

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 39
Finance Committee Substitute Adopted 4/9/97
Finance Committee Substitute #2 Adopted 8/4/97

Short Title: Modify Setoff Debt Collection.

(Public)

Sponsors:

Referred to:

February 3, 1997

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

3 The General Assembly of North Carolina enacts:

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

5 **"CHAPTER 105A.**

6 **"SETOFF DEBT COLLECTION ACT.**

7 **"ARTICLE 1.**

8 **"IN GENERAL.**

9 **"§ 105A-1. Purposes.**

10 The purpose of this ~~Article-Chapter~~ is to establish as policy that all claimant agencies
11 and the Department of Revenue shall cooperate in identifying debtors who owe money to
12 the State or to a local government through ~~its~~ their various ~~claimant~~ agencies and who
13 qualify for refunds from the Department of Revenue. It is also the intent of this ~~Article~~
14 Chapter that procedures be established for setting off against any ~~such~~ refund the sum of
15 any debt owed to the ~~State~~ State or to a local government. Furthermore, it is the
16 legislative intent that this ~~Article-Chapter~~ be liberally construed so as to effectuate these
17 purposes as far as legally and practically possible.

18 **"§ 105A-2. Definitions.**

1 The following definitions apply in this Chapter:

2 (1) Claimant agency. – Either of the following:

3 a. A State agency.

4 b. A local agency acting through a clearinghouse or an organization
5 pursuant to G.S. 105A-3(b1).

6 (2) Debt. – Any of the following:

7 a. A sum owed to a claimant agency that has accrued through
8 contract, subrogation, tort, operation of law, or any other legal
9 theory regardless of whether there is an outstanding judgment for
10 the sum.

11 b. A sum a claimant agency is authorized or required by law to
12 collect, such as child support payments collectible under Title IV,
13 Part D of the Social Security Act.

14 c. A sum owed as a result of an intentional program violation or a
15 violation due to inadvertent household error under the Food
16 Stamp Program enabled by Chapter 108A, Article 2, Part 5.

17 e. A sum owed as a result of having obtained public assistance
18 payments under any of the following programs through an
19 intentional false statement, intentional misrepresentation,
20 intentional failure to disclose a material fact, or inadvertent
21 household error:

22 1. The Aid to Families with Dependent Children Program or
23 the Aid to Families with Dependent Children –
24 Emergency Assistance Program, enabled by Chapter
25 108A, Article 2, Part 2.

26 2. The Work First Cash Assistance Program established
27 pursuant to federal waivers received by the Department of
28 Human Resources on February 5, 1996.

29 3. The State-County Special Assistance for Adults Program,
30 enabled by Chapter 108A, Article 2, Part 3.

31 4. A successor program of one of these programs.

32 (3) Debtor. – An individual who owes a debt.

33 (4) Department. – The Department of Revenue.

34 (5) Reserved.

35 (6) Local agency. – A county, to the extent it is not considered a State
36 agency, or a municipality.

37 (7) Net proceeds collected. – Gross proceeds collected through setoff
38 against a debtor's refund minus the collection assistance fee retained by
39 the Department.

40 (8) Refund. – An individual's North Carolina income tax refund.

41 (9) State agency. – Any of the following:

42 a. A unit of the executive, legislative, or judicial branch of State
43 government.

1 b. A county, to the extent it administers a program supervised by the
2 Department of Human Resources or it operates a Child Support
3 Enforcement Program, enabled by Chapter 110, Article 9, and
4 Title IV, Part D of the Social Security Act.

5 As used in this Article:

6 (1) "Claimant agency" means and includes:

