debt to the Department of Taxation and Finance, however, it must also fulfill certain notification requirements (see Item K-052).

or

- iii. An Impartial Forum Which Provides An Opportunity To Be Heard To A Debtor

Agencies must provide a debtor with an *opportunity* to be heard regarding the debt which is being assessed against that debtor. The type of forum to be provided must be consistent with the nature of the debt and the potential severity of collection actions against the debtor. This third level of administrative determination assumes that a SAPA or SAPA-like hearing is not required in the case of a particular debt.

The method by which a debtor is given an *opportunity* to be heard should be based on an agency's internal written procedures (discussed below) regarding past-due legally enforceable debt.

The debtor who desires to use this *opportunity must put this request in writing and explain why this request is being made*. The debtor's request should be mailed to the appropriate State agency.

The State agency has the responsibility to inform the debtor of the requirements for an *opportunity* to be heard. How the agency informs the debtor and how the agency implements the Impartial Forum must be addressed in an agency's internal procedures for past-due legally enforceable debt.

As in SAPA or SAPA-like hearings, this Forum must provide the debtor with an opportunity to speak to an *impartial* agency representative regarding this matter. The agency, after hearing the debtor's appeal, shall within a prescribed period (established in the agency's internal procedures) make a determination *in writing* to the debtor.

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The determination shall state the reasons for the agency's decision. This written determination notice shall be considered to meet the debtor's due process requirements regarding past-due legally enforceable debt.

As in the case of SAPA and SAPA-like hearings, the *opportunity* for a debtor to be heard does not require that the debtor actually exercise this opportunity before an agency can declare the debt past-due legally enforceable. If the debtor does not avail her/himself of this appeal process within the period of time set forth in law, rules and regulations or agency procedures, then the agency may proceed with collection efforts and consider that the due process requirements for past-due legally enforceable debt have been fulfilled. Before the agency can certify the debt, however, it must also fulfill certain notification requirements (see Item K-052).

### 2. Internal Written Procedures Regarding Due Process and Debt Collection

Agencies must establish internal written due process procedures regarding past-due legally enforceable debt subject to Section 171-f of State Tax Law. These procedures shall include the level of due process necessary for each type of debt and the steps that will be followed to provide this level of due process. Agency procedures shall be submitted to the agency's Counsel for review and approval, and informational copies shall be sent to the Attorney General's Office and made available upon request to the Division of the Budget.

Such internal written procedures will, at a minimum, indicate that the agency must:

- a. Provide prior written notification to the debtor including notification through a billing invoice, payment request letters, and any other notices which clearly describe what the agency is requesting of the debtor and when payments are required;
- b. Provide prior written notification to the debtor (which may be part of the billing invoice, etc.) explaining what collection sanctions will be imposed if the debtor does not comply with the billing invoice and other relevant notices;
- c. Communicate on the written billing invoice and other notices where a debtor may call or write if she/he has questions or requests redress. The agency must provide a contact office or appointed representative to whom a debtor's inquiries can be directed;
- d. Maintain adequate documentation regarding the existence of the debt and its attribution to a debtor. Adequate documentation means that an agency can

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demonstrate irrefutably to a debtor that the debt is owed and that it is owed by that debtor;

- e. Determine the nature of the debt and the type of due process requirements that are necessary for the particular debt; and
- f. Provide guidelines regarding the method, timeframes and written materials necessary to meet the due process requirements.

### D. Payment Request Letters

Payment request letters can be an effective collection tool, especially for smaller accounts. Letters tend to require minimal time, effort and cost. If State agencies intend to use payment request letters, these should be sent to the delinquent debtor on a periodic basis (generally, 30-day intervals). As the past-due account ages, the tone of these letters should become increasingly serious. Effective payment request letters include the following information:

1. Amount of the debt;
2. Name of the State agency;
3. Date of letter and due date;
4. Nature of debt (e.g., permit, license, fine);
5. Request for payment;
6. Actions that the State agency may take if the debtor does not pay within a specified amount of time (e.g., interest/penalty, outside collection agency, non-renewal of license, offset of State payments);
7. Brief descriptions of the debtor's due process rights and the applicability of Article 78 of the Civil Practice Law and Rules (C.P.L.R.); and
8. Agency contact and telephone number.

If provisions will be made by the State agency to receive payments "in person", then the letter should clearly state so.

Payment request letters should be concise, consisting of a few short paragraphs or sentences. The correspondence should be designed to convey quickly all relevant information to the debtor and encourage immediate action.

