# Revenue

## Tax Administration

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**LFB Summary Items for Which an Issue Paper Has Been Prepared**

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| 1 | Expand Auditing Activity (Paper #625) |
| 2 (part) & 3 (part) | Collection Fees Under State Debt Collection Programs (Paper #626) |

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June, 2019 | Joint Committee on Finance | Paper #625

# Expand Auditing Activity (Revenue -- Tax Administration)

[LFB 2019-21 Budget Summary: Page 367, #1]

## CURRENT LAW

The Department of Revenue (DOR) is statutorily authorized to supervise, administer, and enforce state tax laws. Under this authority, DOR administers several auditing programs. In state fiscal year 2017-18, DOR's Audit Bureau issued audit assessments of $520.3 million, of which $236.3 million was collected by the Audit Bureau. An audit assessment is considered unpaid by the taxpayer after 72 days, at which point the assessment is transferred to DOR's Compliance Bureau as a delinquent tax bill. In 2017-18, DOR's Compliance Bureau collected delinquent tax revenues of $254.3 million. The Audit Bureau's average front-line audit staffing level was 374 positions and the average staffing level of delinquent tax collection agents in the Compliance Bureau was 198 positions in 2017-18.

## GOVERNOR

Provide $3,215,100 in 2019-20 and $3,834,300 in 2020-21 and 36.0 positions annually (24.0 project positions and 12.0 permanent positions) to increase auditing activity and to improve tax collections. The administration estimates the additional auditing activity would increase state tax collections by $14,500,000 in 2019-20 and $29,000,000 in 2020-21. The project positions would be authorized from October 1, 2019, through September 30, 2023.

## DISCUSSION POINTS

1. According to the administration, the volume of new tax debts has increased steadily in recent years, and the resulting workload exceeds its current staffing levels. In addition, the administration notes that the U.S. Supreme Court decision in *Wayfair v. South Dakota* has increased

the number of sellers who are required to collect sales and use tax on sales in Wisconsin, which has expanded the number of out-of-state businesses that may be subject to audit. These factors have contributed to the request for additional nexus and out-of-state sales tax auditors described below.

2. The administration indicates that the 36 positions recommended by the Governor would be split between DOR's Audit Bureau (24) and Compliance Bureau (12). This paper provides an overview of DOR's Audit Bureau and Compliance Bureau and a subsequent analysis of the Governor's proposal.

**Audit Bureau**

3. DOR's Audit Bureau staffing is configured so that each auditor focuses on a specific tax type. Front-line audit staffing in 2017-18 consisted of: (a) 98 individual income tax auditors; (b) 112 sales and use tax auditors, including 15 out-of-state sales tax auditors; (c) 85 corporate income/franchise tax auditors; (d) 12 excise tax auditors; (e) 17 out-of-state nexus auditors; (f) 29 pass-through entity auditors; (g) 12 income reconstruction auditors; and (h) nine program development and audit selection specialists.

4. Table 1 shows the average front-line audit staffing level, annual amount of audit assessments and collections, and amount sent to the Compliance Bureau as delinquent over the past eight fiscal years.

**TABLE 1**

**Audit Assessments and Collections: 2010-11 through 2017-18 ($ in Millions)**

| Fiscal Year | Average Front-line Audit Staff | Audit Assessments | Assessment Per Auditor | Audit Collections | Average Collections Per Auditor | Amount Sent to Delinquent Collections* |
|---|---|---|---|---|---|---|
| 2010-11 | 283 | $329.1 | $1.16 | $255.8 | $0.90 | $63.2 |
| 2011-12 | 280 | 264.8 | 0.95 | 200.4 | 0.72 | 42.7 |
| 2012-13 | 278 | 231.6 | 0.83 | 170.4 | 0.61 | 34.5 |
| 2013-14 | 302 | 180.7 | 0.60 | 151.6 | 0.50 | 39.7 |
| 2014-15 | 291 | 254.1 | 0.87 | 176.2 | 0.61 | 38.9 |
| 2015-16 | 388 | 330.1 | 0.85 | 172.2 | 0.44 | 41.7 |
| 2016-17 | 374 | 382.3 | 1.02 | 247.2 | 0.66 | 54.4 |
| 2017-18 | 374 | 520.3 | 1.39 | 236.3 | 0.63 | 51.7 |

*****Amounts in this column include assessed amounts for audits posted during the fiscal year that became delinquent during the same fiscal year and were referred to the Compliance Bureau for collection. Beginning in 2016-17, the amounts that were actually collected as delinquent collections from assessments in the same fiscal year are reflected in this column.

