

Introduction

This document was prepared by the Department of Revenue (DOR) for use by State and local agencies as a reference guide for participation in the Setoff Debt Collection Program. It specifically addresses new legislation that takes effect in January 2000. Agencies should also refer to Chapter 105A of the General Statutes, Setoff Debt Collection Act. Refer questions concerning this document or Chapter 105A to Alice Worsley, Special Program Manager, or Johnetta Baugham, Assistant Special Program Manager, at (919)733-4687. Mail written correspondence relating to the Setoff Program to the Department of Revenue, Attn.: Setoff Unit, PO Box 871, Raleigh, NC 27602-0871.

Set off Debt Collection Program Participation

The setoff debt collection program allows State and local agencies to file claims with DOR for taxpayers' individual income tax refunds. Participation in the program is mandatory for State agencies, unless exempted by the State Controller's Office, and voluntary for local agencies. An agency must register with DOR in order to participate in the program. A registration packet may be obtained from DOR.

Submitting Claims to the Department of Revenue

Agencies may submit claims to DOR as often as weekly by mainframe DASD, mainframe reel tape, mainframe cartridge tape, or PC diskette. Record layouts may be obtained by contacting DOR. Files must be received by DOR no later than 10:00 a.m. on Tuesday mornings. We will require a complete new file of debtors each time an agency makes changes to its database such as adding a debtor, deleting a debtor, or correcting a debtor's name or account balance. The records will be updated Tuesday evening. Each agency will receive an edit report, Setoff Debt Collection Edit Error Listing, to reflect the number of records that were read from the agency file and to reflect the records with formatting errors. An agency will also receive a Setoff Liabilities Exception Report if there are errors identified when the agency's records are updated. DOR will return the agency's tape or diskette

to the respective agency along with the Setoff Debt Collection Edit Error Listing.

Label each tape or diskette to show the following: name, address, and agency code of claimant agency; type of information - "Setoff Debt Collection"; creation date; and file order if the file requires more than one reel/cartridge/diskette. If an agency is sending weekly updates, a sequence indicator may be included to help ensure that tapes and diskettes do not get processed out of order. The sequence indicator would start with number one.

Each agency that elects to create a DASD file at Information Technology Services (formerly known as SIPS) will need to advise DOR of their agency number; the names and telephone numbers for an agency technical contact and agency RACF security administrator; and the maximum number of records the agency anticipates would ever be in a file. DOR technical personnel will work directly with the agencies' technical personnel and RACF administrator to develop and test the DASD process. Once the DASD process is in place for an agency, the agency will be able to create a file on the A-side at Information Technology Services and DOR will be able to retrieve it. Each time the agency creates a DASD file that is available for processing by DOR, an email should be sent to Alice Worsley at alicedor@ncdial.net and Johnetta Baugham at jmbldor@ncdial.net indicating the creation of the file and the number of records that the file contains.

Setoff Process

If the refund and the debt are \$50 or more, the debt will be deducted from the refund and forwarded to the agency. If there is a refund remaining after the debt and the collection assistance fee are deducted, DOR will process the refund to the taxpayer. DOR will send a notice to the taxpayer advising the amount of refund setoff, the name of the agency receiving the refund and the telephone number of the agency. In the case of a joint return, the refund setoff will be the amount applicable to the spouse who owes the debt.

Once the setoff is performed, *DOR will not reverse the setoff*. If a refund is applied against an agency debt that results in an overpayment, the agency is required to refund the overpayment to the debtor plus interest. If the agency must refund the total refund, the collection assistance fee must also be included in the refund.

Taxpayer Notification By Agency

Both State and local agencies must submit written notice to the debtor. For local agencies, the notice must explain that the agency intends to submit the debt owed by the debtor to DOR, the basis for the agency's claim to the debt, the agency's intent to apply the State refund against the debt and the procedures for requesting a hearing to contest the debt. The notice must also explain that the time limit for filing a hearing request is 30 days from the date of the notice, that the hearing request must be in writing, and that failure to request a hearing within the required time will result in setoff of the debt. A local agency may not submit a claim to DOR until it has given notice to the debtor and until the debt has been finally determined (G.S.105A-5(a),(b)), i.e. hearing request resolved.