- 7 a. ~~The State Education Assistance Authority as enabled by Article~~
8 ~~23 of Chapter 116 of the General Statutes;~~
- 9 b. ~~The North Carolina Department of Human Resources when in~~
10 ~~the exercise of its authority to collect health profession student~~
11 ~~loans made pursuant to G.S. 131-121;~~
- 12 c. ~~The North Carolina Department of Human Resources when in~~
13 ~~the performance of its duties under the Medical Assistance~~
14 ~~Program enabled by Chapter 108A, Article 2, Part 6, and any~~
15 ~~county operating the same Program at the local level, when and~~
16 ~~only to the extent such a county is in the performance of Medical~~
17 ~~Assistance Program collection functions;~~
- 18 d. ~~The North Carolina Department of Human Resources when in~~
19 ~~the performance of its duties, under the Child Support~~
20 ~~Enforcement Program as enabled by Chapter 110, Article 9 and~~
21 ~~Title IV, Part D of the Social Security Act to obtain~~
22 ~~indemnification for past paid public assistance or to collect child~~
23 ~~support arrearages owed to an individual receiving program~~
24 ~~services and any county operating the program at the local level,~~
25 ~~when and only to the extent that the county is engaged in the~~
26 ~~performance of those same duties;~~
- 27 e. ~~The University of North Carolina, including its constituent~~
28 ~~institutions as specified by G.S. 116-2(4);~~
- 29 f. ~~The University of North Carolina Hospitals at Chapel Hill in the~~
30 ~~conduct of its financial affairs and operations pursuant to G.S.~~
31 ~~116-37;~~
- 32 g. ~~The Board of Governors of the University of North Carolina and~~
33 ~~the State Board of Education through the College Scholarship~~
34 ~~Loan Committee when in the performance of its duties of~~
35 ~~administering the Scholarship Loan Fund for Prospective College~~
36 ~~Teachers enabled by Chapter 116, Article 5;~~
- 37 h. ~~The Office of the North Carolina Attorney General on behalf of~~
38 ~~any State agency when the claim has been reduced to a judgment;~~
- 39 i. ~~The State Board of Community Colleges through community~~
40 ~~colleges as enabled by Chapter 115D in the conduct of their~~
41 ~~financial affairs and operations;~~
- 42 j. ~~State facilities as listed in G.S. 122C-181(a), School for the Deaf~~
43 ~~at Morganton, North Carolina Sanatorium at McCain, Western~~

- 1 Carolina Sanatorium at Black Mountain, Eastern North Carolina
2 Sanatorium at Wilson, and Gravelly Sanatorium at Chapel Hill
3 under Chapter 143, Article 7; Governor Morehead School under
4 Chapter 115, Article 40; Central North Carolina School for the
5 Deaf under Chapter 115, Article 41; Wright School for
6 Treatment and Education of Emotionally Disturbed Children
7 under Chapter 122C; and these same institutions by any other
8 names by which they may be known in the future;
- 9 k. The North Carolina Department of Revenue;
- 10 l. The Administrative Office of the Courts;
- 11 m. The Division of Forest Resources of the Department of
12 Environment, Health, and Natural Resources;
- 13 n. The Administrator of the Teachers' and State Employees'
14 Comprehensive Major Medical Plan, established in Article 3 of
15 General Statutes Chapter 135;
- 16 o. The State Board of Education through the Superintendent of
17 Public Instruction when in the performance of his duties of
18 administering the Scholarship Loan Fund for Prospective
19 Teachers enabled by Chapter 115C, Article 32A and the
20 scholarship loan and grant programs enabled by Chapter 115C,
21 Article 24C, Part 1;
- 22 p. The Board of Trustees of the Teachers' and State Employees'
23 Retirement System and the Board of Trustees of the Local
24 Governmental Employees' Retirement System in the performance
25 of their duties pursuant to Chapters 120, 128, 135 and 143 of the
26 General Statutes;
- 27 q. The North Carolina Teaching Fellows Commission in the
28 performance of its duties pursuant to Chapter 115C, Article 24C,
29 Part 2;
- 30 r. The North Carolina Department of Human Resources when in
31 the performance of its collection duties for intentional program
32 violations and violations due to inadvertent household error
33 under the Food Stamp Program enabled by Chapter 108A,
34 Article 2, Part 5, and any county operating the same Program at
35 the local level, when and only to the extent such a county is in
36 the performance of Food Stamp Program collection functions.
37 The North Carolina Department of Human Resources when, in
38 the performance of its duties under the Aid to Families with
39 Dependent Children Program or the Aid to Families with
40 Dependent Children Emergency Assistance Program provided
41 in Part 2 of Article 2 of Chapter 108A or the Work First Cash
42 Assistance Program established pursuant to the federal waivers
43 received by the Department on February 5, 1996, or under the

1 State County Special Assistance for Adults Program provided in
2 Part 3 of Article 2 of Chapter 108A, it seeks to collect public
3 assistance payments obtained through an intentional false
4 statement, intentional misrepresentation, intentional failure to
5 disclose a material fact, or inadvertent household error;

6 s. The Employment Security Commission of North Carolina.

