

Guideline on Collecting Debts Owed the State by State Employees, Officials, and Legislators

In 1989, the General Assembly passed the State Employee Debt Collect Act (N.C.G.S. Chapter 143, Article 60). This act promotes payment of a debt owed the State by an employee, official, or legislator of the State through the threat of sanctions (e.g., discharge of employment) if the debt is not paid.

This act was written to assist in the collection of debts owed the State by employees, public officials, and legislators of the State. The definition of "public official" includes those members of State boards, commissions, councils, committees, and other State agencies "created by law" whose personnel positions are not salaried by the State. "Public officials," therefore, would include members of the Board of Governors, the Boards of Trustees of the constituent institutions, the Boards of Trustees of the institutional endowment funds, the Board of Directors The University North Carolina Hospitals at Chapel Hill, the Board of Directors of the State Education Assistance Authority, and the Board of Trustees of the University of North Carolina Center for Public Television. Where an individual is both a salaried State employee and a nonsalaried member of a State agency, the individual should be treated procedurally as a State employee, not as a "public official" (e.g., the President of the University, who is both a State employee and *ex officio* a trustee of The University of North Carolina Center for Public Television).

Debts collectible under the act.

Any "delinquent" debt owed the State by a State employee, public official, or legislator may be pursued under the act.

Method of debt collection.

The means of inducing debt payment by State employees is the threat of termination of employment. Similarly, public officials are faced with termination of appointment for nonpayment. Nonpaying legislators, however, are to be dealt with by the Legislative Ethics Commission.

Responsibilities of State agencies.

In basic outline, the act requires (1) identification of employees, officials, or legislators of the State who are indebted to the State, (2) transmission of notice of the identity of the debtor and the fact of indebtedness to the entity that employs the debtor (or that appointed the official or that is responsible for superintending the conduct of legislators), and (3) actions by the debtor's employer relative to the debtor and the indebtedness, including ultimately the possibility of terminating the State employment of the debtor.

Reporting debtors.

The various components of State government, are responsible for identifying delinquent debtors to the State who also are employees, officials, or legislators of the State.

In recognition of the difficulty likely to be encountered by a State governmental entity in identifying debtors to it who also are employees of another State entity, the State Department of Budget and Management has prescribed a system for addressing the basic reporting responsibility. Using the University context for purposes of illustration, the system requires a constituent institution to report to the Office of State Budget and Management all "past due accounts" for which "satisfactory provisions for repayment" have not already been made. That agency in turn will compare the list supplied with the comprehensive list of State employees and identify those debtors who are State employees. The constituent institution then will be given the name of any debtor to the institution who also is an employee of the State; and the constituent institution then is responsible for notifying the employer that one of the entity's employees is indebted to the institution.

The "representative" of the entity responsible for reporting debtors to the employer of the debtor is not defined by the legislation. The term reasonably appears to suggest that a designated official of the State entity (e.g., vice chancellor for finance) should be identified and authorized to perform the reporting requirement.

The act establishes no timetable for periodic reportings of debtors to the entities responsible for acting on such reports. However, the State Budget Office has directed that it be sent the names and social security numbers of "individuals with past due accounts" for which no satisfactory provisions for repayment has been made. In short, each constituent institution should send to the State Budget Office a list of delinquent debts for which the constituent institution has not been able to induce the debtor to repay or to begin to repay.

Privacy act concerns.

The State Budget Office has called for providing to it the debtor's social security number. The act, however, contains no statutory authorization for such a disclosure and use. In fact, the act expressly states: "Nothing in this Article is intended to conflict with any provision of federal law . . . If the exchange among employing entities of information necessary to effectuate the provisions of this Article would conflict with this intention, the exchange of information shall not be made." In light of these circumstances, the State Budget Office has agreed that an agency need not transmit to the State Budget Office the social security number of an individual debtor if that number was received by the entity under conditions that would cause the federal Privacy Act of 1974 to prohibit its disclosure. For purposes of applying this policy, the following guidelines seem required by the Privacy Act of 1974:

- (1) The transfer from a constituent institution to the State Budget Office of an individual's social security number in the process of debtor/State employee identification is a "disclosure" of that number within the meaning of the Privacy Act of 1974 and is conditioned by that act.
- (2) Any individual who is asked to make initial disclosure to an institution of a social security number in the context of this act must be told that
 - (a) such disclosure is voluntary,
 - (b) such request for disclosure is incident to State administrative procedures for debt collection, and
 - (c) the number, upon disclosure, would be available to effect debt collection.
- (3) Any individual whose social security number has been disclosed to an institution in a manner other than according to condition (2), above, without informing the individual of

possible use of the number for debt collection, must be informed of such possible use before transfer of the number to the State Budget Office. (The time lapse between informing the individual of the intended or potential use and the transfer of the number is not stated by the Attorney General to be important so long as the individual is, in fact, informed before the transfer.)

The Attorney General's opinion of November 21, 1980, establishes two principles of which special note should be made.

(a) It is not significant whether an institution obtained a social security number before December 31, 1974 (the effective date of the Privacy Act of 1974). The Privacy Act conditions use of any social security number.

(b) It is important whether an institution obtained the social security number for use under the act (a) by initial disclosure from the individual (see condition (2), above) or (b) from pre-existing institutional records or from a third party (see condition (3), above).

