

§ 105A-8. State agency notice, hearing, decision, and refund of setoff.

(a) Notice. – Within 10 days after a State agency receives a refund of a debtor, the agency must send the debtor written notice that the agency has received the debtor's refund. The notice must explain the debt that is the basis for the agency's claim to the debtor's refund and that the agency intends to apply the refund against the debt. The notice must also inform the debtor that the debtor has the right to contest the matter by filing a request for a hearing, must state the time limits and procedure for requesting the hearing, and must state that failure to request a hearing within the required time will result in setoff of the debt. A State agency that does not send a debtor a notice within the time required by this subsection must refund the amount set off plus the collection assistance fee, in accordance with subsection (d) of this section.

(a1) Extended Notice. – Notwithstanding any provision of subsection (a) of this section to the contrary, the Office of Indigent Defense Services within the Administrative Office of the Courts shall have 30 days to send the written notice required by subsection (a) of this section.

(b) Hearing. – A hearing on a contested claim of a State agency, except the Judicial Branch or a constituent institution of The University of North Carolina or the Division of Employment Security, must be conducted in accordance with Article 3 of Chapter 150B of the General Statutes. A hearing on a contested claim of a unit of the Judicial Branch must be conducted in accordance with the administrative procedures approved by the Director of the North Carolina Administrative Office of the Courts and the Director of Indigent Defense Services. The clerk of superior court in any county where a judgment has been docketed shall have original jurisdiction to hear a contested claim and the matter may not be transferred to the district or superior court. The Director of the North Carolina Administrative Office of the Courts or the Director's designee shall have original jurisdiction to hear a contested claim of the Judicial Branch not arising out of docketed judgment. A hearing on a contested claim of a constituent institution of The University of North Carolina must be conducted in accordance with administrative procedures approved by the Attorney General. A hearing on a contested claim of the Division of Employment Security must be conducted in accordance with rules adopted by that Division. A request for a hearing on a contested claim of any State agency must be filed within 30 days after the State agency mails the debtor notice of the proposed setoff. A request for a hearing is considered to be filed when it is delivered for mailing with postage prepaid and properly addressed. In a hearing under this section, an issue that has previously been litigated in a court proceeding cannot be considered.

(c) Decision. – A decision made after a hearing under this section must determine whether a debt is owed to the State agency and the amount of the debt.

(d) Return of Amount Set Off. – If a State agency fails to send the notice required by subsection (a) of this section within the required time or a decision finds that a State agency is not entitled to any part of an amount set off, the agency must send the taxpayer the entire amount set off plus the collection assistance fee retained by the Department. That portion of the amount returned that reflects the collection assistance fee must be paid from the State agency's funds.

If a debtor owes a debt to a State agency and the net proceeds credited to the State agency for the debt exceed the amount of the debt, the State agency must send the balance to the debtor. No part of the collection assistance fee retained by the Department may be returned when a debt is owed but it is less than the amount set off.

Interest accrues on the amount of a refund returned to a taxpayer under this subsection in accordance with G.S. 105-241.21. A State agency that returns a refund to a taxpayer under this subsection must pay from the State agency's funds any interest that has accrued since the fifth day after the Department mailed the notice of setoff to the taxpayer. (1979, c. 801, s. 94; 1983, c. 419; 1987, c. 827, s. 16; 1989, c. 539, s. 2; 1997-490, s. 1; 2005-435, s. 42; 2007-491, s. 44(1)c; 2011-401, s. 3.10; 2019-243, s. 10(a); 2022-74, s. 17.2(a).)