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As stated earlier, the severity of the tone should increase the longer the account remains past due. The tone and style of the letter can be developed to best accommodate the type of account and the debtor's relationship with the State agency. Examples of payment request letters are provided on the following pages.

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**MODEL LETTER #1 - 31 DAYS PAST-DUE\***  
(To Be Sent With Second Bill)

### AGENCY LETTERHEAD

DATE:

[Account #]  
[Amount Past Due]  
[Interest/Late Payment Charge]

[DEBTOR NAME]  
[DEBTOR ADDRESS]

Dear Ms./Mr. \_\_\_\_\_

Enclosed is a second billing for payment on the referenced account. **Your account is now past-due** and, by law, interest charges have been assessed.

If you wish to avoid additional interest charges and further collection actions, please remit full payment immediately.

If you have any questions about your account, you may call [Agency contact and telephone number].

Please make your check payable to [Example: Commissioner, NYS Dept. of Agriculture and Markets]. Payment should be sent to:\_\_\_\_\_.

Thank you for your prompt payment.

*\*Agency counsel should develop appropriate language concerning the debtor's due process rights and rights under Article 78 of the Civil Practice Law and Rules. Such language should be incorporated in the agency payment request letter. In addition, agency counsel should approve any standard payment request letter used by the agency.*

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**MODEL LETTER #2 - 31 DAYS PAST-DUE\***  
(To Be Sent With Second Bill)  
Used When Agencies will refer debts before 120 Days Past-Due

**AGENCY LETTERHEAD**

DATE:

[Account #]  
[Amount Past Due]  
[Interest/Late Payment Charge]

[DEBTOR NAME]  
[DEBTOR ADDRESS]

Dear Ms./Mr. \_\_\_\_\_

Enclosed is a second bill for payment on the above referenced account. **Your account is now past-due** and, by law, interest charges have been assessed.

If you wish to avoid additional interest charges and further collection actions, kindly remit full payment immediately.

Please take notice that if this matter is not resolved by [insert date that is 30 days from the date of this letter] your past due account will be referred to [insert either a private collection agency or the Attorney General]. Future correspondence regarding collection of your account after [insert date that is 30 days from the date of this letter] should be directed to [insert either a private collection agency or the Attorney General].

If you have any questions about your account, you may call [Agency contact and telephone number].

Please make your check payable to [Example: Commissioner, NYS Dept. of Agriculture and Markets]. Payment should be sent to:\_\_\_\_\_.

Thank you for your prompt payment.

*\*Agency counsel should develop appropriate language concerning the debtor's due process rights and rights under Article 78 of the Civil Practice Law and Rules. Such language should be incorporated in the agency payment request letter. In addition, agency counsel should approve any standard payment request letter used by the agency.*

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**MODEL LETTER #3 - 61 DAYS PAST-DUE\***  
(To Be Sent With Third Bill)

**AGENCY LETTERHEAD**

DATE:

[Account #]  
[Amount Past Due]  
[Interest/Late Payment Charge]

[DEBTOR NAME]  
[DEBTOR ADDRESS]

Dear Ms./Mr. \_\_\_\_\_

Enclosed is a third bill for your account with this agency. We have had no response to our previous attempts to call your attention to this matter and **your account is considerably past-due.**

If you do not make payment, this agency is authorized to charge you a collection fee in addition to the interest charges already accruing. The assessed collection fee can be up to 22 percent of the outstanding balance. To avoid collection fees and additional interest costs, you must remit your past-due payment immediately or otherwise resolve your account.

If you have any questions about your account, you may call [Agency contact and telephone number].

Please make your check payable to [Example: Commissioner, NYS Dept. of Agriculture and Markets]. Payment should be sent to:\_\_\_\_\_.

Your immediate response is advised.

*\*Agency counsel should develop appropriate language concerning the debtor's due process rights and rights under Article 78 of the Civil Practice Law and Rules. Such language should be incorporated in the agency payment request letter. In addition, agency counsel should approve any standard payment request letter used by the agency.*

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**MODEL LETTER #4 - 61 DAYS PAST-DUE\***  
(To Be Sent With Third Bill)  
Used When Agencies will refer debts before 120 Days Past-Due

### AGENCY LETTERHEAD

DATE:

[Account #]  
[Amount Past Due]  
[Interest/Late Payment Charge]

[DEBTOR NAME]  
[DEBTOR ADDRESS]

Dear Ms./Mr. \_\_\_\_\_

Enclosed is a third bill for your account with this agency. We have had no response to our previous attempts to call your attention to this matter and **your account is seriously past-due**.

