

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 39

Short Title: Modify Setoff Debt Collection.

(Public)

Sponsors: Senators Shaw of Cumberland, Cochrane, Cooper, Kerr, Soles; and Weinstein.

Referred to: Judiciary.

February 3, 1997

A BILL TO BE ENTITLED
AN ACT TO REVISE THE SETOFF DEBT COLLECTION ACT.

The General Assembly of North Carolina enacts:

Section 1. Chapter 105A of the General Statutes reads as rewritten:

"CHAPTER 105A.

"SETOFF DEBT COLLECTION ACT.

"ARTICLE 1.

~~"IN GENERAL.~~

"§ 105A-1. Purposes.

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

"§ 105A-2. Definitions.

The following definitions apply in this Chapter:

- 1 (1) Claimant agency. – A State agency or a local agency acting through a
2 clearinghouse or organization pursuant to G.S. 105A-3(b1).
- 3 (2) Debt. – A liquidated sum due and owing a claimant agency that has
4 accrued through contract, subrogation, tort, operation of law, or any
5 other legal theory regardless of whether there is an outstanding
6 judgment for the sum. The term includes sums collectible pursuant to
7 Title IV, Part D of the Social Security Act.
- 8 (3) Debtor. – An individual owing money to or having a delinquent account
9 with any claimant agency which obligation has not been adjudicated
10 satisfied by court order, set aside by court order, or discharged in
11 bankruptcy.
- 12 (4) Department. – The Department of Revenue.
- 13 (5) Reserved.
- 14 (6) Local agency. – A county or municipality to the extent it is not a State
15 agency as defined in this section.
- 16 (7) Net proceeds collected. – Gross proceeds collected through setoff
17 against a debtor's refund minus any collection assistance fee charged by
18 the Department.
- 19 (8) Refund. – An individual's North Carolina income tax refund.
- 20 (9) State agency. – Any of the following:
- 21 a. The North Carolina Department of Human Resources when in the
22 performance of its duties under the Medical Assistance Program
23 enabled by Chapter 108A, Article 2, Part 6, and any county
24 operating the same Program at the local level, when and only to
25 the extent such a county is in the performance of Medical
26 Assistance Program collection functions.
- 27 b. The North Carolina Department of Human Resources when in the
28 performance of its duties under the Child Support Enforcement
29 Program as enabled by Chapter 110, Article 9 and Title IV, Part
30 D of the Social Security Act to obtain indemnification for past
31 paid public assistance or to collect child support arrearages owed
32 to an individual receiving program services and any county
33 operating the program at the local level, when and only to the
34 extent that the county is engaged in the performance of those
35 same duties.
- 36 c. The North Carolina Department of Human Resources when in the
37 performance of its collection duties for intentional program
38 violations and violations due to inadvertent household error
39 under the Food Stamp Program enabled by Chapter 108A,
40 Article 2, Part 5, and any county operating the same Program at
41 the local level, when and only to the extent such a county is in
42 the performance of Food Stamp Program collection functions.

- 1 d. The North Carolina Department of Human Resources when, in
2 the performance of its duties under the Aid to Families with
3 Dependent Children Program or the Aid to Families with
4 Dependent Children – Emergency Assistance Program provided
5 in Part 2 of Article 2 of Chapter 108A or the Work First Cash
6 Assistance Program established pursuant to the federal waivers
7 received by the Department on February 5, 1996, or under the
8 State-County Special Assistance for Adults Program provided in
9 Part 3 of Article 2 of Chapter 108A, it seeks to collect public
10 assistance payments obtained through an intentional false
11 statement, intentional misrepresentation, intentional failure to
12 disclose a material fact, or inadvertent household error.
- 13 e. The Office of the North Carolina Attorney General on behalf of
14 any State agency when the debt has been reduced to a judgment.
- 15 f. Any other unit of the executive, legislative, or judicial branch of State
16 government, such as a department, a commission, a board, a
17 council, or The University of North Carolina.

