



Legislative Fiscal Bureau

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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**

<u>State Fiscal Year</u>	<u>Fee Collected</u>	<u>DOR Expenses</u>	<u>General Fund Transfer</u>
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**

<u>State Fiscal Year</u>	<u>Fee Collected</u>	<u>DOR Expenses</u>	<u>General Fund Transfer</u>
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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