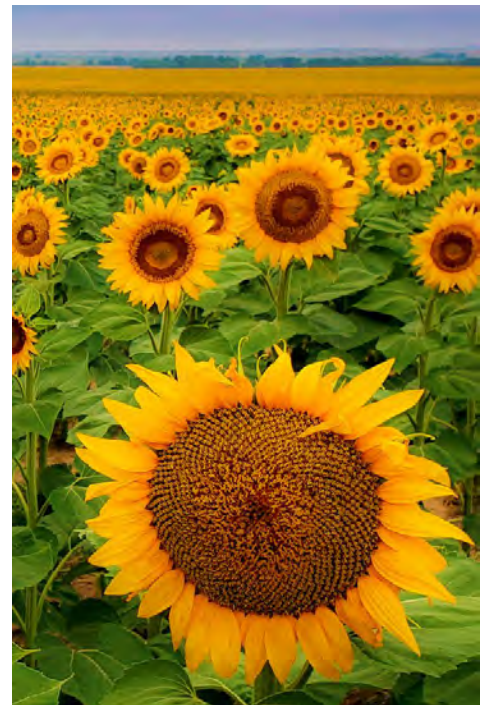
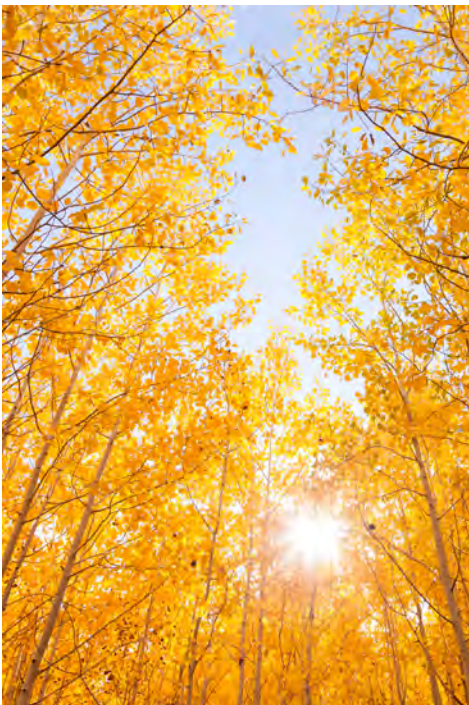


State of Colorado

Rates Charged for Collection of Debts Owed to the State—Part II

Informational Report
February 2023
2201S-A



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OFFICE OF THE STATE AUDITOR
KERRI L. HUNTER, CPA, CFE • STATE AUDITOR

February 27, 2023

Statutory Review of Rates Charged for Collection of Debts Owed to the State—Part II

Members of the Legislative Audit Committee
Members of the Senate Finance Committee
Members of the House Finance Committee:

This report contains the results of the Office of the State Auditor's (OSA) statutorily-required testing of rates charged for the collection of debts owed to the State. Section 5-16-111.5(3), C.R.S., requires that the State Auditor review these rates and report the results of their review to the finance committees of the senate and the house of representatives or any successor committees. We previously provided a memo dated December 9, 2022 on the status of our review, and this report provides the conclusion of our review based on additional testing conducted in January and February 2023.

Background

Prior to Fiscal Year 2022, the Central Collection Services Section within the Department of Personnel & Administration was responsible for administering debt collection on behalf of state agencies via lottery offsets, limited gaming offsets, state tax refund offsets, and private collections agencies. Pursuant to Senate Bill 21-055, this responsibility was transferred to the individual state agencies effective July 1, 2021 (the beginning of Fiscal Year 2022). Senate Bill 21-055 also placed responsibility on the State Controller for advising the various state agencies concerning the collection of debts, and required that the State Controller promulgate fiscal rules to provide information including (1) any requirements for a state agency to refer a debt to private counsel or a private collection agency; and (2) a list of private counsel or private collection agencies that state

agencies may use for debt collection services. The State Controller is statutorily required to select the counsel and collection agencies that state agencies may use for debt collection services through competition pursuant to the State’s procurement code. The State Controller establishes contracts, or “State Price Agreements,” with each of the selected vendors.

