International Municipal Lawyers Association

2012 Annual Conference

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Work Session XI: Finance

The Recovery of Delinquent Accounts Receivable

and

What Makes a Good Collection Statute

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Linebarger Goggan



Accounts Receivable

What are accounts receivable?

Monies owed for goods or services, fines & fees and taxes.

Delinquent Account

When is an account delinquent?

Generally accepted opinion is that an account is delinquent at 30 days past due. It is best for the taxpayer and the city when this is established by law.

Identifying Delinquent Accounts Receivable

- **Internal Financial Audit**
  Audit cash flow to determine uncollectible debt
- **Aging Analyses Review**
  Review financial reports identifying aging trends and/or inactivity
- **Client and Staff Consultation**
  Interview those responsible for collecting the debt

Conduct Inventory

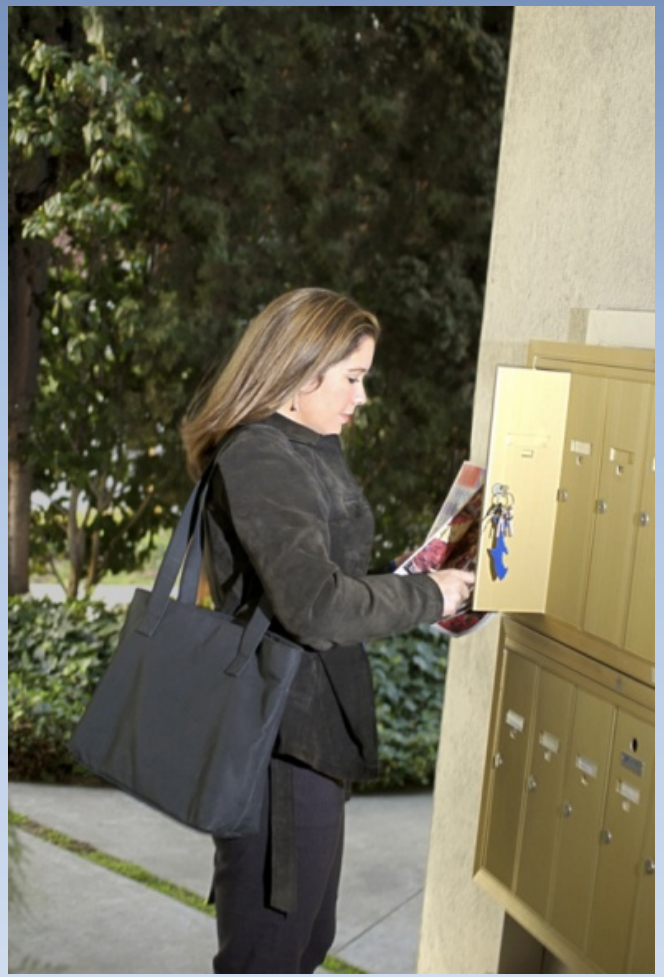
What Debt Exists?

- **Fines and Fees**
- **Administrative or Circuit Court Judgments**
- **Property Damage**
- **NSF Checks**
- **Water Bills**
- **Employee Benefits Reimbursement**
- **Taxes**
- **Emergency Medical Services**
- **Inspectional Services**

Collection Process

- **Identify Mission**
  - Revenue Growth
  - Clean up process or backlog
  - Improve structure going forward
- **State Objectives**
  - Identify specific measurable goals
  - i.e. an increase of X by end of year 1
- **Review Current Policies & Procedures**
  - Align policies to match stated goal

From Delinquency to Positive Balances



Consumers Pay Timely IF:

- They receive the notice timely
- They understand the notice
- They have payment options

Recovery Rates from ACA International

RECOVERY RATES FROM ACA INTERNATIONAL'S SURVEY[1]

Age of Delinquent Debt	Average	Median
Up to 30 days	39.67%	33.35%
31 - 60 days	28.05%	29.00%
61 – 90 days	26.29%	27.00%
91 – 120 days	22.34%	21.00%
121 – 150 days	18.81%	18.00%
151 – 180 days	18.53%	17.00%
181 – 210 days	16.53%	15.50%
Beyond 210 days	15.54%	14.00%

[1]The American Collector's Association International, 2003 Top Collection Markets Survey, page 36

Successful Models



- Laws or ordinances allow delivery to “any known address”
- City outsources skip-tracing and other collection services
- City upgrades and expands customer service functions
- Offers payment options

