

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

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ALL Districts

The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §5.10 relating to collection of debts to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted amendments, attached to this minute order as Exhibits A and B, are incorporated by reference as though set forth verbatim in this minute order, except that they are subject to technical corrections and revisions, approved by the General Counsel, necessary for compliance with state or federal law or for acceptance by the Secretary of State for filing and publication in the *Texas Register*.

IT IS THEREFORE ORDERED by the commission that the amendments to §5.10 are adopted and are authorized for filing with the Office of the Secretary of State.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Submitted and reviewed by:

  
\_\_\_\_\_  
Director, Finance Division

Recommended by:

  
\_\_\_\_\_  
Executive Director

**111667 JAN 29 09**

Minute Number      Date Passed

Adoption Preamble

The Texas Department of Transportation (department) adopts amendments to §5.10, concerning Collection of Debts. The amendments to §5.10 are adopted without changes to the proposed text as published in the December 5, 2008 issue of the *Texas Register* (33 TexReg 9955) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

Government Code, §2107.002, requires a state agency that collects delinquent obligations owed to it to establish by rule procedures for collecting the obligations and further requires that the rules establishing those procedures conform to the guidelines established by the Office of Attorney General. Title 1, Texas Administrative Code (TAC), §59.2, sets out those guidelines.

The department's rules relating to the collection of debts are set out in 43 TAC §5.10, Collection of Debts, which was adopted in October 1995 and has not been changed since its adoption. The department has identified some changes to §5.10 that need to be made to conform the department's debt collection procedures to the Office of Attorney General guidelines. The amendments make those changes and make some additional technical corrections.

1 The amendments make several changes to §5.10(a). In the  
2 definition of "debtor," the words "or entity" are deleted from  
3 the phrase "person or entity" as unnecessary, because the  
4 definition of "person" includes "entity." In the definition of  
5 "delinquent," "payment" is substituted for the phrase "when a  
6 payment" so that the definition coincides with the definition of  
7 that term in the Office of Attorney General guidelines. The  
8 definition of "demand letter" is deleted because the definition  
9 has been integrated into the substance of new §5.10(c)(4), and  
10 the subsequent paragraphs have been renumbered accordingly.  
11 Amendments to the definition of "division" clarify that the term  
12 includes "office" which is also an organizational unit at Austin  
13 headquarters.

14

15 The amendments delete §5.10(b) because the substance of the  
16 subsection is repeated in current subsection (d).

17

18 The amendments re-letter current §5.10(c) as new §5.10(b) and  
19 clarify that the department will subtract the amount of  
20 contractor's obligation to the department from payments due to a  
21 contractor if such an action is practical.

22

23 The amendments re-letter current §5.10(d) as new §5.10(c) and  
24 amend paragraph (1) to provide that the division or district  
25 that determines that an obligation is owed to the department

1 will send the debtor a written notice of the obligation. The  
2 notice must state the amount owed and due date. Amendments to  
3 paragraph (2) provide that if the department does not receive a  
4 satisfactory response, the obligation becomes delinquent on the  
5 31st day after the date that notice is sent and that a first  
6 demand letter will be sent not later than 30 days after the date  
7 on which the obligation becomes delinquent. This amendment is  
8 necessary to establish a definite date that an obligation  
9 becomes delinquent, which also clarifies the date on which  
10 formal demand letters for payment are to be sent, if necessary.  
11 Amendments to paragraph (3) provide that if the department does  
12 not receive a satisfactory response to the first demand letter,  
13 the division or district will send a final demand letter not  
14 later than 60 days after the date on which the first demand  
15 letter was sent. New paragraph (4) clarifies the content of,  
16 and procedure for sending, the demand letters.

17

18 Amendments re-letter current §5.10(e) as new §5.10(d) and  
19 clarify the information that the department will retain in the  
20 records of a delinquent obligation. The amendments make no  
21 substantive change to the current rules.

22

23 Amendments re-letter current §5.10(f) as new §5.10(e) and  
24 provide that before referring a delinquent obligation to the  
25 Office of Attorney General, the department will send two demand

1 letters to the person obligated on the debt. The amendments  
2 also make technical, non-substantive changes to the section.  
3 The amendments are necessary to clarify the procedural steps  
4 that will be taken before making a referral to the Office of  
5 Attorney General.

6  
7 Amendments re-letter current §5.10(g) as new §5.10(f) with no  
8 other changes.

9  
10 COMMENTS

11 No comments on the proposed amendments were received.

12

13 STATUTORY AUTHORITY

14 The amendments are adopted under Transportation Code, §201.101,  
15 which provides the Texas Transportation Commission with the  
16 authority to establish rules for the conduct of the work of the  
17 department, and more specifically, Government Code,  
18 §2107.002(b), requiring state agencies to adopt rules that  
19 establish procedures for collecting a delinquent obligation.