18 As used in this Article:

19 (1) "~~Claimant agency~~" means and includes:

- 20 a. ~~The State Education Assistance Authority as enabled by Article~~
21 ~~23 of Chapter 116 of the General Statutes;~~
- 22 b. ~~The North Carolina Department of Human Resources when in~~
23 ~~the exercise of its authority to collect health profession student~~
24 ~~loans made pursuant to G.S. 131-121;~~
- 25 c. ~~The North Carolina Department of Human Resources when in~~
26 ~~the performance of its duties under the Medical Assistance~~
27 ~~Program enabled by Chapter 108A, Article 2, Part 6, and any~~
28 ~~county operating the same Program at the local level, when and~~
29 ~~only to the extent such a county is in the performance of Medical~~
30 ~~Assistance Program collection functions;~~
- 31 d. ~~The North Carolina Department of Human Resources when in~~
32 ~~the performance of its duties, under the Child Support~~
33 ~~Enforcement Program as enabled by Chapter 110, Article 9 and~~
34 ~~Title IV, Part D of the Social Security Act to obtain~~
35 ~~indemnification for past paid public assistance or to collect child~~
36 ~~support arrearages owed to an individual receiving program~~
37 ~~services and any county operating the program at the local level,~~
38 ~~when and only to the extent that the county is engaged in the~~
39 ~~performance of those same duties;~~
- 40 e. ~~The University of North Carolina, including its constituent~~
41 ~~institutions as specified by G.S. 116-2(4);~~

- 1 f. The University of North Carolina Hospitals at Chapel Hill in the
2 conduct of its financial affairs and operations pursuant to G.S.
3 116-37;
- 4 g. The Board of Governors of the University of North Carolina and
5 the State Board of Education through the College Scholarship
6 Loan Committee when in the performance of its duties of
7 administering the Scholarship Loan Fund for Prospective College
8 Teachers enabled by Chapter 116, Article 5;
- 9 h. The Office of the North Carolina Attorney General on behalf of
10 any State agency when the claim has been reduced to a judgment;
- 11 i. The State Board of Community Colleges through community
12 colleges as enabled by Chapter 115D in the conduct of their
13 financial affairs and operations;
- 14 j. State facilities as listed in G.S. 122C-181(a), School for the Deaf
15 at Morganton, North Carolina Sanatorium at McCain, Western
16 Carolina Sanatorium at Black Mountain, Eastern North Carolina
17 Sanatorium at Wilson, and Gravely Sanatorium at Chapel Hill
18 under Chapter 143, Article 7; Governor Morehead School under
19 Chapter 115, Article 40; Central North Carolina School for the
20 Deaf under Chapter 115, Article 41; Wright School for
21 Treatment and Education of Emotionally Disturbed Children
22 under Chapter 122C; and these same institutions by any other
23 names by which they may be known in the future;
- 24 k. The North Carolina Department of Revenue;
- 25 l. The Administrative Office of the Courts;
- 26 m. The Division of Forest Resources of the Department of
27 Environment, Health, and Natural Resources;
- 28 n. The Administrator of the Teachers' and State Employees'
29 Comprehensive Major Medical Plan, established in Article 3 of
30 General Statutes Chapter 135;
- 31 o. The State Board of Education through the Superintendent of
32 Public Instruction when in the performance of his duties of
33 administering the Scholarship Loan Fund for Prospective
34 Teachers enabled by Chapter 115C, Article 32A and the
35 scholarship loan and grant programs enabled by Chapter 115C,
36 Article 24C, Part 1;
- 37 p. The Board of Trustees of the Teachers' and State Employees'
38 Retirement System and the Board of Trustees of the Local
39 Governmental Employees' Retirement System in the performance
40 of their duties pursuant to Chapters 120, 128, 135 and 143 of the
41 General Statutes;