5. As shown in Table 1, both audit assessments and collections declined from 2010-11 through 2013-14. Between 2013-14 and 2017-18, audit assessments have increased by 188% and audit collections have increased by 56%. Over this same period, the average amount assessed per auditor has more than doubled, while the average amount collected per auditor has increased by 26%. These per-auditor increases have followed increases in the number of front-line audit staff provided to DOR in 2013-15 (33 positions) and 2015-17 (87 positions). DOR indicates that the lower number of front-line auditors in 2016-17 and 2017-18 relative to 2015-16 represents vacant positions. However, the Department also notes that these vacant auditor positions will be filled in July, 2019.

6. Table 1 also demonstrates that audit assessments exceeded audit collections in each fiscal year. One reason for this is that approximately 10% of assessments are appealed and can potentially be reduced upon appeal. Another reason is that some of these assessments are not paid on time and thus become delinquent taxes owed. The payment of delinquent assessments is credited to the Compliance Bureau upon collection.

7. Tables 2 and 3 provide additional detail regarding DOR audit activity by tax type. Both tables show that corporate audits have historically generated the largest share of audit assessments and collections, followed by sales and use tax audits, nexus audits, individual income tax audits, excise tax audits, and other audits.

**TABLE 2**

**Audit Assessments by Tax Type: 2010-11 through 2017-18 (Millions)**

| Fiscal Year | Individual Income# | Sales and Use* | Corporate*# | Excise | Other | Total |
|---|---|---|---|---|---|---|
| 2010-11 | $40.8 | $78.8 | $200.1 | $5.2 | $4.2 | $329.1 |
| 2011-12 | 50.6 | 79.8 | 129.9 | 3.7 | 0.8 | 264.8 |
| 2012-13 | 40.3 | 75.8 | 112.3 | 2.7 | 0.5 | 231.6 |
| 2013-14 | 42.7 | 59.2 | 76.7 | 1.9 | 0.2 | 180.7 |
| 2014-15 | 53.8 | 74.8 | 121.0 | 2.9 | 1.6 | 254.1 |
| 2015-16 | 54.5 | 103.9 | 166.7 | 2.8 | 2.2 | 330.1 |
| 2016-17 | 52.6 | 112.0 | 213.2 | 3.5 | 1.0 | 382.3 |
| 2017-18 | 56.5 | 115.0 | 344.2 | 4.4 | 0.2 | 520.3 |

*Nexus audit assessments are included in corporate income/franchise and sales and use tax collection data.
#Pass-through entity audit assessments are reflected in corporate income/franchise and individual income tax data.

## TABLE 3

### Audit Collections by Tax Type: 2010-11 through 2017-18 (Millions)

| Fiscal Year | Individual Income** | Sales and Use | Corporate** | Excise | Nexus* | Other | Total |
|---|---|---|---|---|---|---|---|
| 2010-11 | $14.2 | $50.2 | $185.3 | $1.4 | - | $4.7 | $255.8 |
| 2011-12 | 18.6 | 49.5 | 130.0 | 0.8 | - | 1.5 | 200.4 |
| 2012-13 | 10.5 | 61.1 | 97.0 | 1.5 | - | 0.3 | 170.4 |
| 2013-14 | 9.9 | 47.7 | 83.4 | 1.3 | $9.2 | 0.1 | 151.6 |
| 2014-15 | 18.1 | 44.7 | 98.8 | 2.9 | 10.3 | 1.4 | 176.2 |
| 2015-16 | 14.4 | 58.5 | 78.0 | 3.3 | 16.1 | 1.9 | 172.2 |
| 2016-17 | 16.6 | 66.4 | 132.2 | 3.3 | 28.0 | 0.7 | 247.2 |
| 2017-18 | 21.0 | 83.0 | 87.0 | 0.7 | 44.4 | 0.2 | 236.3 |

*Nexus collections were included in "Other" tax types prior to 2013-14.
**Pass-through entity collections included in individual income tax and corporate income/franchise collections were $0.4 million in 2013-14, $0.2 million in 2014-15, $7.2 million in 2015-16, $13.3 million in 2016-17, and $12.4 million in 2017-18.