As we reported in December 2022, the State Controller complied with state statutes by issuing State Fiscal Rule 10-1, *Collection of Debt Due to the State*, effective on July 1, 2022, which provided guidance to state agencies on the methods of collecting debt due to the State. Fiscal Rule 10-1 notes debt may be collected through a number of methods, including utilizing a private collection agency (PCA) under an existing State Price Agreement. As of January 2023, the State Controller has established State Price Agreements with five separate vendors for debt collection services. When a state agency decides to utilize one of these five State Price Agreements, agency staff have to contact the vendor directly to discuss the scope of work to be performed. State Fiscal Rule 10-1 also requires state agencies to submit by November 1 of each year a “Collections Plan” detailing the methodology used to collect agency debt, and requires that the agency report in its Collections Plan the amount of debt collected and the amount that was collectible as of the prior June 30 fiscal year end.

The State Purchasing & Contracts Office (SPCO), a division within the Office of the State Controller, is responsible for managing the State’s decentralized purchasing process for state agencies to ensure that goods and services are being procured at the best value for the State. As part of their work, the SPCO manages the statewide solicitation and price agreement program. Program staff are in charge of negotiating, managing, and maintaining all State Price Agreements for commonly sourced items. Once finalized, State Price Agreements are posted on the ColoradoBIDS website.

What was the purpose of our testing and what work was performed?

The purpose of our testing was to determine whether the State complied with the statutory requirements for rates charged for the collection of debts owed to the State.

As part of our testing we performed the following procedures:

- We reviewed the ColoradoBIDS website, noting there were five existing State Price Agreements in place with vendors for providing Collection Services. We obtained copies of the five price agreements and reviewed the debt collection rates listed in each agreement to determine whether the rates were within statutory requirements.
- We reviewed the OSC’s analysis of the state agencies’ debt Collections Plans received for Fiscal Year 2022 to determine if the OSC received all of the Collection Plans by the time of our audit testing.
- We reviewed the listing of Collections Plans for state agencies and noted that three agencies reported using a PCA for debt collection services during the reported period. For those

three state agencies, we obtained a copy of the agency's existing agreement with the PCA and confirmed whether the agency was using one of the five approved PCAs that were listed on the ColoradoBIDS website.

How were the results of our testing measured?

We measured the results of our testing against the following:

- Section 5-16-111.5(1), C.R.S., and Section 24-30-202.4(8)(a), C.R.S., allow for private attorneys' and private collection agencies' charging of fees related to the collection of debt due to the State or any political subdivision within the State. Statute provides that the fees charged by a PCA shall not exceed 18 percent of the debt, and the fees charged by private counsel may not exceed 25 percent of the debt.
- State Fiscal Rule 10-1 notes that state agencies may collect debt through one of four processes: (1) internally (collected by the state agency itself); (2) utilizing a PCA; (3) as a tax offset (state or federal) or vendor offset; or (4) any other means of collection approved by the State Controller.

What were the results of our testing?

As we reported in December 2022, the State Controller complied with state statutes by issuing State Fiscal Rule 10-1, *Collection of Debt Due to the State*, effective on July 1, 2022. As part of our review of the OSC's analysis of the state agencies' debt Collections Plans, we noted that, although some agencies did not make the OSC's November 1, 2022 submission deadline, all agencies had submitted their Collection Plans to the OSC by January 31, 2022. Based on our additional testing performed in January and February 2023, after the Office of the State Controller completed its review of state agencies' debt Collection Plans, we determined that rates charged for the collection of debts owed to the State complied with Section 5-16-111.5(1), C.R.S., and Section 24-30-202.4(8)(a), C.R.S. Specifically, we noted that debt collection rates included in the State's Price Agreements as of February 2023 did not exceed 18 percent for general collections or 25 percent for private counsel related to legal debt collections. In addition, we determined that the three state agencies tested were using one of the five approved PCAs that were listed on the ColoradoBIDS website.

We made no recommendations in this area.





Section 5-16-111.5, C.R.S.

Fees, costs, and costs of collection - limitation.

