

### **Disclaimer**

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## CHAPTER 56.

### SETOFF DEBT COLLECTION ACT

#### **SECTION 12-56-10.** Short title.

This chapter may be cited as the “Setoff Debt Collection Act”.

#### **SECTION 12-56-20.** Definitions.

As used in this chapter:

(1) “Claimant agency” means a state agency, board, committee, commission, public institution of higher learning, political subdivision, or other governmental or quasi-governmental entity of any state or the United States. It includes the South Carolina Student Loan Corporation, housing authorities established pursuant to Articles 5, 7, and 9 of Chapter 3 of Title 31 and the Internal Revenue Service, and the United States Department of Education. It also includes a private institution of higher learning for the purpose of collecting debts related to default on authorized educational loans made pursuant to Chapter 111, 113, or 115 of Title 59. “Political subdivision” includes the Municipal Association of South Carolina and the South Carolina Association of Counties when these organizations submit claims on behalf of a county or local governmental or quasi-governmental entity. A political subdivision who submits a claim through an association is a claimant agency for the purpose of the notice and appeal provisions and other requirements of this chapter.

(2) “Department” means the South Carolina Department of Revenue.

(3) “Debtor” means a person having a delinquent debt or account with a claimant agency which has not been adjusted, satisfied, or set aside by court order, or discharged in bankruptcy.

(4) “Delinquent debt” means a sum due and owing a claimant agency, including collection costs, court costs, fines, penalties, and interest which have accrued through contract, subrogation, tort, operation of law, or other legal theory regardless of whether there is an outstanding judgment for that sum which is legally collectible and for which a collection effort has been or is being made. It does not include sums owed to county hospitals when the hospital and the debtor have entered into a written payment agreement and the debtor is current in meeting the obligations of the agreement. “Delinquent debt” also includes any fine, penalty, cost, fee, assessment, surcharge, service charge, restitution, or other amount imposed by a court or as a direct consequence of a final court order which is received by or payable to the clerk of the appropriate court or treasurer of the entity where the court is located.

(5) “Refund” means any individual or corporate South Carolina income tax refund payable. This term also includes a refund belonging to a debtor resulting from the filing of a joint income tax return.

#### **SECTION 12-56-30.** Collection of debt; information to be given by claimant agency; information to be given by department to claimant agency.

(A) The collection remedy under this chapter is in addition to any other remedy available by law.

(B) Claimant agencies may submit for collection under the procedure established by this chapter all delinquent debts which they are owed.

(C) All claimant agencies, whenever possible, shall obtain the full name, social security number, address, and any other identifying information, required by regulations promulgated by the department for implementation of this chapter, 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 the terms of this chapter.

(D) Upon request from a claimant agency, the department shall furnish the claimant agency the home address, corrected Social Security number or additional Social Security number of any taxpayer whose name has been submitted to the department for collection of a delinquent debt.

**SECTION 12-56-40.** Choice of claimant agency as to use of or participation in setoff program.

If the claimant agency determines that the administrative cost of utilizing this chapter is prohibitive, it may choose not to participate in the setoff program, or it may choose to participate only in cases of delinquent debts above an amount it determines appropriate.

**SECTION 12-56-50.** Department to assist in collection of account or debt by setoff of any refunds due to debtor.

Subject to the limitations contained in this chapter, the department, upon request, shall render assistance in the collection of any delinquent account or debt owing to any claimant agency by setting off any refunds due the debtor from the department by the sum certified by the claimant agency as delinquent debt.

**SECTION 12-56-60.** Notification by claimant agency; refund determinations; department liability.

(A) A claimant agency seeking to attempt collection of a delinquent debt through setoff shall notify the department in writing and supply information the department determines necessary to identify the debtor whose refund is sought to be set off. A request for setoff may be made only after the claimant agency has notified the debtor of its intention to cause the debtor's refund to be set off not less than thirty days before the claimant agency's request to the department. The claimant agency promptly shall notify the debtor when the liability out of which the setoff arises is satisfied. The claimant agency promptly shall notify the department of a reduction in the delinquent debt.