8. In the 2015-17 budget, 102 auditor positions, including 87 front-line staff positions, were provided to increase audit activities related to sales and use tax nexus investigation, corporate audits determining nexus and apportionment among combined group members, and audits of pass-through entities. Table 3 shows that much of the growth in overall audit collections between 2015-16 and 2017-18 is attributable to growth in collections from these tax types. DOR also notes that such collections through April, 2019, have more than doubled over similar collections in 2017-18, which the Department states is attributable to the activities of these 102 additional auditors.

**Compliance Bureau**

9. DOR's Compliance Bureau is responsible for collecting all delinquent taxes and providing taxpayer assistance and information. According to DOR, as of July, 2018, the Compliance Bureau's delinquent tax collection staff totals 200 positions, comprised of: (a) 42 field revenue agents; (b) 115 central revenue agents; (c) 13 special procedures revenue agents; (d) five support staff positions; (e) 18 supervisor positions; and (f) seven analysts, network coordinators, auditors, and trainers. The Bureau also provides collection services for state agencies, counties, and municipalities through the statewide debt collection program and the tax refund intercept program, which are described in a separate paper entitled "Collection Fees Under State Debt Collection Programs". Table 4 shows average delinquent tax agent staffing levels in the Compliance Bureau since 2010-11, as well as delinquent taxes collected by those positions.

## TABLE 4

**Compliance Bureau Delinquent Tax Collections and Staffing Levels: 2010-11 through 2017-18 ($ in Millions)**

| Fiscal Year | Number of Agents | Delinquent Tax Collections | Collections per Agent |
|---|---|---|---|
| 2010-11 | 178 | $202.3 | $1.14 |
| 2011-12 | 142 | 193.3 | 1.36 |
| 2012-13 | 141 | 193.6 | 1.37 |
| 2013-14 | 168 | 194.2 | 1.16 |
| 2014-15 | 170 | 204.1 | 1.20 |
| 2015-16 | 171 | 216.6 | 1.27 |
| 2016-17 | 186 | 251.7 | 1.35 |
| 2017-18 | 198 | 254.3 | 1.28 |

10. Table 4 shows that delinquent tax collections were relatively stable between 2010-11 and 2014-15, then increased considerably in 2016-17 and 2017-18. DOR states this is primarily attributable to additional auditor positions and to a strong economy. Annual collections on a per-agent basis have been relatively stable, and have ranged from $1.14 million to $1.37 million over the last eight years. Table 5 shows the average outstanding delinquent tax balance, the amount of new bills referred to the Compliance Bureau, the amount of delinquent taxes collected, and the amount written off as uncollectible. The balance of other agency debt and total outstanding debt is also shown because DOR states that it cannot delineate the amount of delinquent tax bills written off from the amount of other agency debt written off.

## TABLE 5

**Compliance Bureau Balance of Delinquent Debts: 2010-11 through 2017-18 (Millions)**

| Fiscal Year | Delinquent Tax Balance | Other Agency Debts | Total Balance | New Tax Bills Added | Delinquent Taxes Collected | Delinquent Amounts Written off* |
|---|---|---|---|---|---|---|
| 2010-11 | $930.9 | $3.0 | $933.9 | N/A | $202.3 | $195.7 |
| 2011-12 | 968.5 | 29.7 | 998.2 | $424.0 | 193.3 | 126.5 |
| 2012-13 | 971.3 | 38.1 | 1,009.4 | 392.6 | 193.6 | 123.5 |
| 2013-14 | 975.5 | 46.9 | 1,022.4 | 412.5 | 194.2 | 122.0 |
| 2014-15 | 928.4 | 54.2 | 982.6 | 453.2 | 204.1 | 141.2 |
| 2015-16 | 950.4 | 71.9 | 1,022.3 | 633.1 | 216.6 | 129.4 |
| 2016-17 | 1,020.0 | 126.0 | 1,146.0 | 652.0 | 251.7 | 109.9 |
| 2017-18 | 1,037.6 | 219.6 | 1,257.2 | 573.9 | 254.3 | 96.9 |

*Includes delinquent tax amounts and amounts owed other agencies.

11. Table 5 illustrates that the delinquent tax balance was generally stable from 2010-11 through 2015-16, then increased in the next two fiscal years. This trend is similar to growth in delinquent tax collections demonstrated in Table 4. DOR indicates the reason for recent growth in the delinquent tax balance is also related to increased auditing activity, which results in the identification of more taxes owed overall, some of which become delinquent.