7 t. Any State agency in the collection of salary overpayments from
8 former employees.

9 u. The State Board of Education through the Superintendent of
10 Public Instruction when in the performance of his duties of
11 administering the program under which the State encourages
12 participation in the National Board for Professional Teaching
13 Standards (NBPTS) Program, enabled by Section 19.28 of
14 Chapter 769 of the 1993 Session Laws.

15 (2) " Debtor" means any individual owing money to or having a delinquent
16 account with any claimant agency which obligation has not been
17 adjudicated satisfied by court order, set aside by court order, or
18 discharged in bankruptcy.

19 (3) " Debt" means any liquidated sum due and owing any claimant agency
20 which has accrued through contract, subrogation, tort, operation of law,
21 or any other legal theory regardless of whether there is an outstanding
22 judgment for that sum.

23 (4) " Department" means the North Carolina Department of Revenue.

24 (5) " Refund" means any individual's North Carolina income tax refund.

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

28 **"§ 105A-3. Remedy additional; mandatory State usage; optional local usage;**
29 **obtaining identifying information-information; registration.**

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

32 (b) Mandatory State Usage. – All claimant agencies shall submit, for collection
33 under the procedure established by this Article, all debts which they are owed, except
34 debts that they are advised by A State agency must submit a debt owed to it for collection
35 under this Chapter unless the State Controller has waived this requirement or the
36 Attorney General has advised the State agency not to submit the debt because the validity
37 of the debt is legitimately in dispute, because an alternative means of collection is
38 pending and believed to be adequate, or because such a collection attempt would result in
39 a loss of federal funds. The State Controller may waive the requirement for a State
40 agency, other than the Department of Human Resources or a county acting on behalf of
41 that Department, to submit a debt owed to it for collection under this Chapter if the State
42 Controller finds that collection by this means would not be practical or cost effective. A
43 waiver may apply to all debts owed a State agency or a type of debt owed a State agency.

1 **(b1) Optional Local Usage.** – A local agency may submit a debt owed to it for
2 collection under this Chapter. A local agency that decides to submit a debt owed to it for
3 collection under this Chapter must establish the debt by following the procedure set in
4 G.S. 105A-5 and must submit the debt through one of the following:

5 (1) A clearinghouse that is established pursuant to an interlocal agreement
6 adopted under Article 20 of Chapter 160A of the General Statutes and
7 has agreed to submit debts on behalf of any requesting local agency.

8 (2) The North Carolina League of Municipalities.

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

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

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

19 A clearinghouse or an organization that submits debts on behalf of a local agency
20 must register with the Department. Once a clearinghouse registers with the Department
21 under this subsection, no other clearinghouse may register to submit debts for collection
22 under this Chapter.

23 **"§ 105A-4. Minimum ~~sum collectible.~~ debt and refund.**

24 A claimant agency shall not be allowed to effect final setoff and collect debts through
25 use of the remedy established under this Article unless both the debt and the refund, if
26 any, are—This Chapter applies only to a debt that is at least fifty dollars (\$50.00)-(\$50.00)
27 and to a refund that is at least this same amount.

28 **"§ 105A-5. Local agency notice, hearing, and decision.**

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

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

40 **(c) Administrative Review.** – A debtor who decides to contest a proposed setoff
41 must file a written request for a hearing with the local agency within 30 days after the
42 date the local agency mails a notice of the proposed action to the debtor. A request for a
43 hearing is considered to be filed when it is delivered for mailing with postage prepaid and

1 properly addressed. The governing body of the local agency or a person designated by
2 the governing body must hold the hearing.

3 If the debtor disagrees with the decision of the governing body or the person
4 designated by the governing body, the debtor may file a petition for a contested case
5 under Article 3 of Chapter 150B of the General Statutes. The petition must be filed
6 within 30 days after the debtor receives a copy of the local decision. Notwithstanding the
7 provisions of G.S. 150B-2, a local agency is considered an agency for purposes of
8 contested cases and appeals under this Chapter.

