

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1881*

Short Title: Improve Tax & Debt Collection Process. (Public)

Sponsors: Representatives McGee, Luebke, Brubaker, Carney (Primary Sponsors);
Gibson, Harrison, Hill, Howard, Hughes, Hurley, Insko, Wainwright, Weiss,
Womble, and Wray.

Referred to: State Government/State Personnel, if favorable, Finance.

May 20, 2010

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE COLLECTION OF TAX DEBTS AND OTHER DEBTS
OWED THE STATE.

The General Assembly of North Carolina enacts:

PART I. CHANGES TO DEBT SETOFF PROGRAMS

SECTION 1.1. G.S. 147-86.20(1) reads as rewritten:

"§ 147-86.20. Definitions.

The following definitions apply in this Article:

- (1) ~~Account receivable.~~ Account receivable. – An asset of the State reflecting a debt that is owed to the State and has not been received by the State agency servicing the debt. The term includes claims, damages, fees, fines, forfeitures, loans, overpayments, taxes, and tuition as well as penalties, interest, and other costs authorized by law. The term does not include court costs or fees assessed in actions before the General Court of Justice or counsel fees and other expenses of representing indigents under Article 36 of Chapter 7A of the General Statutes.

...."

SECTION 1.2. G.S. 147-86.22 reads as rewritten:

"§ 147-86.22. Statewide accounts receivable program.

(a) Program. – The State Controller shall implement a statewide accounts receivable program. As part of this program, the State Controller shall do all of the following:

- (1) Monitor the State's accounts receivable collection efforts.
(2) Coordinate information, systems, and procedures between State agencies to maximize the collection of past-due accounts receivable.
(3) Adopt policies and procedures for the management and collection of accounts receivable by State agencies.
(4) Establish procedures for writing off accounts ~~receivable and for determining when to end efforts to collect accounts receivable after they have been written off.~~ receivable.

(b) Electronic Payment. – Notwithstanding the provisions of G.S. 147-86.20 and G.S. 147-86.21, this subsection applies to debts owed a community college, a local school administrative unit, an area mental health, developmental disabilities, and substance abuse authority, and the Administrative Office of the Courts, and to debts payable to or through the office of a clerk of superior court or a magistrate, as well as to debts owed to other State agencies as defined in G.S. 147-86.20.



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1 The State Controller shall establish policies that allow accounts receivable to be payable
2 under certain conditions by electronic payment. These policies shall be established with the
3 concurrence of the State Treasurer. In addition, any policies that apply to debts payable to or
4 through the office of a clerk of superior court or a magistrate shall be established with the
5 concurrence of the Administrative Officer of the Courts. The Administrative Officer of the
6 Courts may also establish policies otherwise authorized by law that apply to these debts as long
7 as those policies are not inconsistent with the Controller's policies.

8 A condition of payment by electronic payment is receipt by the appropriate State agency of
9 the full amount of the account receivable owed to the State agency. A debtor who pays by
10 electronic payment may be required to pay any fee or charge associated with the use of
11 electronic payment. Fees associated with processing electronic payments may be paid out of the
12 General Fund and Highway Fund if the payment of the fee by the State is economically
13 beneficial to the State and the payment of the fee by the State has been approved by the State
14 Controller and State Treasurer.

15 The State Controller and State Treasurer shall consult with the Joint Legislative
16 Commission on Governmental Operations before establishing policies that allow accounts
17 receivable to be payable by electronic payment and before authorizing fees associated with
18 electronic payment to be paid out of the General Fund and Highway Fund. A State agency must
19 also consult with the Joint Legislative Commission on Governmental Operations before
20 implementing any program to accept payment under the policies established pursuant to this
21 subsection.

22 A payment of an account receivable that is made by electronic payment and is not honored
23 by the issuer of the card or the financial institution offering electronic funds transfer does not
24 relieve the debtor of the obligation to pay the account receivable.

25 (c) Collection Techniques. – The State Controller, in conjunction with the Office of the
26 Attorney General, shall establish policies and procedures to govern techniques for collection of
27 accounts receivable. These techniques may include use of credit reporting bureaus, judicial
28 remedies authorized by law, and administrative setoff by a reduction of ~~an individual's~~ a tax
29 refund pursuant to the Setoff Debt Collection Act, Chapter 105A of the General Statutes, or a
30 reduction of another payment, other than payroll, due from the State to a person to reduce or
31 eliminate an account receivable that the person owes the State.

32 ~~No later than January 1, 1999, the~~ The State Controller shall negotiate a contract with a third
33 party to perform an audit and collection process of inadvertent overpayments by State agencies
34 to vendors as a result of pricing errors, neglected rebates and discounts, miscalculated freight
35 charges, unclaimed refunds, erroneously paid excise taxes, and related errors. The third party
36 shall be compensated only from funds recovered as a result of the audit. Savings realized in
37 excess of costs shall be transferred from the agency to the Office of State Budget and
38 Management and placed in a special reserve account for future direction by the General
39 Assembly. Any disputed savings shall be settled by the State Controller. This paragraph does
40 not apply to the purchase of medical services by State agencies or payments used to reimburse
41 or otherwise pay for health care services."