12. Table 6 shows the estimated collectible amounts out of the total delinquent tax balance, and the percentage of taxes collected out of the collectible amounts. Each year, DOR estimates the amounts collectible using a method that is based on accounts in bankruptcy, deceased taxpayers, defunct corporations, and other amounts under consideration for write-off. On average, amounts collectible represent approximately 38% of the total delinquent tax balance over the last five fiscal years. The table also shows that the percentage of taxes collected out of the estimated collectible amounts has generally increased over the five-year period.

**TABLE 6**

**Compliance Bureau Estimated Delinquent Tax Amounts Collectible and Percent Collected: 2013-14 through 2017-18 ($ in Millions)**

| Fiscal Year | Tax Balance | Collectible Balance | Percent Collectible | Taxes Collected | Percent Collected |
|---|---|---|---|---|---|
| 2013-14 | $975.5 | $403.6 | 41.4% | $194.2 | 48.1% |
| 2014-15 | 928.4 | 361.0 | 38.9 | 204.1 | 56.5 |
| 2015-16 | 950.4 | 398.2 | 41.9 | 216.6 | 54.4 |
| 2016-17 | 1,020.0 | 304.2 | 29.8 | 251.7 | 82.7 |
| 2017-18 | 1,037.6 | 370.5 | 35.7 | 254.3 | 68.6 |

**Proposed Additional Positions**

13. The Governor's request would provide 24 project positions to DOR in the Audit Bureau, and 12 permanent positions in the Compliance Bureau. The 24 project positions provided to the Audit Bureau would be comprised of 11 nexus-related project staff and 13 out-of-state sales tax audit project staff, and would be authorized from October 1, 2019, through September 30, 2023.

14. According to DOR, the proposed nexus-related project staff would conduct audits and investigations to find out-of-state businesses who are operating in Wisconsin and should be collecting and remitting Wisconsin taxes because of a presence (nexus) in the state, but are not. These positions would focus primarily on sales and corporate income/franchise tax audits. DOR also states that the proposed out-of-state sales tax project staff would audit businesses headquartered outside the state who are registered to collect sales tax and who remit the tax regularly.

15. Under state law, a project position is defined as a position which is normally funded for a temporary workload increase or for a planned undertaking which is not a regular function of the employing agency and which has an established probable date of termination. A project position may not exist for more than four years.

16. DOR indicates the Audit Bureau positions described below are being requested as project positions because this will provide the Department flexibility to review its staffing needs at the expiration of the positions to see if a future request is warranted and to what degree. In particular, DOR notes that the *Wayfair* decision will expand the number of out-of-state businesses that may be subject to audit, which could increase sales tax revenues, but the Department intends to evaluate the overall *Wayfair*-related revenue impact at the time the positions are due to expire. However, DOR and other state agencies can evaluate staffing needs and recommend deletion of permanent positions that are no longer needed in future budget submissions. In addition, the 38 audit and compliance project positions that were authorized in the 2017-19 budget are scheduled to expire on September 30, 2021. Based on the Governor's request for additional Audit Bureau positions, and considering the additional project auditor positions authorized in 2017-19, it is unclear why some portion of these project positions would not be needed on an ongoing basis. The Joint Finance Committee could choose to provide permanent positions, rather than project positions, if the Committee believes that the positions are needed on an ongoing basis (Alternative 2).

17. As stated above, the 38 project audit and compliance positions provided in the 2017-19 budget are set to expire on September 30, 2021. It should be noted that allowing these positions to expire is estimated to reduce general fund tax revenues by $24.0 million in 2021-22 and $32.0 million in 2022-23, offset partly by reduced GPR expenditures of approximately $1.9 million in 2021-22 and $2.5 million in 2022-23. Expiration of these positions would create a future commitment in the 2021-23 biennium (similarly, if the Committee adopted the Governor's request under the bill, the authorization of 24 project audit positions would create a future commitment in the 2023-25 biennium). The Committee could consider making the 38 project positions authorized in the 2017-19 budget permanent to avoid the structural deficit in the 2021-23 biennium caused by the expiration of these positions under current law (Alternative 3).

18. Alternatively, the Committee could choose to provide all positions being requested on a project basis, including the 12 permanent positions being requested in the Compliance Bureau. As noted, in the 2017-19 biennial budget, DOR was provided 20 project positions in the Compliance Bureau at the same time it was provided 18 project positions in the Audit Bureau. Similar justification was offered by the administration at that time as to why these positions were being requested as project rather than permanent positions. Namely, the administration indicated that project positions would afford it the flexibility to examine its staffing needs at the time the positions were due to expire. The Committee could consider authorizing all requested positions on a project basis (Alternative 4).