In light of the foregoing, an agency may delete from the requested debtor list a social security number whose disclosure is, in effect, prohibited by the Privacy Act of 1974 but should indicate which deletions are made with reference to the Privacy Act, as opposed to mere lack of information.

Informing the employing entity.

When an agency to whom a State debt is owed learns that the debtor is a State employee, public official, or legislator, the agency must inform the employer of the debtor or the appointing authority of a public official or the Legislative Ethics Commission, as the case may be.

Because a debtor to the State may be both a State employee, public official, or legislator and also a taxpayer due a refund of at least \$50 from the Department of Revenue, some debts of an individual will prove collectible under both this act and the Setoff Debt Collection Act. When an agency to whom the debt is owed learns that both acts may pertain to collection of the debt, that agency should inform the employer of the debtor. This will help minimize the possibility that sanctions will be imposed under this act for a debt collected or in the process of being collected under the Setoff Debt Collection Act.

Debt resolution.

State employees have an "employing entity" and public officials have an "appointing authority" to whom notice of the debt must be made. Once notice is received, the statutory duties shift from the agency owed the debt to the employing entity (or appointing authority) of the debtor. The employer, upon receiving notice of the debt, must initiate debt resolution.

Depending upon the nature of the employee or public official's position with the State, the act prescribes the procedure for resolution of the debt to the State by the employer:

(1) Public officials - "Upon receipt of notification, the appointing authority shall investigate the circumstances of the claim of money owed to the State for purposes of determining if a debt is owed and its amount". The act then provides for notice of termination of duties unless a repayment plan is fulfilled or undertaken.

(2) State employees - The act calls for termination of employment if payment is not effected within a "reasonable period." However, passage of a reasonable time without payment is not cause for termination if there is (a) a "genuine dispute" over the existence or amount of the debt, (b) "an unresolved issue concerning insurance coverage," or (c) pursuit by the employee of administrative or judicial remedies in the matter. And, as with public officials, a State employee is saved from sanctions if the employee is undertaking repayment as permitted by the act. With respect to employees, one acceptable plan is to agree to have periodically withheld for repayments "not less than ten percent (10%) of . . . net disposable earnings." "Net disposable earnings" are defined to constitute salary less statutory deductions such as taxes and State retirement, which appear to leave subject to dunning that part of an employee's salary otherwise to be voluntarily paid over to such as retirement funds other than TSERS and the Optional Retirement Plan. Unlike public officials, however, State employees, even after termination, have a right of termination review as provided by N.C.G.S. Chapter 126 if they are subject to the State Personnel Act. The act, reads into its provisions the usual array of remedies available to an aggrieved member of the University community. Essentially, it requires a constituent institution to sit down with its employees who are debtors to the state to work out repayment; but if the employee contests the debt, the constituent institution should treat the process of debt collection as a serious, contested personnel action.

Statutes of limitations and bankruptcy.

The act provides that where collection of the debt is barred by an applicable statute of limitations, the act "shall not be construed to revive" the debt or any part of the debt or to "extend" the statute of limitations. The act contemplates the pursuit by the debtor of judicial remedies, which could include discharge of the debt in bankruptcy. Consequently, no employee or public official of the University should be terminated for nonpayment of debt whose collection is barred by bankruptcy decree or a statute of limitations.

[This is a rewrite of Administrative Memoranda #132 and #144.]

Magnetic Tape Past Due Accounts Format Office of State Budget and Management

The data can be on tape or cards. If tape, the record length should be 80 characters and blocksize 6400 characters. The tape should be either IBM standard labeled or non-labeled and should be 1600 or 6450 BPI.

FORMAT

| Column 1 | Institution | Alpha Code |
|----------|-------------|-------------|
| A - | ASU | I -PSU |
| B - | ECSU | J -UNC-A |
| C - | ECU | K -UNC-CH |
| D - | FSU | L -UNC-C |
| E - | NCA&T | M -UNC-G |
| F - | NCCU | N -UNC-W |
| G - | NCSA | O - WCU |
| H - | NCSU | P -WSSU |
| | | Q - UNCH-CH |

Column 2 – 10 Social Security Number

Column 11 - 40 Name

Please send this information to this office by December 1. Call 733-7061 concerning any questions.

Office of State Budget and Management Procedures

The 1979 General Assembly enacted House Bill 561 (Chapter 864 of the 1979 Session Laws) relating to the collection of money owed to the State by certain public employees. The purpose of this memorandum is to indicate what procedures to follow in collecting past due accounts owed to the State by State employees, certain local governmental employees and public officials.

1. Send a list to this office of the names and Social Security numbers of individuals with past due accounts owed to the State. Do not include names of individuals with past due accounts when satisfactory provisions have already been made for repayment.

2. This office will arrange to compare your lists with lists of employees who are members of the Teachers and State Employees Retirement System or who are on a central payroll.

3. You will be notified if any of the individuals on your lists are employed by a State department, agency or institution, Community College system or by a city or county Board of Education.

4. You should then write the agency employing the individual who has a past due account with your department and State: (a) individual's name, amount of money owed and for what reason; (b) that a written notice be sent to the employee stating that full restitution of the amount owed is a condition of continued employment (Chapter 143, Article 59 of the North Carolina General Statutes); (c) that the employee obtain and provide written evidence from the department owed that a satisfactory arrangement for payment has been agreed upon; (d) that the employee be given a reasonable time period to accomplish (c) above. If the employee does not provide this evidence, steps must be taken to terminate employment unless the employee is pursuing administrative or judicial remedies.