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ARCHIVES DIVISION
MARY BETH HERKERT
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

NOTICE OF PROPOSED RULEMAKING INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 122
DEPARTMENT OF ADMINISTRATIVE SERVICES
CHIEF FINANCIAL OFFICE

FILED

09/17/2018 1:28 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Adopting rules to provide criteria for assigning debts and using SSNs to collect debts.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/08/2018 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

A public rulemaking hearing may be requested in writing by 10 or more people, or by a group with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

CONTACT: Stacey Chase
503-947-8567
stacey.a.chase@oregon.gov

155 Cottage Street NE
Salem, OR 97301

Filed By:
Janet Chambers
Rules Coordinator

NEED FOR THE RULE(S):

ORS 293.226(2) [2017] requires the Oregon Department of Administrative Services to adopt rules specifying the form of the notice, including provisions specifying when the notice must state whether the disclosure of a social security number is voluntary or mandatory; and setting procedures for the sharing of social security numbers between state agencies, and between the Department of Revenue and private collection agencies, for the purpose of collecting debts owed to state agencies.

ORS 293.231(5) [2017] authorizes the Oregon Department of Administrative Services to adopt rules exempting specified kinds of liquidated and delinquent accounts from the time periods established in ORS 293.231(1), (2), and (3) [2017].

ORS 293.231(6)(c) [2017] requires the Oregon Department of Administrative Services to adopt rules exempting liquidated and delinquent accounts that originate in the Employment Department from the time periods established in ORS 293.231(1), (2) and (3) [2017].

ORS 293.233(1) [2017] authorizes a state agency to use rules adopted by the Oregon Department of Administrative Services for exempting liquidated and delinquent accounts from assignment to the Department of Revenue or a private collection agency. The state agency shall provide documentation and justification for exempting liquidated and delinquent accounts from assignment.

ORS 293.233(2) [2017] requires the Oregon Department of Administrative Services to 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.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Oregon Revised Statute 293.226 [2017]: https://www.oregonlegislature.gov/bills_laws/ors/ors293.html

Oregon Revised Statute 293.231 [2017]: https://www.oregonlegislature.gov/bills_laws/ors/ors293.html

Oregon Revised Statute 293.233 [2017]: https://www.oregonlegislature.gov/bills_laws/ors/ors293.html

Oregon Accounting Manual 35.40.10: <http://www.oregon.gov/das/Financial/Acctng/Documents/35.40.10.pdf>

FISCAL AND ECONOMIC IMPACT:

There is no fiscal or economic impact associated with adopting these Rules. The Rules provide an administrative framework for state agencies to manage liquidated and delinquent accounts receivable.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) No economic impact.

(2) (a) No anticipated impact to small business.

(b) No reporting, recordkeeping, or administrative activities required of small business.

(c) No anticipated cost to any small business.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Small businesses were not involved in the development of these Rules since they relate solely to actions performed by state agencies.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

OARs 122-085-0100, 122-085-0110, 122-085-0120, 122-085-0130, 122-085-0140, 122-085-0150, and 122-085-0160 reflect the change from policy to Rule, which cause no fiscal impact.

OAR 122-085-0200, associated with Social Security Numbers, merely specifies the content of notification and does not appear to impose an additional financial burden beyond what is referenced in statute.

RULES PROPOSED:

122-085-0100, 122-085-0110, 122-085-0120, 122-085-0130, 122-085-0140, 122-085-0150, 122-085-0160, 122-085-0200

ADOPT: 122-085-0100

RULE SUMMARY: Adopting rule to provide criteria to determine when mandatory collection agency transfer accounts are subject to assignment or exempt from assignment based on law change effective July 1, 2018.

CHANGES TO RULE:

122-085-0100

Statement of purpose

The purpose of these rules is to provide criteria to determine when Mandatory Collection Agency Transfer (MCAT) accounts are subject to assignment or exempt from assignment. This rule also provides information on how a state agency may request an exemption from the statutory assignment timeframe referenced in Oregon Revised Statute (ORS) 293.231.

Statutory/Other Authority: ORS 293.231 & 293.233

Statutes/Other Implemented: ORS 293.231(5), 293.231(6)(c), 293.233(1) & 293.233(2)

ADOPT: 122-085-0110

RULE SUMMARY: Adopting rule to provide definitions associated with the proposed accounts receivable management rules.