19. The proposed 11 nexus-related project staff in the Audit Bureau would consist of eight nexus revenue auditors, two lead workers, and one revenue management supervisor to investigate businesses operating in Wisconsin but not filing or paying the applicable taxes. DOR estimates the 11 additional positions would increase revenues collected by the Audit Bureau by $4.0 million in 2019-20 and $8.0 million in 2020-21, or approximately $1.0 million per front-line auditor on an annual basis. The administration's estimate for the amount of revenue generated per auditor is higher than the average amount of collections per auditor in the past several fiscal years, as shown in Table 1. However, DOR notes that the tax types the proposed nexus-related project staff would work on (primarily sales and corporate income/franchise taxes) typically generate more revenues than those generated from the auditing activities associated with other tax types. For example, average nexus-

related collections per front-line nexus auditor over the past three fiscal years were approximately $1.74 million. For comparison, average individual income tax collections per associated front-line auditor in 2017-18 were approximately $210,000.

20. The proposed 13 out-of-state sales tax audit project staff for the Audit Bureau would consist of 10 sales tax revenue auditors, one revenue management supervisor, and two computer audit sampling specialists to conduct additional sales tax audits of businesses headquartered outside Wisconsin. DOR indicates these positions would supplement the 15 front-line permanent positions currently conducting such audits that were authorized in the 2015-17 budget. DOR estimates these positions will increase revenues collected by the Audit Bureau by $5.0 million in 2019-20 and $10.0 million in 2020-21, or by $1.0 million per front-line auditor on an annual basis. Again, these per-auditor amounts are higher than the average collections per auditor shown in Table 1. However, DOR states that these positions are associated with a tax type that generally produces greater revenues than other types. For example, in 2017-18, sales tax collections per associated front-line auditor were approximately $740,000, while individual income tax collections per associated front-line auditor in 2017-18 were approximately $210,000.

21. The 12 proposed permanent positions provided to the Compliance Bureau would consist of 11 Revenue Agents and one Revenue Agent Supervisor to investigate delinquent tax collections. The Department indicates these positions are necessary to address ongoing growth in the volume of new tax debts received by the Compliance Bureau. As noted previously, this growth has partially been spurred by increased auditing activity generating additional tax debts owed, some of which are not paid until delinquent. DOR indicates these additional tax debts represent an ongoing trend. The administration estimates these additional positions will generate delinquent tax collections of $5.5 million in 2019-20 and $11.0 million in 2020-21, or $1.0 million per revenue agent on an annual basis. For comparison, the average delinquent collections per revenue agent over the past eight fiscal years were approximately $1.27 million.

22. The administration's estimates for the amount of revenues generated per revenue agent and per front-line nexus auditor appear slightly low, while its estimate for revenues generated per sales tax auditor appears slightly high. On balance, the annual fiscal estimate of revenues generated by approving these positions appears reasonable.

## ALTERNATIVES

1. Adopt the Governor's recommendation to provide $3,215,100 in 2019-20 and $3,834,300 in 2020-21 and 36.0 positions annually (24.0 project positions and 12.0 permanent positions) to DOR to increase auditing activity and improve tax collections. Estimate increased state tax revenues of $14,500,000 in 2019-20 and $29,000,000 in 2020-21. The project positions would be authorized from October 1, 2019 through September 30, 2023.

| ALT 1 | Change to Base | | Change to Bill | |
|---|---|---|---|---|
| | Funding | Positions | Funding | Positions |
| GPR | $7,049,400 | 36.00 | $0 | 0.00 |
| GPR-Tax | $43,500,000 | | | |

2. Adopt Alternative 1, but provide permanent positions instead of project positions.

| ALT 2 | Change to Base | | Change to Bill | |
|---|---|---|---|---|
| | Funding | Positions | Funding | Positions |
| GPR | $7,049,400 | 36.00 | $0 | 0.00 |
| GPR-Tax | $43,500,000 | | | |

3. Authorize the 38.0 project audit and compliance positions provided in the 2017-19 budget on a permanent basis. This alternative would not have a fiscal effect in the 2019-21 biennium, but would reduce future commitments from the general fund in the 2021-23 biennium. This alternative can be adopted independent of any other alternative.

