

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:
 - 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.
- (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.

- 1 d. A regional joint agency created by interlocal agreement under Article
2 20 of Chapter 160A of the General Statutes between two or more
3 counties, cities, or both.
- 4 e. A public health authority created under Part 1B of Article 2 of
5 Chapter 130A of the General Statutes or other authorizing legislation.
- 6 f. A metropolitan sewerage district created under Article 5 of Chapter
7 162A of the General Statutes.
- 8 g. A sanitary district created under Part 2 of Article 2 of Chapter 130A
9 of the General Statutes.
- 10 h. A housing authority created under Chapter 157 of the General
11 Statutes, provided that the debt owed to a housing authority has been
12 reduced to a final judgment in favor of the housing authority.
- 13 (7) Net proceeds collected. – Gross proceeds collected through setoff against a
14 debtor's refund minus the collection assistance fees provided in G.S.
15 105A-13.
- 16 (8) Refund. – A debtor's North Carolina tax refund.
- 17 (9) State agency. – Any of the following:
- 18 a. A unit of the executive, legislative, or judicial branch of State
19 government.
- 20 b. A local agency, to the extent it administers a program supervised by
21 the Department of Health and Human Services or it operates a Child
22 Support Enforcement Program, enabled by Chapter 110, Article 9,
23 and Title IV, Part D of the Social Security Act.
- 24 c. A community college. (1979, c. 801, s. 94; 1981, c. 724; 1983, c.
25 922, s. 21.11; 1983 (Reg. Sess., 1984), c. 1034, s. 10.2; 1985, c. 589,
26 s. 33; c. 649, s. 6; c. 747; 1985 (Reg. Sess., 1986), c. 1014, s. 63(e),
27 (f); 1987, c. 564, s. 18; c. 578, ss. 1, 2; c. 856, s. 12; 1989, c. 141, s.
28 2; c. 539, s. 1; c. 699; c. 727, s. 30; c. 770, s. 75.2; 1993 (Reg. Sess.,
29 1994), c. 735, s. 1; 1995, c. 227, s. 1; 1996, 2nd Ex. Sess., c. 18, s.
30 24.30(d); 1997-433, ss. 3.3, 11.3; 1997-443, ss. 11A.118(a),
31 11A.119(a), 11A.122, 12.26; 1997-490, s. 1; 1998-17, s. 1; 1998-98,
32 s. 38(a); 2002-156, s. 5(a); 2003-333, s. 1; 2004-138, s. 1; 2005-326,
33 s. 1; 2006-259, s. 20; 2007-97, s. 2; 2010-31, ss. 10.19A(a), 31.8(d);
34 2011-365, s. 1.)

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36 **§ 105A-3. Remedy additional; mandatory State usage; optional local usage; obtaining**
37 **identifying information; registration.**

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

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

49 (b1) Optional Local Usage. – A local agency may submit a debt owed to it for collection
50 under this Chapter. A local agency that decides to submit a debt owed to it for collection under

1 this Chapter must establish the debt by following the procedure set in G.S. 105A-5 and must
2 submit the debt through one of the following:

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

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

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

17 A clearinghouse or an organization that submits debts on behalf of a local agency must
18 register with the Department. Once a clearinghouse registers with the Department under this
19 subsection, no other clearinghouse may register to submit debts for collection under this
20 Chapter. (1979, c. 801, s. 94; 1989 (Reg. Sess., 1990), c. 946, s. 1; 1993, c. 512, s. 4;
21 1997-443, s. 11A.122; 1997-490, s. 1; 1998-212, s. 12.3A(a), (b); 2010-31, s. 31.8(e).)

22 23 **§ 105A-4. Minimum debt and refund.**

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

26 27 **§ 105A-5. Local agency notice, hearing, and decision.**

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

31 (b) Notice. – A local agency must send written notice to a debtor that the agency
32 intends to submit the debt owed by the debtor for collection by setoff. The notice must explain
33 the basis for the agency's claim to the debt, that the agency intends to apply the debtor's refund
34 against the debt, and that a collection assistance fee of fifteen dollars (\$15.00) will be added to
35 the debt if it is submitted for setoff. The notice must also inform the debtor that the debtor has
36 the right to contest the matter by filing a request for a hearing with the local agency, must state
37 the time limits and procedure for requesting the hearing, and must state that failure to request a
38 hearing within the required time will result in setoff of the debt.

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

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

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

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

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

14 If a local agency submits a debt for collection under this Chapter after sending the required
15 notice and the net proceeds collected that are credited to the local agency for the debt exceed
16 the amount of the debt, the local agency must send the balance to the debtor. No part of the
17 collection assistance fees provided in G.S. 105A-13 may be returned when a notice was sent
18 and a debt is owed but the debt is less than the amount set off.

19 Interest accrues on the amount of a refund returned to a taxpayer under this subsection in
20 accordance with G.S. 105-241.21. A local agency that returns a refund to a taxpayer under this
21 subsection must pay from the local agency's funds any interest that has accrued since the fifth
22 day after the Department mailed the notice of setoff to the taxpayer. (1979, c. 801, s. 94;
23 1997-490, s. 1; 2002-156, s. 5(b); 2007-491, s. 44(1)c.)
24

25 **§ 105A-6. Procedure Department to follow in making setoff.**

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

31 (b) Setoff by Department. – The Department, upon receipt of notification, must
32 determine each year whether the debtor to the claimant agency is entitled to a refund of at least
33 fifty dollars (\$50.00) from the Department. Upon determination by the Department that a
34 debtor specified by a claimant agency qualifies for such a refund, the Department must set off
35 the debt against the refund to which the debtor would otherwise be entitled and must refund any
36 remaining balance to the debtor. The Department must mail the debtor written notice that the
37 setoff has occurred and must credit the net proceeds collected to the claimant agency. If the
38 claimant agency is a State agency, that agency must credit the amount received to a
39 nonreverting trust account and must follow the procedure set in G.S. 105A-8. (1979, c. 801, s.
40 94; 1989 (Reg. Sess., 1990), c. 946, s. 2; 1997-490, s. 1.)
41

