

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION

CHAPTER 946
SENATE BILL 1587

AN ACT TO IMPROVE THE PROCEDURE FOR COLLECTING DEBTS OWED
THE STATE BY SETTING OFF THE DEBTS AGAINST TAX REFUNDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105A-3 reads as rewritten:

"§ 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 debts that they 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."

Sec. 2. G.S. 105A-6 reads as rewritten:

"§ 105A-6. Procedure for setoff.

(a) A claimant agency seeking to attempt collection of a debt through setoff shall notify ~~in writing~~ the Department in writing and supply (i) information necessary to identify the debtor whose refund is sought to be set ~~off~~ off and (ii) the date, if any, that the debt is expected to expire. Notification to the Department and the furnishing of identifying information must occur on or before a date specified by the Department in the first year preceding the calendar year during which the refund would be paid. The notice is effective to initiate setoff against refunds that would be made in calendar years following the year in which the notice was first made until the date specified in the notice that the debt is expected to expire. The agency shall notify the Department in writing when a debt has been paid or is no longer owed the agency. ~~Additionally, subject to the notification deadline specified above, the notification shall be effective only to initiate setoff 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 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 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."

Sec. 3. G.S. 105A-13 reads as rewritten:

"§ 105A-13. Disposition of proceeds collected; collection assistance fees.

(a) Upon effecting final setoffs, 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 setoff, 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 Setoff Debt Collection Act, the sum of one hundred fifteen thousand dollars (\$115,000) 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 setoff 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 Each year the Department shall calculate its actual cost of collection as a percentage of the immediately preceding year's collections under the Setoff Debt Collection Act, and that percentage shall be its collection assistance fee for the then-current fiscal year. Act and shall retain that percentage from the gross proceeds collected by the Department through setoff for the current fiscal year."~~

Sec. 4. Not later than October 1, 1991, the Administrative Office of the Courts shall submit to the Department of Revenue pursuant to Chapter 105A of the General Statutes, a list of all debts as defined in G.S. 105A-2(3) which are owed to the State by any debtor on a judgment docketed on or after October 1, 1981, under G.S. 7A-455(b) or G.S. 7A-450.3 for the value of services rendered and expenses incurred in providing representation to an indigent, juvenile or dependent adult, and for which the information required by G.S. 105A-3(c) and G.S. 105A-6(a), is available in the records of the clerk of superior court.

Sec. 5. G.S. 7A-455 is amended by adding a new subsection to read:

"(d) In all cases in which the entry of a judgment is authorized under G.S. 7A-450.1 through G.S. 7A-450.4 or under this section, the attorney, guardian **ad litem**, public defender, or appellate defender who rendered the services or incurred the expenses for which the judgment is to be entered shall obtain the social security number, if any, of each person against whom judgment is to be entered. This number, or a certificate that the person has no social security number, shall be included in each fee application submitted by an assigned attorney, guardian **ad litem**, public defender, or appellate defender, and no order for payment entered upon an application which does not include the required social security number or certification shall be valid to authorize payment to the applicant from the Indigent Persons' Attorney Fee Fund. Each judgment docketed against any person under this section or under G.S. 450.3 shall include the social security number, if any, of the judgment debtor."

Sec. 6. G.S. 7A-455(c) reads as rewritten:

"(c) ~~If the indigent person is not finally convicted, the foregoing provisions with respect to partial payments and liens shall not be applicable. No order for partial payment under subsection (a) of this section and no judgment under subsection (b) of this section shall be entered unless the indigent person is convicted. If the indigent person is convicted, the order or judgment shall become effective and the judgment shall be docketed and indexed pursuant to G.S. 1-233 et seq., in the amount then owing, upon the later of (i) the date upon which the conviction becomes final if the indigent person is not ordered, as a condition of probation, to pay the State of North Carolina for the costs of his representation in the case or (ii) the date upon which the indigent person's probation is terminated or revoked if the indigent person is so ordered.~~"

Sec. 7. In order to pay for the computer programming, data entry, and related expenses needed to implement the provisions of this act, the Department of Revenue shall draw from individual income tax net collections received under Division II of Article 4 of Chapter 105 of the General Statutes an amount not to exceed eighty-one thousand six hundred dollars (\$81,600) for the 1990-91 fiscal year.

Sec. 8. This act shall become effective July 1, 1990. Sections 1 through 3 of this act are effective for taxable years beginning on or after January 1, 1991, and apply to debts submitted pursuant to G.S. 105A-6 on or after January 1, 1991. Section 5 shall apply to all applications submitted and orders entered on or after October 1, 1990, and Section 6 shall apply to all judgments entered on or after that date.

In the General Assembly read three times and ratified this the 17th day of July, 1990.