Expand Your Collection Efforts

- Statutes or local regulations should authorize add-on fee to defer costs or private collection assistance
- Consider a tiered approach to add-on fees
- Adopt a public policy position that “those who incur the collection expense should pay for it”
- Ensure add-on fee is dedicated to offset collection costs

Advantages of Outsourcing

- Manage and Control Backlog
- Private Sector Bears all Resource Costs
  - Technology
  - Staffing
  - Training/Experience
- Profit Motive



Customer Service Standards

- Look for track records that encourage innovative, client-driven solutions with value-added services
- Review their record of compliance with collection laws
- Inquire about their national collection capabilities
- Ask about their front-line personnel policies:
  - training programs
  - bilingual collectors
  - collection floor turn-over and management oversight
- Examine their policies on complaints
- Confirm security of data systems and redundant networks

What a Private Collector Can Do for a Government

Allows government clients to:

Focus on their primary mission of providing quality essential public services

Benefit from the millions of dollars invested in technology

Utilize experienced and highly trained work force

Why Adopt an Add-on Fee?

Collection services could be cost-free to your city.

- Many states have statutes that allow the cost of collection to be passed on to the debtor – (the “add-on fee”)
- Some cities have ordinances that do the same.
- If you don’t have either, be sure to consult your state constitution before proposing this addition to statute or ordinance.

Excellent Collection Statute (Washington)

(1) (a) Agencies, departments, taxing districts, political subdivisions of the state, counties, and cities may retain, by written contract, collection agencies licensed under this chapter for the purpose of collecting public debts owed by any person, including any restitution that is being collected on behalf of a crime victim.

(b) Any governmental entity as described in (a) of this subsection using a collection agency may add a reasonable fee, payable by the debtor, to the outstanding debt for the collection agency fee incurred or to be incurred. The amount to be paid for collection services shall be left to the agreement of the governmental entity and its collection agency or agencies, but a contingent fee of up to fifty percent of the first one hundred thousand dollars of the unpaid debt per account and up to thirty-five percent of the unpaid debt over one hundred thousand dollars per account is reasonable, and a minimum fee of the full amount of the debt up to one hundred dollars per account is reasonable. Any fee agreement entered into by a governmental entity is presumptively reasonable.

(2) No debt may be assigned to a collection agency unless (a) there has been an attempt to advise the debtor (i) of the existence of the debt and (ii) that the debt may be assigned to a collection agency for collection if the debt is not paid, and (b) at least thirty days have elapsed from the time notice was attempted.

(3) Collection agencies assigned debts under this section shall have only those remedies and powers which would be available to them as assignees of private creditors.

(4) For purposes of this section, the term debt shall include fines and other debts, including the fee allowed under subsection (1)(b) of this section. Rev. Code Wash. § 19.16.500

Another good example (Mississippi)

The board of supervisors of any county, in its discretion, may contract with a private attorney or private collection agent or agency to collect any type of delinquent payment owed to the county including, but not limited to, past due fees, fines and assessments, delinquent ad valorem taxes on personal property and delinquent ad valorem taxes on mobile homes that are entered as personal property on the mobile home rolls, or with the district attorney of the circuit court district in which the county is located to collect any delinquent fees, fines and other assessments. Any such contract may provide for payment contingent upon successful collection efforts or payment based upon a percentage of the delinquent amount collected; however, the entire amount of all delinquent payments collected shall be remitted to the county and shall not be reduced by any collection costs or fees. There shall be due to the county from any person whose delinquent payment is collected pursuant to a contract executed under this subsection an amount, in addition to the delinquent payment, of not to exceed twenty-five percent (25%) of the delinquent payment for collections made within this state and not to exceed fifty percent (50%) of the delinquent payment for collections made outside of this state. However, in the case of delinquent fees owed to the county for garbage or rubbish collection or disposal, only the amount of the delinquent fees may be collected and no amount in addition to the delinquent fees may be collected if the board of supervisors of the county has notified the county tax collector under Section 19-5-22 for the purpose of prohibiting the issuance of a motor vehicle road and bridge privilege license tag to the person delinquent in the payment of such fees. Any private attorney or private collection agent or agency contracting with the county under the provisions of this subsection shall give bond or other surety payable to the county in such amount as the board of supervisors deems sufficient. Any private attorney with whom the county contracts under the provisions of this subsection must be a member in good standing of The Mississippi Bar. Any private collection agent or agency with whom the county contracts under the provisions of this subsection must meet all licensing requirements for doing business in the State of Mississippi. Neither the county nor any officer or employee of the county shall be liable, civilly or criminally, for any wrongful or unlawful act or omission of any person or business with whom the county has contracted under the provisions of this subsection. The Mississippi Department of Audit shall establish rules and regulations for use by counties in contracting with persons or businesses under the provisions of this subsection. Miss. Code Ann. §19-3-41(2)