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

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

13 (e) Return of Amount Set Off. – If a local agency submits a debt for collection
14 under this Chapter without sending the notice required by subsection (b) of this section,
15 the agency must send the taxpayer the entire amount set off plus the collection assistance
16 fee retained by the Department. Similarly, if a local agency submits a debt for collection
17 under this Chapter after sending the required notice but before final determination of the
18 debt and a decision finds that the local agency is not entitled to any part of the amount set
19 off, the agency must send the taxpayer the entire amount set off plus the collection
20 assistance fee retained by the Department. That portion of the amount returned that
21 reflects the collection assistance fee must be paid from the local agency's funds.

22 If a local agency submits a debt for collection under this Chapter after sending the
23 required notice and the net proceeds collected that are credited to the local agency for the
24 debt exceed the amount of the debt, the local agency must send the balance to the debtor.
25 No part of the collection assistance fee retained by the Department may be returned when
26 a notice was sent and a debt is owed but the debt is less than the amount set off.

27 Interest accrues on the amount of a refund returned to a taxpayer under this subsection
28 in accordance with G.S. 105-266. A local agency that returns a refund to a taxpayer under
29 this subsection must pay from the local agency's funds any interest that has accrued since
30 the fifth day after the Department mailed the notice of setoff to the taxpayer.

31 ~~Collection of sums due claimant agencies through setoff.~~

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

37 **§ 105A-6. Procedure for Department to follow in making setoff.**

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

1 preceding the calendar year during which the refund would be paid. The notice is effective to
2 initiate setoff against refunds that would be made in calendar years following the year in which
3 the notice was first made until the date specified in the notice that the debt is expected to expire.
4 The agency shall ~~must~~ notify the Department in writing when a debt has been paid or is
5 no longer owed the agency.

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

12 (e) ~~Unless stayed by court order, the Department shall, upon certification as provided in~~
13 ~~this Article, must set off the certified debt against the refund to which the debtor would~~
14 ~~otherwise be entitled. entitled and must refund any remaining balance to the debtor. The~~
15 ~~Department must mail the debtor written notice that the setoff has occurred and must~~
16 ~~credit the net proceeds collected to the claimant agency. If the claimant agency is a State~~
17 ~~agency, that agency must credit the amount received to a nonreverting trust account and~~
18 ~~must follow the procedure set in G.S. 105A-8.~~

19 **"§ 105A Hearing.**

20 (a) ~~The claimant agency, upon receipt of notification from the Department that a~~
21 ~~debtor is entitled to a refund, shall within 10 days send a written notification to the~~
22 ~~debtor and a copy of same to the Department of its assertion of rights to the refund or any~~
23 ~~part thereof. Such notification shall inform the debtor of the claimant agency's intention~~
24 ~~to direct the Department to apply the refund or any portion thereof against the debt~~
25 ~~certified as due and owing. For the Department to be obligated to continue holding~~
26 ~~refunds until receipt of certification of the debt, if any, pursuant to G.S. 105A-10, the~~
27 ~~copy of the notification to the debtor by the claimant agency of its intention to set off~~
28 ~~must be received by the Department within 15 days of the date of the Department's~~
29 ~~mailing to the respective claimant agency the notification of the debtor's entitlement to a~~
30 ~~refund.~~

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

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

41 **"§ 105A-8. Hearing procedure. State agency notice, hearing, decision, and refund of**
42 **setoff.**

1 (a) Notice. – Within 10 days after a State agency receives a refund of a debtor, the
2 agency must send the debtor written notice that the agency has received the debtor's
3 refund. The notice must explain the debt that is the basis for the agency's claim to the
4 debtor's refund and that the agency intends to apply the refund against the debt. The
5 notice must also inform the debtor that the debtor has the right to contest the matter by
6 filing a request for a hearing, must state the time limits and procedure for requesting the
7 hearing, and must state that failure to request a hearing within the required time will
8 result in setoff of the debt. A State agency that does not send a debtor a notice within the
9 time required by this subsection must refund the amount set off plus the collection
10 assistance fee, in accordance with subsection (e) of this section.