A State agency must send written notice to the debtor within 10 days of receiving the debtor's refund. DOR interprets 10 days as working days. In the case of electronic funds transfer, the 10 days would begin when the agency receives the listing identifying the taxpayers whose refunds have been setoff. The notice must advise the debtor that his/her refund has been received, the basis for the debt, the intent to apply the refund against the debt, and the procedures for requesting a hearing to contest the debt. The notice must also explain that the time limit for filing a hearing request is 30 days from the date of the notice, that the hearing request must be in writing, and that failure to request a hearing within the required time will result in setoff of the debt.

A State agency must credit the debtor refund to a nonreverting trust fund until it has given notice to the debtor and the debt has been finally determined (G.S.105A-6 and G.S.105A-8), i.e. hearing request resolved.

If the notice to the debtor is returned, the agency should contact the DOR for assistance in locating a better address. DOR requests that the agency

submit a list on a monthly basis to include the agency name, the agency code, the taxpayer name and the social security number.

For local agencies, a returned notice means a claim cannot be filed with DOR. For State agencies, the refund setoff must remain in the nonreverting trust account until the notice is mailed and not returned.

DOR will send a notice to the taxpayer when the refund is setoff. The notice will include the amount of refund being setoff, the name of the agency receiving the refund, and the telephone number of the agency for questions concerning the debt.

Hearing Requests

A hearing on a contested claim of a local agency shall be held before the governing body of the local agency or the governing body's designee (G.S.105A-5(c)). If the debtor does not agree with the decision of the governing body or designee, a petition may be filed under Article 3 of Chapter 150B of the General Statutes.

A hearing on a contested claim of a State agency, except a constituent institution of The University of North Carolina or the Employment Security Commission, must be conducted in accordance with Article 3 of Chapter 150B of the General Statutes (G.S.105A-8(b)). A hearing on a contested claim of a constituent institution of The University of North Carolina must be conducted in accordance with administrative procedures approved by the Attorney General (G.S.105A-9). A hearing on a contested claim of the Employment Security Commission must be conducted in accordance with rules adopted by that Commission.

Appeals from hearings allowed under this Chapter, other than those conducted by the Employment Security Commission, shall be in accordance with the provisions of Chapter 150B of the General Statutes, the Administrative Procedure Act, except that the place of initial judicial review shall be the superior court for the county in which the debtor resides.

Appeals from hearings allowed under this Chapter that are conducted by the Employment Security Commission of North Carolina shall be in accordance with the provisions of Chapter 96 of the General Statutes.

A debtor of a local or State agency must request a hearing with that agency in writing within 30 days after the date the local or State agency mails the debtor a notice.

Setoff Listing of Taxpayers and Payment of Refunds Setoff

DOR will send to the agency on a biweekly (every two weeks) basis, a *hard copy* listing of the taxpayers whose refunds have been setoff. The listing will contain: taxpayer name, social security number, and address; agency interest begin date; amount of interest DOR included in the refund; principal refund; gross refund; net refund; and collection assistance fee.

The setoff funds will be sent to the agency on a biweekly basis by check or by electronic funds transfer. If the funds are sent by check, the check will be accompanied by a listing to reflect the taxpayers whose refunds have been setoff. If the funds are sent by electronic funds transfer, the listing will follow the transfer. The funds sent to a State agency must be placed in a nonreverting trust account until the debtor has received the agency's notice, and if a hearing has been requested, the hearing has been resolved.

DOR wants to facilitate the transfer of setoff funds to agencies by electronically transferring the funds rather than writing checks which is time consuming, cumbersome and not cost effective for DOR or the agencies. Therefore, DOR will be using the Cash Management System (CMCS) which is available to most agencies through the Office of State Controller. A year 2000 calendar is provided at the end of this manual noting the dates the electronic transfers will be available to the agencies. The transfers will be available by 5:00 p.m. on the dates highlighted.

