



North Carolina Association
of County Commissioners

North Carolina League of
Municipalities

NCL LEAGUE
OF MUNICIPALITIES

To: County Managers
City Managers/Clerks

From: Kevin Leonard, NCACC Executive Director
Paul A. Meyer, NCLM Executive Director

Date: October 30, 2014

Subject: NC Local Government Debt Setoff Clearinghouse Program

The North Carolina Association of County Commissioners and the North Carolina League of Municipalities were successful in having enacted a legislative goal in 1997, to enable county and city participation in the state's income tax debt setoff program. Since that time several legislative amendments have been passed authorizing others to participate in the program. As of January 1, 2013 G.S. 105A-2(6), the statute which defines the Local Agencies that may participate in the program, now includes the following:

- *A county, to the extent it is not considered a State agency.*
- *A municipality*
- *A water and sewer authority created under Article 1 of Chapter 162A of the General Statutes*
- *A regional joint agency created by interlocal agreement under Article 20 of Chapter 160A of the General Statutes between two or more counties, cities, or both.*
- *A public health authority created under Part 1B of Article 2 of Chapter 130A of the General Statutes or other authorizing legislation..*
- *A metropolitan sewerage district created under Article 5 of Chapter 162A of the General Statutes.*
- *A sanitary district created under Part 2 of Article 2 of Chapter 130A of the General Statutes.*
- *A housing authority created under Chapter 157 of the General Statutes, provided that the debt owed to a housing authority has been reduced to a final judgment in favor of the housing authority. (See information on special requirements for housing authorities below.)*
- *A regional solid waste management authority created under Article 22 of Chapter 153A of the General Statutes.*

The debt setoff program permits local agencies to submit any outstanding delinquent debt (totaling \$50 or more) through a local government clearinghouse to the NC Department of Revenue, to attempt to match these debts against individual income tax refunds.

The notification and appeals process as set forth in G.S. Chapter 105A requires debtors to be notified of the \$15 collection assistance fee. The clearinghouse is responsible for adding the \$15 to the amount of delinquent debt submitted by participating local governments. **Each delinquent debt that is successfully matched incurs the \$15 collection assistance fee. This applies to individual debts of \$50 or more, and to those combined debts to meet the \$50 minimum. No charges accrue unless a successful tax refund setoff is made. Again, the clearinghouse adds the \$15 to the amount of debt submitted by the participating local agency.**

An individual local agency may combine debts under a single debtor's social security number in order to meet the \$50 minimum. For your information, G.S. Chapter 105A stipulates that delinquent debt is a sum totaling at least \$50 owed to a local agency (claimant agency) that has accrued through contract, subrogation, tort, operation of law, or any other legal theory regardless of whether there is an outstanding judgment for the sum.* We also require that a full 60 days must lapse after a local agency labels the debt as delinquent before the debt can be submitted to the clearinghouse. The local agency must furnish the full name and social security number of each debtor. *There is a special statutory provision applicable to housing authorities requiring that, prior to submission to the clearinghouse, a debt owed to a housing authority must be reduced to a final judgment.

NCACC and NCLM have contracted with Five Star Computing, Inc., Columbia, SC to administer the debt setoff program. Five Star Computing receives, processes and submits the consolidated debts to the North Carolina Department of Revenue, and has established a call center to handle telephone calls from taxpayers who have had their refunds withheld, in whole or in part. Five Star also submits successful match information back to the participating local agencies. Five Star has managed the South Carolina Association of Counties debt setoff program since its inception. Five Star has put online a website to facilitate local government participation (www.ncsetoff.org).

Successful match funds are disbursed through Capital Management of the Carolinas, the agency that oversees administration of the North Carolina Capital Management Trust. Each local agency must have an account with Capital Management and will need to complete Capital Management's *Inter-Fund Authorization Transfer* form, designating its account number to receive the funds. Details regarding completion and transmission of this form and opening new accounts accompany the form. No additional charge will accrue for this service -- Capital Management considers this an important service offering to its local clients. Due to investment policy restrictions specified under federal law, housing authorities must obtain permission from the US Department of Housing and Urban Development to use the services of Capital Management and thereby participate in the debt setoff program.

In order to participate in the program, each local agency should become familiar with G.S. Chapter 105A and must agree to comply with the requirements therein. Certain appeal procedures, including notification to the debtor and debtor's right to a hearing must be followed. The local agency must send written notice to a debtor that the agency intends to submit the debt for collection by setoff, and that a collection assistance fee of \$15 will be added to the debt if it is submitted for setoff. The notice must explain the debt and that the local agency intends to apply the debtor's refund against the debt. The notice must inform the debtor that the debtor has the right to contest the matter by filing a request for a hearing with the local agency, must state the time limits and specifics of the hearing, and must state that failure to request a hearing within the required time will result in setoff of the debt. Please see the *Summary of Notification and Appeals Process*, along with a sample notification letter, a sample post hearing notification letter, and a tracking form for your use.

