

# ADMINISTRATIVE MEMORANDUM

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**SUBJECT** Set-Off Debt Collection Act  
(G. S. Chapter 105A)

**NUMBER** 127

**DATE** October 30, 1979

The 1979 General Assembly enacted legislation to facilitate collection of debts owed by an individual to an agency of the State of North Carolina by establishing a procedure for setting off any such debt against any refund that might be due the debtor under North Carolina individual income tax law. The new act is Section 94 of Chapter 801, 1979 Session Laws (the 1979 Revenue Act) and is codified as G. S. Chapter 105A ("Set-Off Debt Collection Act"). The Act was made effective July 1, 1979, but the first set-offs under the Act will be relative only to refunds due after January 1, 1980.

The North Carolina Department of Revenue has already begun drafting regulations, seeking registration of "claimant agencies" as defined by the Act, and establishing initial procedures for identifying debtors subject to set-off. In this process Mr. David Edwards of this office has responded by offering comment on the Act, as requested by the Department of Revenue, and then by identifying agencies within The University of North Carolina (and their chief fiscal officers) that we believe constitute the specific entities (claimant agencies) within The University, contemplated under the Act. As a reflection of this, we have put the Department of Revenue in direct contact with the Vice President for Finance, the Vice Chancellors for Finance (or officers of equivalent title), the Director of Fiscal Services of North Carolina Memorial Hospital, and the Executive Director of the North Carolina State Education Assistance Authority. These officers have received, by letter dated September 12, 1979, materials concerning registration of their respective agencies under the Act with the Department of Revenue. A set of these materials is attached to this Administrative Memorandum. Your attention is especially directed to the copy of G. S. Chapter 105A; the sequential outline of the Act, called "Steps in Set-Off Procedure"; and the "Proposed Rules and Procedures" (which appear to be functioning already as a regulatory document).

The purpose of this Administrative Memorandum is to provide you copies of the materials necessary to implement the Act, to comment briefly upon salient points of the Act, and to address provisions of the Act needing interpretive comment.

## Textual and interpretive aspects of the Act.

1. Use of the Act. Some parts of the Act appear to make its use permissible[G. S. 105A-1 and G.S. 105A-3(b)]; other parts of the Act suggest its use to be mandatory [G.S. 105A-3(a) and G. S. 105A-5].

The Attorney General has ruled, however, that the "Act is not ambiguous." Rather, "while the Act is mandatory, its use does not bar or preclude utilization of other available remedies to collect debts." This means that your institution must file by December 1 of each year a complete list of debtors whose debts are contemplated by the Act for potential set-off; but the Attorney General in the regular process of list review may decide, on the basis of your information or his own information, that the debt can be collected by means other than G. S. Chapter 105A.

2. Debts eligible for set-off. The Act may be used for set-off only if: (a) the debt is at least \$50.00 (G. S. 105A-4); (b) the debt is at least 90 days in arrears or has been reduced to judgment ("Proposed Rules and Procedures"); and (c) the tax refund due the debtor is at least \$50.00 (G. S. 105A-4). The procedure for making these determinations and the means for effecting set-off are set forth in the Act by relatively straightforward language and, skeletally, in the "Steps in Set-Off Procedure."

3. Information needed to effect the Act. To obtain the necessary match between debtor lists and lists of those eligible for a tax refund, G. S. 105A-3(c) calls upon claimant agencies "whenever possible" to obtain information, including the social security number, "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 the terms of this Article." Similarly, G. S. 105A-14(a) directs the Department of Revenue, when remitting the net set-off check to the claimant agency, to send to the claimant agency "whenever possible" information about the debtor including the debtor's social security number. While the federal "Privacy Act of 1974" prohibits, in effect, the involuntary disclosure to a state agency of an individual's social security number (except in prescribed contexts including the "administration of any tax"), the Attorney General has taken the "position" that the federal statutory exemptions are "amply broad to include the exemption of Social Security numbers within the ambit of this Act and therefore [do] not require any voluntary disclosure by the party assigned that number." In short, the disclosure by any debtor or potential debtor to the State of that person's social security number in contemplation of possible debt set-off against a possible tax refund may be required, as its disclosure is associated with "the administration of [a] tax." While this official view may help legally protect state agencies in forcing disclosure of social security numbers, the Opinion cannot remove other prohibitions to disclosure created by the context giving rise to the debt. For example, a State agency will likely be limited by social and commercial convention from seeking the social security number of each successful bidder on State surplus property or of the purchaser of securities sold through a fiscal agent and a broker from an institutional endowment fund. Fortunately, G. S. Chapter 105A calls for disclosure only "whenever possible."