20

21 CROSS REFERENCE TO STATUTE

22 Government Code, §2107.002.

1 SUBCHAPTER B. COLLECTION OF DEBTS

2 §5.10. Collection of Debts.

3 (a) Definitions. The following words and terms, when used  
4 in this section, shall have the following meanings, unless the  
5 context clearly indicates otherwise.

6 (1) Attorney general--The Office of the Attorney General  
7 of Texas.

8 (2) Debtor--Any person [~~or entity~~] liable for an  
9 obligation owed to the department or against whom a claim or  
10 demand for payment has been made.

11 (3) Delinquent--Payment [~~When a payment~~] is past due by  
12 law or by customary business practice, and all conditions  
13 precedent to payment have occurred or been performed.

14 (4) Department--The Texas Department of Transportation.

15 [~~(5) Demand letter--A writing setting forth the nature~~  
16 ~~and amount of an obligation owed to the department that is~~  
17 ~~delivered by United States certified mail, first class.]~~

18 (5) [~~(6)~~] District--A subdivision of the department  
19 responsible for the day-to-day operations of the department in a  
20 specific geographically defined area.

21 (6) [~~(7)~~] Division --An organizational unit in the  
22 department's Austin headquarters. The term includes an  
23 organizational unit that is designated as an office.

1           (7) [~~(8)~~] Obligation--A debt, judgment, claim, account,  
2 fee, fine, tax, penalty, interest, loan, charge, or grant.

3           (8) [~~(9)~~] Person--An individual, corporation,  
4 organization, business trust, estate, trust, partnership,  
5 association, and any other legal entity.

6           (9) [~~(10)~~] Security--Any right to have property owned by  
7 an entity with an obligation to the department sold or forfeited  
8 in satisfaction of the obligation, and any instrument granting a  
9 cause of action in favor of the department against another  
10 entity or that entity's property, such as bond, letter of  
11 credit, or other collateral that has been pledged to the  
12 department to secure an obligation.

13           ~~[(b) Determination of liability. When a person who is~~  
14 ~~responsible for an obligation to the department has failed or~~  
15 ~~refused to make payments, the department will deem the~~  
16 ~~obligation delinquent.]~~

17           (b) [~~(e)~~] Collection from contractors. If an obligation of  
18 a contractor of the department is delinquent and the department  
19 owes payment to that contractor, [~~then~~] the department will  
20 subtract the [~~delinquent~~] amount of the obligation from the  
21 payment if practical.

22           (c) [~~(d)~~] Notification of obligation and demand [~~Demand~~]  
23 letters.

1           (1) The division or district responsible for determining  
2 that an obligation is owed to the department will send to the  
3 debtor written notice of the obligation that contains the amount  
4 owed and the date payment is due [~~issue a first demand letter no~~  
5 ~~later than 30 days after the obligation becomes delinquent~~].

6           (2) If no satisfactory response is received within 30  
7 days after the date that the notice is sent under paragraph (1)  
8 of this subsection, the obligation becomes delinquent on the  
9 31st day after the date that notice is sent. The district or  
10 division will send a first demand letter not later than the 30th  
11 day after the date on which the obligation becomes delinquent.  
12 [~~of the first letter, the division or district will send a~~  
13 ~~second and final demand letter no later than 60 days after the~~  
14 ~~obligation becomes delinquent. The second demand letter will~~  
15 ~~include a deadline to respond and a notation, where practicable,~~  
16 ~~that a copy is being sent to the attorney general who may file a~~  
17 ~~lawsuit on the account.]~~

18           (3) If no satisfactory response is received within 30  
19 days after the day on which the first demand letter was sent,  
20 the division or district will send a final demand letter no  
21 later than 60 days after the date on which the first demand  
22 letter was sent. The final demand letter will include a  
23 deadline by which the debtor must respond and, if the department

1 determines in accordance with subsection (e) of this section  
2 that the obligation should be referred to the attorney general,  
3 a statement that the obligation, if not paid, will be referred  
4 to the attorney general.

5  ~~[(3) Demand letters will be mailed in an envelope bearing~~  
6  ~~the notation "address correction requested" in conformity with~~  
7  ~~39 Code of Federal Regulations §265(d). If an address~~  
8  ~~correction is provided by the United States Postal Service, the~~  
9  ~~division or district will resend the demand letter to that~~  
10  ~~address prior to referral to the attorney general.]~~

11 (4) Each demand letter will set forth the nature and  
12 amount of the obligation owed to the department and will be  
13 mailed by first class United States mail, in an envelope bearing  
14 the notation "address correction requested." If an address  
15 correction is provided by the United States Postal Service, the  
16 division or district will resend the demand letter to that  
17 address prior to referral to the attorney general.