(B) Upon receiving the certification of the claimant agency of the amount of the delinquent debt, the department shall determine if the debtor is due a refund. If the debtor is due a refund of more than a tolerance amount as determined by the department, the department shall set off the delinquent debt against the amount of the refund. The department may retain an amount not to exceed twenty-five dollars of each refund set off to defray its administrative expenses, and that amount may be added to the debt. Apportionment is not required in the case of a refund resulting from filing a joint return. A person has no property right or property interest in a refund until all amounts due the State and claimant agencies are paid. The department shall consider a delinquent debt and debtor list provided by a claimant agency as correct and the department is not liable for a wrongful or improper setoff.

**SECTION 12-56-62.** Notice of intention to set off debt; form, delivery and presumption.

The notice of intention to set off must be given by mailing the notice, with postage prepaid, addressed to the debtor at the address provided to the claimant agency when the debt was incurred or at the debtor's last known address. The giving of the notice by mail is complete upon the expiration of thirty days after deposit of the notice in the mail. A certification by the claimant agency that the notice has been sent is presumptive proof that the requirements as to notice are met, even if the notice actually has not been received by the debtor. The notice must include a statement of appeal procedures available to the debtor, substantially as follows:

“According to our records, you owe the (claimant agency) a debt in the amount of (amount of the debt), plus interest, if applicable, for (type of debt). You are hereby notified of the (claimant agency's) intention to submit this debt to the South Carolina Department of Revenue to be set off against your individual income tax refunds until the debt is paid in full. Pursuant to the Setoff Debt Collection Act, this amount, plus all costs, will be deducted from your South Carolina individual income tax refunds unless you file a written protest within thirty days of the date of this notice. If you file a joint return with your spouse, this amount will be deducted from the total joint refunds without regard to which spouse incurred the debt or actually withheld the taxes. The protest must contain the following information:

- (1) your name;
- (2) your address;
- (3) your social security number;
- (4) the type of debt in dispute; and
- (5) a detailed statement of all the reasons you disagree with or dispute the debt.

The original written protest must be mailed to the (claimant agency) at the following address: (address of the entity requesting the setoff)".

**SECTION 12-56-63.** Protest procedure; administrative fees.

(A) A debtor who protests the debt shall file a written protest with the claimant agency at the address provided in the claimant agency's notification of intention to set off. The protest must be filed within thirty days of the date of the notice of intention to set off and must contain the debtor's name, address, and tax identification number, identify the type of debt in dispute, and give a detailed statement of all the reasons that support the protest. The requirements of this section are jurisdictional.

(B) To recover costs incurred by the Municipal Association of South Carolina and the South Carolina Association of Counties for submitting a debt pursuant to this chapter and Section 12-4-580 to the department for collection, the association may charge an administrative fee, not to exceed twenty-five dollars, that must be added to the debt. An association is exempt from the notice and appeal procedures of this chapter. The entity that has submitted its claim through the association is responsible for the notice and hearing requirements of this chapter.

**SECTION 12-56-65.** Protest and contested case hearings; refunds; erroneous retention or set off; time limit.

(A) Before submitting a debt to the department, the claimant agency shall appoint a hearing officer to hear a protest of a debtor. This hearing officer is vested with the authority to decide a protest in favor of either the debtor or the claimant agency. The claimant agency shall certify to the department, on a form prescribed by the department, that a hearing officer has been appointed and shall inform the department of the name, address, and telephone number of the hearing officer. If this hearing officer is unable to serve at any time, the claimant agency shall appoint another hearing officer.

(B) Upon receipt of a notice of protest, the claimant agency shall notify the department that a protest has been received and shall hold an informal hearing at which the debtor may present evidence, documents, and testimony to dispute the debt. The claimant agency shall notify the debtor of the date, time, and location of the informal hearing. At the conclusion of the informal hearing, the hearing officer shall render his determination. Upon receipt of a sworn certification from the hearing officer that he held an informal hearing and ruled in favor of the claimant agency, the department may proceed to collect the delinquent debt regardless of a subsequent appeal by the debtor.

(C) A debtor may seek relief from the hearing officer's determination by requesting, within thirty days of the determination, a contested case hearing before the Administrative Law Judge Division. A request for a hearing before the Administrative Law Judge Division must be made in accordance with its rules.

(D) If a portion of the delinquent debt is collected by the department and the determination of the hearing officer in favor of the claimant agency is later reversed or the debtor prevails in a claim for refund, the claimant agency shall refund the appropriate amount to the taxpayer, including the appropriate amount of the fee. That portion of the refund reflecting the department's fee must be paid from claimant agency funds. If the claimant agency is found to be entitled to a portion of an amount collected by set off, it is not required to refund the setoff fee retained by the department.