4. Contested debts. The Act provides that debts submitted for potential set-off that are disputed by the alleged debtor shall be reviewed in a "hearing according to procedures established under Chapter 150A, the Administrative Procedure Act, to determine whether the claim is valid." [G. S. 105A-8(a)] The Attorney General has ruled, however, that the hearing contemplated under G. S. 105A-8, when a debt to The University is at issue, is not required of The University. This is because G. S. 150A-1 provides that "the University of North Carolina and its constituent or affiliated boards, agencies, and institutions" are exempt from all but Article 4 ("Judicial Review") of the APA. In consequence of this Opinion it would appear that a constituent institution can satisfy the requirements of administrative review of the debt called for by G. S. 105A-8 and by general legal requirements of procedure raised by debt set-off through simply making available to the debtor an opportunity informally to review and contest the debt. This means that the claimant institution, with reference to G. S. 105A-7(b) and Step 4 of the attached "Steps in Set-Off Procedure," should announce to the debtor that the debtor may within the 30-day period specified by G. S. 105A-7(b) seek in writing the opportunity to be shown the institutional records supporting the debt claim and the opportunity to contest or correct the debt claim in the presence of appropriate institutional officials.

5. Judicial review of hearing determinations. The Act at G. S. 105A-9 provides that a hearing outcome adverse to the debtor may be taken to court by the debtor pursuant to G. S. Chapter 150A (Article 4) "except that the place of initial review shall be the superior court for the county in which the debtor resides." The Attorney General has ruled that "residence" is to be defined, pursuant to G. S. 150A-2(8), as one's "domicile or place of business." He has also ruled that "superior court" as used in the APA and Set-Off Debt Collection Act must refer only to superior courts of North Carolina. Therefore, a debtor to The University contesting a debt pursuant to G. S. 105A-9 who is neither a domiciliary of North Carolina nor established in business in this state must still look to the superior courts of North Carolina for debt review, logically either the county in which the University agency is located or Wake County (the usual situs for judicial review under the APA).

6. Alternative collection remedies. G. S. 105A-3(a) states that the "collection remedy under this [Act] is in addition to and not in substitution for any other remedy of law"; and the Proposed Rules and Regulations of the Department of Revenue stress the permissive signals of the Act, not its seemingly mandatory ones. Furthermore, the Department of Revenue has defined debts eligible for set-off to exclude those less than 90 days in arrears and not subject to an outstanding judgment. The Department has tentatively established by proposed regulation a presumption that debts less than 90 days in arrears are subject to a "pending" and "adequate" "alternative means of collection." This rule, therefore, preempts for 90 days the duty of the Attorney General under

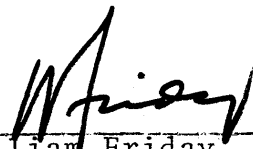
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G. S. 105A-3(b) to assess the pendency and adequacy of alternative collection methods for a debt eligible to be submitted by a claimant agency for set-off. In sum, then, the Set-off Debt Collection Act, while written so as to require institutional response, will in fact be administered to enhance not encumber debt collection by the constituent institutions.

Compliance.

Each constituent institution and agency is urged to cooperate fully with the Department of Revenue in establishing the debt set-off machinery required of it by G. S. Chapter 105A and, of course, in supplying the annual list of debtors. For each constituent institution and agency of The University this machinery should include a designated agent or office to receive notice from a debtor of his or her intent to contest an asserted debt and to facilitate informal administrative review of the debt with institutional officials as needed pursuant to G. S. 105A-8. In preparing to use and in using that machinery, you and your staff are likely to raise both technical and general questions about the Act. These questions may be directed either to Mr. Keith Goodson, Assistant Secretary for Revenue (Raleigh telephone 733-7311), or Mr. David Edwards of this office. However, please inform Mr. Edwards, concurrently, about any inquiry you may make of Mr. Goodson.