- 1 q. ~~The North Carolina Teaching Fellows Commission in the~~
2 ~~performance of its duties pursuant to Chapter 115C, Article 24C,~~
3 ~~Part 2;~~
- 4 r. ~~The North Carolina Department of Human Resources when in~~
5 ~~the performance of its collection duties for intentional program~~
6 ~~violations and violations due to inadvertent household error~~
7 ~~under the Food Stamp Program enabled by Chapter 108A,~~
8 ~~Article 2, Part 5, and any county operating the same Program at~~
9 ~~the local level, when and only to the extent such a county is in~~
10 ~~the performance of Food Stamp Program collection functions.~~
11 ~~The North Carolina Department of Human Resources when, in~~
12 ~~the performance of its duties under the Aid to Families with~~
13 ~~Dependent Children Program or the Aid to Families with~~
14 ~~Dependent Children Emergency Assistance Program provided~~
15 ~~in Part 2 of Article 2 of Chapter 108A or the Work First Cash~~
16 ~~Assistance Program established pursuant to the federal waivers~~
17 ~~received by the Department on February 5, 1996, or under the~~
18 ~~State County Special Assistance for Adults Program provided in~~
19 ~~Part 3 of Article 2 of Chapter 108A, it seeks to collect public~~
20 ~~assistance payments obtained through an intentional false~~
21 ~~statement, intentional misrepresentation, intentional failure to~~
22 ~~disclose a material fact, or inadvertent household error;~~
- 23 s. ~~The Employment Security Commission of North Carolina.~~
- 24 t. ~~Any State agency in the collection of salary overpayments from~~
25 ~~former employees.~~
- 26 u. ~~The State Board of Education through the Superintendent of~~
27 ~~Public Instruction when in the performance of his duties of~~
28 ~~administering the program under which the State encourages~~
29 ~~participation in the National Board for Professional Teaching~~
30 ~~Standards (NBPTS) Program, enabled by Section 19.28 of~~
31 ~~Chapter 769 of the 1993 Session Laws.~~
- 32 (2) ~~" Debtor" means any individual owing money to or having a delinquent~~
33 ~~account with any claimant agency which obligation has not been~~
34 ~~adjudicated satisfied by court order, set aside by court order, or~~
35 ~~discharged in bankruptcy.~~
- 36 (3) ~~" Debt" means any liquidated sum due and owing any claimant agency~~
37 ~~which has accrued through contract, subrogation, tort, operation of law,~~
38 ~~or any other legal theory regardless of whether there is an outstanding~~
39 ~~judgment for that sum.~~
- 40 (4) ~~" Department" means the North Carolina Department of Revenue.~~
- 41 (5) ~~" Refund" means any individual's North Carolina income tax refund.~~

1 (6) "~~Net proceeds collected~~" means ~~gross proceeds collected through final~~
2 ~~setoff against a debtor's refund minus any collection assistance fee~~
3 ~~charged by the Department.~~

4 **"§ 105A-3. Remedy additional; mandatory State usage; optional local usage;**
5 **obtaining identifying information; information; registration.**

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

8 (b) Mandatory State Usage. – All ~~claimant~~ State agencies shall submit, for
9 collection under the procedure established by this ~~Article~~ Chapter, all debts ~~which they~~
10 are owed, except debts that they are advised by the Attorney General not to submit
11 because the validity of the debt is legitimately in dispute, because an alternative means of
12 collection is pending and believed to be adequate, or because such a collection attempt
13 would result in a loss of federal funds. Except in the case of a State agency described in
14 G.S. 105A-2(9)a. through d., the State Controller may waive this requirement in
15 situations when an agency's submission of the debts would not be practical or would not
16 be effective.

17 (b1) Optional Local Usage. – After complying with the notice and hearing
18 requirements of G.S. 105A-5, a local agency may submit for collection under the
19 procedure established in this Chapter all debts it is owed, other than debts the validity of
20 which is in dispute. Local agencies shall submit debts for collection pursuant to this
21 Chapter only through one of the following:

22 (1) A clearinghouse established pursuant to an interlocal agreement adopted
23 under Article 20 of Chapter 160A of the General Statutes, pursuant to
24 which the clearinghouse will submit debts on behalf of any requesting
25 local agency.

26 (2) The North Carolina League of Municipalities.

27 (3) The North Carolina Association of County Commissioners.

28 (c) Identifying Information. – All claimant agencies shall whenever possible
29 obtain the full name, social security number, address, and any other identifying
30 information required by ~~rules promulgated by the Department pursuant to G.S. 105A-16~~
31 from any person for whom the agencies provide any service or transact any business and
32 who the claimant agencies can foresee may become a debtor under this ~~Article~~ Chapter.