CHANGES TO RULE:

122-085-0110

Definitions

(1) "Account" means a debt relationship between a state agency and an individual or an entity, which may include multiple obligations and time periods. ¶

(2) "Consensual Security Interest" means an enforceable interest in real or personal property voluntarily created by a debtor to secure an obligation to pay a debt (e.g. a mortgage, trust deed, security agreement, or pledged securities). ¶

(3) "Delinquent (account)" means a receivable for which payment was not received by the initial due date. (The establishment of a payment agreement does not change the status of the delinquency.) ¶

(4) "DOR-OAA" refers to the Department of Revenue Other Agency Account unit. ¶

(5) "Hardship" refers to 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, or terminal illness. ¶

(6) "Imprisoned" refers to an individual who is currently incarcerated. ¶

(7) "Litigation" refers to a dispute when the account: ¶

(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 or federal court system, including bankruptcy. ¶

(8) "Liquidated (account)" has the meaning given in the Oregon Accounting Manual (OAM). Generally speaking, a liquidated account is one in which: ¶

(a) The amount of the debt is known. ¶

(b) The debtor has been notified of the debt, and ¶

(c) The debtor has been given an opportunity to dispute the debt. ¶

(9) "Mandatory collection agency transfer (MCAT) account" refers to an account that is: ¶

(a) Liquidated. ¶

(b) Delinquent, and ¶

(c) Not prohibited by state or federal law from being transferred to a collection firm. ¶

(10) "MCAT eligibility date" refers to the latter of the following dates: ¶

(a) The date the account receivable became both liquidated and delinquent; or ¶

(b) The date the MCAT account exemption expires. ¶

(11) "Non-consensual lien" means a lien established by operation of law; such as a judgment with a financial obligation or the recording of an administrative record (e.g. agency distraint warrant or civil penalty final order). ¶

(12) "Payment" means a voluntary amount of money paid by a debtor to a state agency or an involuntary amount of money paid by a debtor through offset or garnishment. ¶

(13) "PCF" refers to a private collection firm. ¶

(14) "State agency" means any officer, board, commission, department, division or institution in the executive or administrative branch of state government subject to ORS 293.

Statutory/Other Authority: ORS 291.015, 293.227

Statutes/Other Implemented: ORS 291.015(1), 293.227(1), & 293.227(2)

ADOPT: 122-085-0120

RULE SUMMARY: Adopting rule to outline the mandatory collection agency transfer account assignment requirements based on the law change effective July 1, 2018.

CHANGES TO RULE:

122-085-0120

Mandatory Collection Agency Transfer Assignment Requirements

- (1) If a state agency does not receive any payments on an MCAT account during any 90-day period following the MCAT eligibility date for that account, the state agency must review the account for assignment to DOR-OAA for full collections. ¶
- (2) The state agency must assign accounts to DOR-OAA unless the account is subject to an exemption under OAR 122-085-0130 or OAR 122-085-0150. ¶
- (3) MCAT accounts assigned to DOR-OAA will be transferred to a PCF if no payment is received on the account within six months from the date of assignment. DOR-OAA may transfer the assigned MCAT accounts to a PCF prior to six months. ¶
- (4) MCAT accounts returned to DOR-OAA by a PCF may be retained by DOR-OAA indefinitely or returned to the state agency upon request. ¶
- (5) OAR 122-085-0120 does not apply to accounts that originate in the Department of Revenue or the Oregon Employment Department; those accounts are required to be assigned one year from the MCAT eligibility date or the date of last payment, whichever is later. ¶
- (6) OAR 122-085-0120 does not apply to state agencies that the Department of Administrative Services Chief Financial Office (DAS CFO) has granted a time period exemption, as per 122-085-0140. ¶
- (7) Before a state agency may write-off an account, the account must have been returned from DOR-OAA as uncollectible, unless the law prohibits the account from assignment or the state agency has exempted the account from assignment as provided in 122-085-0130 or 122-085-0150. ¶
- (8) A state agency may not make an offer for assignment contrary to applicable state or federal laws or regulations governing offers for assignment.