Attachments

  
\_\_\_\_\_  
William Friday

JAMES B. HUNT, JR.  
GOVERNOR



State of North Carolina  
Department of Revenue  
P. O. Box 25000  
Raleigh, N. C. 27640

MARK G. LYNCH  
SECRETARY

JAMES P. SENTER  
DEPUTY SECRETARY

September 12, 1979

Mr. L. Felix Joyner, Vice Pres. for Finance  
The University of North Carolina  
General Administration  
Chapel Hill Box 311

Dear Mr. Joyner:

Please refer to your copy of Mr. David Edwards' letter of September 5, to me regarding the Set-Off Debt Collection Act. This legislation was enacted by the 1979 General Assembly and requires the Department of Revenue and various other State agencies and institutions to jointly identify debtors who owe money to the State and qualify for State individual income tax refunds, and to set-off qualifying debts against the refunds of the respective refundees. This legislation is contained in Chapter 801 of the 1979 Session Laws, Section 94. A copy is enclosed for your information as well as a list of the required steps in the set-off process.

I am also enclosing the following compliance materials which are necessary for the implementation of this program:

Registration form for submission of information by participating agencies. A separate registration should be submitted by each unit within the agency that will be filing separately under this program. We would appreciate your completing and returning the necessary registrations right away so that we can complete our registry of participants.

Draft of a four-part form to be used as indicated on each page.

Draft of proposed rules and procedures.

We would like for you to review the enclosed forms and rules and procedures and, if you have any questions or would like to discuss these procedures, please call me at (919) 733-7211. If you have questions or need to discuss the submission of computer data, contact Peggy Brothers of our Planning and Processing Division at (919) 733-7386. As soon as your registration is received, the necessary information for submission of debtor information will be promptly forwarded to you.

Very truly yours,

*Keith Goodson*  
Keith Goodson

Asst. Secretary for Revenue

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provided invalid, it is the intention of the General Assembly that such provisions for refund shall be annulled and the tax shall be levied without any provisions for such refund and that this Article shall be so construed.

(b) Any person making a false application or affidavit for the purpose of securing a refund to which he is not entitled under the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not exceeding five hundred dollars (\$500.00) or imprisoned not exceeding two years, in the discretion of the court."

Sec. 93. G.S. 105-449.24 is rewritten to read as follows:

"§ 105-449.24. Exemptions, rebates and refunds.--The provisions of G.S. 105-439, G.S. 105-446.1, G.S. 105-446.3, G.S. 105-446.5 and G.S. 105-449 relating to exemption from, and rebates and refunds of tax levied on gasoline shall also apply to the taxes levied by this Article on special fuels."

Sec. 94. The General Statutes are amended to insert therein immediately following Chapter 105 of the General Statutes a new Chapter 105A entitled "Set-Off Debt Collection Act" to read as follows:

"CHAPTER 105A.

"SET-OFF DEBT COLLECTION ACT.

"Article 1.

"§ 105A-1. Purposes.--The purpose of this Article 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 through its various claimant agencies and who qualify for refunds from the Department of Revenue. It is also the intent of this Article that procedures be established for setting off against any such refund the sum of any debt owed to the State. Furthermore, it is the legislative intent that this Article be liberally construed so as to effectuate these purposes as far as legally and practically possible.

