

REVENUE DEPARTMENT[701]

Adopted and Filed Emergency After Notice

Rule making related to collection of court debt

The Revenue Department hereby adopts new Chapter 155, “Collection of Court Debt,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 421.14 and 602.8107(3)“a”(2) as enacted by 2020 Iowa Acts, Senate File 457.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 602.8107(3) as amended by 2020 Iowa Acts, Senate File 457, section 87.

Purpose and Summary

This rule making is intended to implement statutory changes to the collection of court debt. Specifically, this rule making sets forth the Department’s imposition of a fee to reflect the cost of processing for the collection of court debt under Iowa Code section 602.8107(3) as amended by 2020 Iowa Acts, Senate File 457, division XIV.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 18, 2020, as **ARC 5272C**. A virtual public hearing was held on December 8, 2020, at 1 p.m. Iowa Legal Aid Litigation Director and General Counsel Alex Kornya provided additional context and support for Iowa Legal Aid’s written comment described below. The individual mentioned below also commented, reiterating the same concerns as expressed in the individual’s written comments.

The Department received comments from Iowa Legal Aid, the Iowa-Nebraska NAACP State Area Conference of Branches, the Iowa Judicial Branch, and one individual.

Iowa Legal Aid comment: Iowa Legal Aid commented through its Litigation Director and General Counsel Alex Kornya. Iowa Legal Aid recommended that (1) the rule exclude indigent defense recoupment fees and jail fees from the basis upon which the collection fee is calculated; (2) the rule provide for a waiver of the fee upon a showing of financial hardship; and (3) collection of court debt be undertaken in accordance with constitutional and statutory protections for court debtors.

The Department did not make any changes to the rule making based on these comments. The Legislature has granted the Department the authority to “impose a fee established by rule to reflect the cost of processing” pursuant to Iowa Code section 602.8107(3)“a”(2). If the Department were to exclude certain debts from the fee imposed under this rule making based on grounds other than the cost of processing, the Department would arguably be promulgating a rule beyond the authority delegated to the Department by the Legislature. That is, the Legislature did not grant the Department the authority to consider factors other than the cost of processing in promulgating the rule establishing the fee. The Legislature is empowered to exclude certain debts from the calculation of the collection fee if it chooses.

Regarding the request to include a waiver of the fee in the case of financial hardship, Iowa Code section 910.2A provides a “reasonable ability to pay” determination process for certain court debt. The Legislature is empowered to amend this provision or adopt a different waiver process based on financial hardship if it chooses. Additionally, any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions pursuant to rule 701—7.28(17A).

While not specifically related to any suggested changes in the rule making, the Department has taken note of the concerns expressed by Iowa Legal Aid regarding the lawful collection of court debt.

Iowa-Nebraska NAACP State Area Conference of Branches comment: The NAACP concurred with and strongly endorsed the comments submitted by Iowa Legal Aid. Specifically, the NAACP concurred with Iowa Legal Aid’s suggestions that 1) jail fees and court-appointed attorney fees should not be factored into the collection fee; and 2) the Department should allow full or partial hardship waivers of the collection fee. In support of its concurrence with Iowa Legal Aid, the NAACP stated that jail fees and court-appointed attorney fee debt will work a hardship on a disproportionate number of African Americans in Iowa and provided statistics in support of its position.

For the same reasons as stated above, the Department has not made any changes to its rule making based on the above comment. The Legislature is empowered to exclude certain debts from the calculation of the collection fee and to provide for a waiver based on hardship. Additionally, the Department only has the authority to consider the cost of processing in establishing a rule to impose a fee. Iowa Code section 910.2A provides a “reasonable ability to pay” determination process for certain court debt. The Legislature is empowered to amend this provision or adopt a different waiver process based on financial hardship if it chooses. Finally, the petition for waiver process under rule 701—7.28(17A) is available for any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person.

Iowa Judicial Branch comment: The Iowa Judicial Branch submitted a comment stating that the Iowa Judicial Branch already imposes a fee for a dishonored payment and would require technology changes to accommodate the proposed dishonored payment fee.

After discussion with the Iowa Judicial Branch, and to ensure that no “double billing” occurs, the Department has removed the portion of the rule related to the dishonored payment, which stated: “In the event a payment is returned as dishonored for any reason, an additional fee shall be imposed in the amount of 15 percent of the amount of the dishonored payment.”

Individual comment: One individual provided a comment expressing concern that his court debt would increase as a result of the fee proposed. This individual also stated some complaints about the criminal justice system. The Department did not make any changes to its rule making based on this comment.

Reason for Waiver of Normal Effective Date

Pursuant to Iowa Code section 17A.5(2)“b”(1)(b), the Department finds that the normal effective date of this rule making, 35 days after publication, should be waived and the rule making made effective on January 1, 2021, because the rule making confers a benefit on the public of the State of Iowa. The normal effective date of this rule making would result in an effective date after January 1. The Department begins collecting court debt on January 1. If the rule were to take effect after January 1, the Department would arguably be unable to collect a fee to reflect the cost of processing until the effective date of the new rule. The Department will be able to more efficiently collect court debt with a rule allowing for a fee to reflect the cost of processing, benefitting the public.

Adoption of Rule Making

This rule making was adopted by the Department on December 23, 2020.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making became effective on January 1, 2021.

The following rule-making action is adopted:

Adopt the following **new** 701—Chapter 155:

CHAPTER 155
COLLECTION OF COURT DEBT

701—155.1(602) Fee for collection of court debt.

155.1(1) A fee of 15 percent of the amount of each court debt is imposed on each court debt that has been assigned to the department for collection under Iowa Code section 602.8107(3). The total balance of the court debt shall be adjusted to include the fee. Notwithstanding the foregoing, no fee shall be imposed on any amount of a court debt that is collected by setoff or is reduced or adjusted by the court as a result of community service, a reasonable ability to pay determination, or any other reason.

155.1(2) The fee imposed by this rule shall be payable to the department to reimburse the department's cost of processing.

This rule is intended to implement Iowa Code section 602.8107.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/13/21.