If you do not make payment, this agency is authorized by law to charge you a collection fee in addition to the interest charges already accruing. The assessed collection fee can be up to 22 percent of the outstanding balance. To avoid collection fees and additional interest costs, you must remit your past-due payment immediately or otherwise resolve your account.

Please be informed that if this matter is not resolved by [insert date that is 30 days from this date of this letter] this agency will refer your past due account to [insert either a private collection agency or the Attorney General]. Future correspondence regarding collection of your account after [insert date that is 30 days from the date of this letter] should be directed to [insert either a private collection agency or the Attorney General].

If you have any questions about your account, you may call [Agency contact and telephone number].

Please make your check payable to [Example: Commissioner, NYS Dept. of Agriculture and Markets]. Payment should be sent to:\_\_\_\_\_.

Your immediate response is advised.

*\*Agency counsel should develop appropriate language concerning the debtor's due process rights and rights under Article 78 of the Civil Practice Law and Rules. Such*

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*language should be incorporated in the agency payment request letter. In addition, agency counsel should approve any standard payment request letter used by the agency.*

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MODEL LETTER #5 - 91 DAYS PAST-DUE\*  
 (To be used when a past-due debt will be referred to either the Attorney General or to a Private Collection Agency)  
**NOTE: Not to be used for purposes of notification that the debt will be certified to the Department of Taxation and Finance**

**AGENCY LETTERHEAD**

DATE:

**OFFICIAL NEW YORK STATE NOTICE FOR PAYMENT**

[Account #]  
 [Original Due Date]  
 [Type of Transaction (fee, fine, license)]  
 [Amount Past Due]  
 [Interest/Late Payment Charge]  
 [Collection Fee]  
 [Social Security No./EIN No.]

[DEBTOR NAME]  
 [DEBTOR ADDRESS]

Dear Ms./Mr. \_\_\_\_\_

**YOU ARE NOW 91 DAYS PAST-DUE ON YOUR ACCOUNT.** Your continued failure to resolve your past due account has caused us to charge you interest and collection fees.

Since you have not responded to our previous bills and letters, we are prepared to refer your past-due account to [insert either a private collection agency, or the Attorney General] for collection. To avoid the above action you must remit full payment or otherwise resolve your past-due account by [insert date that is 30 days from the date of this letter].

Amount Past Due	\$ _____
Interest/Late Payment Charge	\$ _____
Collection Fee	\$ _____
<b>Total Amount Owed</b>	<b>\$ _____</b>

If you have any questions about your account, you may call [Agency contact and telephone number].

Please make your check payable to [Example: Commissioner, NYS Dept. of Agriculture and Markets]. Payment should be sent to: \_\_\_\_\_.

This matter is serious and deserves your immediate attention.

*\*Agency counsel should develop appropriate language concerning the debtor's due process rights and rights under Article 78 of the Civil Practice Law and Rules. Such language should be incorporated in the agency payment request letter. In addition, agency counsel should approve any standard payment request letter used by the agency.*

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**MODEL LETTER #6 - 91 DAYS PAST-DUE\***  
**(To be used when past-due debts will be certified to the Department of Taxation and Finance for Offset)**

**AGENCY LETTERHEAD**

DATE:

**OFFICIAL NEW YORK STATE NOTICE FOR PAYMENT**

- [Account #]
- [Original Due Date]
- [Type of Transaction (fee, fine, license)]
- [Amount Past-Due]
- [Interest/Late Payment Charge]
- [Collection Fee]
- [Social Security No./EIN No.]

[DEBTOR NAME]  
[DEBTOR ADDRESS]

Dear Ms./Mr. \_\_\_\_\_:

**YOU ARE NOW *[insert number of days past-due]* DAYS PAST-DUE ON YOUR ACCOUNT.** Your continued failure to resolve your past-due account has caused us to charge you interest and collection fees.

Amount Past-Due	\$ _____
Interest/Late Payment Charge	\$ _____
Collection Fee	\$ _____
Return Check Charge	\$ _____
<b>Total Amount Owed</b>	<b>\$ _____</b>

Unless the above referenced debt is paid within 30 days of this notice, the debt will be certified to the Department of Taxation and Finance for offset. The Department of Taxation and Finance is authorized, by law, to collect your past-due debt through the offset of certain State and tax refunds and other State payments.

