

Summary of Notification and Appeals Process
Setoff Debt Collection Notice Requirements and Hearing Procedure
(N. C. G. S. 105A-5)

1. A local agency may not submit a debt for setoff collection until the local government/agency has given a due process notice to the debtor, giving the debtor an opportunity to be heard and the claim has been finally determined. In addition, the due process notice should not be sent prior to 60 days delinquent.
2. The local agency must send **written notice** to the debtor and state that the local government/agency intends to submit the debt owed by the debtor for collection by setoff. It only needs to be sent via regular postal mail to the last known address. It does not have to be certified or registered mail.
3. **The Due Process Notice must:**
 - a. Explain the basis for the local government/agency's claim to the debt;
 - b. Inform the debtor that the local government/agency intends to apply the debtor's tax refund and/or education lottery winnings against the debt;
 - c. Inform the debtor that a collection assistance fee of \$15 will be added to each debt over \$50 or combination of debts over \$50 if it is submitted for setoff;
 - d. Inform the debtor that the debtor has right to contest the matter by filing a request for a hearing with the local government/agency;
 - e. Inform the debtor that the debtor has **30 days** (after the date the local government/agency mailed the notice of the proposed action to the debtor) to file a **written request** for a hearing with the local government/agency;
 - f. Inform the debtor that a decision made after a hearing must determine whether a debt is owed to the local government/agency and the amount of the debt;
 - g. Inform the debtor that a request for a hearing is considered to be filed when it is delivered for mailing with postage prepaid and properly addressed; and
 - h. Inform the debtor that failure to request a hearing within the required time will result in setoff of the debt against the debtor's tax refund.Sample Due Process Notification Letters: <http://www.ncsetoff.org/forms.htm>
4. **Notice of Hearing after Request by Debtor** (Note: see "Sample Debtor Notice of Hearing")
 - a. Inform the debtor of the time, date and the place for the hearing;
 - b. Inform the debtor who will hear the challenge;
 - c. Provide the debtor with a pre-hearing contact person;
 - d. Inform the debtor that after the hearing, the local government/agency will mail to the debtor's last known address, a written decision as to whether the debt is owed and the amount.
5. **Post Hearing Procedure** (Note: see "Sample Post Hearing Notification Letter")
 - a. Advise the debtor of the hearing decision;
 - b. Inform the debtor that if the debtor disagrees with the decision of the governing body or the person designated by the governing body to hold the requested hearing, the debtor may file a petition for a contested case under Article 3 of Chapter 150B of the General Statutes (the Administrative Procedure Act); and
 - c. Inform the debtor that the petition for a contested case must be filed within 30 days after the debtor receives a copy of the local government/agency decision.
 - d. **Note: While the statute does not require it, you should send this notification letter by certified mail/return receipt requested, since the appeal time runs from the date the debtor receives notification of the decision. Common sense dictates that you need a record of this.**

6. **Samples:**

NOTICE: This summary and the sample letters referred to is intended as a guideline only. It is not a substitute for consultation with the municipal attorney. If it is found that you have failed to comply with Chapter 105A, The Setoff Debt Collection Act, and more specifically N.C. 105A-5 you will be required to send to the taxpayer the entire amount setoff plus the collection assistance fee retained by the North Carolina Department of Revenue and/or Education Lottery and possibly with interest.

a. **Notification Letters:**

) listed on the website: <http://www.ncsetoff.org/forms.htm>

b. **Notice of Hearing Letter:**

SAMPLE DEBTOR NOTICE OF HEARING

[Debtor Name]
[Debtor Address]
[Debtor City State and Zip]

RE: Notice of hearing for debt owed to [local government/agency]
Intention to setoff debt for [Debtor Name]

Dear [Debtor Name]

Pursuant to your request, [dated] and as provided by North Carolina General Statutes, Chapter 105A-2(6), The Setoff Debt Collection Act, a hearing will be held [time and date] at [location of hearing] to give you the opportunity to be heard on the above matter.

The matter will be heard before [name and position of hearing official of the local agency governing body]. If you have any questions please contact [local debt setoff contact person] at [phone number].

After the hearing, the local agency will mail a written decision as to whether the debt is owed and the amount.

Yours truly,

[Signature]

[Name]

[Title]

c. Post Hearing Letter:

[Debtor Name]
[Debtor Address]
[Debtor City State and Zip]

RE: Notice of hearing decision for debt owed to [local government/agency]
Intention to setoff debt for [Debtor Name]

Dear [Debtor Name]

Pursuant to your request, [dated] and as provided by North Carolina General Statutes, Chapter 105A-2 (6), The Setoff Debt Collection Act, a hearing was held [date of hearing] to consider your challenge to the [local government/agency] intention to submit the above debt to the North Carolina Department of Revenue and Education Lottery for collection by applying the debt against any income tax refund or lottery winning you may be entitled to receive.

(Choose the appropriate paragraph)

This is to inform you that the decision of the [Hearing Officer/Governing Board] is that the debt is owed in the amount of [\$]. If you disagree with this decision of the Hearing Officer/Governing Board, you may file a petition for a contested case under Article 3 of Chapter 150B of the North Carolina General Statutes, The Administrative Procedures Act. This petition must be filed with the Office of Administrative Hearings within 30 days after you receive this letter.

(Or)

This is to inform you that the decision of the [Hearing officer/] is that the debt is not owed. [Local government/agency] will not submit the debt to the North Carolina Department of Revenue or Education Lottery for collection through the Setoff Debt Collection Act.

Yours truly,

[Signature]

[Name]

[Title]

Note: While the statute does not require it, send this notification letter by certified mail/ return receipt requested since the appeal time runs from the date the debtor receives notification of the decision. Be sure to keep a copy.

Debtor Information Appeals Tracking Worksheet

- a. This sample worksheet is provided to help you insure compliance with the requirements of the Setoff Debt Collection Act before submitting the debt to the CLEARINGHOUSE for collection.

1. Debtor Information:

Name:	
Address:	
City, State Zip	

2. Debt Information:

	Type of Debt	Account/Billing #	Delinquent Date	60 Day Delinquent Date	Amount Due
1					
2					
3					

3. Appeal/Hearing Information:

a. Notification

Step	Notification Procedure	Date/Selection	Verified By:
	Date Due Process Notification Letter Mailed to Debtor		
1a	Copy of letter available	Yes/No	
2	Deadline Date for Debtor Appeal Notice (30 days from above date)		
3	Postmark Date of Debtor Appeal Letter		
4	Date of Actual Receipt of Debtor Appeal Letter		

b. Administrative Review

Item/Step	Review Procedure	Date/Name/Selection	Verified By:
1	Date/Time of Hearing		
2	Date Notice of Hearing Mailed to Debtor		
3	Presenting Debt for Local Government/Agency		
4	Hearing Officer/Governing Board		
3	Decision of Hearing (circle debt confirmation decision)	Full Amt. Owed Partial Amt. Owed \$0.00 Owed	
4	Date Decision Mailed to Debtor		
5	Final Date for Petition to Contest Decision (30 days from date debtor receives above notice of decision)		

c. Administrative Review

Item/ Step	Review Procedure	Date
1	Date/Time of Hearing	
2	Date Notice of Hearing Mailed to Debtor	
3	Decision of Hearing (circle debt confirmation decision)	Full Amt. Owed Partial Amt. Owed \$0.00 Owed
4	Date Decision Mailed to Debtor	
5	Final Date for Petition to Contest Decision (30 days from date debtor receives above notice of decision)	

d. Clearinghouse Information

Submittal Information	Date
Date debt submitted to the Clearinghouse for setoff	

Comments

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