

<i>date</i> 4/1/93	<i>subject</i> <b>Certification of Debts to the Department of Taxation and Finance</b>	<i>item</i> K-052
<i>supersedes</i>		<i>page</i> 1

**A. Purpose and Scope**

This item describes the policies and procedures prescribed by the Director of the Budget for State agencies certifying debts to the Department of Taxation and Finance for offset of State payments, including tax refunds and contract payments.

For a more detailed discussion of offset procedures see Appendix E.

**B. Statutory Reference**

Section 171-f of the State Tax Law authorizes State agencies to certify past-due legally enforceable non-tax debt to the Department of Taxation and Finance for offset against State payments. The Department of Taxation and Finance is authorized to act as an agent on behalf of the State Comptroller. The order of offset in cases where a person owes more than one debt to the State is State and certain local tax liabilities, estimated tax liabilities, past-due child support, default in repayment of a State or City University of New York loan, past-due legally enforceable non-tax debt, default in repayment of a guaranteed Higher Education Services Corporation student loan, and Federal tax liabilities.

**C. Circumstances for Certifying an Account Receivable to the Department of Taxation and Finance**

A State agency **may** certify a debt \$25 or more to the Department of Taxation and Finance for offset if the following qualifications are met:

1. The debt is more than 90 days past-due; and
2. The debt is past-due and legally enforceable.

A State agency **must** certify a debt \$25 or more to the Department of Taxation and Finance if the following conditions are true:

1. The debt is more than 300 days past-due; and
2. The debt is past-due and legally enforceable.

**D. Requirements For Certification**

To certify a debt for offset, the State agency must fulfill the following due process and notification requirements for a past-due legally enforceable debt:

## BUDGET POLICY AND REPORTING MANUAL

<i>date</i> 4/1/93	<i>subject</i> <b>Certification of Debts to the Department of Taxation and Finance</b>	<i>item</i> K-052
<i>supersedes</i>		<i>page</i> 2

### 1. Due Process

The State agency has followed appropriate due process if it has:

- a. Obtained a judgment; or
- b. Made a final administrative determination after the debtor was given the opportunity for an adjudicatory proceeding in which Article 3 of the State Administrative Procedure Act (SAPA) applies; or
- c. Made a final administrative determination after the debtor was given the opportunity for an adjudicatory proceeding which substantially conforms to Article 3 of SAPA, if Article 3 does not apply; or
- d. Afforded the debtor the appropriate notice and opportunity to be heard that is applicable to the State agency and to the debt.

See Item K-031 for a detailed discussion on due process. It is important to note that a judgment is not necessary for certification.

### 2. Notification

Once the State agency has fulfilled the due process requirements regarding past-due legally enforceable debt, the agency must notify the debtor that it intends to certify the debt to the Department of Taxation and Finance. Pursuant to Section 171-f of the State Tax Law, the letter must inform the debtor of the following:

- a. The debt is past-due and, unless paid within 30 days of the notification, the past-due debt will be certified to the Department of Taxation and Finance to be collected by offset against a tax refund or contract payment or other State payment.
- b. State law allows the offset of debts against tax refunds and other payments of the State.
- c. The debtor may request a review of the proposed referral for offset by contacting the creditor State agency at a telephone number or address contained in the letter within 30 days.
- d. The debtor may present written evidence and arguments in support of the defense against the proposed referral or the debtor may appear at a scheduled

## BUDGET POLICY AND REPORTING MANUAL

<i>date</i> 4/1/93	<i>subject</i> <b>Certification of Debts to the Department of Taxation and Finance</b>	<i>item</i> K-052
<i>supersedes</i>		<i>page</i> 3

conference with the State agency to present oral arguments and written and oral evidence in support of the defense.

- e. Defenses that would be acceptable include the debt has been paid, the recipient of the letter is not the person identified as the debtor in the letter, the total amount owed is incorrect, a deferred payment arrangement is in effect, the debt has been discharged in bankruptcy, or the debt is currently in bankruptcy.
- f. The debtor may not reargue any issue that was, or could have been, adjudicated in a court proceeding or administrative proceeding that established the debt is past-due.

In addition, the agency should attach a notice concerning non-obligated spouses. (See Exhibit 1 for a Model Notification Letter and Attachment.)

3. The State agency must also determine that the debt cannot be collected through administrative offset.

### **E. Debtor Response to Notification**

If the debtor responds to the State agency's notification of intention to certify the debt and requests a review or conference, then the State agency must hold an appropriate review. Until the review is concluded, the State agency cannot certify the debt for offset.

If the determination is favorable to the State agency and the debtor does not settle the debt, then the State agency must proceed with certification.

If the debtor does not respond within 30 days of the notification, then the State agency must certify the debt to the Department of Taxation and Finance.

### **F. Certification/Decertification to the Department of Taxation and Finance**

For each type of an agency's debt, the agency counsel must submit an Opinion of Counsel to the Department of Taxation and Finance that certifies that the due process procedures applicable to the type of debt are suitable for past-due legally enforceable debt.

The Department of Taxation and Finance's procedures concerning State agencies' certification and decertification of non-tax debt, including the Opinion of Counsel Form, are provided in Appendix E.

<i>date</i> 4/1/93	<i>subject</i> <b>Certification of Debts to the Department of Taxation and Finance</b>	<i>item</i> K-052
<i>supersedes</i>		<i>page</i> 4

**G. Revenue Arrearage Account**

With the exception of payments of non-tax debts that are owed to a Federal fund, a Federal Trust fund or a Fiduciary fund, all payments collected by offset are deposited into the Revenue Arrearage Account.

At the end of the fiscal year, the State Comptroller deposits all funds in the Revenue Arrearage Account into the General Fund.

**H. Refund Procedure**

An erroneous offset may occur for several reasons; such as

1. The debtor sent full or partial payment but was offset;
2. The debtor entered into a deferred payment plan but was offset; or
3. An erroneous identification number was submitted to the Department of Taxation and Finance.

In these cases, the State agency must arrange for a refund to the debtor from the fund into which the offset was deposited, according to procedures specified by the State Comptroller.

**I. Reports From the Department of Taxation and Finance to a State Agency**

On a monthly basis, the Department of Taxation and Finance will provide the State agency with a listing of actual offsets. This listing will include the following:

1. Debtor name;
2. Debtor identification number;
3. Account number;
4. Amount of debt;
5. Amount of actual offset or amount reversed; and
6. Date of offset.

Upon receiving this monthly listing, the State agency must then reconcile its accounts receivable files accordingly.

**BUDGET POLICY AND REPORTING MANUAL**

<i>date</i> 4/1/93	<i>subject</i> <b>Certification of Debts to the Department of Taxation and Finance</b>	<i>item</i> K-052
<i>supersedes</i>		<i>page</i> 5

**EXHIBIT 1\***  
(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.**

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: \_\_\_\_\_.

## BUDGET POLICY AND REPORTING MANUAL

<i>date</i> 4/1/93	<i>subject</i> <b>Certification of Debts to the Department of Taxation and Finance</b>	<i>item</i> K-052
<i>supersedes</i>		<i>page</i> 6

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 contents 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.