
Coates' Canons Blog: Suped-Up Set-Off Debt Collection

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The Set-off Debt Collection Act is one of the General Statute's hidden gems for local governments. For decades the process commonly called "debt set-off" has allowed local governments, water and sewer authorities, and similar public agencies to attach state income tax returns to satisfy debts of \$50 or more owed by individuals. Lottery winnings were made subject to the process in 2005. Debt set-off can be used to collect taxes or assessments or fees or fines or *any* obligation owed to a local government and is in addition to all other collection remedies available to a local government for a particular debt. As part of the shockingly punctual 2010 budget bill, the General Assembly made this hidden gem even more valuable by increasing the types of debtors and funds subject to debt set-off.

Section 31.8 of the budget bill makes debt set-off applicable to any "person" who owes a debt instead of any "individual." This seemingly minor change in terminology makes a major substantive impact. The general statutory construction principles found in GS 12-3 define the term "person" to include "bodies politic and corporate." As a result, debt set-off can now be used against corporations who owe taxes or fees or fines, not just against individuals. Governments using the process are now encouraged to obtain and submit federal identification numbers if the targeted debtors are corporations, just as they have been encouraged to obtain and submit social security numbers for individual debtors.

In addition to expanding the types of debtors against whom debt set-off can be used, the General Assembly expanded the types of funds that can be reached by debt set-off. GS 147-86.25 was amended to require the state controller make available any "payments the state owes to debtors" to satisfy local government claims under debt set-off. Presumably, this will allow local governments to attach payments owed by the state to corporations or individuals under construction or procurement contracts. The statute excludes wages from debt set-off, but local governments can already attach state employee wages for any type of delinquent tax and some types of fees. (See this bulletin for details on property tax attachments and this bulletin for details on the collection of other taxes and fees.)

Local governments and public agencies can't submit debt set-off claims directly to the state. Instead, they must work through a third-party, the N.C. Local Government Setoff Debt Clearinghouse. Click [here](#) for a link to the clearinghouse's website and registration forms. According to the clearinghouse, 93 counties and 223 municipalities have received funds through debt set-off in 2010. Twenty-seven local governments and agencies have recovered more than \$1 million each since the program's inception.

Keep in mind that debt set-off can be pursued at the same time as other collection remedies. Debt set-off can be used simultaneously with bank account or wage attachments for local government debts such as property taxes, special assessments, and privilege license taxes. The local government can't be paid more than once and must refund any overpayments, of course. But there is no reason to wait to use debt set-off until after a bank account or wage garnishment is complete. And because the changes to the program became effective when the governor signed the budget bill on June 30, local governments can begin targeting corporations with debt set-off immediately.

Links

- www.ncga.state.nc.us/gascripts/Statutes/StatutesTOC.pl?Chapter=0105A
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_18C/GS_18C-134.html
- www.ncleg.net/Sessions/2009/Bills/Senate/HTML/S897v8.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_12/GS_12-3.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_147/GS_147-86.25.html
- www.sog.unc.edu/pubs/electronicversions/pdfs/ptb152.pdf
- www.sog.unc.edu/pubs/electronicversions/pdfs/ptb154.pdf



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- www.ncsetoff.org/