When electronic transfers of funds are made to an agency by DOR, the receiving agency is expected to accept the transfer no later than the next to the last business day of the month in which the transfer is made. For example, if the last day of the month is Friday, the receiving agency is required to accept the transfer no later than 5:00 p.m. on Thursday. If an agency has two or more months where electronic transfers are not accepted timely, by the next to the last business day of the month as explained above, DOR will process future setoff monies by check. The check will be issued

once a month to the agency for the next succeeding months, including any electronic payments that may have been pending but not accepted timely.

Collection Assistance Fee

In order to recover the costs incurred in setting off refunds against agency debts, DOR must charge a fee. The fee is deducted from the taxpayer's refund and the remaining refund is applied against the agency's debt except in situations involving child support debts. Instead of deducting a fee from a child support debtor's refund, the fee will be deducted from the General Fund. The agency will apply the net refund, gross refund minus the collection fee, against the debtor's account. The fee is a flat fee of no more than \$15.00 that is based on DOR's setoff program expenses incurred in the previous year. DOR will send a memo to each agency in early January to advise of the amount of the collection assistance fee. Also the collection assistance fee will be identified on the weekly agency listing of refunds setoff.

Interest

If an agency must return a portion or the entire refund to the taxpayer, interest must be paid from the agency's funds in accordance with G.S. 105-266. An interest begin date for the agency will be included on the agency's setoff listing. Pursuant to G.S. 105-266, if an agency must return a portion of the refund to the taxpayer, the refund is not considered paid until five days after the agency has mailed the taxpayer a check for the refund. In other words, the agency must include 5 extra days interest from the date the check is issued to allow for mailing and receipt by the taxpayer.

The Secretary of Revenue establishes the interest rate on or before December 1 and June 1 of each year which will be in effect during the six month period beginning January 1 and July 1, respectively. DOR will update the agencies on the interest rate every six months.

Interest is computed on a daily basis on the principal refund. The following is an example of interest computation. Taxpayer A requests a refund of \$1000. DOR determines the taxpayer has a \$2000 debt to another State

agency. Assuming the taxpayer filed his return on April 15, the interest begin date is May 30 (interest begins 45 days after the filing date or the date filed whichever is latest). If the refund is processed on August 24, the interest computation would be as follows: $\$1000 \times .08$ (current interest rate) $\times 92$ days/365.25 (.25 allows for leap year) = \$20.15 interest. The 92 days includes 5 days for DOR to generate and mail a notice to the taxpayer as required by G.S.105-266(b). Before the agency receives the refund of \$1020.15 from DOR, the taxpayer pays \$1500 of the debt. Therefore, when the agency receives the \$1020.15, it must refund the overpayment of \$520.15 to the taxpayer plus interest. The interest begin date for the agency would be August 30 (DOR will identify interest begin date on setoff listing), and assume that the agency processes a check payable to the taxpayer for the overpayment on September 15. The interest computation by the agency would be as follows: $\$520.15 \times .08$ (current interest rate) $\times 22$ days/365.25 = \$2.51 interest. The 22 days includes 5 extra days for mailing the check to the taxpayer as required by G.S 105-266(b). Also the interest included in the refund by DOR (\$20.15) was applied against the \$500 debt first followed by the principal amount of refund (\$1000) which resulted in the \$520.15 overpayment.

Agency Updates and Agency Priority

Please be sure to update DOR with changes to the agency contact person, agency address and/or agency telephone number. You may advise us of your changes by sending a letter to the North Carolina Department of Revenue, Attn.: Setoff Unit, PO Box 871, Raleigh, NC, 27602-0871, or by sending an email to Alice Worsley at alicedor@ncdial.net and Johnetta Baugham at jmbldor@ncdial.net.

The priority in setoff claims is specified in G.S. 105A-12. DOR has priority over all agencies for collection by setoff. State agencies have priority over local agencies. If there are multiple State agencies other than DOR, the priority is based on the date each State agency registered with DOR. If there are multiple claims by two or more organizations submitting debts on behalf of local agencies, the claims have priority based on the date the organization registered with DOR. If there are multiple claims among local agencies whose debts are submitted by the same organization, the priority of the

claim is based on the date each local agency requested the organization to submit debts on its behalf.

The North Carolina Department of Revenue has printed 250 copies at a cost of \$33.59 or \$.13 per copy.