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

37 A clearinghouse or organization that submits debts on behalf of a local agency must
38 register by filing written notice with the Department of its intention to effect collection
39 through setoff. If a clearinghouse registers to submit debts pursuant to this subsection, no
40 other clearinghouse may register to submit debts pursuant to this subsection.

41 **"§ 105A-4. Minimum sum collectible.**

42 ~~A claimant agency shall not be allowed to effect final setoff and collect debts through~~
43 ~~use of the remedy established under this Article~~ The Department shall not collect a debt

1 pursuant to this Chapter unless both the debt and the refund, if any, are at least fifty
2 dollars (\$50.00).

3 **"§ 105A-5. Local agency notice, hearing, and determination.**

4 (a) Prerequisite. – A local agency may not submit a debt to the Department
5 pursuant to G.S. 105A-6 until it has given the notice required by this section and the
6 claim has been finally determined as provided in this section.

7 (b) Notice. – A local agency shall send written notice to the debtor that the agency
8 intends to submit the debt for collection by setoff. The notice shall clearly set forth the
9 basis for the agency's claim to the debt, the intention to apply the debtor's tax refund
10 against the debt, the debtor's opportunity to give written notice of intent to contest the
11 validity of the claim within 30 days after the date the notice was mailed, the mailing
12 address to which the application for a hearing must be sent, and the fact that failure to
13 apply for a hearing in writing within the 30-day period is a waiver of the opportunity to
14 contest the claim, causing potential setoff by default. The written application by the
15 debtor for a hearing becomes effective upon mailing the application postage prepaid and
16 properly addressed.

17 (c) Hearing. – A hearing on a contested claim of a local agency shall be held first
18 before the governing body of the local agency or the governing body's designee. No
19 issues may be considered at the hearing that have been previously litigated. If the debtor
20 disagrees with the determination of the governing body or its designee, the debtor may
21 file a petition for a contested case under Article 3 of Chapter 150B of the General
22 Statutes. The petition must be filed within 30 days after the debtor receives a copy of the
23 determination of the governing body or its designee. Notwithstanding the provisions of
24 G.S. 150B-2, a local agency is an agency for purposes of contested cases and appeals
25 under this Chapter.

26 (d) Determination. – It shall be determined at the hearing whether the claimed sum
27 asserted as due and owing is correct, and if not, an adjustment to the claim shall be made.
28 The debtor may appeal the determination as provided in G.S. 105A-9.

29 **~~Collection of sums due claimant agencies through setoff.~~**

30 ~~Subject to the limitations contained in this Article, the Department of Revenue shall~~
31 ~~upon request render assistance in the collection of any delinquent account or debt owing~~
32 ~~to any claimant agency. This assistance shall be provided by setting off any refunds due~~
33 ~~the debtor from the Department by the sum certified by claimant agency as due and~~
34 ~~owing.~~

35 **"§ 105A-6. Procedure for setoff.**

36 (a) Notice to Department. – A claimant agency seeking to attempt collection of a
37 debt through setoff shall notify the Department in writing and supply (i) information
38 necessary to identify the debtor whose refund is sought to be set off and (ii) off. The
39 claimant agency may include with the notification the date, if any, that the debt is
40 expected to expire. Notification to the Department and the furnishing of identifying
41 information must occur on or before a date specified by the Department in the first year
42 preceding the calendar year during which the refund would be paid. The notice is effective to
43 initiate setoff against refunds that would be made in calendar years following the year in which

1 ~~the notice was first made until the date specified in the notice that the debt is expected to expire.~~
2 The agency shall notify the Department in writing when a debt has been paid or is no
3 longer owed the agency.

4 (b) Setoff by Department. – The Department, upon receipt of notification, shall
5 determine each year whether the debtor to the claimant agency is entitled to a refund of at
6 least fifty dollars (\$50.00) from the Department. Upon determination by the Department
7 that a debtor specified by a claimant agency qualifies for such a refund, the Department
8 shall ~~notify in writing the claimant agency that a refund is pending, specify its sum, and indicate~~
9 ~~the debtor's address as listed on the tax return.~~

10 (e) ~~Unless stayed by court order, the Department shall, upon certification as provided in~~
11 ~~this Article, set off the certified debt against the refund to which the debtor would~~
12 ~~otherwise be entitled. entitled and shall refund any remaining balance to the debtor as if~~
13 ~~setoff had not occurred. The Department shall mail the debtor written notice that setoff~~
14 ~~has occurred. Upon effecting setoffs, the Department shall periodically credit claimant~~
15 ~~agencies with the net proceeds collected on their behalf.~~

16 (c) Refund if Setoff Exceeds Debt. – If the net proceeds credited to a claimant
17 agency exceed the amount of the debtor's debt, the agency shall refund the balance to the
18 debtor. The refund shall bear interest as provided in G.S. 105A-8(b).

