

PROCEDURES FOR A HEARING ON A CONTESTED SETOFF CLAIM ARISING OUT OF A DOCKETED JUDGMENT

Introduction

G.S. Chapter 105A, the [Setoff Debt Collection Act](#), provides a procedure for state and local government agencies to collaborate with the North Carolina Department of Revenue (NCDOR) in an effort to identify and collect debts owed to government agencies through setting off tax refunds owed to debtors. Further, [G.S. 18C-134](#) provides for setoff of lottery prize winnings, following the same procedure in G.S. 105A-8, when the claimant agency is enrolled in the Department of Revenue setoff debt program.

The North Carolina Administrative Office of the Courts (NCAOC) is a state “claimant agency” subject to the Act and required to be registered with NCDOR to participate in the setoff debt collection process. G.S. 105A-2 and -3. Individuals who owe debts to these agencies are “debtors” under the Act. A list of judgment debtors who owe debts to a state agency (NCAOC) through civil judgments are regularly transmitted electronically to NCDOR through the Judicial Branch Civil Case Processing System (VCAP).

The setoff procedure is triggered when a debtor owes a debt to a claimant agency of at least \$50.00 and is (i) entitled to a tax refund from the State of at least \$50.00 or (ii) has won a lottery prize of at least \$600.00. G.S. 105A-4 and G.S. 18C-134. If a debtor owes money to more than one claimant agency, G.S. 105A-12 governs the priority. The setoff funds are transmitted from NCDOR to the NCAOC and the taxpayer or lottery winner is provided with a notice from NCDOR indicating the amount of the setoff, the claimant agency who received the funds, and a contact number for the claimant agency.

The notice from NCDOR lists NCAOC as the state claimant agency. Funds collected by the NCAOC through the setoff procedure are transmitted to North Carolina Indigent Defense Services (NCIDS) to fund indigent defense services in North Carolina. NCIDS is the agency tasked with ensuring the state provides representation and necessary expenses to indigent individuals entitled to counsel under the federal and state constitutions. NCIDS exercises its statutory powers independently of the NCAOC but receives administrative support from the NCAOC. North Carolina law provides for the docketing of unpaid appointed counsel fees as a civil judgment that accrues interest (the “debt”). Payments made toward these civil judgments arising from indigent appointed counsel are technically owed to NCIDS. For more information about indigent defense services, see [G.S. Chapter 7A, Art. 39B](#) and the website for NCIDS available at this link: <http://www.ncids.org/>. More information about NCDOR setoff debt collection may be found at this link: <https://www.ncdor.gov/local-government/debt-setoff-unit>.

I. Notice of Setoff from IDS Setoff Debt Collection Department – Forms AOC-A-200 and AOC-A-256

Within 10 days of the North Carolina Office of Indigent Defense Services (IDS) receiving setoff funds transmitted from either the North Carolina Department of Revenue (DOR) or the North Carolina Lottery Commission (Lottery Commission), the Setoff Debt Division at IDS must mail a “Notice of Claim to Income Tax Refund” (AOC-A-200) or “Notice of Claim to NC Lottery Funds” (AOC-A-256) to the debtor.

This notice provides the debtor important information, including the debtor’s right to contest the intercept within 30 days of the date on the notice. The notice (i) explains the debt(s) that is the basis for the agency’s claim to the tax refund or lottery prize and that the agency intends to apply the refund against the debt, (ii) informs the debtor of the right to contest the matter by filing a request for a hearing, (iii) provides the time limits and procedure to request a hearing, and (iv) states that a failure to timely request a hearing will result in setoff of the debt. Additionally, this notice provides the phone

number and address for the Setoff Debt division so that the debtor may contact the office with questions and file a written request for hearing on a contested claim. G.S. 105A-8(a).

II. Written Notice of Hearing on a Contested Claim

Upon timely¹ receipt of a debtor's written request for hearing, IDS may first choose to negotiate a resolution with the debtor. If IDS does not choose to negotiate a resolution or if a resolution is not fully completed within 30 days after receipt of the debtor's written request for hearing, the IDS Setoff Debt Division must designate the hearing county and send a copy of the request for hearing to the clerk of superior court in the designated county, which must be a county where a judgment has been docketed.

The clerk of superior court in the hearing county shall schedule a hearing and send the debtor notice of the hearing using form AOC-G-902 "Notice of Hearing Setoff Debt Collection" to the address provided by IDS. If the debtor is represented by an attorney, the notice shall be sent to the attorney of record. Notice of the hearing may be sent to IDS by fax to the Setoff Debt Department. The notice shall provide the date, time, and location of the hearing and shall be served by first class U.S Mail at least 20 days prior to the hearing.

III. Hearing and Decision

The clerk of superior court has original jurisdiction to hear a contested claim arising from a docketed judgment, and the matter may not be transferred to district or superior court. G.S. 105A-8(b). The debtor may be represented by counsel, and IDS may appear, through counsel, at the hearing. At the hearing, IDS and the debtor may present evidence.² The North Carolina Rules of Evidence apply. Subpoenas may be issued pursuant to G.S. 1A-1, Rule 45.

Upon conclusion of the hearing, the clerk must determine based on the evidence whether a debt is owed to the State agency and, if so, the amount of the debt. G.S. 105A-8(c). An issue that has previously been litigated in a court proceeding may not be considered in the hearing. G.S. 105A-8(b). The clerk of superior court renders a decision and enters an order using form AOC-G-903 "Final Decision on Contested Claim Setoff Debt Collection." The clerk serves the debtor with a copy of the order and transmits a copy to the IDS Setoff Division.

IV. Appeal

A party aggrieved by an order of the clerk may be appealed in writing within 10 days of entry of the order for a hearing de novo in superior court. G.S. 105A-9. The notice of appeal must be filed with the clerk in the county where the order was entered. There is not an AOC form for filing a notice of appeal.



Mary S. Pollard
Executive Director
Indigent Defense Services

Dated: 11/22/21



Andrew T. Heath
Director
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Dated: 11/22/21

¹ G.S. 105A-8(b) provides, in part, that "[a] request for a hearing on a contested claim of any State agency must be filed within 30 days after the State agency mails the debtor notice of the proposed setoff. A request for hearing is considered to be filed when it is delivered for mailing with postage prepaid and properly addressed."

² The term "debtor" is used herein for continuity with Chapter 105A of the North Carolina General Statutes.