

## **Chapter 105A.**

### **Setoff Debt Collection Act.**

#### Article 1.

#### In General.

#### **§ 105A-1. Purposes.**

The purpose of this Chapter is to establish as policy that all claimant agencies and the Department of Revenue shall cooperate in identifying debtors who owe money to the State or to a local government through their various agencies and who qualify for refunds from the Department of Revenue. It is also the intent of this Chapter that procedures be established for setting off against any refund the sum of any debt owed to the State or to a local government. Furthermore, it is the legislative intent that this Chapter be liberally construed so as to effectuate these purposes as far as legally and practically possible. (1979, c. 801, s. 94; 1997-490, s. 1.)

#### **§ 105A-2. Definitions.**

The following definitions apply in this Chapter:

- (1) Claimant agency. – Either of the following:
  - a. A State agency.
  - b. A local agency acting through a clearinghouse or an organization pursuant to G.S. 105A-3(b1).
- (2) Debt. – Any of the following, except as limited in sub-subdivision (f.) of this subdivision:
  - a. A sum owed to a claimant agency that has accrued through contract, subrogation, tort, operation of law, or any other legal theory regardless of whether there is an outstanding judgment for the sum.
  - b. A sum a claimant agency is authorized or required by law to collect, such as child support payments collectible under Title IV, Part D of the Social Security Act.
  - c. A sum owed as a result of an intentional program violation or a violation due to inadvertent household error under the Food and Nutrition Services Program enabled by Part 5 of Article 2 of Chapter 108A of the General Statutes.
  - d. Reserved for future codification purposes.
  - e. A sum owed as a result of having obtained public assistance payments under any of the following programs through an intentional false statement, intentional misrepresentation, intentional failure to disclose a material fact, or inadvertent household error:
    1. The Work First Program provided in Article 2 of Chapter 108A of the General Statutes.
    2. The State-County Special Assistance Program enabled by Part 3 of Article 2 of Chapter 108A of the General Statutes.
    3. A successor program of one of these programs.
  - f. For any school of medicine, clinical program, facility, or practice affiliated with one of the constituent institutions of The University of North Carolina that provides medical care to the general public and for

The University of North Carolina Health Care System and other persons or entities affiliated with or under the control of The University of North Carolina Health Care System, the term "debt" is limited to the sum owed to one of these entities by law or by contract following adjudication of a claim resulting from an individual's receipt of hospital or medical services at a time when the individual was covered by commercial insurance, Medicaid, Health Choice, Medicare, Medicare Advantage, a Medicare supplement plan, or any other government insurance.

- (3) Debtor. – A person who owes a debt.
- (4) Department. – The Department of Revenue.
- (5) Reserved.
- (6) Local agency. – Any of the following:
  - a. A county, to the extent it is not considered a State agency.
  - b. A municipality.
  - c. A water and sewer authority created under Article 1 of Chapter 162A of the General Statutes.
  - d. A regional joint agency created by interlocal agreement under Article 20 of Chapter 160A of the General Statutes between two or more counties, cities, or both.
  - e. A public health authority created under Part 1B of Article 2 of Chapter 130A of the General Statutes or other authorizing legislation.
  - f. A metropolitan sewerage district created under Article 5 of Chapter 162A of the General Statutes.
  - g. A sanitary district created under Part 2 of Article 2 of Chapter 130A of the General Statutes.
  - h. A housing authority created under Chapter 157 of the General Statutes, provided that the debt owed to a housing authority has been reduced to a final judgment in favor of the housing authority.
  - i. A regional solid waste management authority created under Article 22 of Chapter 153A of the General Statutes.
- (7) Net proceeds collected. – Gross proceeds collected through setoff against a debtor's refund minus the collection assistance fees provided in G.S. 105A-13.
- (8) Refund. – A debtor's North Carolina tax refund.
- (9) State agency. – Any of the following:
  - a. A unit of the executive, legislative, or judicial branch of State government.
  - b. A local agency, to the extent it administers a program supervised by the Department of Health and Human Services or it operates a Child Support Enforcement Program, enabled by Chapter 110, Article 9, and Title IV, Part D of the Social Security Act.
  - c. A community college. (1979, c. 801, s. 94; 1981, c. 724; 1983, c. 922, s. 21.11; 1983 (Reg. Sess., 1984), c. 1034, s. 10.2; 1985, c. 589, s. 33; c. 649, s. 6; c. 747; 1985 (Reg. Sess., 1986), c. 1014, s. 63(e), (f); 1987, c. 564, s. 18; c. 578, ss. 1, 2; c. 856, s. 12; 1989, c. 141, s. 2; c. 539, s. 1; c. 699; c. 727, s. 30; c. 770, s. 75.2; 1993 (Reg. Sess., 1994), c. 735, s. 1; 1995, c. 227, s. 1; 1996, 2nd Ex.