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

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

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

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

35 Interest accrues on the amount of a refund returned to a taxpayer under this subsection
36 in accordance with G.S. 105-266. A State agency that returns a refund to a taxpayer under
37 this subsection must pay from the State agency's funds any interest that has accrued since
38 the fifth day after the Department mailed the notice of setoff to the taxpayer.

39 ~~(a) A hearing on a contested claim, other than a claim of a constituent institution~~
40 ~~of The University of North Carolina, or a claim of the Employment Security Commission~~
41 ~~of North Carolina, shall be conducted in accordance with Article 3 of Chapter 150B of~~
42 ~~the General Statutes. A hearing on a contested claim of a constituent institution of The~~
43 ~~University of North Carolina shall be conducted in accordance with administrative~~

1 procedures approved by the Attorney General. A hearing on a contested claim of the
2 Employment Security Commission of North Carolina shall be conducted in accordance
3 with regulations adopted by the Employment Security Commission of North Carolina.
4 Additionally, it shall be determined at the hearing whether the claimed sum asserted as
5 due and owing is correct, and if not, an adjustment to the claim shall be made.

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

9 (c) No issues may be considered at the hearing which have been previously
10 litigated.

11 **"§ 105A-9. Appeals from hearings.**

12 Appeals from action taken at hearings allowed under this Article ~~Chapter~~, other than
13 those conducted by the Employment Security Commission, shall be in accordance with
14 the provisions of Chapter 150B of the General Statutes, the Administrative Procedure
15 Act, except that the place of initial judicial review shall be the superior court for the
16 county in which the debtor resides. Appeals from actions ~~hearings~~ allowed under this
17 Article ~~Chapter~~ that are conducted by the Employment Security Commission of North
18 Carolina shall be in accordance with the provisions of Chapter 96 of the General Statutes.

19 **~~"§ 105Ae finalization of setoff.~~**

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

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

29 **~~"§ 105Aa Upon the finalization of setoff under the provisions of this Article, the
30 Department shall notify the debtor in writing of the action taken along
31 with an accounting of the action taken on any refund. If there is an
32 outstanding balance after setoff, the notice under this section shall
33 accompany the balance when disbursed.~~**

34 **"§ 105A-12. Priorities in claims to setoff.**

35 Priority in multiple claims to refunds allowed to be set off under the provisions of this
36 Article shall be in the order in time which a claimant agency has filed a written notice
37 with the Department of its intention to effect collection through setoff under this Article.
38 Notwithstanding the priority set forth above according to time of filing, the The
39 Department has priority over all other claimant agencies for collection by setoff
40 whenever it is a competing agency for a refund. State agencies have priority over local
41 agencies for collection by setoff. When there are multiple claims by State agencies other
42 than the Department, the claims have priority based on the date each agency registered
43 with the Department under G.S. 105A-3. When there are multiple claims by two or more

1 organizations submitting debts on behalf of local agencies, the claims have priority based
2 on the date each organization registered with the Department under G.S. 105A-3. When
3 there are multiple claims among local agencies whose debts are submitted by the same
4 organization, the claims have priority based on the date each local agency requested the
5 organization to submit debts on its behalf.

6 **"§ 105A-13. ~~Disposition of proceeds collected; collection~~ Collection assistance fees.**

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

9 (b) ~~Each year the Department shall determine its actual cost of collection under the~~
10 ~~Setoff Debt Collection Act for the immediately preceding year and shall calculate the~~
11 ~~percentage that cost represents of the preceding year's collections, excluding collections~~
12 ~~of child support arrearages under G.S. 105A-2(1)d. The Department shall retain that~~
13 ~~percentage from the gross proceeds collected by the Department through setoff for the~~
14 ~~current year, other than the gross proceeds collected of child support arrearages under~~
15 ~~G.S. 105A-2(1)d. To recover the costs incurred by the Department in collecting debts~~
16 ~~under this Chapter, a collection assistance fee of no more than fifteen dollars (\$15.00) is~~
17 ~~imposed on each debt collected through setoff. The Department must collect this fee as~~
18 ~~part of the debt and retain it. The Department must set the amount of the collection~~
19 ~~assistance fee based on its actual cost of collection under this Chapter for the immediately~~
20 ~~preceding year. If the Department is able to collect only part of a debt through setoff, the~~
21 ~~collection assistance fee has priority over the remainder of the debt. The collection~~
22 ~~assistance fee shall not be added to child support debts or collected as part of child~~
23 ~~support debts. Instead, the Department shall retain from collections under Division II of~~
24 ~~Article 4 of Chapter 105 of the General Statutes the cost of collecting child support debts~~
25 ~~under this Chapter.~~