You have the right to present written evidence, or to appear at a conference with a representative of this agency to present oral or written evidence in support of a defense to this certification. **However, you may not challenge the underlying debt at this time, nor reargue any issue which was, or could have been heard.**

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Defenses that would be acceptable include the debt has been paid, you are not the person identified as the debtor in this notice, the total amount owed is incorrect, a deferred payment agreement is in effect and payments have been paid as agreed, the debt has been discharged in bankruptcy, or the debt is currently in bankruptcy.

If you wish to request a review you must contact [Agency contact, address and telephone number] **within 30 days of this notice.**

Otherwise, please make your check payable to [Example: NYS Dept. of Agriculture and Markets]. Payment should be sent to:\_\_\_\_\_.

This matter is serious and deserves your immediate attention. You are urged to contact this agency to avoid certification of your debt to the Department of Taxation and Finance for offset.

*\*Agency counsel should review, for approval, form letters that will be used by a State agency. However, agencies should not modify the substantive content and format of the model letter except for incorporation of unique agency requirements.*

### ATTACHMENT

#### NOTICE TO TAXPAYERS FILING STATE FORM IT-280 (Non-Obligated Spouse Allocation Form)

If married taxpayers filing joint returns have filed with their joint New York State tax return a New York State Department of Tax and Finance form IT-280 (entitled "Nonobligated Spouse Allocation"), then, under certain circumstances, a partial tax refund may be made to the spouse who does not owe debts to the State which are being recouped by offsetting a tax refund. If a spouse who does not owe such debts has (a) complied with Department of Tax and Finance regulations 20 NYCRR §151.10(f) and has filed a written demand with the joint tax return requesting that tax overpayments by that person not be offset by debts owed to the State by his or her spouse, or (b) within ten days of notification from the Department of Tax and Finance of an offset against a tax refund, the spouse who does not owe debts to the State has complied with regulation 20 NYCRR §151.10(f) and has filed a written demand requesting that the tax overpayments by that person not be offset by debts owed to the State by his or her spouse, then the Department of Tax and Finance will allocate the amount of the refund to each spouse in accordance with regulation 151.10(f) and form IT-280. Note, however, that spouses may not file amended tax returns to make such a demand, but must make such a demand only in accordance with regulation 151.10(f) and form IT-280.

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### E. Returned Mail

If a bill or payment request letter is returned as undeliverable, the first step is to check agency records to make sure that the bill was sent to the debtor's correct address. Basic information to look for in Returned Mail is:

- ! Incorrect spelling of debtor's name;
- ! Incorrect or missing apartment number;
- ! Missing or inappropriate C/O designation; and
- ! Improper or missing zip code.

If appropriate, State agency personnel should make any corrections and immediately resend the bill to the correct address. State agency personnel must record the date of the second mailing. This step is important because, for purposes of assessing interest and pursuing other collection actions, the date of the corrected second mailing will determine the date when the debtor receives the first bill.

If the debtor has moved, there are several resources a State agency can use to locate a debtor:

- ! Debtor addresses may be found using a telephone directory or a criss-cross directory.
- ! The New York State Department of Motor Vehicles (DMV) is a valuable source of debtor information. Appendix C details how other State agencies may obtain address information from DMV.
- ! The State agency can contact the U.S. Postal Service to obtain a forwarding address. For some State agencies, it may be more efficient to send a Returned Mail claim to a private collection agency to locate individuals.

### F. Telephone Collection

Agencies may elect to use telephone collections. Telephone contact can be one of the most effective and direct collection techniques. It is much more difficult for a debtor to ignore a person on the telephone than it is to disregard a letter. Additionally, the collector on the telephone has a better opportunity to:

- ! Gather information;
- ! Respond to debtor inquires or reasons for not paying; and
- ! Get a commitment for a specific payment to be made on a specific date.

When contacting a debtor, the collector must remember that she or he is representing the State agency and the State as a whole. Therefore, the collector must remain professional and

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courteous while collecting past-due payments. The purpose of the call is to get a commitment for payment or resolve an issue. People tend to react more favorably (e.g., make a payment) when the nature of the debt is clearly and accurately explained. If a debtor gets upset on the phone, it is usually better to politely break off the conversation and call them back at a later time. Some debtors may be antagonistic, but a collector must avoid arguing and maintain control of the conversation.

The following are some techniques that can help in telephone collections.