"§ 105A-2. Definitions.--As used in this Article:

(1) 'Claimant agency' means and includes:

- a. The State Education Assistance Authority as enabled by Article 23 of Chapter 116 of the General Statutes;
- b. The North Carolina Department of Human Resources when in the exercise of its authority to collect health profession student loans made pursuant to G.S. 131-121;
- c. The North Carolina Department of Human Resources when in the performance of its duties under the Medical Assistance Program enabled by Chapter 108, Article 2, Part 5, and any county operating the same Program at the local level, when and only to the extent such a county is in the performance of Medical Assistance Program collection functions;
- d. The North Carolina Department of Human Resources when in the performance of its duties under the Child Support Enforcement Program (as enabled by

Chapter 110, Article 9) to obtain indemnification for the State for past public assistance paid and any county operating the same Program at the local level, when and only to the extent such a county is engaged in the performance of those same program duties;

- e. The University of North Carolina, including its constituent institutions as specified by G.S. 116-2(4);
- f. The North Carolina Memorial Hospital in the conduct of its financial affairs and operations pursuant to G.S. 116-37;
- g. The Board of Governors of The University of North Carolina and the State Board of Education through the College Scholarship Loan Committee when in the performance of its duties of administering the Scholarship Loan Fund for Prospective College Teachers enabled by Chapter 116, Article 5;
- h. The Office of the North Carolina Attorney General on behalf of any State agency when the claim has been reduced to a judgment;
- i. The State Board of Education through community colleges, technical institutes, and industrial education centers as enabled by Chapter 115D in the conduct of their financial affairs and operations;
- j. Broughton Hospital, Cherry Hospital, Dorothea Dix Hospital, John Umstead Hospital, Caswell School at



Kinston, Murdoch School, O'Berry School, Western Carolina Center, Black Mountain Alcoholic Rehabilitation Center, Butner Alcoholic Rehabilitation Center, Walter B. Jones Alcoholic Rehabilitation Center, School for the Deaf at Morganton, North Carolina Sanatorium at McCain, Western Carolina Sanatorium at Black Mountain, Eastern North Carolina Sanatorium at Wilson, and Gravelly Sanatorium at Chapel Hill under Chapter 143, Article 7; Governor Morehead School under Chapter 115, Article 40; Central North Carolina School for the Deaf under Chapter 115, Article 41; Wright School for Treatment and Education of Emotionally Disturbed Children under Chapter 122, Article 12A; the Lenox Baker Children's Hospital under Chapter 131, Article 14; and these same institutions by any other names by which they may be known in the future;

k. The North Carolina Department of Revenue; and

l. The Administrative Office of the Courts.

(2) 'Debtor' means any individual owing money to or having a delinquent account with any claimant agency which obligation has not been adjudicated satisfied by court order, set aside by court order, or discharged in bankruptcy.

(3) 'Debt' means any liquidated sum due and owing any claimant by which has accrued through contract, subrogation, tort, operation of law, or any other legal theory regardless of whether

there is an outstanding judgment for that sum.

(4) 'Department' means the North Carolina Department of revenue.

(5) 'Refund' means any individual's North Carolina income tax refund.

(6) 'Net proceeds collected' means gross proceeds collected through final set-off against a debtor's refund minus any collection assistance fee charged by the Department.

"§ 105A-3. Remedy additional; mandatory usage; obtaining identifying information.--(a) The collection remedy under this Article is in addition to and not in substitution for any other remedy available by law.

(b) All claimant agencies shall submit, for collection under the procedure established by this Article, all debts which they are owed, except in cases where said agencies are advised by the Attorney General not to submit a claim because the validity of the debt is legitimately in dispute, because an alternative means of collection is pending and believed to be adequate, or because such a collection attempt would result in a loss of federal funds.

(c) All claimant agencies shall whenever possible obtain the full name, social security number, address, and any other identifying information required by rules promulgated by the Department pursuant to the authority of G.S. 105A-16 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 the terms of this Article.

"§ 105A-4. Minimum sum collectible.--A claimant agency shall be allowed to effect final set-off and collect debts through use of the remedy established under this Article unless both the debt and the refund, if any, are at least fifty dollars (\$50.00).

"§ 105A-5. Collection of sums due claimant agencies through set-off.--Subject to the limitations contained in this Article, the Department of Revenue shall upon request render assistance in the collection of any delinquent account or debt owing to any claimant agency. This assistance shall be provided by setting off any refunds due the debtor from the Department by the sum certified by claimant agency as due and owing.