4. Adopt Alternative 1, but provide project positions instead of permanent positions.

| ALT 4 | Change to Base | | Change to Bill | |
|---|---|---|---|---|
| | Funding | Positions | Funding | Positions |
| GPR | $7,049,400 | 36.00 | $0 | 0.00 |
| GPR-Tax | $43,500,000 | | | |

5. Take no action.

| ALT 5 | Change to Base | | Change to Bill | |
|---|---|---|---|---|
| | Funding | Positions | Funding | Positions |
| GPR | $0 | 0.00 | - $7,049,400 | - 36.00 |
| GPR-Tax | $0 | | - $43,500,000 | |

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June, 2019 Joint Committee on Finance Paper #626

# Collection Fees Under State Debt Collection Programs (Revenue -- Tax Administration)

[LFB 2019-21 Budget Summary: Page 368, #2; and Page 369, #3]

## CURRENT LAW

The Department of Revenue (DOR) administers a statewide tax refund intercept program (TRIP) for the purpose of offsetting refunds owed a debtor against debts owed by the debtor to state agencies, the courts, the Legislature, state authorities, local units of government, the federal government, federally recognized tribes, and certain ambulance service providers.

The Department also administers a statewide debt collection program (SDC) for the purpose of collecting debts owed state agencies, the courts, the Legislature, state authorities, and local units of government. DOR may enter into agreements with such entities and charge a fee for the collection of unpaid fines, forfeitures, costs, fees, surcharges, or restitution payments on behalf of those entities.

DOR charges each debtor for the administrative expenses associated with TRIP. Annually, DOR is required to review its costs incurred in administering TRIP from the previous fiscal year and adjust the charges it assesses each debtor accordingly. Alternatively, for its administrative expenses associated with the SDC program, DOR charges a collection fee. DOR has set this fee equal to the greater of $35 or 15% of the debt amounts certified to be collected. Amounts collected from TRIP and SDC charges are deposited in the Department's debt collection appropriation. At the close of each fiscal year, any unencumbered amounts from this appropriation transfer to the general fund.

## GOVERNOR

Charge debtors a *collection fee* rather than an *administrative expense* for the costs associated with administering TRIP. In addition, remove the requirement that DOR annually review its administrative expenses associated with TRIP and adjust its fees accordingly, as described above.

**DISCUSSION POINTS**

1. Under the TRIP program, DOR is authorized to offset state tax refunds against tax and nontax obligations owed other states and the local governmental units within those states, and may enter into agreements with the Internal Revenue Service (IRS) to offset state tax refunds against federal tax obligations. As noted, DOR is required to set the fees under TRIP according to the expenses it incurs in administering the program. Currently, DOR charges per debt it offsets: (a) $5 for state debts; (b) $15 for debts owed the State of Minnesota and its localities; and (c) $25 for debts owed the IRS and federally recognized tribes. The Department indicates that charging a "collection fee" instead of an "administrative expense" under the bill would not change these fee amounts.

2. 2015 Act 59 authorized for inclusion in the TRIP program debts incurred by ambulance service providers operating under contract with a municipality or county that result from those providers responding to 911 calls made to a government-operated call center. Act 59 considers such debts as owed the municipality or county. DOR indicates these service providers are the only private companies authorized to participate in the TRIP program and are generally allowed to do so only for debts managed under contract with the local government entity.

3. Table 1 shows the amount of fees collected by DOR under the TRIP program, the Department's annual expenses incurred under the program, and revenues transferred to the general fund in the five most recent fiscal years. As shown below, program fees collected exceeded TRIP program expenses by an annual average of approximately $1.68 million. As stated above, current law requires DOR to annually review its administrative costs and adjust its fees accordingly. However, fees imposed by DOR were approximately three times their administrative expenses in 2013-14 and 2014-15, and were more than 500% of their administrative expenses on average over the past three fiscal years.

**TABLE 1**

**TRIP Fees Collected, Expenses Incurred, and Amounts Transferred to the General Fund: 2013-14 through 2017-18**

| State Fiscal Year | Fee Collected | DOR Expenses | General Fund Transfer |
|---|---|---|---|
| 2013-14 | $2,323,641 | $758,196 | $1,565,445 |
| 2014-15 | 2,066,870 | 718,503 | 1,348,367 |
| 2015-16 | 2,268,983 | 417,594 | 1,851,389 |
| 2016-17 | 2,140,386 | 391,408 | 1,748,978 |
| 2017-18 | 2,363,231 | 493,212 | 1,870,020 |

4. The SDC program was created as a pilot project in the 2007-09 biennial budget bill.

Prior to that time, DOR contracted with private collection agencies to pursue delinquent tax accounts. DOR believed it could generate a greater return on investment if the state were to use its own compliance and audit staff to aggressively pursue delinquent accounts that would otherwise be referred to private collection businesses. The Department has the authority under the SDC program to take certain enforcement actions which are not available to private collection agencies, such as to garnish wages, levy nonwage assets, and seize monies and personal property.

