

**THE PROMPT PAYMENT POLICY STATEMENT OF THE
TOBACCO SETTLEMENT FINANCING CORPORATION**

Article I

STATEMENT OF PURPOSE

101. This Policy Statement is adopted pursuant to Section 2880 of the Public Authorities Law.

Article II

DEFINITION OF TERMS

201. Definitions. For the purpose of this policy statement, the following terms shall have the following meanings unless the context shall clearly indicate otherwise:

"Contract" shall mean an enforceable agreement entered into by the Corporation and a contractor, including purchase orders. Bond Resolutions and Purchase Agreements are not contracts within the meaning of this Section.

"Contractor" shall mean any persons or organizations providing goods, property or services to the Corporation pursuant to a contract.

"Corporation" shall mean the Tobacco Financing Settlement Corporation.

"Designated Payment Department" shall mean that department within the Corporation to which a proper invoice is to be submitted by a contractor.

"Prompt Payment" shall mean payment of a debt due and owing by the Corporation before interest accrues thereon pursuant to the specifications herein.

"Proper Invoice" shall mean a written request for contract payment setting forth the description, price and quantity of goods, property or services provided by a contractor in such form,

and supported by such other substantiating documentation, as the Corporation may reasonably require.

"Receipt of Invoice" shall mean either (a) the date on which a proper invoice is received by the designated payment department, or (b) the date on which the Corporation receives the purchased goods, property or services covered by the proper invoice, whichever is later. "Set-off" shall mean the reduction by the Corporation of a payment due to a contractor by an amount equal to the amount of an unpaid legally enforceable debt owed by the contractor to the Corporation.

Article III

RULES AND REGULATIONS

301. Payment Request Procedure. Most contractors who are owed money by the Corporation shall send a proper invoice to the attention of Accounts Payable, the designated payment department of the Corporation. Accounts Payable will log the reception date of the invoice, and send the document to the unit within the Corporation that received the purchased goods, property or services from the contractor for review and verification.

A small group of contractors will not have to request payment because their contracts provide for automatic payment at predetermined intervals without the necessity of an invoice. Accordingly, review and verification of the work of these contractors will take place prior to each scheduled payment date.

302. Schedule for Prompt Payment The Corporation will adhere to the following schedule for prompt payment:

- a. After receipt of a proper invoice, payment will be made within 30 calendar days, excluding legal holidays.

- b. For contracts with predetermined payment dates, payment will be made on each such date.

This schedule will not apply in those instances where payment is being delayed for any of the exceptions listed in section 305 or tolled for any of the reasons listed in section 306 of this policy statement.

303. Interest Computation. If the Corporation fails to meet the prompt payment schedule set out above, the Corporation will pay interest to the affected contractors at the rate equal to that set by the State Tax Commission for corporate taxes.

304. Funds Available to Pay Interest Penalties. The Corporation will pay penalties with monies drawn from earnings on investments, and Corporation fees and charges, for both personal services contracts and non-personal services contracts, the two types of contracts entered into by the Corporation.

305. Situations Which Justify Extension of Payment Time for Proper Invoices. The following facts or conditions constitute exceptions to the prompt payment schedule set forth in section 302:

- a. statutory or contract provisions requiring an inspection or an audit prior to payment.
- b. a requirement for state appropriation to authorize payment.
- c. a requirement for federal government examination of a proper invoice prior to payment.
- d. extraordinary delay between the provision of goods, property or services by a contractor and the receipt of a proper invoice by the Corporation.

- e. failure by a contractor to submit documents required by agreement prior to payment.

In addition, the Corporation is not responsible for the processing time taken by the State Department of Taxation and Finance, the State Division of the Budget, the Office of the State Comptroller, or any other external entity that is required by statute or regulation to approve or process Corporation payments.

306. Reasons Which Justify the Tolling of Payment Time for Invoices. The following facts or conditions toll the prompt payment schedule set forth in section 302:

- (1) the existence of defects in the goods, property or services delivered.
- (2) the existence of defects in the invoice.
- (3) suspected improprieties of any kind.

307. Tolling Regulations. In order to toll the prompt payment schedule without penalty, the Corporation has fifteen days after receipt of an invoice to send a contractor notification of defects or improprieties. Corporation notification shall be in the form of a standardized letter. In the event that the Corporation fails to act within fifteen days, once the defect or impropriety is corrected, the number of days allowed for payment is reduced by the number of days between the fifteenth day and the date of notification. In the event that the Corporation's contentions are proved unreasonable, the date by which contract payment shall be made is calculated from the date of receipt of invoice.

For those contracts which provide for scheduled payments without an invoice the same fifteen day regulations apply as above.

Article IV

REPORTS

401. Statement Filing. Within thirty days of the adoption of this statement, and of any amendments hereto, the Corporation shall file copies with the State Comptroller, the State Director of the Budget, the Chairman of the Senate Finance Committee, and the Chairman of the Assembly Ways and Means Committee.

402. Annual Report. Within ninety days after the end of each fiscal year, the Corporation shall prepare an annual report on the scope and implementation of this prompt payment policy. The report shall include, but not be limited to, the following:

- a. a listing of the types or categories of contracts which the Corporation entered into during the twelve-month period of the report with an indication whether each such contract was subject to the prompt payment requirements, and if not, why not;
- b. the number and amount of interest payments made for contracts, arranged according to each such type or category;
- c. the number of interest chargeable days, and the total number of days taken to process each late contract payment; and
- d. a summary of the principal reasons why such late payments had to be made.

Copies of this report shall be filed with the State Comptroller, the State Director of the Budget, the Chairman of the Senate Finance Committee and the Chairman of the Assembly Ways and Means Committee.

ARTICLE V

MISCELLANEOUS PROVISIONS

501. Statement Amendment. The Corporation shall have the power to amend this policy statement by promulgating amended rules and regulations at any time.

502. Contract Incorporation. The policy statement in effect at the time of the creation of a contract is hereby incorporated into and made a part of that contract.

503. Public Access. The Corporation shall make copies of this policy statement, as well as the annual report, available to the public upon reasonable request at the Corporation's main office.

In addition, the Corporation shall provide a copy of this policy statement to each contractor.

504. Inapplicability of Statute. The statute authorizing this statement is not applicable to the Corporation's contracts with other governmental agencies, to interest on judgments rendered by a court against the Corporation pursuant to any other statute, or in situations where the Corporation exercises a legally authorized set-off against all or part of a payment due a contractor.

505. Legal Processes. The Corporation is under no liability to pay interest pursuant to the statute after a contractor has filed a claim or given notice of an intention to file a claim or commenced legal action for payment of interest.