This one goes the wrong way (Kentucky)

Because under subsection (1) of KRS § 160.500 the sheriff is designated as the party responsible for the collection of school taxes for county schools; the only alternative is provided by KRS 160.505, which authorizes a board of education to "appoint a person who shall be responsible for collection and administration" of the tax which clearly contemplates that the person so appointed will be an employee of the school district rather than a private contractor.

A board of education cannot designate the sheriff to collect some school taxes, and designate an employee to collect the remainder, because a shared responsibility would defeat the legislative intention present in KRS 160.500 and this section to make a single person responsible for collection of the taxes. OAG 92-11.

Collection agencies may not collect school taxes imposed by county school districts because under KRS 160.500(1), the sheriff is designated as the party responsible for the collection of school taxes for county schools; the only alternative is provided by this section, which authorizes a board of education to "appoint a person who shall be responsible for collection and administration" of the tax which clearly contemplates that the person so appointed will be an employee of the school district rather than a private contractor. OAG 92-11.

While delinquent taxes may be placed in a separate logical category from school taxes in general, it is a category without legal significance; delinquent school taxes are still school taxes, and their collection must comply with the statutory provisions for the collection of school taxes. OAG 92-11.

Sample Add-on Fee Ordinance

BY AUTHORITY

ORDINANCE NO. _____ COUNCIL BILL NO. 672

SERIES OF 2004 COMMITTEE OF REFERENCE:

FINANCE

A BILL

For an ordinance amending Article I of Chapter 53 of the Revised Municipal Code concerning debts referred for collection.

BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF _____:

Section 1. That a new Section 53-4 (also known and cited in the alternative as Section 4, Chapter 53) of the Revised Municipal Code pertaining to providing collection methods and the imposition of a charge for collection for unpaid debts be and is hereby added, as follows:

Sec. 53-4. Collection methods and collection fees for unpaid debts.

(a) *Collection methods.* To collect on past due fines, debts, or fees, dishonored bank drafts and other negotiable instruments, the city may employ any collection method available, including assigning such accounts to private counsel or private collection agencies.

(b) *Fee schedule.* Whenever any account or debt due the city, or any department or agency thereof, excluding taxes or dishonored bank drafts and other negotiable instruments, is referred for collection, the following collection fees will be added to the original debt amount:

Amount of debt	Collection fee
$0.01 to 50.00	$20.00
$50.01 to 100.00	$30.00
$100.01 to 150.00	$40.00
$150.01 to 200.00	$60.00
$200.01 to 300.00	$80.00
$300.01 and above	30% of the debt amount

The debtor shall be liable for repayment of the total of the amount outstanding plus the collection fee. The city may, at its option, waive the collection fee for good cause shown. These fees will apply to accounts which become delinquent on or after the effective date.

Section 2. That this Ordinance shall become effective on October 1, 2004.

PASSED BY THE COUNCIL _____ 2004

_____ - PRESIDENT

APPROVED: _____ - MAYOR _____ 2004

ATTEST: _____ - CLERK AND RECORDER,

CITY AND COUNTY OF _____

Law Firm Advantages

- **Law Firm Lift** – Debtors perceive and respond differently to contact from a law firm as opposed to a general collection agency.
- **Quality Control** – Law firms can provide legal enforcement action immediately without outsourcing the accounts to a third party
- **Ethical Considerations** – Law firm actions are regulated by the State Bar & the Supreme Court. Fewer complaints and a better reflection on the client.
- **Why Not?** – If a law firm can provide all of the services normally associated with a collection agency, why not hire the law firm and realize the additional benefits?

Recommendations

- Address need for Add-On Collection Fee statute or ordinance immediately
- Ask Finance or Treasury Department(s) to identify revenue-generating departments
- Identify each receivable in each revenue-generating department
- Prioritize resource deployment based on collection feasibility
- Retain professional legal services to implement your collection strategy
- Re-invest 10-20% of additional revenue realized to improve current receivable collections



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