5. State agencies are generally required by statute to enter into an SDC agreement with DOR to collect any amount owed to the agency that is more than 90 days past due. DOR is permitted to enter into similar agreements with the courts, the Legislature, state authorities, and local units of government.

6. The SDC program has experienced consistent growth in recent years. The amount of outstanding debts, and the amount of debts collected, have steadily increased in each year. In addition, the average amount of debts collected per agent have increased over the prior year in all years except 2015-16. Collections per agent have increased from approximately $1.4 million in 2012-13 to $1.8 million in 2017-18, and the Legislature increased the number of debt collector agents over that span from seven agents to 24 in response to this growth.

7. Table 2 presents similar information for the SDC program as is presented for TRIP in Table 1. As shown below, the amount of fees collected in excess of SDC program expenses has increased in each fiscal year from $1.62 million in 2013-14 to $5.26 million in 2017-18. On average over the past three fiscal years, fees charged by DOR were more than 300% of the administrative costs incurred under the SDC program.

**TABLE 2**

**SDC Fees Collected, Expenses Incurred, and Amounts Transferred to the General Fund: 2013-14 through 2017-18**

| State Fiscal Year | Fee Collected | DOR Expenses | General Fund Transfer |
|---|---|---|---|
| 2013-14 | $2,135,000 | $510,497 | $1,624,503 |
| 2014-15 | 2,523,000 | 545,909 | 1,977,091 |
| 2015-16 | 3,396,000 | 1,321,596 | 2,074,404 |
| 2016-17 | 4,567,000 | 1,565,630 | 3,001,370 |
| 2017-18 | 7,236,700 | 1,972,846 | 5,263,854 |

8. When compiling the Governor's 2019-21 biennial budget bill, DOR estimated that combined fee revenues from TRIP and SDC would exceed expenditures in 2018-19 and in each year of the 2019-21 biennium by $4.0 million in 2019-20 and $3.9 million in 2020-21, both of which are lower than the amount transferred in 2017-18. However, the Department indicates that fee revenues have continued to grow beyond the estimated amounts. Through February, 2019, total fee revenues exceeded program expenses by approximately $6.3 million. Based on this year-to-date growth, and on observed year-over-year growth in fees collected, the estimated amounts transferred to the general

fund under current law and relative to the Governor's bill have been increased by approximately $4.9 million in 2018-19, $5.0 million in 2019-20, and $5.1 million in 2020-21. The estimated increased transfer for 2018-19 was included in the May 15 revenue estimate memorandum prepared by this office. The higher estimates for 2019-20 and 2020-21 have been included under Alternatives 1, 4, and 5.

9. The Joint Committee on Finance could consider whether imposing SDC and TRIP fees that are, on average, three to four times the cost incurred by DOR to collect debts on behalf of state and local units of government is an appropriate way to raise revenues that transfer to the general fund. The fees are charged in excess of the amount of debt owed by the debtor, and are estimated to exceed the Department's costs of collecting those debts by over 400% over the 2019-21 biennium. For comparison, the Wisconsin Consumer Act (WCA) and other pertinent state regulations generally do not authorize private debt collection companies to charge collection fees above the amount of debt owed.

10. The Department of Financial Institutions (DFI) issues guidance on the WCA. DFI indicates it is not aware of any statutory basis for private debt collection companies to assert a right to collect more from a debtor than the amount that debtor contractually owes to a creditor. In addition, a 2008 court case in the U.S. Court of Appeals for the Seventh Circuit found that charging debtors any fee in addition to the original amount of debt owed violates the WCA. Subsequently, certain circuit courts viewed DOR as a "debt collector" under the WCA that was generally prohibited from collecting a fee in excess of the debts owed under an agreement with the county board. 2015 Act 55 clarified that DOR could collect a collection fee in excess of the amount of debt owed under state law.

11. Prior to Act 55, DOR was required to perform an annual review of its administrative expenses associated with the SDC program (as it is currently required to do under TRIP). Act 55 instead required DOR to charge each debtor a collection fee under the SDC program, rather than charge for administrative expenses. The provision did not specify an amount at which the fee must be set.

