

DRAFT CSRM COLLECTION RULES REVISED 07-25-2013

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New)
Rules I through XI, relating to debt)
collection services)

NOTICE OF PUBLIC HEARING ON
PROPOSED ADOPTION

7-25-13 Draft

TO: All Concerned Persons

1. On _____, 2013, at _____, a public hearing will be held in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption of the above-stated rules.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Helena, Montana.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5 p.m., _____, 2013, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, PO Box 7701, Helena, Montana 59604-7701; telephone 406.444.5828; fax 406.444.4375; or e-mail canderson@mt.gov.

3. The proposed new rules do not replace or modify any section currently found in the Administrative Rules of Montana. The proposed new rules provide as follows:

NEW RULE I DEFINITIONS The following definitions apply to terms found in this subchapter:

(1) "Collection methods" means any action taken in an attempt to collect on a debt, including but not limited to making a demand for payment, issuing collection notices, obtaining a judgment, and levying wages and bank accounts.

(2) "Criteria for uncollectability" means the agency's written standards stating the collection methods that must occur in order for the agency to determine that the debt is uncollectible.

(3) "Write off" means to remove the debt from accounts receivable.

(4) "Unliquidated debt" means a debt where the amount is unassessed, unsettled, or disputed.

AUTH: 15-1-201, 17-4-110, MCA

IMP: 17-4-101, 17-4-104, 17-4-105, 17-4-106, 17-4-107, 17-4-108, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule I to define the terms used in the new chapter that will be added into ARM Title 42, which

MAR Notice No. 42-2- [insert notice number here]

will house the new rules being proposed in this notice regarding the debt collection services the department provides for other agencies. The inclusion of this proposed new definitions rule will add clarity.

NEW RULE II AGENCY'S SUBMISSION OF DEBTS TO DEPARTMENT

(1) Prior to submitting any debt to the department for collection services, the agency shall (a) enter into a memorandum of understanding with the department addressing debt collection services; and (b) establish criteria for uncollectability and provide that criteria to the department.

(2) The agency shall not submit to the department any unliquidated debts. The agency must have followed its internal policies and procedures regarding debtor notification and dispute resolution on any debts it submits to the department.

(3) To submit a debt to the department, the agency shall certify the amount of the debt and that the debt is uncollectible in accordance with its criteria for uncollectibility.

AUTH: 15-1-201, 17-4-110, MCA

IMP: 17-4-104, 17-4-109, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule II to establish the actions an agency must undertake in order to submit a debt to the department for collection assistance.

NEW RULE III DEPARTMENT'S REVIEW OF SUBMITTED ACCOUNTS

(1) Upon the department's request, the agency shall submit all relevant evidence regarding the debt, including but not limited to, documentation of the collection methods undertaken by the agency and any information that substantiates the debt

(2) The department shall determine if the agency has met its criteria for uncollectibility. The department will only accept a debt for collection services if the department determines that the agency has met its criteria for uncollectibility. If the department determines that the agency has not met its criteria for uncollectibility, the department will return the debt to the agency.

(3) The department shall notify the agency of its acceptance or rejection of the debt for collection services.

AUTH: 15-1-201, 17-4-110, MCA

IMP: 17-4-104, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule III to inform agencies of the process the department undertakes to review submitted debts for collection services,

NEW RULE IV TRANSFER OF DEBTS TO DEPARTMENT (1) Upon the department's acceptance of a debt for collection services, the debt is transferred to the department

(2) Once a debt has been transferred to the department, the transferring agency

shall:

(a) write off the debt, unless the agency is excepted from this requirement under Title 17, chapter 4, MCA;
(b) cease all collection activities on the debt;
(c) forward to the department any payment received by the agency; and
(d) update the department with any information received relating to the debt, including notification that the debtor has filed for bankruptcy and the debtor's contact information.

(3) If the transferring agency receives payment on a debt that has been collected in full, the agency shall refund the overpayment to the debtor.

AUTH: 15-1-201, 17-4-110, MCA

IMP: 17-4-104, 17-4-105, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule IV to establish the process for transferring a debt from an agency to the department. The proposed new rule also describes the actions an agency must undertake on a transferred debt.

NEW RULE V DEBTOR APPEALS ON VALIDITY OF TRANSFER (1) The department shall notify the debtor that an agency has transferred a debt to the department for collection services. The notice of transfer must identify the debt, provide contact phone numbers and mailing address, payment information, state that the department intends to undertake collection activities, and inform the debtor of the appeal rights in section (2) of this rule.