19 (d) State Agency Notice to Debtor. – A State agency shall credit to a nonreverting
20 trust account all refund setoffs credited to it. Within 10 days after receipt of a refund
21 setoff from the Department, the State agency shall send written notification to the debtor
22 that the refund has been received. The notice shall clearly set forth the basis for the claim
23 to the refund, the intention to apply the refund against the debt to the claimant agency, the
24 debtor's opportunity to give written notice of intent to contest the validity of the claim
25 within 30 days after the date the notice was mailed, the mailing address to which the
26 application for a hearing must be sent, and the fact that failure to apply for a hearing in
27 writing within the 30-day period is a waiver of the opportunity to contest the claim,
28 causing final setoff by default. The written application by the debtor for a hearing
29 becomes effective upon mailing the application postage prepaid and properly addressed.

30 If a State agency fails to provide timely notice in accordance with the requirements of
31 this subsection, the State agency shall refund to the debtor the entire amount set off plus
32 the collection assistance fee retained by the Department. That portion of the refund
33 reflecting the collection assistance fee must be paid from the State agency's funds. The
34 refund shall bear interest as provided in G.S. 105A-8(b).

35 ~~"§-105A~~hearing.

36 (a) ~~The claimant agency, upon receipt of notification from the Department that a~~
37 ~~debtor is entitled to a refund, shall within 10 days send a written notification to the~~
38 ~~debtor and a copy of same to the Department of its assertion of rights to the refund or any~~
39 ~~part thereof. Such notification shall inform the debtor of the claimant agency's intention~~
40 ~~to direct the Department to apply the refund or any portion thereof against the debt~~
41 ~~certified as due and owing. For the Department to be obligated to continue holding~~
42 ~~refunds until receipt of certification of the debt, if any, pursuant to G.S. 105A-10, the~~
43 ~~copy of the notification to the debtor by the claimant agency of its intention to set off~~

1 must be received by the Department within 15 days of the date of the Department's
2 mailing to the respective claimant agency the notification of the debtor's entitlement to a
3 refund.

4 (b) ~~The contents of the written notification to the debtor (and the Department's~~
5 ~~copy) of the setoff claim shall clearly set forth the basis for the claim to the refund, the~~
6 ~~intention to apply the refund against the debt to the claimant agency, the debtor's~~
7 ~~opportunity to give written notice of intent to contest the validity of the claim within 30~~
8 ~~days of the date of the mailing of the notice, the mailing address to which the application~~
9 ~~for a hearing must be sent, and the fact that failure to apply for a hearing in writing within~~
10 ~~the 30-day period will be deemed a waiver of the opportunity to contest the claim causing~~
11 ~~final setoff by default.~~

12 (c) ~~The written application by the debtor for a hearing shall be effective upon~~
13 ~~mailing the application postage prepaid and properly addressed to the claimant agency.~~

14 **"§ 105A-8. Hearing procedure. State agency hearing and determination.**

15 (a) Hearing. — A hearing on a contested claim, claim of a State agency, other than a
16 claim of a constituent institution of The University of North Carolina, or a claim of the
17 Employment Security Commission of North Carolina, shall be conducted in accordance
18 with Article 3 of Chapter 150B of the General Statutes. A hearing on a contested claim
19 of a constituent institution of The University of North Carolina shall be conducted in
20 accordance with administrative procedures approved by the Attorney General. A hearing
21 on a contested claim of the Employment Security Commission of North Carolina shall be
22 conducted in accordance with regulations adopted by the Employment Security
23 Commission of North Carolina. No issues may be considered at the hearing that have
24 been previously litigated.