"§ 105A-6. Procedure for set-off.--(a) A claimant agency seeking to attempt collection of a debt through set-off shall notify in writing the Department and supply information necessary to identify the debtor whose refund is sought to be set-off. Notification to the Department and the furnishing of identifying information must occur on or before a date specified by the Department in the year preceding the calendar year during which the refund would be paid. Additionally, subject to the notification deadline specified above, the notification shall be effective only to initiate set-off for claims against refunds that would be made in the calendar year subsequent to the year in which notification is made to the Department.

(b) The Department, upon receipt of notification, shall determine 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 shall notify in writing the claimant agency that a refund is pending, specify its sum, and indicate the debtor's address as listed on the tax return.

(c) Unless stayed by court order, the Department shall, upon certification as hereinafter provided in this Article, set-off the certified debt against the refund to which the debtor would otherwise be entitled.

"§ 105A-7. Notification of intention to set-off and right to hearing.--(a) The claimant agency, upon receipt of notification from the Department that a debtor is entitled to a refund, shall within 10 days send a written notification to the debtor and a copy of same to the Department of its assertion of rights to the refund or any part thereof. Such notification shall inform the debtor of the claimant agency's intention to direct the department to apply the refund or any portion thereof against the debt certified as due and owing. For the Department to be obligated to continue holding refunds until receipt of certification of the debt, if any, pursuant to G.S. 105A-10, the copy of the notification to the debtor by the claimant agency of its intention to set-off must be received by the Department within 15 days of the date of the Department's mailing to the respective claimant agency the notification of the debtor's entitlement to a refund.

(b) The contents of the written notification to the debtor (and the Department's copy) of the set-off claim shall clearly set forth the basis for the claim to the refund, the intention to

apply the refund against the debt to the claimant agency, the debtor's opportunity to give written notice of intent to contest the validity of the claim before the claimant agency within 30 days of the date of the mailing of the notice, the mailing address to which the application for a hearing must be sent, and the fact that failure to apply for a hearing in writing within the 30-day period will be deemed a waiver of the opportunity to contest the claim causing final set-off by default.

(c) The written application by the debtor for a hearing shall be effective upon mailing the application postage pre-paid and properly addressed to the claimant agency.

"§ 105A-8. Hearing procedure.--(a) If a claimant agency receives written application of the debtor's intention to contest at hearing the claim upon which the intended set-off is based, it shall grant a hearing according to procedures established under apter 150A, the Administrative Procedure Act, to determine whether the claim is valid. Additionally, it shall be determined at the hearing whether the claimed sum asserted as due and owing is correct, and if not, an adjustment to the claim shall be made.

(b) Pending final determination at hearing of the validity of the debt asserted by the claimant agency, no action shall be taken in furtherance of collection through the set-off procedure allowed under this Article.

(c) No issues may be considered at the hearing which have been previously litigated.

"§ 105A-9. Appeals from hearings.--Appeals from action taken at hearings allowed under this Article shall be in accordance

with the provisions of Chapter 150A, 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.

§ 105A-10. Certification of debt by claimant agency; finalization of set-off.--(a) Upon final determination through hearing provided by G.S. 105A-8 of the debt due and owing the claimant agency or upon the debtor's default for failure to comply with G.S. 105A-7 mandating timely request for review of the asserted basis for set-off, the claimant agency shall within 20 days certify the debt to the Department and in default thereof, the Department shall no longer be obligated to hold the refund for set-off.

(b) Upon receipt by the Department of a certified debt from the claimant agency, the Department shall finalize the set-off by transferring the net proceeds collected for credit or payment in accordance with the provisions of G.S. 105A-14 and by refunding ~~any~~ remaining balance to the debtor as if set-off had not occurred.

§ 105A-11. Notice of final set-off.--Upon the finalization of set-off under the provisions of this Article, the Department shall notify the debtor in writing of the action taken along with an accounting of the action taken on any refund. If there is an outstanding balance after set-off, the notice under this section shall accompany the balance when disbursed.

§ 105A-12. Priorities in claims to set-off.--Priority in multiple claims to refunds allowed to be set-off under the provisions of this Article shall be in the order in time which a

claimant agency has filed a written notice with the Department of its intention to effect collection through set-off under this article. Notwithstanding the priority set forth above according to time of filing, the Department has priority over all other claimant agencies for collection by set-off whenever it is a competing agency for a refund.