Sess., c. 18, s. 24.30(d); 1997-433, ss. 3.3, 11.3; 1997-443, ss. 11A.118(a), 11A.119(a), 11A.122, 12.26; 1997-490, s. 1; 1998-17, s. 1; 1998-98, s. 38(a); 2002-156, s. 5(a); 2003-333, s. 1; 2004-138, s. 1; 2005-326, s. 1; 2006-259, s. 20; 2007-97, s. 2; 2010-31, ss. 10.19A(a), 31.8(d); 2011-365, s. 1; 2012-88, s. 1; 2013-382, s. 12.1; 2014-100, ss. 12I.4(a), (b).)

**§ 105A-3. Remedy additional; mandatory State usage; optional local usage; obtaining identifying information; registration.**

(a) **Remedy Additional.** – The collection remedy under this Chapter is in addition to and not in substitution for any other remedy available by law.

(b) **Mandatory State Usage.** – A State agency must submit a debt owed to it for collection under this Chapter unless the State Controller has waived this requirement or the State agency has determined that the validity of the debt is legitimately in dispute, an alternative means of collection is pending and believed to be adequate, or such a collection attempt would result in a loss of federal funds. The State Controller may waive the requirement for a State agency, other than the Department of Health and Human Services or a county acting on behalf of that Department, to submit a debt owed to it for collection under this Chapter if the State Controller finds that collection by this means would not be practical or cost effective. A waiver may apply to all debts owed a State agency or a type of debt owed a State agency.

(b1) **Optional Local Usage.** – A local agency may submit a debt owed to it for collection under this Chapter. A local agency that decides to submit a debt owed to it for collection under this Chapter must establish the debt by following the procedure set in G.S. 105A-5 and must submit the debt through one of the following:

- (1) A clearinghouse that is established pursuant to an interlocal agreement adopted under Article 20 of Chapter 160A of the General Statutes and has agreed to submit debts on behalf of any requesting local agency.
- (2) The North Carolina League of Municipalities.
- (3) The North Carolina Association of County Commissioners.

(c) **Identifying Information.** – All claimant agencies shall whenever possible obtain the full name, social security number or federal identification number, address, and any other identifying information required by the Department from any person for whom the agencies provide any service or transact any business and who the claimant agencies can foresee may become a debtor under this Chapter.

(d) **Registration and Reports.** – A State agency must register with the Department and with the State Controller. Every State agency must report annually to the State Controller the amount of debts owed to the agency for which the agency did not submit a claim for setoff and the reason for not submitting the claim.

A clearinghouse or an organization that submits debts on behalf of a local agency must register with the Department. Once a clearinghouse registers with the Department under this subsection, no other clearinghouse may register to submit debts for collection under

this Chapter. (1979, c. 801, s. 94; 1989 (Reg. Sess., 1990), c. 946, s. 1; 1993, c. 512, s. 4; 1997-443, s. 11A.122; 1997-490, s. 1; 1998-212, s. 12.3A(a), (b); 2010-31, s. 31.8(e).)

**§ 105A-4. Minimum debt and refund.**

This Chapter applies only to a debt that is at least fifty dollars (\$50.00) and to a refund that is at least this same amount. (1979, c. 801, s. 94; 1997-490, s. 1.)

**§ 105A-5. Local agency notice, hearing, and decision.**

(a) Prerequisite. – A local agency may not submit a debt for collection under this Chapter until it has given the notice required by this section and the claim has been finally determined as provided in this section.

(b) Notice. – A local agency must send written notice to a debtor that the agency intends to submit the debt owed by the debtor for collection by setoff. The notice must explain the basis for the agency's claim to the debt, that the agency intends to apply the debtor's refund against the debt, and that a collection assistance fee of fifteen dollars (\$15.00) will be added to the debt if it is submitted for setoff. The notice must also inform the debtor that the debtor has the right to contest the matter by filing a request for a hearing with the local agency, 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.

