

## BUDGET POLICY AND REPORTING MANUAL

<i>date</i> 4/1/93	<i>subject</i>  <b>Collection Fee</b>	<i>item</i> K-033
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### A. Purpose and Scope

This item describes the policies and procedures prescribed by the Director of the Budget for State agencies to assess collection fee charges on outstanding non-tax debt owed to State agencies.

A collection fee reimburses, in whole or in part, a State agency for its collection expenses. As in the case of interest, collection fees are intended to induce debtors to pay in a timely manner.

It should be noted that assessing collection fee charges is an option that agencies may use. It is a statutory authorization, not a requirement.

### B. Statutory Reference

Section 18 of the State Finance Law authorizes State agencies to assess a collection fee of up to 22 percent of an outstanding non-tax debt that is more than 90 days past-due:

**In addition to the charges referred to in subdivision four of this section, and unless provided otherwise by contract, statute or regulation, a debtor that fails to make payment of a debt subject to this section within ninety days of receipt by the debtor of the first billing invoice or notice may be assessed an additional collection fee charge, not to exceed twenty-two percent of the outstanding debt which is owed, by a state agency to cover the cost of processing, handling and collecting such debt. The assessed collection fee charge may not exceed the agency's estimated cost of processing, handling and collecting such debt.**

This means that if a State agency has an existing contract which specifically prohibits a collection fee charge or prescribes a collection fee in a manner that differs from Section 18 of the State Finance Law, the agency must adhere to the provisions of the contract. Similarly, if a State agency is subject to a statute or regulation in effect prior to January 1, 1993, that addresses collection fee charges in a manner that differs from Section 18 of the State Finance Law, the State agency must adhere to such statute or regulation.

The collection fee charged may not exceed the State agency's estimated cost of processing, handling, and collecting.

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**C. Assessment**

1. Calculation

When a State agency assesses a collection fee, several factors affect the calculation of that collection fee:

- a. The collection fee of up to 22 percent is calculated by using the outstanding debt — principal and interest.

Thus, if a debtor owes \$1,200 in principal and interest, the State agency would calculate the collection fee by assessing up to 22 percent of \$1,200.

- b. The State agency may assess a collection fee only if the debt is more than 90 days past-due.

If a debtor makes full payment within 90 days of the assumed receipt of the first billing invoice or notice, then the State agency may not assess a collection fee, even though it may demonstrate that collection costs have been incurred.

- c. Once a collection fee is assessed on a particular debt, that assessed amount cannot change over the life of the debt. (This means neither the percentage or the dollar value can change after the agency has assessed the collection fee.)
- d. If a debtor has entered into a deferred payment arrangement, then the State agency may choose to waive a collection fee but not interest (see Item K-035).

2. State Agency Costs Covered by a Collection Fee

The collection fee of up to 22 percent of the outstanding debt is intended to reimburse a State agency for the costs of processing, handling, and collecting a debt, though it may not exceed the estimated costs of these activities. Expenses that the State agency may include in the justification of a collection fee are those associated with the following:

- a. In-house collection activities (including personal services, supplies and materials, equipment, contractual services, and non-personal service);
- b. Use of a credit bureau or other sources of information to locate a debtor;
- c. Legal actions; and

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- d. Collection of the debt by a private collection agency or the Attorney General's Office.

The State agency should maintain reasonable documentation of all collection expenditures.

If the State agency has referred a debt to the Attorney General's Office and has not assessed any collection fee, then the Attorney General's Office may assess a collection fee up to 22 percent of the outstanding debt and will inform the agency and debtor accordingly. If the State agency has assessed a collection fee of 22 percent or less of the outstanding debt prior to referral to the Attorney General's Office, then no additional assessment is permitted. Thus, the Attorney General's Office may not assess the debtor any further collection fee that is provided for in Section 18 of the State Finance Law.

### D. Waiver

State agencies are not required to assess a collection fee on a debt that is more than 90 days past-due. If, however, a State agency does assess a collection fee, then any subsequent waiver of that fee is justified only on the basis that collection would not be administratively practical or cost-effective based on the provisions of Section 18 of the State Finance Law. (See Item K-035 on policies for waiving penalties.)

### E. Debtor Notification

#### 1. Before Assessment

In all cases, before a State agency assesses interest, late payment charges, collection fees of up to 22 percent of the past-due debt, or returned check charges, it must inform debtors that they are liable for these charges.

Any State agency that assesses fees, fines, or other assessments shall post a readily visible notice in any area set aside for collection of such charges. This public posting should inform the public of possible late payment charges, interest, collection fees, returned check charges and offset authority if prompt payment is not made.

All agency billing invoices or written notices must inform individuals or businesses of the possible late payment charges, interest, offset authority, etc.

In the case of a contract between a State agency and an individual or business, the contract must identify the possible late payment charges, interest, offset authority, etc.

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### 2. After Assessment

Once a State agency assesses a collection fee, this fee becomes part of the total amount due to the State agency. Any subsequent contact with the debtor (such as telephone calls or payment request letters) should make clear that the new total amount due includes this penalty.

### F. Questions and Answers

- Q.** What if a debtor sends full payment for the principal and interest but not the collection fee? Should the State agency pursue payment?
- A.** If the collection fee is less than \$25, the State agency should mail one letter requesting payment and other collection efforts are optional. If the collection fee is \$25 or more, then the agency should attempt collection through appropriate methods. (See Item K-035 on waiving penalties for further details.)
- Q.** What if a debtor sent \$50 for partial payment of a bill, which consists of \$220 in principal and interest, and a \$20 returned check charge, totalling \$240? How should the State agency calculate a collection fee?
- A.** If the debt is more than 90 days past-due, then any collection fee is assessed on the outstanding principal and interest, but not on the returned check charge. Since the debtor remitted a \$50 partial payment, that payment is first applied to the returned check charge and then to the principal and interest. Thus, any collection fee would be assessed on the outstanding principal and interest, which total \$190.