### 1. Pre-Call Planning

Before making or responding to any calls some pre-call planning is required:

- a. Review all previous records of the account, including the original and current balance, making sure that all payments have been posted;
- b. Determine the nature of indebtedness;
- c. Review any administrative hearings and determinations relative to the debt;
- d. Review any previous collection activity including the debtor's reasons for non-payment;
- e. Review past payment record;
- f. Determine the appropriate person with whom to speak;
- g. Prepare for possible questions; and
- h. Prepare an opening telephone statement, including collector's name or an operator identification number, the State agency represented and the reason for the call. Then use a "strategic pause".

Appendix D reiterates the pre-call steps. Agencies may wish to distribute copies of Appendix D to all collectors and require that it be used as a checklist before initiating or responding to collection calls.

### 2. The Collection Call

The collector must first make sure that they are talking to the individual responsible for payment. If an individual other than the debtor asks what the call is about, the debt should not be discussed. The only information that should be given is that there is a matter that needs to be reviewed with "Ms. or Mr. \_\_\_."

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Once the debtor is reached, the collector should:

- a. Identify her/himself and title and the State agency;
  - b. State the reason for the call and obtain the debtor's acknowledgement of the debt, including the nature of the debt, and the amount outstanding;
  - c. Ascertain or verify the following information:
    - i. The debtor's full name;
    - ii. The debtor's full home address, including apartment number and any "in care of" designation (preferably not a P.O. Box number);
    - iii. The debtor's place of employment
      - ! Business address
      - ! Business telephone number, including any extensions;
    - iv. Any other telephone number/address at which the debtor can be reached.
  - d. Ask for immediate payment in full;
  - e. Remind the debtor if a previous promise to pay was not met;
  - f. Ask pertinent, fact-finding questions (e.g., what caused the delinquency and whether the cause has been resolved);
  - g. Remain focused on the subject of the debt and do not get side-tracked on unrelated issues; and
  - h. Never threaten the debtor with actions the State agency does not intend to pursue. Likewise, be specific as to what actions may be taken if satisfactory arrangements cannot be made.
3. Frequent Responses

The collector must be aware of, and be prepared for, common objections to paying a debt:

- a. A bill was never received.
  - ! Ask if the name and address are correct.
  - ! Make any needed corrections to State agency records.
  - ! Ask for immediate payment when the debtor receives a bill.
  - ! Mail a duplicate bill that day.

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b. Disagrees with the bill.

- ! Review the debt with the debtor to identify where the disagreement stems from.
- ! Immediately find out what the error was and make corrections as needed or notify the debtor that the bill is accurate and must be paid immediately.
- ! If only part of the amount is disputed, the payment of any undisputed portion should be requested.
- ! If appropriate, inform the debtor of applicable recourse.

c. Does not have the money to pay.

- ! Determine the debtor's ability to make partial payments (deferred payment arrangement) and if the debtor's financial problems are temporary.
- ! Encourage the debtor to look into ways of raising the money needed to satisfy the debt (e.g., bank loan, cash advance on credit cards, credit unions).

d. The payment has been mailed.

- ! Ask when and where payment was sent.
- ! Ask the amount of the check and the check number.
- ! Determine if the debtor has received the cancelled check and, if so request a copy of the cancelled check (front and back).

e. Bankruptcy

- ! Get attorney information (e.g., name, address, telephone number).
- ! Determine when the bankruptcy was filed. It should be noted that if the debt was incurred after the filing, then it is not subject to the stay of bankruptcy.
- ! Determine the type of bankruptcy (Chapter 7, 11 or 13).
- ! Find out the docket number, the court and when the case will be heard.
- ! Forward all the above information and required documentation to the Attorney General's Office.

f. Debtor is deceased.

- ! In a professional manner, express condolences.
- ! Request the name of the executor of the estate or the name of the attorney for the estate for further action.
- ! Request the following information from the executor or the attorney:

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- " When the debtor died;
- " Where the debtor died (hospital, city, county, state);
- " Any names that by which the debtor was known; and
- " A copy of the death certificate.

! If the debt is under \$25, one bill should be sent to the executor of the estate.

! If the debt is more than \$25, the debtor's file should be sent to the Attorney General's Office.

#### 4. Close the Call.

- a. Summarize the terms to which the debtor agreed.
- b. Thank the debtor.

#### 5. Keep Records.

Maintain complete and accurate records of all contact made for each account. The record should include:

- a. Date of contact;
- b. Telephone contact number (home, employment, other);
- c. Person contacted (debtor, spouse, other);
- d. Note promise to pay (amount and dates); and
- e. Any other relevant information.