42 **SECTION 1.3.** G.S. 147-86.25 reads as rewritten:

43 **"§ 147-86.25. Setoff debt collection.**

44 The State Controller shall implement a statewide setoff debt collection program to provide
45 for collection of ~~accounts receivable that have been written off. The statewide program shall~~
46 ~~supplement the Setoff Debt Collection Act, Chapter 105A of the General Statutes, and shall~~
47 ~~provide for written off~~ the following accounts receivable to be set off by setoff against payments
48 the State owes to debtors, other than payments of ~~individual income~~ tax refunds and
49 ~~payroll.~~ payroll:

(1) Accounts receivable submitted to the Department of Revenue by a claimant agency under the Setoff Debt Collection Act, Chapter 105A of the General Statutes.

(2) An overdue tax debt, as defined in G.S. 105-243.1.

~~A program shall provide that, before final setoff can occur, the State agency servicing the debt must notify the debtor of the proposed setoff and of the debtor's right to contest the setoff through an administrative hearing and judicial review. A proposed setoff by a State agency that is a "claimant agency" under Chapter 105A of the General Statutes shall be conducted in accordance with the procedures the State agency must follow under that Chapter. A proposed setoff by a State agency that is not a "claimant agency" under Chapter 105A of the General Statutes shall be conducted under Articles 3 and 4 of Chapter 150B of the General Statutes."~~

SECTION 1.4. G.S. 105A-2 reads as rewritten:

"§ 105A-2. Definitions.

The following definitions apply in this Chapter:

...

(3) Debtor. – ~~An individual~~ A person who owes a debt.

...

(8) Refund. – ~~An individual's North Carolina income~~ A debtor's North Carolina tax refund.

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

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

b. A local agency, to the extent it administers a program supervised by the Department of Health and Human Services or it operates a Child Support Enforcement Program, enabled by Chapter 110, Article 9, and Title IV, Part D of the Social Security Act.

c. A community college."

SECTION 1.5. G.S. 105A-3(c) reads as rewritten:

"(c) Identifying Information. – All claimant agencies shall whenever possible obtain the full name, social security ~~number, number or federal identification number,~~ address, and any other identifying information required by the Department from any person for whom the agencies provide any service or transact any business and who the claimant agencies can foresee may become a debtor under this Chapter."

SECTION 1.6. G.S. 105A-14(a) reads as rewritten:

"(a) Simultaneously with the transmittal of the net proceeds collected to a claimant agency, the Department must provide the agency with an accounting of the setoffs for which payment is being made. The accounting must whenever ~~possible,~~ possible include the full names of the debtors, the debtors' social security ~~numbers, numbers or federal identification numbers,~~ the gross proceeds collected per setoff, the net proceeds collected per setoff, and the collection assistance fee added to the debt and collected per setoff."

SECTION 1.7. G.S. 105-259(b)(18) reads as rewritten:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person except as provided in this subsection. Standards used or to be used for the selection of returns for examination and data used or to be used for determining the standards may not be disclosed for any purpose. All other tax information may be disclosed only if the disclosure is made for one of the following purposes:

...

(18) To furnish to the Office of the State Controller ~~the name, address, and account and identification numbers of a taxpayer upon request to~~ enable information needed by the State Controller to implement the setoff

1 debt collection program established under G.S. 147-86.25, verify statewide
2 vendor files ~~files~~, or track debtors of the State.

3"

4 PART II. CHANGES TO ATTACHMENT AND GARNISHMENT PROCESS

5 SECTION 2.1. G.S. 105-242(b) reads as rewritten:

6 "(b) ~~Garnishment and Attachment.~~ Attachment and Garnishment. – Intangible property
7 that belongs to a taxpayer, is owed to a taxpayer, or has been transferred by a taxpayer under
8 circumstances that would permit it to be levied upon if it were tangible property is subject to
9 attachment and garnishment in payment of a tax that is due from the taxpayer and is collectible
10 under G.S. 105-241.22. Intangible personal property includes bank deposits, rent, salaries,
11 wages, property held in the Escheat Fund, and any other property incapable of manual levy or
12 delivery. G.S. 105-242.1 sets out the procedure for attachment and garnishment of intangible
13 property.