26 **"§ 105A-14. Accounting to the claimant agency; credit to debtor's obligation.**

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

33 (b) ~~Upon receipt by a claimant agency of a check representing net proceeds~~
34 ~~collected on a the claimant agency's behalf by the Department Department, a final~~
35 ~~determination of the claim if it is a State agency claim, and an accounting of the proceeds~~
36 ~~as specified under this section, the claimant agency shall must credit the debtor's~~
37 ~~obligation with the gross net proceeds collected.~~

38 **"§ 105A-15. Confidentiality exemption; nondisclosure.**

39 (a) ~~Notwithstanding G.S. 105-259 or any other provision of law prohibiting~~
40 ~~disclosure by the Department of the contents of taxpayer records or information and~~
41 ~~notwithstanding any confidentiality statute of any claimant agency, all the exchange of~~
42 ~~any information exchanged among the Department, the claimant agency, the organization~~

1 ~~submitting debts on behalf of a local agency, and the debtor necessary to accomplish and~~
2 ~~effectuate the intent of this Article implement this Chapter~~ is lawful.

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

11 **"§ 105A-16. Rules and regulations. Rules.**

12 ~~The Secretary of Revenue is authorized to prescribe forms and make all rules which he~~
13 ~~deems necessary in order to effectuate the intent of this Article. may adopt rules to implement~~
14 ~~this Chapter. The State Controller may adopt rules to implement this Chapter."~~

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

16 "(b) Interest. – An overpayment of tax bears interest at the rate established in G.S.
17 105-241.1(i) from the date that interest begins to accrue until a refund is paid. A refund
18 sent to a taxpayer is considered paid on a date determined by the Secretary that is no
19 sooner than five days after a refund check is mailed.

20 A refund set off against a debt pursuant to Chapter 105A of the General Statutes is
21 considered paid five days after the Department mails the taxpayer a notice of the setoff,
22 unless G.S. 105A-5 or G.S. 105A-8 requires the agency that requested the setoff to return
23 the refund to the taxpayer. In this circumstance, the refund that was set off is not
24 considered paid until five days after the agency that requested the refund mails the
25 taxpayer a check for the refund.

26 Interest on an overpayment of a tax, other than a tax levied under Article 4 or Article
27 8B of this Chapter, accrues from a date 90 days after the date the tax was originally paid
28 by the taxpayer until the refund is paid. Interest on an overpayment of a tax levied under
29 Article 4 or Article 8B of this Chapter accrues from a date 45 days after the latest of the
30 following dates until the refund is paid:

- 31 (1) The date the final return was filed.
- 32 (2) The date the final return was due to be filed.
- 33 (3) The date of the overpayment.

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

36 Section 3. The State Controller is directed to study whether it is desirable and
37 feasible for the State to establish a central clearinghouse for compiling debt set-off
38 information required by the Department of Revenue to comply with Chapter 105A of the
39 General Statutes. In conducting the study, the State Controller shall consider which State
40 agency is the most appropriate agency to serve as a clearinghouse and the costs and
41 benefits of developing a clearinghouse, including the extent to which separate agencies
42 must establish duplicative functions in the absence of a central clearinghouse.

1 The State Controller shall report the findings of this study to the Revenue Laws
2 Study Committee by February 16, 1998. The Revenue Laws Study Committee shall
3 report any recommendations on this issue to the 1998 Regular Session of the General
4 Assembly.

5 Section 4. Section 3 of this act and the changes to G.S. 105A-3(d) and G.S.
6 105A-16 made by this act are effective when this act becomes law. The changes to G.S.
7 105A-5 made by this act become effective January 1, 1999. The remainder of this act
8 becomes effective January 1, 2000, and applies to income tax refunds determined on or
9 after that date.