

NORTH CAROLINA DEBT SETOFF PROGRAM

Authority: NCGS 105A and NCGS 18C-134

The North Carolina Debt Setoff Program provides a coordinated effort for NC state agencies, counties, municipalities and local agencies to garnish state income tax refunds (of \$50 or more) and NC Education Lottery winnings (over \$600) for the purpose of collecting a variety of delinquent debts such as property taxes, EMS charges, etc. Participants send qualifying debts to the NC Debt Setoff Clearinghouse jointly established by the NC Association of County Commissioners (“NCACC”) and the NC League of Municipalities (“NCLM”). The Clearinghouse, operated by Five Star Computing, Incorporated, cross-references the debts with information from the NC Department of Revenue and the NC Education Lottery Commission to match them with any applicable state income tax refunds or lottery winnings. If a qualifying refund or lottery winning exists, then the amount(s) submitted by the participating agency (or agencies) are “set off” and paid to the participant(s) instead of being issued to the debtor. Debts owed to any state agency take priority over debts owed to local agencies, and local agency debts are setoff on a first come, first serve basis. Participants may submit debts throughout the year.

Eligible Participants

Participation in the NC Debt Setoff Program is mandatory for state agencies and optional for counties, municipalities, and these types of local agencies: joint regional agencies, metropolitan sewerage districts, public health authorities, sanitary districts, water and sewer authorities, housing authorities, and regional solid waste management authorities.

Legislated Collection Fees (applicable to the debtor):

- \$ 5.00 - Department of Revenue “collection assistance fee” (per tax refund)
- \$ 5.00 - NC Education Lottery (per winning over \$600)
- \$15.00 - Local collection assistance fee (per debt over \$50 per calendar year)

Before participating in the Program, the local agency must:

- Review and agree to comply with NCGS 105A-1 through 105A-15.
- Have an account with Capital Management of the Carolinas (the agency that oversees administration of the North Carolina Capital Management Trust).
- Complete Capital Management’s “*Inter-Fund Authorization Transfer*” form and designate the account number that is to receive the funds. A copy of this form can be obtained from <http://www.ncsetoff.org/forms.htm>.
- Complete the Memorandum of Understanding and Agreement (available at <http://www.ncsetoff.org/forms.htm>.)
- A Resolution from the governing board is not required to participate in the Debt Setoff Program, but because the Memorandum of Understanding (MOU) is a contract, the unit may prefer to obtain such a Resolution. A sample Resolution can be found at <http://www.ncsetoff.org/forms.htm>.
- Obtain the Social Security number of the debtor. If the Social Security number is unknown, refer to the “Skiptracing Techniques” section in this manual which may provide resources for obtaining the number. Also, Individual Taxpayer Identification Numbers (ITIN) are allowed for those debtors that cannot be assigned an SSN.

Debts submitted must be at least \$50, but several smaller debts owed by the same debtor can be combined so long as the total is \$50 or more. Furthermore, debts should fall within the appropriate

statute of limitations. Christopher B. McLaughlin has provided an in-depth discussion of the statute of limitations for NC property taxes in his book **Fundamentals of Property Tax Collection Law in North Carolina (2011)** (please see pages 171 – 172 in the book.) For questions about the impacts of the statute of limitations upon submitting a particular tax debt, the Clearinghouse recommends the participating agency refer the matter to its legal counsel.

Prior to submitting a debt for setoff, the participating agency must send written notice to the debtor advising that the county intends to submit the debt for setoff. The notice must:

- ✓ Explain the debt;
- ✓ Advise that the agency intends to apply the debtor's state income tax refund or lottery winnings against the debt;
- ✓ State that if the debt is setoff, a \$15 "local collection assistance charge" will be withheld from the tax return or lottery winnings as a cost of collection;
- ✓ Inform the debtor that he has the right to contest the matter by filing a request for hearing with the participating agency and must state the time limits and specifics of the hearing; and
- ✓ State that the debtor's failure to request a hearing within the required time will result in setoff of the debt.

A sample notice can be found at <http://www.ncsetoff.org/forms.htm>. Notification letters can be sent via regular mail; they do not have to be certified. The notice must be mailed to the debtor's last known address. If the notice is returned by the US Postal Service as "undeliverable", the debt may still be submitted to the Clearinghouse; however, the agency should keep the returned notice as evidence of its reasonable attempt to notify the debtor.