(2) To request a hearing before the department on whether the transfer of the debt from the agency to the department was valid, the debtor must submit a written request stating the basis of the debtor's objection within 30 days of the date on the notice of transfer. Failure to timely submit a written request shall be deemed an admission that the debtor agrees that the debt stated in the notice of transfer is due and owing.

(3) The department shall not make any determination regarding the validity of the underlying debt. If the debtor's objection to the debt transfer includes a challenge to the validity of the underlying debt, the department may return the debt to the transferring agency. The debtor is not entitled to a hearing on the validity of the debt if the debt has been the subject matter of any proceeding to determine the validity of the debt and a decision made as a result of that proceeding has become final.

AUTH: 15-1-201, 17-4-110, MCA

IMP: 17-4-105, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule V to inform the public of the process that department will use to notify a debtor when a debt has been transferred to the department for collection purposes. The proposed new rule further explains the opportunity a debtor shall have to request a hearing concerning the validity of the debt transfer and the time period in which the agency must make this

request.

NEW RULE VI DEBTOR APPEALS ON DEPARTMENT'S COLLECTIONS

(1) The department shall notify the debtor when it identifies funds that may be subject to offset. The notice must identify the debt and the funds held, state that the department will hold the funds for 30 days pending receipt of a hearing request, and inform the debtor of the right to request a hearing on the potential offset of the funds held. The notice must clearly state the contact information and contact methods so that the debtor may file an objection of to the offset.

(2) To request a hearing on the potential offset of the funds held, the debtor must submit a written request stating the basis of the debtor's objection within 30 days of the date on the notice of offset.

(3) If the 30 days provided for in (2) expire without the debtor requesting a hearing, the department will apply the held funds to the debt.

AUTH: 15-1-201, 17-4-110, MCA

IMP: 17-4-105, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule VI to inform the public of the process that department will use to notify a debtor when funds have been identified that may be used to satisfy a debt held by the state. The proposed new rule further explains the opportunity a debtor shall have to request a hearing concerning application of the funds to a debt.

NEW RULE VII APPEAL HEARINGS (1) Hearings on debts owed to an agency other than the Department of Public Health and Human Services will be conducted by the department. Such hearings will be conducted pursuant to 15-1-211, MCA, and ARM 42.2.613 through 42.2.621.

(2) Hearings on debts owed to the Department of Public Health and Human Services will be conducted by the Department of Public Health and Human Services.

AUTH: 15-1-201, 17-4-110, MCA

IMP: 17-4-105, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule VII to inform the public of how the hearings will be conducted for the debts owed to the agency under this new subchapter. The proposed new rule further explains that the department does not conduct hearings for debts owed to the Department of Public Health and Human Services, because they conduct their own.

NEW RULE VIII WRITE OFF OF AGENCY DEBT BY DEPARTMENT

(1) Upon determining that a transferred debt is uncollectible or that the cost of continued collection activities would exceed the amount of debt, the department shall write off the debt and cease collection activities.

AUTH: 15-1-201, 17-4-110, MCA

IMP: 17-4-107, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule VIII to describe when it will write off a debt that has been transferred to it for collection services.

NEW RULE IX COLLECTIONS SERVICE FEE (1) The department shall charge a collections service fee for the cost of collections. Any payment the department receives will first be applied to the collections service fee and then to the transferred debt. Any payment the agency receives on a transferred debt is also subject to the collections service fee.

AUTH: 15-1-201, 17-4-110, MCA

IMP: 17-4-103, 17-4-106, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule IX to describe the collection service fee that it will charge for the cost of collection services and the manner in which payments will be applied.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone 406.444.5828; fax 406.444.4375; or e-mail canderson@mt.gov and must be received no later than _____.

5. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

6. An electronic copy of this notice is available on the department's web site at www.revenue.mt.gov. Select the "Legal Resources" link in the left hand column, and click on the "Rules" link within to view the options under the "Notice of Proposed Rulemaking" heading. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. While the department also strives to keep its web site accessible at all times, in some instances it may be temporarily unavailable due to system maintenance or technical problems.

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the person in 4 above or faxed to the office at

406.444.4375, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

8. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption of the above-referenced rules will not significantly and directly impact small businesses.

CLEO ANDERSON
Rule Reviewer

MIKE KADAS
Director of Revenue

Certified to Secretary of State __ __, 2013

ESPM collections 7-25-13