25 (b) Determination; Refund. — Additionally, it—It shall be determined at the hearing
26 whether the claimed sum asserted as due and owing is correct, and if not, an adjustment
27 to the claim shall be made. If it is determined that the amount set off is excessive, the
28 State agency shall refund the excess amount to the taxpayer. If it is determined that the
29 State agency is not entitled to any part of the amount set off, the State agency shall refund
30 the entire amount set off plus the collection assistance fee retained by the Department.
31 That portion of the refund reflecting the collection assistance fee must be paid from the
32 State agency's funds. If a refund is made to the taxpayer, the State agency shall pay
33 interest to the taxpayer calculated as provided in G.S. 105-241.1(i) from the date one day
34 after the date through which the Department pays interest on the refund or the date that
35 interest begins to accrue, as provided in G.S. 105-266(b), whichever is later.

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

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

41 **"§ 105A-9. Appeals from hearings.**

42 Appeals from action taken at hearings allowed under this ~~Article~~ Chapter shall be in
43 accordance with the provisions of Chapter 150B of the General Statutes, the

1 Administrative Procedure Act, except that the place of initial judicial review shall be the
2 superior court for the county in which the debtor resides. Appeals from actions allowed
3 under this ~~Article~~ Chapter conducted by the Employment Security Commission of North
4 Carolina shall be in accordance with the provisions of Chapter 96 of the General Statutes.

5 **~~"§ 105A finalization of setoff.~~**

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

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

15 **~~"§ 105Aa Upon the finalization of setoff under the provisions of this Article, the~~**
16 **~~Department shall notify the debtor in writing of the action taken along~~**
17 **~~with an accounting of the action taken on any refund. If there is an~~**
18 **~~outstanding balance after setoff, the notice under this section shall~~**
19 **~~accompany the balance when disbursed.~~**

20 **"§ 105A-12. Priorities in claims to setoff.**

21 ~~Priority in multiple claims to refunds allowed to be set off under the provisions of this~~
22 ~~Article shall be in the order in time which a claimant agency has filed a written notice~~
23 ~~with the Department of its intention to effect collection through setoff under this Article.~~
24 ~~Notwithstanding the priority set forth above according to time of filing, the The~~
25 ~~Department has priority over all other claimant agencies for collection by setoff~~
26 ~~whenever it is a competing agency for a refund. State agencies have priority over local~~
27 ~~agencies for collection by setoff. When there are multiple claims by State agencies other~~
28 ~~than the Department, the priority shall be in the order in time in which each agency~~
29 ~~registered for setoff pursuant to G.S. 105A-3. When there are multiple claims by~~
30 ~~organizations submitting debts on behalf of local agencies, the priority shall be in the~~
31 ~~order in time in which each organization registered for setoff pursuant to G.S. 105A-3.~~
32 ~~When there are multiple claims among local agencies whose debts are submitted by a~~
33 ~~single organization, the priority shall be in the order in time in which each local agency~~
34 ~~requested the organization to submit debts on its behalf.~~

35 **~~"§ 105A-13. Disposition of proceeds collected; collection-Collection assistance fees.~~**

36 (a) ~~Upon effecting final setoffs, the Department shall periodically write checks to~~
37 ~~the respective claimant agencies for the net proceeds collected on their behalf.~~

38 (b) ~~Each year the Department shall determine its actual cost of collection under the~~
39 ~~Setoff Debt Collection Act for the immediately preceding year and shall calculate the~~
40 ~~percentage that cost represents of the preceding year's collections, excluding collections~~
41 ~~of child support arrearages under G.S. 105A-2(1)d. To recover its cost of collection under~~
42 ~~this Chapter, the The Department shall retain that percentage from the gross proceeds~~
43 ~~collected by the Department through setoff for the current year, other than the gross~~

1 ~~proceeds collected of child support arrearages under G.S. 105A-2(1)d. add a collection~~
2 ~~assistance fee to each debt collected through setoff, collect it as part of the debt, and~~
3 ~~retain it. The collection assistance fee shall be determined based on the Department's~~
4 ~~actual cost of collection under this Chapter for the immediately preceding year and shall~~
5 ~~not exceed fifteen dollars (\$15.00). If the Department is able to collect only part of a~~
6 ~~debt through setoff, the collection assistance fee has priority over the remainder of the~~
7 ~~debt. The collection assistance fee shall not be added to child support debts or collected~~
8 ~~as part of child support debts. The Department shall retain from collections under~~
9 ~~Division II of Article 4 of Chapter 105 of the General Statutes the cost of collection of~~
10 ~~child support debts under this Chapter.~~