(c) Administrative Review. – A debtor who decides to contest a proposed setoff must file a written request for a hearing with the local agency within 30 days after the date the local agency mails a notice of the proposed action to the debtor. A request for a hearing is considered to be filed when it is delivered for mailing with postage prepaid and properly addressed. The governing body of the local agency or a person designated by the governing body must hold the hearing.

If the debtor disagrees with the decision of the governing body or the person designated by the governing body, the debtor may file a petition for a contested case under Article 3 of Chapter 150B of the General Statutes. The petition must be filed within 30 days after the debtor receives a copy of the local decision. Notwithstanding the provisions of G.S. 105-241.21, a local agency is considered an agency for purposes of contested cases and appeals under this Chapter.

In a hearing under this section, an issue that has previously been litigated in a court proceeding cannot be considered.

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

(e) Return of Amount Set Off. – If a local agency submits a debt for collection under this Chapter without sending the notice required by subsection (b) of this section, the agency must send the taxpayer the entire amount set off plus the collection assistance fees provided in G.S. 105A-13. Similarly, if a local agency submits a debt for collection under this Chapter after sending the required notice but before final determination of the debt and a decision finds that the local agency is not entitled to any part of the amount set off, the agency must send the taxpayer the entire amount set off plus the collection assistance fees provided in G.S. 105A-13. That portion of the amount returned that reflects the collection assistance fees must be paid from the local agency's funds.

If a local agency submits a debt for collection under this Chapter after sending the required notice and the net proceeds collected that are credited to the local agency for the debt exceed the amount of the debt, the local agency must send the balance to the debtor. No part of the collection

assistance fees provided in G.S. 105A-13 may be returned when a notice was sent and a debt is owed but the debt 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 local agency that returns a refund to a taxpayer under this subsection must pay from the local 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; 1997-490, s. 1; 2002-156, s. 5(b); 2007-491, s. 44(1)c.)

#### **§ 105A-6. Procedure Department to follow in making setoff.**

(a) Notice to Department. – A claimant agency seeking to attempt collection of a debt through setoff must notify the Department in writing and supply information necessary to identify the debtor whose refund is sought to be set off. The claimant agency may include with the notification the date, if any, that the debt is expected to expire. The agency must notify the Department in writing when a debt has been paid or is no longer owed the agency.

(b) Setoff by Department. – The Department, upon receipt of notification, must determine each year whether the debtor to the claimant agency is entitled to a refund of at least fifty dollars (\$50.00) from the Department. Upon determination by the Department that a debtor specified by a claimant agency qualifies for such a refund, the Department must set off the debt against the refund to which the debtor would otherwise be entitled and must refund any remaining balance to the debtor. The Department must mail the debtor written notice that the setoff has occurred and must credit the net proceeds collected to the claimant agency. If the claimant agency is a State agency, that agency must credit the amount received to a nonreverting trust account and must follow the procedure set in G.S. 105A-8. (1979, c. 801, s. 94; 1989 (Reg. Sess., 1990), c. 946, s. 2; 1997-490, s. 1.)

#### **§ 105A-7: Repealed by Session Laws 1997-490, s. 1, effective January 1, 2000, and applicable to income tax refunds determined on or after that date.**

#### **§ 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.

(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).)

### **§ 105A-9. Appeals from hearings.**

Appeals from hearings allowed under this Chapter, other than those conducted by the Judicial Branch and the Division of Employment Security, shall be in accordance with the provisions of Chapter 150B of the General Statutes, the Administrative Procedure Act, except that the place of initial judicial review shall be the superior court for the county in which the debtor resides. A party aggrieved by an order or decision of a hearing conducted by the clerk of superior court or the Director of the North Carolina Administrative Office

of the Courts or the Director's designee, under this Article may, within 10 days of entry of the order, appeal to the superior court for a hearing de novo. Notice of appeal shall be in writing and shall be filed with the clerk of superior court in the county where the order was entered. Appeals from hearings allowed under this Chapter that are conducted by the Division of Employment Security shall be in accordance with the provisions of Chapter 96 of the General Statutes. (1979, c. 801, s. 94; 1989, c. 539, s. 3; 1997-490, s. 1; 2011-401, s. 3.11; 2019-243, s. 10(b).)