18 (d) [(e)] Records. The department will retain records of a  
19 delinquent obligation. A record shall contain documentation of  
20 the following information:

21 (1) the identity of each ~~[the]~~ person ~~[or entity]~~ liable  
22 on all or any part of the obligation;

23 (2) the physical address of the debtor's place of

1 business;

2 (3) the physical address of the debtor's residence, where  
3 applicable;

4 (4) a post office box address where it is impractical to  
5 obtain a physical address, or when the post office box address  
6 is in addition to a correct physical address;

7 (5) attempted contacts with the debtor;

8 (6) the substance of communications with the debtor;

9 (7) efforts to locate the debtor and the assets of the  
10 debtor;

11 (8) state warrants that may be issued to the debtor;

12 (9) current contracts with the department;

13 (10) security interests that the department has against  
14 any assets of the debtor;

15 (11) notices of bankruptcy, proofs of claim, dismissals  
16 and discharge orders received from the United States bankruptcy  
17 courts; and

18 (12) other information relevant to collection of the  
19 delinquent account.

20 (e) [~~(f)~~] Referrals of a delinquent obligation to the  
21 attorney general.

22 (1) Prior to referral of a delinquent obligation to the  
23 attorney general, the department will:

1 (A) verify the debtor's address and telephone number;

2 (B) send a first and final demand letter [~~transmit no~~  
3 ~~more than two demand letters~~] to the debtor in accordance with  
4 subsection (c) of this section;

5 (C) verify that the obligation is not considered  
6 uncollectible under paragraph (2) of this subsection;

7 (D) prepare and file a proof of claim in the case of a  
8 bankruptcy unless the department is represented by the attorney  
9 general; and

10 (E) file a claim in the probate proceeding if the  
11 debtor is deceased unless the department is represented by the  
12 attorney general.

13 (2) The department will consider a delinquent obligation  
14 uncollectible and will make no further effort to collect if the  
15 obligation:

16 (A) has been dismissed or discharged in bankruptcy;

17 (B) is subject to an applicable limitations provision  
18 that would prevent collection as a matter of law;

19 (C) is owed by a corporation which has been dissolved,  
20 is in liquidation under Chapter 7 of the United States  
21 Bankruptcy Code, has forfeited its corporate privileges or  
22 charter, or, in the case of a foreign corporation, had its  
23 certificate of authority revoked unless circumstances indicate

1 that the account is nonetheless collectible or that fraud was  
2 involved;

3 (D) is owed by an individual who is located out-of-  
4 state, or outside the United States, unless a determination is  
5 made that the domestication of a Texas judgment in the foreign  
6 forum would more likely than not result in collection of the  
7 obligation, or that the expenditure of department funds to  
8 retain foreign counsel to domesticate the judgment and proceed  
9 with collection attempts is justified;

10 (E) is owed by a debtor who is deceased, where probate  
11 proceeding have concluded, and where there are no remaining  
12 assets available for distribution; or

13 (F) is owed by a debtor whose circumstances demonstrate  
14 a permanent inability to pay or make payments toward the  
15 obligation.

16 (3) In making a determination of whether to refer a  
17 delinquent obligation [~~matter~~] to the attorney general, the  
18 department will consider:

19 (A) the expense of further collection procedures;

20 (B) the size of the debt;

21 (C) the existence of any security;

22 (D) the likelihood of collection through passive means  
23 such as the filing of a lien;

1 (E) the availability of resources to collect the  
2 obligation; and

3 (F) policy reasons or other good cause.

4 (4) The department will refer a delinquent obligation to  
5 the attorney general for further collection efforts if [~~not~~  
6 ~~later than the 30th day after the date~~] the department  
7 determines in accordance with this subsection that the  
8 delinquent obligation should be referred [~~that normal department~~  
9 ~~collection procedures for a delinquent obligation have failed~~].

10 (f) [~~(g)~~] Supplemental and alternative collection  
11 procedures.

12 (1) Liens. The department, unless represented by the  
13 attorney general, will record a lien securing the delinquent  
14 obligation in the appropriate records of the county where the  
15 debtor's principal place of business, or, where appropriate, the  
16 debtor's residence, is located or in such county as may be  
17 required by law as soon as is practicable. Unless the  
18 delinquent obligation has been paid in full, any lien securing  
19 the indebtedness may not be released without the approval of the  
20 attorney representing the department after the matter has been  
21 referred to the attorney general.

22 (2) Warrants. The department will utilize the "warrant  
23 hold" procedures of the Comptroller of Public Accounts

- 1 authorized by Government Code, §403.055, to ensure that no
- 2 treasury warrants are issued to debtors until the debt is paid.