11 **"§ 105A-14. Accounting to the claimant agency; credit to debtor's obligation.**

12 (a) Simultaneously with the transmittal of ~~a check for~~ the net proceeds collected to
13 a claimant agency, the Department shall provide the agency with an accounting of the
14 setoffs ~~finalized~~ for which payment is being made. The accounting shall, whenever
15 possible, include the full names of the debtors, the debtors' social security numbers, the
16 gross proceeds collected per ~~individual~~ setoff, the net proceeds collected per setoff, and
17 the collection assistance fee added to the debt and collected ~~charged~~ per setoff.

18 (b) Upon receipt by a claimant agency of ~~a check representing~~ net proceeds
19 collected on ~~a~~ the claimant agency's behalf by the ~~Department~~ Department, a final
20 determination of the claim, and an accounting of the proceeds as specified under this
21 section, the claimant agency shall credit the debtor's obligation with the gross ~~net~~
22 proceeds collected.

23 **"§ 105A-15. Confidentiality exemption; nondisclosure.**

24 (a) Notwithstanding G.S. 105-259 or any other provision of law prohibiting
25 disclosure by the Department of the contents of taxpayer records or information and
26 notwithstanding any confidentiality statute of any claimant agency, ~~all the exchange of~~
27 any information exchanged among the Department, the claimant agency, the organization
28 submitting debts on behalf of a local agency, and the debtor necessary to accomplish and
29 effectuate the intent of this Article ~~implement this Chapter~~ is lawful.

30 (b) The information ~~obtained by a claimant agency or an organization submitting~~
31 debts on behalf of a local agency obtains from the Department in accordance with the
32 exemption allowed by subsection (a) ~~shall only~~ may be used by a ~~claimant~~ the agency or
33 organization only in the pursuit of its debt collection duties and ~~practices and any person~~
34 ~~employed by, or formerly employed by, a claimant agency who discloses any such information~~
35 ~~for any other purpose, except as otherwise allowed by G.S. 105-259, shall be penalized in~~
36 ~~accordance with the terms of that statute.~~ practices and may not be disclosed except as
37 provided in G.S. 105-259, 153A-148.1, or 160A-208.1.

38 **"§ 105A-16. Rules and regulations. Rules.**

39 The Secretary of Revenue is ~~authorized to prescribe forms and make all rules which~~
40 ~~he deems necessary in order to effectuate the intent of this Article.~~ may adopt rules to
41 implement this Chapter."

42 Section 2. G.S. 105-266(b) reads as rewritten:

1 "(b) Interest. – An overpayment of tax bears interest at the rate established in G.S.
2 105-241.1(i) from the date that interest begins to accrue until a refund is paid. A refund is
3 considered paid on a date determined by the Secretary that is no sooner than five days
4 after a refund check is ~~mailed~~-mailed or, in the case of a refund set off against a debt
5 pursuant to Chapter 105A of the General Statutes, five days after the Secretary's notice of
6 setoff is mailed.

7 Interest on an overpayment of a tax, other than a tax levied under Article 4 or Article
8 8B of this Chapter, accrues from a date 90 days after the date the tax was originally paid
9 by the taxpayer until the refund is paid. Interest on an overpayment of a tax levied under
10 Article 4 or Article 8B of this Chapter accrues from a date 45 days after the latest of the
11 following dates until the refund is paid:

- 12 (1) The date the final return was filed.
- 13 (2) The date the final return was due to be filed.
- 14 (3) The date of the overpayment.

15 The date of an overpayment of a tax levied under Article 4 or Article 8B of this Chapter
16 is determined in accordance with section 6611(d), (f), (g), and (h) of the Code."

17 Section 3. The changes to G.S. 105A-3(d), 105A-5, and 105A-16 made by this
18 act are effective when this act becomes law. The remainder of this act becomes effective
19 January 1, 1998.