14 A person who is in possession of intangible property that is subject to attachment and
15 garnishment is the garnishee and is liable for the amount the taxpayer owes. The liability
16 applies only to the amount of the taxpayer's property in the garnishee's possession, reduced by
17 any amount the taxpayer owes the garnishee. ~~G.S. 105-242.1 sets out the procedure for~~
18 ~~attachment and garnishment of intangible property.~~

19 The Secretary may submit to a financial institution, as defined in G.S. 53B-2, information
20 that identifies a taxpayer who owes a tax debt that is collectible under G.S. 105-241.22 and the
21 amount of the debt. The Secretary may submit the information on a quarterly basis or, with the
22 agreement of the financial institution, on a more frequent basis. A financial institution that
23 receives the information must determine the amount, if any, of intangible property it holds that
24 belongs to the taxpayer and is subject to attachment and garnishment and must inform the
25 Secretary of its determination. The Secretary must reimburse a financial institution for its costs
26 in providing the information, not to exceed the amount payable to the financial institution under
27 G.S. 110-139 for providing information for use in locating a noncustodial parent.

28 No more than ten percent (10%) of a taxpayer's wages or salary is subject to attachment and
29 garnishment. The wages or salary of an employee of the United States, the State, or a political
30 subdivision of the State are subject to attachment and garnishment."

31 SECTION 2.2. G.S. 105-242.1 reads as rewritten:

32 "§ 105-242.1. Procedure for attachment and garnishment.

33 (a) Notice. – G.S. 105-242 specifies when intangible property is subject to attachment
34 and garnishment. Before the Department attaches and garnishes intangible property in payment
35 of a tax, the Department must send the garnishee a notice of garnishment. The notice must be
36 sent in accordance with the methods authorized in G.S. 105-241.20 ~~or by registered or certified~~
37 ~~mail~~ or, with the agreement of the garnishee, by electronic means. The notice must contain all
38 of the following ~~information:~~ information, unless the notice is an electronic notice subject to
39 subsection (a1) of this section:

- 40 (1) The taxpayer's ~~name, address, and social security number or federal~~
41 ~~identification number.~~ name.
- 42 (2) The ~~type of tax the taxpayer owes and the tax periods for which the tax is~~
43 ~~owed.~~ taxpayer's social security number or federal identification number.
- 44 (3) The amount of tax, interest, and penalties the taxpayer owes.
- 45 (4) An explanation of the liability of a garnishee for tax owed by a taxpayer.
- 46 (5) An explanation of the garnishee's responsibility concerning the notice.

47 (a1) Electronic Notice. – Before the Department sends an electronic notice of
48 garnishment to a garnishee, the Department and the garnishee must have an agreement that
49 establishes the protocol for transmitting the notice and provides the information required under
50 subdivisions (4) and (5) of subsection (a) of this section. An electronic notice must contain the
51 information required under subdivisions (1), (2), and (3) of subsection (a) of this section.

1 (b) Action. – ~~Within 30 days after receiving a notice of garnishment, a~~A garnishee must
2 comply with ~~the a notice of~~ garnishment or file a written response to the ~~notice.~~notice within
3 the time set in this subsection. A garnishee that is a financial institution must comply or file a
4 response within 20 days after receiving a notice of garnishment. All other garnishees must
5 comply or file a response within 30 days after receiving a notice of garnishment. A written
6 response must explain why the garnishee is not subject to garnishment and attachment. ~~Upon~~

7 Upon receipt of ~~the a~~ written response, the Department must contact the garnishee and
8 schedule a conference to discuss the response or inform the garnishee of the Department's
9 position concerning the response. If the Department does not agree with the garnishee on the
10 garnishee's liability, the Department may proceed to enforce the garnishee's liability for the tax
11 by sending the garnishee a notice of proposed assessment in accordance with G.S. 105-241.9.

12 (c) Release. – ~~When the Department releases a garnishee from liability, the Department~~
13 ~~must send the garnishee a letter of release. The letter must identify the taxpayer to whom the~~
14 ~~release applies and contain the identifying information about the taxpayer that is required under~~
15 ~~subsection (a) on a notice of garnishment.~~A notice of garnishment sent to a financial institution
16 is released when the financial institution complies with the notice. A notice of garnishment sent
17 to all other garnishees is released when the Department sends the garnishee a notice of release.
18 A notice of release must state the name and social security number or federal identification
19 number of the taxpayer to whom the release applies.

20 (d) Financial Institution. – As used in this section, the term 'financial institution' has the
21 same meaning as in G.S. 53B-2."

22 **SECTION 2.3.** G.S. 53B-4(2) reads as rewritten:

23 "**§ 53B-4. Access to financial records.**

24 Notwithstanding any other provision of law, no government authority may have access to a
25 customer's financial record held by a financial institution unless the financial record is
26 described with reasonable specificity and access is sought pursuant to any of the following:

27 ...

28 (2) Authorization under ~~G.S. 105-254~~G.S. 105-242 or G.S. 105-258."

29 **PART III. EFFECTIVE DATE**

30 **SECTION 3.1.** Section 2.1 of this act becomes effective January 1, 2011. The
31 remainder of this act is effective when it becomes law.