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SENATE BILL 353
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Short Title: DOR Debt Collection Changes-AB.

(Public)

Sponsors:

Referred to:

March 6, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE A PERMANENT MECHANISM FOR THE COLLECTION
OF TAX DEBTS.

The General Assembly of North Carolina enacts:

SECTION 1. The General Assembly finds that the Department of Revenue has documented that the State's cost of collecting overdue tax debts exceeds twenty percent (20%) of the amount of the overdue tax debts. The General Assembly finds that the cost of collecting overdue tax debts is currently borne by taxpayers who pay their taxes on time. It is the intent of the General Assembly by this act to shift this cost to the delinquent taxpayers who owe overdue tax debts.

SECTION 2. Article 9 of Chapter 105 of the General Statutes is amended by adding a new section to read:

§ 105-243.1. Collection of tax debts.

(a) Definitions. – The following definitions apply in this section:

(1) Overdue tax debt. – Any part of a tax debt that remains unpaid 90 days or more after the notice of final assessment was mailed to the taxpayer and for which the Department has exhausted all other collection remedies available under this Chapter. The term does not include a tax debt, however, if either of the following conditions is met:

a. The taxpayer entered into an installment agreement for the tax debt under G.S. 105-237 within 90 days after the notice of final assessment was mailed and has not failed to make any payments due under the installment agreement.

1 b. A notice of garnishment of the tax debt was served under G.S.
2 105-242(b) within 90 days after the notice of final assessment
3 was mailed and the tax debt is being paid pursuant to a resulting
4 agreement or judgment for garnishment.

5 (2) Tax debt. – The total amount of tax, penalty, and interest due for
6 which a notice of final assessment has been mailed to a taxpayer after
7 the taxpayer no longer has the right to contest the debt.

8 (b) Outsourcing. – The Secretary may contract for the collection of tax debts.
9 Contracts shall be awarded by the competitive bid process on a regional basis only to
10 contractors who practice a code of ethics as approved by the Secretary of Revenue. At
11 least 30 days before the Department submits a tax debt to a contractor for collection, the
12 Department must notify the taxpayer by mail that the debt may be submitted for
13 collection if payment is not received within 30 days after the notice was mailed.

14 (c) Secrecy. – Notwithstanding the provisions of G.S. 105-259, a contractor to
15 whom the Department has submitted tax debts for collection shall not disclose tax
16 information to any person for any purpose. Violation of this subsection is a Class I
17 felony.

18 (d) Fee. – A collection assistance fee is imposed on an overdue tax debt that
19 remains unpaid 30 days or more after the fee notice required by this subsection is
20 mailed to the taxpayer. In order to impose a collection assistance fee on a tax debt, the
21 Department must notify the taxpayer that the fee will be imposed if the tax debt is not
22 paid in full within 30 days after the date the fee notice was mailed to the taxpayer. The
23 Department may not mail the fee notice earlier than 60 days after the notice of final
24 assessment for the tax debt was mailed to the taxpayer. The fee is collectible as part of
25 the debt. The Secretary may waive the fee pursuant to G.S. 105-237 to the same extent
26 as if it were a penalty.

27 The amount of the collection assistance fee is twenty percent (20%) of the amount of
28 the overdue tax debt. If the Department collects only part of the overdue tax debt, the
29 amount collected is allocated proportionally between the collection assistance fee and
30 the tax debt.

31 (e) Use. – The fee is a receipt of the Department and must be applied to the costs
32 of collecting overdue tax debts. The proceeds of the fee must be credited to a special
33 account within the Department and may be expended only as provided in this
34 subsection. The Department may apply the proceeds of the fee to pay contractors for
35 collecting tax debts under subsection (b) of this section and to pay the fee the United
36 States Department of the Treasury charges for setoff to recover tax owed to North
37 Carolina. The remaining proceeds of the fee may be spent only pursuant to
38 appropriation by the General Assembly. The fee proceeds do not revert but remain in
39 the special account until spent for the costs of collecting overdue tax debts.

40 (f) Reports. – The Department must report to the Joint Legislative Commission
41 on Governmental Operations and to the Revenue Laws Study Committee on its efforts
42 to collect tax debts. Reports must be submitted quarterly beginning November 1, 2001,
43 through November 1, 2002, and semiannually thereafter. The report must include a

1 breakdown of the amount and age of tax debts collected by collection agencies on
2 contract, the amount and age of tax debts collected by the Department through warning
3 letters, and the amount and age of tax debts otherwise collected by Department
4 personnel."

5 **SECTION 3.** G.S. 105A-13 reads as rewritten:

6 "**§ 105A-13. Collection assistance fees.**

7 (a) State Setoff. – To recover the costs incurred by the Department in collecting
8 debts under this Chapter, a collection assistance fee of no more than fifteen dollars
9 (\$15.00) is imposed on each debt collected through setoff. The Department must collect
10 this fee as part of the debt and retain it. The Department must set the amount of the
11 collection assistance fee based on its actual cost of collection under this Chapter for the
12 immediately preceding year. If the Department is able to collect only part of a debt
13 through setoff, the collection assistance fee has priority over the remainder of the debt.
14 The collection assistance fee shall not be added to child support debts or collected as
15 part of child support debts. Instead, the Department shall retain from collections under
16 Division II of Article 4 of Chapter 105 of the General Statutes the cost of collecting
17 child support debts under this Chapter.