(1) Except as described in subsection (2) of this section, a private collection agency or privately retained attorney collecting on any debt arising from past-due orders, obligations, fines, or fees due to the state, or due to any political subdivision within the state, may add to the amount due that has been placed for collection all fees, costs, and costs of collection, including designated contractual attorney fees and costs that are awarded by a court of competent jurisdiction. Exclusive of the accrual of interest and court costs, any fees, costs, and costs of collection may not exceed eighteen percent in the aggregate unless additional reasonable attorney fees are awarded by a court of competent jurisdiction.

(2) Subsection (1) of this section does not apply if the state or political subdivision of the state has sold the debt to a third party.

(3) Notwithstanding section 24-1-136 (11)(a)(I), on or before January 1, 2023, and on or before January 1 every five years thereafter, the state auditor shall review the rate described in subsection (1) of this section and the fee described in section 24-30-202.4 (8)(a) and report the results of his or her review to the finance committees of the senate and the house of representatives or any successor committees. The report may include any recommendations of the state auditor regarding raising or lowering the rate or the fee.

Source: L. 2018: Entire section added, (HB 18-1057), ch. 314, p. 1895, §1, effective July 1, 2019.
L. 2021: (3) amended, (SB 21-055), ch. 12, p. 75, §3, effective March 21.

Section 24-30-202.4, C.R.S.

Collection of debts due the state - state agency options - controller's duties - offsetting disbursements - definitions.

(1) A state agency is responsible for the collection of any debt owed to it. The controller shall advise the various state agencies concerning the collection of debts due the state through the agencies, in accordance with the fiscal rules promulgated by the controller in accordance with subsection of this section, to achieve the prompt collection of debts due the agencies.

(2) (a) The controller shall promulgate fiscal rules for collection of debts due to a state agency; except that the fiscal rules do not apply to those debts under the jurisdiction of the department of revenue referred to in section 24-35-108 (1)(a). The controller shall include in the fiscal rules any

requirements for a state agency to refer a debt to private counsel or a private collection agency under subsection (2)(b) of this section or to certify a debt to the department of revenue under subsection (2.5) of this section.

(b) A state agency may refer the debt to a private counsel or private collection agency. The controller shall establish a list of private counsel or private collection agencies that a state agency may contract with for debt collection services. The controller must select the private counsel or private collection agencies included in the list of private counsel or private collection agencies through competition pursuant to the “Procurement Code”, articles 101 to 112 of this title 24.

(2.5) A state agency may certify the amount of a debt due to the state to the department of revenue in order for the department to provide lottery offsets in accordance with section 24-30-202.7, and an offset of a state tax refund due the debtor under section 39-21-108 (3), and to the registry operator in order for the registry operator to provide limited gaming offsets in accordance with the “Gambling Payment Intercept Act”, part 6 of article 35 of this title 24.

(3) (a) (Deleted by amendment, L. 2021.)

(b) (Deleted by amendment, L. 91, p. 839, 1, effective January 1, 1992.)

(c) The controller, with the consent of the state treasurer, is authorized to release or compromise any debt due the state, but only in accordance with the rules applicable thereto. Such rules may provide delegated authority and criteria for release and compromise of debts and may include provisions to prohibit the referral of debts for tax offset based on the age or amounts of debts.

(d) Proceeds of debts collected by a state agency or by a private counsel or private collection agency are accounted for and paid into the fund from which the receivable was derived, and if the fund is no longer in existence, it is paid into the general fund.

(e) Repealed.

(f) and (g) (Deleted by amendment, L. 2021.)

(3.5) (a) (I) The controller shall approve disbursements from state funds from the state’s central accounting system in accordance with section 24-30-202 (2). If there is an unpaid balance or debt owed, a state agency may direct the controller to withhold the amount of the disbursement that does not exceed the amount of:

(A) Any unpaid child support debt as set forth in section 14-14-104, or child support arrearages that are the subject of enforcement services provided pursuant to section 26-13-106, as certified by the department of human services;

(B) Any unpaid balance of tax, accrued interest, or other charges specified in article 21 of title 39, that is subject to offset under section 39-21-108 (3), and owing by the payee according to the records of the controller;

(C) Any unpaid debt owing to the state or any agency thereof by a payee, the amount of which is found to be owing as a result of a final agency determination or the amount of which has been reduced to judgment;

(D) Any unpaid loan due to the student loan division of the department of higher education as set forth in section 23-3.1-104 (1)(p), found to be owing to the division by a payee as a result of final agency determination; or

(E) Any amount required to be paid to the unemployment compensation fund pursuant to articles 70 to 82 of title 8, the amount of which has been determined to be owing as a result of a final agency determination or judicial decision or that has been reduced to judgment by the division of unemployment insurance in the department of labor and employment.