(E) If a refund is retained in error, the claimant agency shall pay to the taxpayer interest calculated as provided in Section 12-54-20 from the date provided by law after which interest is paid on refunds until the appeal is final, except that interest does not accrue when the claimant agency is the Office of Child Support Services of the South Carolina Department of Social Services.

(F) If the claimant agency determines that money has been erroneously or illegally collected, the claimant agency, in its discretion, may issue a refund, even if the debtor does not file a protest or file a claim for refund.

(G) A collection may not be contested more than one year after the date it was made. The date of collection must be conclusively determined by the department. This provision must be construed as a statute of repose and not as a statute of limitation.

(H) A debtor may make a claim for refund of an amount collected pursuant to this chapter within one year from the date the amount is collected, in the same manner as seeking relief from a hearing officer's determination pursuant to Section 12-56-65 or 12-56-67.

#### **SECTION 12-56-67.** Jury trial rights.

This section does not create a right to jury trial where one does not already exist. Where a debtor otherwise is entitled to have a jury determine the issue of indebtedness, that right is preserved specifically. If a right to a jury trial already exists and the debtor wishes to exercise that right, the debtor is not required to request a contested case hearing before the Administrative Law Judge Division but instead must file a summons and complaint in the Court of Common Pleas and serve the pleadings on the claimant agency within thirty days from the date of the hearing officer's determination. The summons and complaint must name the claimant agency as a defendant and the allegations of the complaint must contest the debt and any potential setoff.

#### **SECTION 12-56-70.** Priority of claims to refund.

Claims to refunds allowed to be set off under this article must be made by a claimant agency filing a written notice with the department of its intention to effect collection through setoff under this article. The following is the order of priority for multiple claims filed:

- (1) claims of the Department of Revenue;
- (2) claims of the Division of Child Support Enforcement of the State Department of Social Services;
- (3) other claims of the State Department of Social Services and other state agencies;
- (4) claims of the Internal Revenue Service and claims filed by institutions of higher learning;
- (5) claims of other agencies not given a specific priority.

Priority within a class in which multiple claims are filed is the order in time in which the claimant agencies filed the written notice with the department of the intention to effect collection through setoff under this article.

**SECTION 12-56-80.** Proceeds collected transmitted to agency; accounting provided by department to agency; credit to debtor's obligation by agency; notification of agency to debtor of setoff.

(A) Simultaneously with the transmittal of proceeds collected to a claimant agency, the department shall provide the agency with an accounting, which, whenever possible, must include the full names of the debtors and the debtors' social security numbers. No federal tax return information may be divulged by the department under any circumstances.

(B) Upon receipt by a claimant agency of proceeds collected on its behalf by the department and an accounting thereof as specified under this section, the agency shall credit the debtor's obligation and shall notify the debtor in writing of the amount of the setoff.

**SECTION 12-56-90.** Information from department to be used only by agency for collection purposes; penalties for disclosure.

(A) The exchange of information among the department, claimant agency, and the debtor pursuant to this chapter is lawful.

(B) The information obtained by a claimant agency from the department in accordance with the exemption allowed by subsection (A) may be used by the agency only in the pursuit of its debt collection duties and practices. A person employed by or formerly employed by the agency who discloses the information for another purpose is subject to the penalties provided in Section 12-54-240.

**SECTION 12-56-100.** Indemnification of department by agency.

Claimant agencies shall indemnify the department against any injuries, actions, liabilities, or proceedings arising from performance under the provisions of this chapter.

**SECTION 12-56-110.** Department regulations, forms and procedures permitted.

The department may promulgate regulations and prescribe forms and procedures necessary to implement this chapter.

**SECTION 12-56-120.** Department and Internal Revenue Service exempt from notice and appeal procedures; other procedures as exclusive remedy.

The department and Internal Revenue Service are exempt from the notice and appeal procedures of this chapter. The sole and exclusive appeal procedure for the setoff of a debt owed to the department is governed by the provisions of Chapter 60 of Title 12. The appeal procedure in connection with a liability to the Internal Revenue Service is governed by Title 26 of the United States Code.