18 (b) ~~Federal Setoff. — A collection assistance fee of fifteen dollars (\$15.00) applies~~
19 ~~to a setoff made by the United States Department of the Treasury to recover tax owed to~~
20 ~~North Carolina. The Department of Revenue must add the fee to the amount of the tax~~
21 ~~liability submitted to the United States Department of the Treasury for setoff. The~~
22 ~~Department of Revenue must collect the fee as part of the debt and retain it. If a federal~~
23 ~~setoff covers only part of the tax due, the collection assistance fee has priority over the~~
24 ~~tax due."~~

25 **SECTION 4.** G.S. 105-269 reads as rewritten:

26 "**§ 105-269. Extraterritorial authority to enforce payment.**

27 (a) ~~The Secretary of Revenue, Secretary,~~ with the assistance of the Attorney
28 General, is ~~hereby empowered~~ authorized to bring suits in the courts of other states to
29 collect taxes legally due this State. The officials of other states ~~which~~ that extend a like
30 comity to this State are empowered to sue for the collection of ~~such~~ taxes in the courts
31 of this State. A certificate by the Secretary of State, under the Great Seal of the State,
32 that ~~such~~ these officers have authority to collect the tax ~~shall be~~ is conclusive evidence
33 of ~~such~~ this authority. Whenever ~~it shall be deemed expedient by the Secretary of~~
34 ~~Revenue~~ the Secretary considers it expedient to employ local counsel to assist in
35 bringing suit in an out-of-state court, the Secretary, with the concurrence of the
36 Attorney General, may employ ~~such~~ local counsel on the basis of a negotiated retainer
37 or in accordance with prevailing commercial law league rates.

38 (b) ~~The Secretary of Revenue may, in accordance with the procedure prescribed~~
39 ~~in G.S. 143-49(3), contract for the collection of taxes legally due this State from~~
40 ~~taxpayers located in other states. The Secretary may furnish to a contractor hired~~
41 ~~pursuant to this subsection any information he considers necessary to identify and locate~~
42 ~~a taxpayer, establish the tax liability of a taxpayer, or effect collection of the amount~~
43 ~~due."~~

1 **SECTION 5.** G.S. 105-259(b) is amended by adding a new subdivision to
2 read:

3 "(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State
4 who has access to tax information in the course of service to or employment by the State
5 may not disclose the information to any other person unless the disclosure is made for
6 one of the following purposes:

7 . . .

8 (26) To contract for the collection of tax debts pursuant to G.S. 105-243.1."

9 **SECTION 6.** Section 5(a) of S.L. 1999-341, as amended by Section 16 of
10 S.L. 2000-120, reads as rewritten:

11 "Section 5.(a) The Secretary of Revenue shall contract during the 1999-2001
12 fiscal biennium for the collection of delinquent tax debts owed by nonresidents and
13 foreign entities. To implement this section, the Secretary may draw funds for the
14 1999-2000 fiscal year from net collections that would otherwise be credited to the
15 General Fund under G.S. 105-269.14, enacted by Section 2 of this act. For the
16 2000-2001 ~~fiscal year~~, and 2001-2002 fiscal years, the Secretary may retain the costs of
17 implementing this section from the amounts collected pursuant to the contracts
18 authorized by this section. The Secretary of Revenue shall report annually to the
19 Revenue Laws Study Committee on its collections pursuant to this contract during the
20 biennium."

21 **SECTION 6.1.(a)** Effective with respect to taxable years beginning after
22 December 31, 2001, G.S. 105-241.2 is amended by adding a new subsection to read:

23 "**(b3) Payment of Taxpayer's Costs.** – The Tax Review Board shall award costs,
24 including reasonable attorneys' fees, to a taxpayer if the Board finds that the taxpayer is
25 the prevailing party and that the Secretary was not substantially justified in the position
26 asserted against the taxpayer. A taxpayer is considered to be the prevailing party if the
27 taxpayer substantially prevailed with respect to the amount in controversy or with
28 respect to the most significant issue or set of issues presented."

29 **SECTION 6.1.(b)** Effective with respect to taxable years beginning after
30 December 31, 2001, G.S. 105-267 reads as rewritten:

31 "**§ 105-267. Taxes to be paid; suits for recovery of taxes.**

32 No court of this State shall entertain a suit of any kind brought for the purpose of
33 preventing the collection of any tax imposed in this Subchapter. Whenever a person has
34 a valid defense to the enforcement of the collection of a tax, the person shall pay the tax
35 to the proper officer, and that payment shall be without prejudice to any defense of
36 rights the person may have regarding the tax. At any time within the applicable protest
37 period, the taxpayer may demand a refund of the tax paid in writing from the Secretary
38 and if the tax is not refunded within 90 days thereafter, may sue the Secretary in the
39 courts of the State for the amount demanded. The protest period for a tax levied in
40 Article 2A, 2C, or 2D of this Chapter is 30 days after payment. The protest period for all
41 other taxes is three years after payment.

42 The suit may be brought in the Superior Court of Wake County, or in the county in
43 which the taxpayer resides at any time within three years after the expiration of the

1 90-day period allowed for making the refund. If upon the trial it is determined that all or
2 part of the tax was levied or assessed for an illegal or unauthorized purpose, or was for
3 any reason invalid or excessive, judgment shall be rendered therefor, with interest, and
4 the judgment shall be collected as in other cases. The court shall award costs, including
5 reasonable attorneys' fees, to a taxpayer if the court finds that the taxpayer is the
6 prevailing party and that the Secretary was not substantially justified in the position
7 asserted against the taxpayer. A taxpayer is considered to be the prevailing party if the
8 taxpayer substantially prevailed with respect to the amount in controversy or with
9 respect to the most significant issue or set of issues presented. The amount of taxes for
10 which judgment is rendered in such an action shall be refunded by the State. G.S. 105-
11 241.2 provides an alternate procedure for a taxpayer to contest a tax and is not in
12 conflict with or superseded by this section."

13 **SECTION 7.** Section 6 of this act is effective when it becomes law. The
14 remainder of this act becomes effective July 1, 2001, and applies to tax debts that
15 remain unpaid on or after that date.