Statutory/Other Authority: ORS 293.231, 293.233, 293.240

Statutes/Other Implemented: ORS 293.231(1), 293.231(5), 293.231(6)(c), 293.233(1) & 293.233(2), 293.240(2)

RULE SUMMARY: Adopting rule to specify the mandatory collection agency transfer account assignment exemptions based on the law change effective July 1, 2018.

CHANGES TO RULE:

122-085-0130

Mandatory Collection Agency Transfer Accounts Exempt from Assignment

(1) A state agency may, at its discretion, choose not to offer for assignment to DOR-OAA 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, including bankruptcy, arbitration or 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, or who is on 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;¶

(i) Would, if assigned, result in a loss of federal funding or a loss of funding under a federal program;¶

(j) Is owed by an estate and the state agency has received notice that the estate has closed;¶

(k) Is eligible for suspension of collections as provided in ORS 305.155;¶

(l) Would constitute a hardship if assigned, and assignment would be inconsistent with a state agency goal;¶

(m) Is secured by a non-consensual lien against specific real or personal property identified by the state agency;¶

(n) Is secured by a bond;¶

(o) Is one of multiple accounts owed to the state agency by the same debtor, any one of which has received a payment within the preceding 90-day period, including accounts created and paid at the same time;¶

(p) Is within the scope of a state agency specific exemption approved as per OAR 122-085-0150;¶

(q) 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;¶

(r) Arises when a wage garnishment has been served on the debtor's employer and no funds are available to the state agency because a wage garnishment or order to withhold earnings of higher priority currently prevents any funds from being applied to the state agency debt;¶

(s) Arises from an administrative or judicial support order, judgment, or decree; or¶

(t) 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.¶

(2) State agencies shall evaluate each account to determine the appropriate collection actions for accounts eligible to be exempted from collection assignment. While the exemptions listed in OAR 122-085-0130(1) allow a state agency to exempt an account from assignment, it doesn't prohibit the state agency from assigning the account. State agencies must exercise reasonable effort and due diligence to collect debts owed to the state agency.¶

(3) When a state agency determines an MCAT account may be exempted from assignment, the state agency should document their conclusions using the applicable form provided in the OAM (or equivalent). A state agency is not required to file this form with the DAS CFO, but the form is useful to explain the reasoning for exempting accounts in the event of an inquiry or in response to an audit of the state agency's liquidated and delinquent accounts.¶

(4) If a state agency exercises the option to exempt an account from assignment, the state agency is responsible to continue to pursue reasonable efforts to collect the account and monitor the account exemption status. If the state agency later determines that the exemption no longer applies, the state agency must proceed with assignment of the account as per OAR 122-085-0120.

Statutory/Other Authority: ORS 293.231 & 293.233

Statutes/Other Implemented: ORS 293.231(5), 293.231(6)(c), 293.233(1) & 293.233(2)

ADOPT: 122-085-0140

RULE SUMMARY: Adopting rule to provide guidelines for agencies to request an exemption to the 90-day mandatory collection agency transfer account assignment requirements based on the law change effective July 1, 2018.

CHANGES TO RULE:

122-085-0140

Mandatory Collection Agency Transfer Account Request for Exemption

(1) To request an exemption from the 90-day assignment provision referenced in OAR 122-085-0120, a state agency must complete the applicable form provided in the OAM. If approved, the exemption request will permit either a 180-day turnover period or a 365-day turnover period. ¶

(2) State agencies must submit requests for the exemption from the 90-day turnover timeframe to the DAS CFO no later than March 31. Each approved request will begin the following July 1 and will be valid until June 30 of the subsequent fiscal year. For example, an approved request submitted in March 2018 will become effective from July 1, 2018 through June 30, 2020. ¶

(3) A state agency may not use such exemption until approved by the DAS CFO and may only apply the exemption to accounts with an MCAT eligibility date within the approved exemption period. ¶

(4) The state agency's right to use the exemption terminates upon expiration of the approved period. If the exemption expires and the state agency has not received approval from DAS CFO for another exemption for the subsequent two year period, all accounts must be assigned as required in OAR 122-085-0120.

Statutory/Other Authority: ORS 293.231 & 293.233

Statutes/Other Implemented: ORS 293.231(5), 293.231(6)(c), 293.233(1) & 293.233(2)

ADOPT: 122-085-0150

RULE SUMMARY: Adopting rule to provide guidelines for agencies to request an agency specific exemption to the mandatory collection agency transfer account assignment requirements based on the law change effective July 1, 2018.