If the debtor contests the debt and files a written request for hearing within 30 days after the notice is mailed, the governing body or a person designated by the governing body must hold the hearing. If the debtor disagrees with the decision rendered, the debtor may file a petition for a contested case under Article 3 of Chapter 150B of the NC General Statutes. The petition must be filed within 30 days after the debtor receives a copy of the participating agency's decision. A summary of the notification and appeals process may be found at <http://www.ncsetoff.org/forms.htm>. An informal survey of the counties currently participating in the program reveals that designated hearing officers include personnel from the tax office, finance department or legal department.

Some counties have incorporated the debt setoff written notification required by NCGS 105A-5 by including this wording as a paragraph that appears on their tax notices. An example of such a paragraph this follows:

NOTIFICATION OF DEBT SETOFF: It is the intention of *(fill in organization's name)* to secure payment of past due taxes by filing a claim with the State of North Carolina to intercept income tax refunds or education lottery winnings. If the tax balance is submitted to the debt setoff program, a collection assistance fee of \$15.00 shall be added. *(Fill in organization's name)* does not receive any NC collection assistance fees. The taxpayer has the right to contest the proposed setoff by filing a written request within 30 days from the date on this tax statement. Failure to request a hearing within the required time will result in the setoff. Requests may be mailed to: *(Fill in designee's name)*, or delivered in person to the *(fill in organization's name)*. A hearing officer will consider the debtor's appeal and render a decision. If the debtor disagrees with the decision of the hearing officer, the debtor may file a petition for the contested case under Chapter 105B, Article 3, of the NC General Statutes. The debtor must file the petition within 30 days after receiving a copy of the local decision.

When all of the prerequisites above have been met, the debt is ready to submit to the Clearinghouse through Five Star Computing. Data submission options include:

- A. ASCII (Unicode):** The file layout format to send data to the Clearinghouse is ASCII, also referred to in MS Windows® applications as *Unicode*. Your Information Technology (IT) staff

should be able to take your existing debt information and put it into an ASCII (Unicode) format. The required layout is available online from the Clearinghouse website.

B. Microsoft EXCEL®: The Clearinghouse provides a sample format for EXCEL® data submissions online at its website.

C. Hardcopy Forms (Data Entry Required). There are two options:

1. Clearinghouse - will use internal staff. There may be a COST for this service. An estimate will be given upon the review of the hardcopy information. [Contact the Clearinghouse](#) directly for more information.
2. Local Government Outsource - contract with your own local data entry vendor. Give them the ASCII (Unicode) documentation. You pay them directly. The Clearinghouse will assist with loading this data into its Client software and helping you install on your agency's own computer to use from that point forward.

D. Client Software: The Clearinghouse has developed a Microsoft Windows® application that does the entire debt process. Enter debtors and their debts, generates the required notification letters, create reports, automatically transfer files to and from the Clearinghouse directly within this software (Internet access required). Comes with an online Help system that explains everything.

It is important to note that each debt submitted must have a "unique identifier". This is a set of numbers or a combination of letters and numbers that is recognizable by the county or city and is unique to that record. With regard to tax collections, usually a bill number will be sufficient to serve as the "unique identifier."

When a debt has been setoff, the debtor will receive a letter from the Department of Revenue advising of the setoff. The letter will include a toll free number [(877) 843-0330] that can connect the debtor to the Clearinghouse Interactive Voice Response System. This response system provides all county or city contact names and phone numbers that submitted a debt for setoff against the debtor. The debtor can then call the city or county with any questions regarding the setoff.

Questions and additional information pertaining to the North Carolina Debt Setoff Program may be found at www.ncsetoff.org or addressed to the following persons:

NCACC (N.C. Association of County Commissioners)

- Lisa Nolen (919) 715-4362; fax (919) 715-1065; Lisa.Nolen@ncacc.org

NCLM (N.C. League of Municipalities)

Wanda Veasey (919) 715-2218; fax (919) 301-1020

Five Star Computing

- Technical Support – toll free (866) 265-1668
- Email: ncsetoff@ncsetoff.org
- Interactive Voice Response (IVR): (877) 843-0330

N.C. Department of Revenue Tax Care Assistance: (877) 252-3052

N.C. Capital Management Trust: (800) 222-3232

WEB RESOURCES

www.ncsetoff.org

This site is maintained by Five Star Computing and contains an overview of the Program and all of the necessary forms and instructions for completion. Other items of interest found on this site include a list of participating counties and cities, statistics showing the program's successes, and the Department of Revenue's setoff process schedule.

www.ncacc.org

This is the official website of the North Carolina Association of County Commissioners. In addition to a number of other topics, this site provides information and forms relative to the Debt Setoff Program.

www.nclm.org

This is the official website of the North Carolina League of Municipalities. In addition to a number of other topics, this site provides information and forms relative to the Debt Setoff Program.