(II) Any money withheld for payment of child support debt or child support arrearages pursuant to subsection (3.5)(a)(I) of this section is deposited with the state treasurer for disbursement by the department of human services. For all names and amounts certified by the department of human services pursuant to section 26-13-111, the controller shall provide to the department of human services the payees' names and associated amounts deposited with the state treasurer pursuant to this subsection (3.5)(a)(II) and any other identifying information as required by the department of human services.

(III) Any money withheld for payment of an unpaid balance of tax, interest, or other charges specified in subsection (3.5)(a)(I) of this section and subject to offset under section 39-21-108 (3), is deposited with the state treasurer. For all names and amounts submitted by the executive director of the department of revenue pursuant to section 39-21-114 (10), the controller shall provide to the department the payees' names and associated amounts deposited with the state treasurer pursuant to this subsection (3.5)(a)(III).

(IV) Any money withheld for payment of an unpaid debt owing to the state pursuant to subsection (3.5)(a)(I) of this section is deposited with the state treasurer. For all names and amounts certified by a state agency pursuant to subsection (3.5)(a) of this section, the controller shall provide to the state

agency the payees' names and associated amounts deposited with the state treasurer pursuant to this subsection (3.5)(a)(IV).

(V) All money withheld for payment of a student loan division debt pursuant to subsection (3.5)(a)(I) of this section is deposited with the state treasurer for disbursement by the state treasurer to the division. For all names and amounts certified by the division pursuant to section 23-3.1-104(1)(q), the controller shall provide to the division the payees' names and associated amounts deposited with the state treasurer pursuant to this subsection (3.5)(a)(V).

(VI) The controller shall deposit with the state treasurer any money withheld for payment of unemployment compensation debt pursuant to subsection (3.5)(a)(I) of this section, and the state treasurer shall credit the money to the unemployment compensation fund. For all names and amounts certified by the division of unemployment insurance, the controller shall provide to the division the payees' names and associated amounts deposited with the state treasurer pursuant to this subsection (3.5)(a)(VI).

(VII) The controller shall pay any approved disbursement in excess of the unpaid balance or debt to the approved payee.

(b) In the event that there are debts for unpaid child support, as set forth in section 26-13-111, debts for an unpaid balance of tax, interest, or other charges pursuant to article 21 of title 39, and other debts owing to the state or any agency thereof as set forth in subsection (3.5)(a)(I) of this section, the amount withheld pursuant to subsection (3.5)(a)(I) of this section is credited to the unpaid debts and is applied first to those unpaid debts in the order they appear in this subsection (3.5)(b), and any remaining amounts withheld pursuant to subsection (3.5)(a)(I) of this section is applied based on the priority determined by the controller.

(c) (Deleted by amendment, L. 2021.)

(4) (Deleted by amendment, L. 99, p. 689, 9, effective August 4, 1999.)

(5) (Deleted by amendment, L. 2021.)

(6) Any contract awarded to private counsel or private collection agency shall require that the contractor remain licensed under the contractor's respective occupational licensing statutes or rules during the term of the contract. The contract shall require that a private counsel or private collection agency shall at all times act in compliance with the provisions of the "Colorado Fair Debt Collection Practices Act", article 16 of title 5, and in compliance with any rules promulgated by the controller.

(7) (Deleted by amendment, L. 2021.)

(8) (a) A collection fee for a private collection agency shall not exceed eighteen percent of the debt, and the fee for private counsel shall not exceed twenty-five percent of the debt. All fees collected and retained by a private collection agency or private counsel as payment for services collecting a debt that are not deposited in the state treasury are not subject to article 36 of title 24 or section 20 of article X of the state constitution.