CHANGES TO RULE:

122-085-0150

State Agency Specific Exemptions

(1) A state agency may request that the DAS CFO approve one or more state agency specific exemptions under ORS 293.233 for classifications of accounts that are not exempt as per OAR 122-085-0130. A state agency must submit a request for a state agency specific exemption from assignment using the applicable form provided in the OAM. ¶

(2) A state agency may not use such exemption until approved by the DAS CFO and the exemption only applies to accounts with an MCAT eligibility date within the approved exemption period. In its written approval of the request, the DAS CFO may specify that the exemption is for a limited duration (not to exceed two fiscal years). ¶

(3) The state agency's right to use the exemption terminates upon expiration of the limited duration period.

Statutory/Other Authority: ORS 293.231 & 293.233

Statutes/Other Implemented: ORS 293.231(5), 293.231(6)(c), 293.233(1) & 293.233(2)

ADOPT: 122-085-0160

RULE SUMMARY: Adopting rule to exempt mandatory collection agency transfer accounts assigned to a PCF prior to July 1, 2018 from the new assignment provisions based on the law change effective July 1, 2018.

CHANGES TO RULE:

122-085-0160

State Agency MCAT Assignments to PCFs

- (1) State agency MCAT accounts assigned to a PCF prior to July 1, 2018 are not subject to OAR 122-085-0120. These accounts may continue through the collection cycle as per the purchase order agreement between the state agency and the PCF. Once the account is returned to the assigning state agency from the PCF, the state agency may evaluate the account for write-off or assign the account to DOR-OAA for additional collection services.¶
- (2) State agency MCAT accounts subject to assignment after July 1, 2018 are subject to OAR 122-085-0120.

Statutory/Other Authority: ORS 293.231 & 293.233

Statutes/Other Implemented: ORS 293.231(5), 293.231(6)(c), 293.233(1) & 293.233(2)

ADOPT: 122-085-0200

RULE SUMMARY: Adopting rule to provide guidelines for agencies to voluntarily collect Social Security numbers for debt collection purposes.

CHANGES TO RULE:

122-085-0200

Voluntary collection of Social Security numbers for use in collecting debts owed to the state

(1) For purposes of this rule "state agency" is defined as any state officer, board, commission corporation, institution, department or other state organization except for state courts and commissions, departments and divisions of the Judicial branch of state government, the Secretary of State or the State Treasurer.¶¶

(2) The purpose of this rule is to provide standards for state agencies when requesting a person to voluntarily provide the person's Social Security number on any document relating to a monetary obligations or transaction for use in collecting debts owed to the state of Oregon. This rule does not apply to a Social Security number that is required to be provided under state or federal law. ¶¶

(3) Where reasonable and unless otherwise prohibited by state or federal law, a state agency may request a person to voluntarily provide their Social Security number when there is a real or potential monetary obligation or transaction. ¶¶

(a) When requesting a Social Security number, the state agency must notify the person clearly in writing:¶¶

(A) that providing their Social Security number is voluntary. ¶¶

(B) the state agency is requesting the Social Security number for use in collecting debts owed to the state of Oregon. ¶¶

(C) that the Social Security number will be properly secured as required by the Oregon Consumer Identity Theft Protection Act (ORS 646A.600-646A.628).¶¶

(b) State agencies must follow federal and Oregon state guidelines for the protection of Social Security numbers collected under sections of this rule. If for any reason a state agency is unable to properly secure and protect Social Security numbers it may not ask a person to voluntarily provide their Social Security number.¶¶

(c) Except as otherwise prohibited by federal or state law, any state agency may share Social Security numbers collected under section 3 of this rule as necessary for use in collecting debts owned to the state of Oregon.¶¶

(A) State agencies that share Social Security numbers shall do so in a manner that is in compliance with all Oregon Identity Theft Protection Act requirements contained in ORS 646A.600.¶¶

(B) State agencies may not share a Social Security number with another entity that is not able to secure properly secure and protect the Social Security number in accordance with federal and Oregon state guidelines.

Statutory/Other Authority: ORS 293.226

Statutes/Other Implemented: ORS 293.226(2)