"§ 105A-13. Disposition of proceeds collected; collection assistance fees.--(a) Upon effecting final set-offs, the Department shall periodically write checks to the respective claimant agencies for the net proceeds collected on their behalf.

(b) From the gross proceeds collected by the Department of Revenue through set-off, the Department shall retain fifteen percent (15%), which amount shall be charged to the respective claimant agency as a collection assistance fee. The Department

shall devote the funds so retained to the following uses and purposes: (1) for the purpose of effectuating the provisions of the income tax refund Set-off Debt Collection Act, the sum of one hundred fifteen thousand dollars (\$15,000) in the fiscal year 1979-80, and the sum of one hundred sixty thousand dollars (\$160,000) in the fiscal year 1980-81; and (2) for the purpose of preparing, printing, publishing and mailing to taxpayers revised income withholding tax tables required to be revised as a result of the Revenue Act of 1979, the sum of one hundred one thousand dollars (\$101,000) in the fiscal year 1979-80, and the sum of one hundred eight thousand dollars (\$108,000) in the fiscal year 1980-81. Any balance remaining unexpended from the total collection assistance fees at the close of each fiscal year shall

be deposited into the State Treasury for credit to the General Fund. In order to fund the cost of the set-off program and of printing, publishing and mailing said tax tables, before receipt of any collection assistance fees, the Department of Revenue is authorized to borrow from the Contingency and Emergency Fund up to two hundred sixteen thousand dollars (\$216,000) in fiscal year 1979-80, and up to two hundred sixty-eight thousand dollars (\$268,000) in fiscal year 1980-81, to be repaid from collection assistance fees as they are received.

For years after fiscal year 1980-81, the Department shall calculate its actual cost of collection as a percentage of the immediately preceding year's collections under the Set-off Debt Collection Act, and that percentage shall be its collection assistance fee for the then-current fiscal year.

"§ 105A-14. Accounting to the claimant agency; credit to debtor's obligation.--(a) Simultaneously with the transmittal of a check for net proceeds collected to a claimant agency, the Department shall provide the agency with an accounting of the set-offs finalized for which payment is being made. The accounting shall, whenever possible, include the full names of the debtors, the debtors' social security numbers, the gross proceeds collected per individual set-off, the net proceeds collected per set-off, and the collection assistance fee charged per set-off.

(b) Upon receipt by a claimant agency of a check representing net proceeds collected on a claimant agency's behalf by the Department and an accounting of the proceeds as specified under



this section, the claimant agency shall credit the debtor's obligation with the gross proceeds collected.

"§ 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, all information exchanged among the Department, claimant agency, and the debtor necessary to accomplish and effectuate the intent of this Article is lawful.

(b) The information obtained by a claimant agency from the Department in accordance with the exemption allowed by subsection (a) shall only be used by a claimant agency in the pursuit of its debt collection duties and practices and any person employed by, formerly employed by, a claimant agency who discloses any such information for any other purpose, except as otherwise allowed by G.S. 105-259, shall be penalized in accordance with the terms of that statute.

"§ 105A-16. Rules and regulations.---The Secretary of Revenue is authorized to prescribe forms and make all rules which he deems necessary in order to effectuate the intent of this Article."

Sec. 95. G.S. 121-5(d) is amended to add after the last sentence the words: "The Department may answer written inquiries for nonresidents of North Carolina and for such service charge a search and handling fee not to exceed five dollars (\$5.00), the receipts from which fee shall be used to defray the cost of

STEPS IN SET-OFF PROCEDURE  
AS SPECIFIED IN CHAPTER 801 OF THE 1979 SESSION LAWS, SECTION 94

(For Preliminary Informational Purposes Only)