#### 6. Follow-up

It may be necessary to arrange to call the debtor back, send documentation or formally establish a deferred payment arrangement. In such cases, the State agency should develop a systematic process for timely follow-up.

### G. Telephone Regulations

The use of the telephone in collections is under the direct jurisdiction and supervision of several Federal commissions.

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The Federal Communications Commission (FCC) has developed guidelines that must be followed in collecting accounts. Violation of the Federal guidelines can result in loss of phone service, fines and/or imprisonment. The Federal guidelines prohibit:

- ! Calling debtors at unusual times of the day or night;
- ! Excessive calling;
- ! Calls placed to friends, neighbors, relatives, etc., of the debtor;
- ! Making threats;
- ! Calls asserting falsely that the debtor's credit rating will be hurt;
- ! Calls falsely stating that legal process is about to be served. Do not state that you will be turning a debt over to the Attorney General's Office unless the action will be taken;
- ! Calls demanding payment for amounts not owed; and
- ! Misrepresenting the terms and conditions of existing or proposed contracts.

The FCC further states that it is illegal for anyone to use the telephone to "frighten, abuse, torment, or harass" any individual. Remember, not only are these approaches ineffective and unprofessional, they are illegal.

Another Federal agency, the Federal Trade Commission, enforces The Fair Debt Collection Practices Act, which makes the following practices illegal:

- ! Threats of violence, obscene language, harassing phone calls, and publication of debtors;
- ! Calling the debtor at work, if the debtor objects;
- ! Impersonating government officials or misrepresenting the identity of the collector; and
- ! Revealing the fact of the past-due debt to a third party, such as a neighbor or employer. However, you are still free to report the debt to spouses, credit bureaus, or the individual's attorney.

While this law does not bind State employees whose specific job entails collecting debts, State employees should adhere to the intent of the Fair Debt Collection Practices Act.

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The Bell Telephone System suggests avoiding:

- ! Calls outside normal working hours;
- ! Excessive calling; and
- ! Failure to honor an employer's request that no further calls be made at the place of business.

### H. Scheduling Collection Activity

Generally, accounts with the highest dollar value merit more intense collection efforts. On the following page is a suggested schedule of collection activity that a State agency should pursue. However, for medical-related debt, the approach is slightly different, as detailed in Item K-030.

The final payment request letter sent by a State agency should state that unless the past-due account is settled immediately, the account will be referred to either a private collection agency or the Attorney General. If the agency will certify a debt to the Department of Taxation and Finance for offset, it must send a notification of certification to the debtor.

The following schedule applies to debtors who have not entered into a written deferred payment arrangement. If a debtor has entered into such an agreement and is making payments pursuant to the agreement, then that debtor should not receive payment request letters or collection telephone calls. Further, a State agency that is receiving the deferred payments in a timely manner should retain the account, even though the outstanding past-due balance may be more than 120 days past-due.

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### PAST-DUE ACCOUNT CONTACT SCHEDULE FOR STATE AGENCIES Non-Medical Debt

#### DOLLARS PAST-DUE

Age of Account	\$25-500	\$501-1,000	\$1,001+
31 Days Past-Due	Mail the second bill with the first past-due letter, notifying the debtor of late payment charge or interest.	Mail the second bill with the first past-due letter, notifying the debtor of late payment charge or interest.	Mail the second bill with the first past-due letter, notifying the debtor of late payment charge or interest.
			<b>Optional: Make phone contact; get a debtor promise to pay.</b>
61 Days Past-Due	Mail the third bill with the second past-due letter. Notify the debtor of late payment charge or interest and that collection fees may be imposed effective with the next bill.	Mail the third bill with the second past-due letter. Notify the debtor of late payment charge or interest and that collection fees may be imposed effective with the next bill.	Mail the third bill with the second past-due letter. Notify the debtor of late payment charge or interest and that collection fees may be imposed effective with the next bill.
			<b>Optional: Make phone contact; refer to broken promise to pay, if appropriate. Establish definite date for debtor payment.</b>
91 Days Past-Due	Mail third letter advising of referral to outside entity or notification of certification. Assess collection fee if appropriate.	Mail third letter advising of referral to outside entity or notification of certification. Assess collection fee if appropriate.	Mail third letter advising of referral to outside entity or notification of certification. Assess collection fee if appropriate.
			<b>Optional: Make phone contact; Get debtor promise to pay.</b>
121 Days+ Past-Due	Refer or certify account.	Refer or certify account.	Refer or certify account.
			<b>Optional: Make phone contact to establish definite date for debtor payment.</b>