42 **§ 105A-7: Repealed by Session Laws 1997-490, s. 1, effective January 1, 2000, and**
43 **applicable to income tax refunds determined on or after that date.**
44

45 **§ 105A-8. State agency notice, hearing, decision, and refund of setoff.**

46 (a) Notice. – Within 10 days after a State agency receives a refund of a debtor, the
47 agency must send the debtor written notice that the agency has received the debtor's refund.
48 The notice must explain the debt that is the basis for the agency's claim to the debtor's refund
49 and that the agency intends to apply the refund against the debt. The notice must also inform
50 the debtor that the debtor has the right to contest the matter by filing a request for a hearing,
51 must state the time limits and procedure for requesting the hearing, and must state that failure

1 to request a hearing within the required time will result in setoff of the debt. A State agency
2 that does not send a debtor a notice within the time required by this subsection must refund the
3 amount set off plus the collection assistance fee, in accordance with subsection (d) of this
4 section.

5 (b) Hearing. – A hearing on a contested claim of a State agency, except a constituent
6 institution of The University of North Carolina or the Division of Employment Security, must
7 be conducted in accordance with Article 3 of Chapter 150B of the General Statutes. A hearing
8 on a contested claim of a constituent institution of The University of North Carolina must be
9 conducted in accordance with administrative procedures approved by the Attorney General. A
10 hearing on a contested claim of the Division of Employment Security must be conducted in
11 accordance with rules adopted by that Division. A request for a hearing on a contested claim of
12 any State agency must be filed within 30 days after the State agency mails the debtor notice of
13 the proposed setoff. A request for a hearing is considered to be filed when it is delivered for
14 mailing with postage prepaid and properly addressed. In a hearing under this section, an issue
15 that has previously been litigated in a court proceeding cannot be considered.

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

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

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

28 Interest accrues on the amount of a refund returned to a taxpayer under this subsection in
29 accordance with G.S. 105-241.21. A State agency that returns a refund to a taxpayer under this
30 subsection must pay from the State agency's funds any interest that has accrued since the fifth
31 day after the Department mailed the notice of setoff to the taxpayer. (1979, c. 801, s. 94; 1983,
32 c. 419; 1987, c. 827, s. 16; 1989, c. 539, s. 2; 1997-490, s. 1; 2005-435, s. 42; 2007-491, s.
33 44(1)c; 2011-401, s. 3.10.)

34
35 **§ 105A-9. Appeals from hearings.**

36 Appeals from hearings allowed under this Chapter, other than those conducted by the
37 Division of Employment Security, shall be in accordance with the provisions of Chapter 150B
38 of the General Statutes, the Administrative Procedure Act, except that the place of initial
39 judicial review shall be the superior court for the county in which the debtor resides. Appeals
40 from hearings allowed under this Chapter that are conducted by the Division of Employment
41 Security shall be in accordance with the provisions of Chapter 96 of the General Statutes.
42 (1979, c. 801, s. 94; 1989, c. 539, s. 3; 1997-490, s. 1; 2011-401, s. 3.11.)

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44 **§ 105A-10. Repealed by Session Laws 1997-490, s. 1, effective January 1, 2000, and
45 applicable to income tax refunds determined on or after that date.**

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47 **§ 105A-11. Repealed by Session Laws 1997-490, s. 1, effective January 1, 2000, and
48 applicable to income tax refunds determined on or after that date.**

49
50 **§ 105A-12. Priorities in claims to setoff.**

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

11
12 **§ 105A-13. Collection assistance fees.**

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

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

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

27 (d) Priority. – If the Department is able to collect only part of a debt through setoff, the
28 collection assistance fee provided in subsection (a) of this section has priority over the local
29 collection assistance fee and over the remainder of the debt. The local collection assistance fee
30 has priority over the remainder of the debt. (1979, c. 801, s. 94; 1989 (Reg. Sess., 1990), c. 946,
31 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);
32 2004-21, s. 1.)

33
34 **§ 105A-14. Accounting to the claimant agency; credit to debtor's obligation.**

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

41 (b) Upon receipt by a claimant agency of net proceeds collected on the claimant
42 agency's behalf by the Department, a final determination of the claim if it is a State agency
43 claim, and an accounting of the proceeds as specified under this section, the claimant agency
44 must credit the debtor's obligation with the net proceeds collected. (1979, c. 801, s. 94;
45 1997-490, s. 1; 2010-31, s. 31.8(f).)

46
47 **§ 105A-15. Confidentiality exemption; nondisclosure.**

48 (a) Notwithstanding G.S. 105-259 or any other provision of law prohibiting disclosure
49 by the Department of the contents of taxpayer records or information and notwithstanding any
50 confidentiality statute of any claimant agency, the exchange of any information among the

1 Department, the claimant agency, the organization submitting debts on behalf of a local agency,
2 and the debtor necessary to implement this Chapter is lawful.

3 (b) The information a claimant agency or an organization submitting debts on behalf of
4 a local agency obtains from the Department in accordance with the exemption allowed by
5 subsection (a) may be used by the agency or organization only in the pursuit of its debt
6 collection duties and practices and may not be disclosed except as provided in G.S. 105-259,
7 153A-148.1, or 160A-208.1. (1979, c. 801, s. 94; 1997-490, s. 1.)

8
9 **§ 105A-16. Rules.**

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