(b) The debtor is liable for repayment of the total amount of a debt due to the state, including collection fee charged by the private collection agency or private counsel, plus allowable fees and costs pursuant to subsection (8)(c) of this section and the delinquency charge pursuant to section 24-79.5-102.

(c) If a debt due to the state is litigated and the state prevails, in addition to the collection fee, the debtor shall also be liable for the following:

(I) Reasonable attorney fees as may be determined by the court;

(II) Court costs as described in section 13-16-122; and

(III) Fees incurred by the state's attorney in processing the litigation and collection of any judgment.

(d) If a debt due to the state is in the form of a check, draft, or order not paid upon presentment, the state agency is entitled, in addition to a collection fee, if applicable, to collect damages as specified in section 13-21-109 (1)(b) (II) and (2)(a).

(9) and (10) (Deleted by amendment, L. 2021.)

Source: **L. 75:** Entire section added, p. 798, § 2, effective July 1. **L. 83:** (2) amended, p. 793, § 3, effective June 3. **L. 84:** (3)(a) and (3)(d) amended and (3)(e) added, p. 1013, § 2, effective April 27. **L. 91:** (3)(a) amended and (7) added, p. 802, § 1, effective May 24; (2), (3)(a)(I), (3)(b), (3)(d), (3)(e), and (4) amended and (5) and (6) added, p. 839, § 1, effective January 1, 1992. **L. 95:** (1), (2), and (3)(a) amended, p. 642, § 36, effective July 1. **L. 97:** (3.5) added, p. 941, § 2, effective July 1. **L. 99:** (3)(d), (4), and (7) amended, p. 689, § 9, effective August 4. **L. 2002:** (3)(a)(II) amended, p. 101, § 4, effective August 7. **L. 2006:** (1), (2), (3)(c), (3)(d), and (5) amended and (2.5), (8), and (9) added, p. 1159, § 2, effective May 25. **L. 2010:** (2), (8)(a), and (8)(b) amended, (HB 10-1181), ch. 351, p. 1619, § 2, effective June 7; (2) and (3)(a)(II) amended, (SB 10-003), ch. 391, p. 1850, § 28, effective June 9. **L. 2011:** (3)(f) added, (SB 11-226), ch. 190, p. 733, § 3, effective May 19; (3)(g) added, (SB 11-051), ch. 286, p. 1331, § 1, effective August 10. **L. 2012:** IP(3.5)(a)(I), (3.5)(a)(I)(E), and (3.5)(a)(VI) amended, (HB 12-1120), ch. 27, p. 107, § 22, effective June 1. **L. 2013:** (2.5) amended and (10) added, (SB 13-247), ch. 296, p. 1581, § 1, effective August 7. **L. 2017:** (6) and IP(9) amended, (HB

17-1238), ch. 260, p. 1173, § 20, effective August 9. **L. 2018:** (2) amended, (HB 18-1047), ch. 155, p. 1096, § 9, effective April 23; (8)(a) amended, (HB 18-1057), ch. 314, p. 1896, § 2, effective July 1, 2019. **L. 2021:** Entire section amended, (SB 21-055), ch. 12, p. 67, § 1, effective March 21.

Editor's note: (1) Amendments to subsection (3)(a) by Senate Bill 91-15 and Senate Bill 91-140 were harmonized.

(2) Amendments to subsection (2) by Senate Bill 10-003 and House Bill 10-1181 were harmonized.

(3) The effective date for amendments to this section by House Bill 12-1120 (chapter 27, Session Laws of Colorado 2012) was changed from August 8, 2012, to June 1, 2012, by House Bill 12S-1002 (First Extraordinary Session, chapter 2, p. 2432, Session Laws of Colorado 2012.)

(4) Subsection (3)(e)(II) provided for the repeal of subsection (3)(e), effective July 1, 2021. (See L. 2021, p. 67.)

Cross references: (1) For the legislative declaration contained in the 1995 act amending subsections (1), (2), and (3)(a), see section 112 of chapter 167, Session Laws of Colorado 1995.

(2) For the legislative declaration in the 2010 act amending subsections (2) and (3)(a)(II), see section 1 of chapter 391, Session Laws of Colorado 2010.



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