12. Alternative 2 would require DOR to annually adjust the fees it charges debtors under TRIP and SDC to be as close as practicable to DOR's estimated costs incurred in administering both programs. Alternative 3 would require DOR to annually adjust the fees it charges debtors under TRIP and SDC to be not more than twice the amount of DOR's estimated expenditures under both programs. Either alternative would reduce the amounts transferred to the general fund, but debtors would continue to pay a fee in excess of the amount of debt owed that would fund the Department's costs to administer both programs.

13. As noted, the collection fees DOR charges under the TRIP and SDC programs are not enumerated in statute. If the Committee approves of the current fee structure, the Committee could consider enumerating the current fees charged by DOR in statute (Alternative 4). Under this alternative, the current fee rates could not change without additional legislative authority.

14. The Committee could choose to take no action on the Governor's request (Alternative 5). In this scenario, DOR would continue to be required to conduct the exercise of reviewing its administrative costs and adjusting its fees accordingly for the TRIP program. However, this exercise

is not being implemented at present, as the amounts transferred to the general fund under the TRIP program have stayed relatively stable in recent fiscal years, despite a decrease in program expenses over the same period. DOR could continue to set its SDC collection fee level at its discretion, as under current law. As a result, the estimated amounts transferred to the general fund under Alternative 5 are the same as under Alternatives 1 and 4.

## ALTERNATIVES

1. Adopt the Governor's request to specify that debtors are charged a collection fee instead of an administrative expense under TRIP. Reestimate the amount transferred from DOR's debt collection appropriation to the general fund from $4.0 million in 2019-20 and $3.9 million in 2020-21 to $9.0 million in 2019-20 and $9.0 million in 2020-21.

| **ALT 1** | **Change to** | |
|---|---|---|
| | **Base** | **Bill** |
| GPR-REV | $0 | $10,100,000 |

2. Take no action on the Governor's request. Instead, require DOR to annually adjust any fee or expense it charges debtors under TRIP and SDC, including a collection fee or an administrative expense, to be as close as practicable to DOR's estimated costs incurred in administering both programs. Estimate that a minimal amount of revenue would transfer from DOR's debt collection appropriation to the general fund each year.

| **ALT 2** | **Change to** | |
|---|---|---|
| | **Base** | **Bill** |
| GPR-REV | - $18,000,000 | - $7,900,000 |

3. Take no action on the Governor's request. Instead, require DOR to annually adjust any fee or expense it charges debtors under TRIP and SDC, including a collection fee or an administrative expense, to be twice the amount of DOR's estimated expenditures under both programs. Estimate the amount transferred from DOR's debt collection appropriation to the general fund at $3.0 million in 2019-20 and $3.0 million in 2020-21.

| **ALT 3** | **Change to** | |
|---|---|---|
| | **Base** | **Bill** |
| GPR-REV | - $12,000,000 | - $1,900,000 |

4. Adopt the Governor's request to specify that debtors are charged a collection fee instead of an administrative expense under TRIP. In addition, require that the fees currently charged under TRIP ($5 for state debts, $15 for other states' debts, and $25 for debts owed the IRS and federally

recognized tribes) and SDC (the greater of $35 or 15% of debt amounts certified to be collected) be enumerated in statute. Reestimate the amount transferred from DOR's debt collection appropriation to the general fund at $9.0 million in 2019-20 and $9.0 million in 2020-21.

| **ALT 4** | **Change to** | |
|---|---|---|
| | **Base** | **Bill** |
| GPR-REV | $0 | $10,100,000 |

5. Take no action and maintain the current law provision requiring DOR to annually review its administrative costs associated with TRIP and adjust its associated fees accordingly. Reestimate the amount transferred from DOR's debt collection appropriation to the general fund at $9.0 million in 2019-20 and $9.0 million in 2020-21.

| **ALT 5** | **Change to** | |
|---|---|---|
| | **Base** | **Bill** |
| GPR-REV | $0 | $10,100,000 |

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# REVENUE

## Tax Administration

### LFB Summary Items for Which No Issue Paper Has Been Prepared

| Item # | Title |
|---|---|
| 2 (part) | Changes to State Debt Collection Through Lottery Operations (except for "collection fees charged to debtors" described in Paper #626) |
| 3 (part) | Technical Changes to State Debt Collection Programs (except for the portion of "refund offsetting provisions and collection fees charged to debtors" described in Paper #626) |