1. Claimant agencies annually submit lists of debtors by (date to <sup>12-1-79</sup> be established) showing name, social security number and address of debtor.
2. Department runs lists against refunds.
3. When match occurs, Department notifies in writing the claimant agency giving the amount of refund and the debtor's address listed on the tax return.
4. The claimant agency must notify the debtor within 10 days of receipt of the Department's notice of its intent to claim the refund and send a copy of such notice to the Department so as to be received within 15 days from the date the Department mailed its notice that a match had occurred.
5. Debtor may contest agency's claim by giving written notice to agency within 30 days from the date of the mailing of the agency notice to the debtor.
6. If claim is not contested within the required 30 days, within 20 days thereafter, the claimant agency must certify the debt to the Department.
7. If claim is contested, the period for certification is 20 days following completion of the hearing process.
8. The Department shall transfer by check the net proceeds collected (gross minus 15% collection assistance fee) to the appropriate claimant agency together with the following information:
  - Full name of the debtors
  - Social Security number of debtors
  - Gross proceeds per set-off
  - Net proceeds per set-off
  - Collection fee per set-off
9. Claimant agency will credit the debtor with gross proceeds.
10. Department notifies taxpayer of action taken and refund any remaining balance.

N. C. Department of Revenue  
Revenue Building  
P. O. Box 25000  
Raleigh, N. C. 27609

Registration For Participation In Set-Off Debt Collection Program

Name Of Claimant Agency (Institution, Division, Etc.)

Street Address:

Mailing Address:

Qualifying Statute: G. S. 105A-2(1) \_\_\_\_\_  
(Insert Applicable Paragraph Number)

Name, Title, Address And Telephone Number Of:

a. Program Administrator -

b. Computer Technician -

c. Person To Whom Notification That Refund Is Pending (G. S. 105A-6(b)) Is To  
Be Sent -

d. Person To Whom Check For Net Proceeds Collected And Transmittal Information  
Should Be Sent -

Check Should Be Made Payable To: \_\_\_\_\_

Claimant Agency Code: \_\_\_\_\_  
(To Be Assigned By The Department Of Revenue)

Is Debtor Information To Be Submitted On Magnetic Tape? ☐ Yes ☐ No

This Form Should Be Submitted-In Duplicate To:

Peggy Brothers (919) 733-7386  
Planning And Processing Division  
North Carolina Department Of Revenue  
Room 116, Revenue Building  
P. O. Box 25000  
Raleigh, North Carolina 27640

NOTICE TO CLAIMANT AGENCY  
SET OFF DEBT COLLECTION ACT, G.S.105A

CLAIMANT AGENCY:

TAXPAYER:

DATE OF THIS NOTICE

AMOUNT OF REFUND

TO THE CLAIMANT AGENCY: Pursuant to the requirements of G.S. 105A-6(b), you are hereby notified that the above taxpayer, who you have indicated is indebted to your agency, is due an income tax refund in the amount shown. If you intend to claim a part or all of the refund to apply against the debt, you must notify the taxpayer within 10 days after receiving this notice. You must also send a copy of the notice you send the taxpayer to the Department of Revenue and such copy must be received within 15 days from the date shown in the block above; otherwise, you will forfeit your entitlement to any part of the refund. The copy must be either hand-delivered or sent by interoffice or courier mail to: Set-Off Unit, Individual Income Tax Division, Room 407, Department of Revenue.

Part 1 - For the Claimant Agency

CERTIFICATION OF DEBT  
SET OFF-DEBT COLLECTION ACT, G.S.105A

CLAIMANT AGENCY:

TAXPAYER:

DATE OF THIS NOTICE

AMOUNT OF REFUND

I hereby certify that the requirements of sections 7, 8 and 9 of G.S. 105A (as applicable) have been met with respect to the determination of the debt owed this agency by the above-named taxpayer; that pursuant to G.S. 105A-10, the debt was certified as due and owing on \_\_\_\_\_; and that the amount of the debt is \$ \_\_\_\_\_. (Date)

FOR THE AGENCY:

\_\_\_\_\_  
Authorized Signature

Part 2 - To be completed by the Claimant Agency

CLAIMANT AGENCY:

TAXPAYER:

DATE OF THIS NOTICE

AMOUNT OF REFUND

TO THE TAXPAYER: This is a copy of a notice we sent to the above claimant agency informing them that you are due a North Carolina income tax refund. The law (General Statute 105A) requires certain state and county agencies to furnish the Department of Revenue the names and addresses of persons owing money to them. The claimant agency has informed us of your indebtedness and the purpose of this notice is to enable the agency to begin procedures to collect the indebtedness by applying part or all of your income tax refund against the debt.