A debtor who decides to contest a proposed setoff must file a written request for a hearing with the local agency within 30 days after the date the local agency mails a notice of the proposed action to the debtor. 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 General Statutes. The petition must be filed within 30 days after the debtor receives a copy of the local agency's decision. **Please also note that no debt can be submitted to the clearinghouse until the entire notification and appeals process is completed for that debt.**

Local Government Debt Setoff Clearinghouse Program and Match Guidelines highlights include:

- Only counties, cities, water and sewer authorities (created under G.S. Chapter 162A, Article 1), regional joint agencies (created by interlocal agreement under G.S. Chapter 160A, Article 20), public health authorities (created under G.S. Chapter 130A, Article 2, Part 1B or other authorizing legislation), metropolitan sewerage districts (created under G.S. Chapter 162A, Article 5), sanitary districts (created under G.S. Chapter 130A, Article 2, Part 2), housing authorities (created under G.S. Chapter 157) and regional solid waste management authorities

(created under G.S. Chapter 153A, Article 22) may participate in the NC Local Government Debt Setoff Clearinghouse program

- Debts owed to a housing authority must have been reduced to a final judgment in favor of the housing authority.
- The local agency must submit debts of at least \$50 each individually by debtor name and social security number to the clearinghouse. Smaller debts less than \$50 can be combined to meet the \$50 threshold.
- No debts can be submitted until they are at least 60 full days past the local agency's definition of delinquency. For example, if County A's policy defines a bill as delinquent after 30 days from its due date, County A must wait 90 days from the bill's due date before submitting the debt to the clearinghouse.
- Debts must be submitted in the format and media required by the NC Local Government Debt Setoff Clearinghouse. Please see the *File Layout* requirements.
- The Debt Setoff Clearinghouse Program is dependent upon the use of debtor's social security number. We encourage you to discuss the procurement and use of debtor's social security numbers with your local attorney. You will also want to become familiar with G.S. 143-64.60 entitled the "State Privacy Act" which sets forth rules associated with disclosure of, and requests for, social security numbers. A discussion of these subjects is also found in *Public Records Law for North Carolina Local Governments* by David M. Lawrence and published by the School of Government, The University of North Carolina at Chapel Hill.
- Per state law, priorities for refunds will be determined when the debt is initially submitted to the program. **PLEASE NOTE THAT STATE AGENCIES HAVE PRIORITY OVER LOCAL AGENCIES FOR COLLECTION BY SETOFF.**
- Existing submitted debts may be adjusted upwards for interest, fees, penalties, etc., and will retain the original priority order, but not a later submitted new debt, even if for the same debtor. New debts will be date- and time-stamped with the later submission date.
- Successful matches against a debtor refund will be credited to the first local agency submitting the debt.
- Should the individual debtor's refund exceed the first local agency's total debt and another local agency has submitted other debt(s) owed by the same debtor, the debtor's remaining refund will be reduced by the amount of the second local agency's debt. This procedure shall continue through the priority of debtors should there be sufficient refund due the debtor.
- Each delinquent debt successfully intercepted will incur the \$15 collection assistance fee.

For local agencies wishing to participate, please see the *Memorandum of Understanding and Agreement, NC Local Government Debt Setoff Clearinghouse Program*, for your execution. Please do not neglect to complete the appropriate Riders. Please also complete a *Participation Form* (found on the Program website at www.ncsetoff.org) that requires the designation of a Local Debt Setoff Coordinator and a Local Debt Setoff Contact (the same staff member may serve in both roles). Please return an original executed copy of the Agreement, any required Riders, a Local Agency Certification (if required) and the participation form. Please see the *Sample Resolution for Board Adoption* that may be used by your governing board to authorize your local agency's participation in the Program.

Throughout the State there are many collection arrangements that rely upon the county to administer the property tax collection process for its cities. G.S. 105-354., Collections for districts and other units of local government, provides, "whenever a taxing unit collects taxes for some district or other unit of local government, those taxes, for collection and foreclosure purposes, shall be treated as taxes of the taxing unit making the collection." If your county collects and enforces the collection of current year and

delinquent property taxes on behalf of your cities, the total (municipal and county) of all delinquent taxes for an individual debtor may be combined to meet the \$50 minimum requirement and be submitted as a single debt. Therefore, if your particular county's arrangement with your cities complies with the above statute, you may combine and file the property tax debts on behalf of these units. The county must notify us by completing the *Multiple Unit Collection Rider*. Please also be aware that the automated voice response system will refer any delinquent property taxpayers to your county's debt setoff contact.

As mentioned above, debts owed to housing authorities must be reduced to a final judgment in order to be subject to set off. Additionally, housing authorities must obtain permission from the US Department of Housing and Urban Development to use the services of Capital Management of the Carolinas. In association with these special requirements, housing authorities must complete the *Housing Authority Rider* in addition to the other documents needed to participate in the debt setoff program.

Please see the following documents:

- Memorandum of Understanding and Agreement, NC Local Government Debt Setoff Clearinghouse Program
- Local Agency Certification – Attachment I (required for all agencies except counties and municipalities)
- File Layout
- Participation Form
- Inter-fund Authorization Transfer Form & Instructions-North Carolina Capital Management Trust Fund
- Summary of Notification and Appeals Process, and Sample Debtor Notification Forms & Tracking Form
- Sample Resolution for Adoption by Board of County Commissioners or Town Council
- Multiple Unit Collection Rider (Counties Only)
- Housing Authority Rider
- Business Associate Rider (Local Agencies w/health information covered under HIPPA)
- Frequently Asked Questions and Answers

The Association and the League are pleased to provide this service to their local government partners. We believe it will prove useful as a method of debt collection, although this is no simple matter. If you have any questions, please contact:

NCACC:

- Scott Kauffman (Controller); 919-715-2863;
- Amy Bason (General Counsel) for legal assistance, 919-715-1044.

NCLM:

- Rob Shepherd (Manager of Member Relations), 919-715-9767;
- Wanda Veasey (Staff Associate) for program implementation, 919-715-2218;
- John Phelps (Senior Assistant General Counsel) for legal assistance, 919-715-3920.