**§ 105A-10. Repealed by Session Laws 1997-490, s. 1, effective January 1, 2000, and applicable to income tax refunds determined on or after that date.**

**§ 105A-11. Repealed by Session Laws 1997-490, s. 1, effective January 1, 2000, and applicable to income tax refunds determined on or after that date.**

**§ 105A-12. Priorities in claims to setoff.**

The Department has priority over all other claimant agencies for collection by setoff whenever it is a competing agency for a refund. State agencies have priority over local agencies for collection by setoff. When there are multiple claims by State agencies other than the Department, the claims have priority based on the date each agency registered with the Department under G.S. 105A-3. When there are multiple claims by two or more organizations submitting debts on behalf of local agencies, the claims have priority based on the date each organization registered with the Department under G.S. 105A-3. When there are multiple claims among local agencies whose debts are submitted by the same organization, the claims have priority based on the date each local agency requested the organization to submit debts on its behalf. (1979, c. 801, s. 94; 1997-490, s. 1.)

**§ 105A-13. Collection assistance fees.**

(a) State Setoff. – To recover the costs incurred by the Department in collecting debts under this Chapter, a collection assistance fee of five dollars (\$5.00) is imposed on each debt collected through setoff. The Department must collect this fee as part of the debt and retain it. The collection assistance fee shall not be added to child support debts or collected as part of child support debts. Instead, the Department shall retain from collections under Division II of Article 4 of Chapter 105 of the General Statutes the cost of collecting child support debts under this Chapter.

(b) Repealed by Session Laws 2001-380, s. 3, effective November 1, 2001.

(c) Local Debts. – To recover the costs incurred by local agencies in submitting debts for collection under this Chapter, a local collection assistance fee of fifteen dollars (\$15.00) is imposed on each local agency debt submitted under G.S. 105A-3(b1) and collected through setoff. The Department must collect this fee as part of the debt and remit it to the clearinghouse that submitted the debt. The local collection assistance fee does not apply to child support debts.

(d) Priority. – If the Department is able to collect only part of a debt through setoff, the collection assistance fee provided in subsection (a) of this section has priority over the local collection assistance fee and over the remainder of the debt. The local collection assistance fee has priority over the remainder of the debt. (1979, c. 801, s. 94; 1989 (Reg. Sess., 1990), c. 946, s. 3;

1995, c. 360, s. 4(a); 1997-490, s. 1; 2000-126, s. 6; 2001-380, s. 3; 2002-156, s. 5(c); 2004-21, s. 1.)

**§ 105A-14. Accounting to the claimant agency; credit to debtor's obligation.**

(a) Simultaneously with the transmittal of the net proceeds collected to a claimant agency, the Department must provide the agency with an accounting of the setoffs for which payment is being made. The accounting must whenever possible include the full names of the debtors, the debtors' social security numbers or federal identification numbers, the gross proceeds collected per setoff, the net proceeds collected per setoff, and the collection assistance fee added to the debt and collected per setoff.

(b) Upon receipt by a claimant agency of net proceeds collected on the claimant agency's behalf by the Department, a final determination of the claim if it is a State agency claim, and an accounting of the proceeds as specified under this section, the claimant agency must credit the debtor's obligation with the net proceeds collected. (1979, c. 801, s. 94; 1997-490, s. 1; 2010-31, s. 31.8(f).)

**§ 105A-15. Confidentiality exemption; nondisclosure.**

(a) Notwithstanding G.S. 105-259 or any other provision of law prohibiting disclosure by the Department of the contents of taxpayer records or information and notwithstanding any confidentiality statute of any claimant agency, the exchange of any information among the Department, the claimant agency, the organization submitting debts on behalf of a local agency, and the debtor necessary to implement this Chapter is lawful.

(b) The information a claimant agency or an organization submitting debts on behalf of a local agency obtains from the Department in accordance with the exemption allowed by subsection (a) may be used by the agency or organization only in the pursuit of its debt collection duties and practices and may not be disclosed except as provided in G.S. 105-259, 153A-148.1, or 160A-208.1. (1979, c. 801, s. 94; 1997-490, s. 1.)

**§ 105A-16. Rules.**

The Secretary of Revenue may adopt rules to implement this Chapter. The State Controller may adopt rules to implement this Chapter. (1979, c. 801, s. 94; 1997-490, s. 1.)