If you have any questions about this notice, you **MUST** contact the claimant agency indicated above.

Part 3 - For the Taxpayer

CLAIMANT AGENCY:

TAXPAYER:

DATE OF THIS NOTICE

AMOUNT OF REFUND

FOR OFFICE USE:

Date copy of notification to debtor  
received from claimant agency:

\_\_\_\_\_

Date certification of debt  
received from claimant agency:

\_\_\_\_\_

REMARKS:

Part 4 - For the File

**SET-OFF DEBT COLLECTION PROGRAM  
PROPOSED RULES AND PROCEDURES**

The function of the Department of Revenue under the Set-Off Debt Collection Program is to assist claimant agencies, upon request, in the collection of qualifying delinquent accounts. From lists of qualifying debtors furnished by the various claimant agencies, the Department will identify those entitled to individual income tax refunds of at least \$50 and, upon receipt of a final certification of the debt from the respective claimant agency, set-off the applicable amount. Periodically, the Department will remit to the respective claimant agencies the net proceeds collected which shall be the gross proceeds collected less the 15% collection assistance fee. A transmittal statement will be included reconciling the amount of the remittance with the gross proceeds collected per individual set-off so that the claimant agency can credit the debtor's obligation with gross proceeds collected as required by G.S. 105A-14(b).

Claims for set-off must be filed with the Department of Revenue in accordance with the provisions of Article 1 of Chapter 105A and the rules and procedures set forth below and authorized under G.S. 105A-16.

Each claimant agency must submit its complete list of debtors for which set-off is sought to the Department annually by December 1 of the year preceding the calendar year during which refunds would have been paid. For example, a list of debtors submitted by December 1, 1979, will be matched against taxpayers entitled to refunds in the calendar year 1980. The list must include the full name, social security number, address, and the amount of the obligation for each debtor. The amount of the obligation is required to facilitate the processing of multiple claims. A new list must be submitted each year. Magnetic tape specifications and record layouts are available upon request. Claimant agencies that have the capability and volume to justify it are urged to send debtor information on magnetic tape. (G.S. 105A-6(a)).

To participate in the set-off procedure, each claimant agency must register with the Department of Revenue. A registration form is available for this purpose.

Claims for obligations of less than \$50 should not be submitted (G.S. 105A-4).

No debt should be certified for set-off that is less than 90 days in arrears unless there is an outstanding judgment for the debt. In the case of debts that are less than 90 days in arrears, it shall be presumed that an alternative means of collection is pending and believed to be adequate.

"Debtor" means any individual owing money to or having a delinquent account with any claimant agency which obligation has not been adjudicated satisfied by court order, set aside by court order, or discharged in bankruptcy. (G.S. 105A-2(2)).

"Debt" means liquidated sum due and owing any claimant agency which has accrued through contract, subrogation, tort, operation of law, or any other legal theory regardless of whether there is an outstanding judgment for that sum. (G.S. 105A-2(3)).

The claimant agency, upon receipt of notification from the Department of Revenue that a debtor is entitled to a refund, shall within 10 days send a written notification to the debtor and a copy of the same to the Department of its assertion of rights to the refund or any part thereof. SUCH NOTICE SHOULD CLEARLY INDICATE TO THE DEBTOR THAT ANY OBJECTIONS TO THE CLAIM SHOULD BE DIRECTED TO THE CLAIMANT AGENCY, NOT THE DEPARTMENT OF REVENUE. In this connection the Department of Revenue prefers that the notice also give the name and telephone number of the appropriate contact person within the claimant agency. (G.S. 105A-7(a)).

If a claim is contested, the claimant agency should notify the Department of Revenue and indicate a date by which final determination of this claim might reasonably be expected.

If a claim is paid or otherwise settled, the claimant agency should notify the Department of Revenue immediately so that the tax refund can be promptly released