

GENERAL ASSEMBLY OF NORTH CAROLINA

EXTRA SESSION 1994

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HOUSE BILL 196

Short Title: Income Tax Setoff for Restitution.

(Public)

Sponsors: Representative Joye.

Referred to: Courts and Justice.

February 14, 1994

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE COLLECTION OF RESTITUTION, REQUIRED TO BE PAID BY A CRIMINAL, THROUGH THE USE OF A SETOFF FROM THE AMOUNT OF ANY STATE INDIVIDUAL INCOME TAX REFUND THE CRIMINAL IS OTHERWISE DUE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105A-1 reads as rewritten:

"§ 105A-1. Purposes.

The purpose of this Article is to establish as policy that all claimant agencies and the Department of Revenue shall cooperate in identifying debtors who individuals who qualify for a refund and who either owe money to a crime victim as a result of having been convicted of a crime and required to pay restitution to the victim or debtors who owe money to the State through its various claimant agencies and who qualify for refunds from the Department of Revenue agencies. It is also the intent of this Article that procedures be established for setting off against any such refund the sum of any restitution due a crime victim or debt owed to the State. Furthermore, it is the legislative intent that this Article be liberally construed so as to effectuate these purposes as far as legally and practically possible."

Sec. 2. G.S. 105A-2 reads as rewritten:

"§ 105A-2. Definitions.

As used in this Article:

(1) 'Claimant agency' means and includes:

- a. The State Education Assistance Authority as enabled by Article 23 of Chapter 116 of the General Statutes;

- 1 b. The North Carolina Department of Human Resources when in
2 the exercise of its authority to collect health profession student
3 loans made pursuant to G.S. 131-121;
- 4 c. The North Carolina Department of Human Resources when in
5 the performance of its duties under the Medical Assistance
6 Program enabled by Chapter 108A, Article 2, Part 6, and any
7 county operating the same Program at the local level, when and
8 only to the extent such a county is in the performance of
9 Medical Assistance Program collection functions;
- 10 d. The North Carolina Department of Human Resources when in
11 the performance of its duties, under the Child Support
12 Enforcement Program as enabled by Chapter 110, Article 9 and
13 Title IV, Part D of the Social Security Act to obtain
14 indemnification for past paid public assistance or to collect
15 child support arrearages owed to an individual receiving
16 program services and any county operating the program at the
17 local level, when and only to the extent that the county is
18 engaged in the performance of those same duties;
- 19 e. The University of North Carolina, including its constituent
20 institutions as specified by G.S. 116-2(4);
- 21 f. The University of North Carolina Hospitals at Chapel
22 Hill in the conduct of its financial affairs and operations
23 pursuant to G.S. 116-37;
- 24 g. The Board of Governors of The University of North Carolina
25 and the State Board of Education through the College
26 Scholarship Loan Committee when in the performance of its
27 duties of administering the Scholarship Loan Fund for
28 Prospective College Teachers enabled by Chapter 116, Article
29 5;
- 30 h. The Office of the North Carolina Attorney General on behalf of
31 any State agency when the claim has been reduced to a
32 judgment;
- 33 i. The State Board of Community Colleges through community
34 colleges as enabled by Chapter 115D in the conduct of their
35 financial affairs and operations;
- 36 j. State facilities as listed in G.S. 122C-181(a), School for the
37 Deaf at Morganton, North Carolina Sanatorium at McCain,
38 Western Carolina Sanatorium at Black Mountain, Eastern North
39 Carolina Sanatorium at Wilson, and Gravelly Sanatorium at
40 Chapel Hill under Chapter 143, Article 7; Governor Morehead
41 School under Chapter 115, Article 40; Central North Carolina
42 School for the Deaf under Chapter 115, Article 41; Wright
43 School for Treatment and Education of Emotionally Disturbed

- 1 Children under Chapter 122C; and these same institutions by
 2 any other names by which they may be known in the future;
- 3 k. The North Carolina Department of Revenue;
- 4 l. The Administrative Office of the Courts;
- 5 m. The Division of Forest Resources of the Department of
 6 Environment, Health, and Natural Resources;
- 7 n. The Administrator of the Teachers' and State Employees'
 8 Comprehensive Major Medical Plan, established in Article 3 of
 9 General Statutes Chapter 135;
- 10 o. The State Board of Education through the Superintendent of
 11 Public Instruction when in the performance of his duties of
 12 administering the Scholarship Loan Fund for Prospective
 13 Teachers enabled by Chapter 115C, Article 32A and the
 14 scholarship loan and grant programs enabled by Chapter 115C,
 15 Article 24C, Part 1;
- 16 p. The Board of Trustees of the Teachers' and State Employees'
 17 Retirement System and the Board of Trustees of the Local
 18 Governmental Employees' Retirement System in the
 19 performance of their duties pursuant to Chapters 120, 128, 135
 20 and 143 of the General Statutes;
- 21 q. The North Carolina Teaching Fellows Commission in the
 22 performance of its duties pursuant to Chapter 115C, Article
 23 24C, Part 2;
- 24 r. The North Carolina Department of Human Resources when in
 25 the performance of its intentional program violation collection
 26 duties under the Food Stamp Program enabled by Chapter
 27 108A, Article 2, Part 5, and any county operating the same
 28 Program at the local level, when and only to the extent such a
 29 county is in the performance of Food Stamp Program
 30 intentional program violation collection functions.
- 31 The North Carolina Department of Human Resources when,
 32 in the performance of its duties under the Aid to Families with
 33 Dependent Children Program or the Aid to Families with
 34 Dependent Children - Emergency Assistance Program provided
 35 in Part 2 of Article 2 of Chapter 108A or under the State-
 36 County Special Assistance for Adults Program provided in Part
 37 3 of Article 2 of Chapter 108A, it seeks to collect public
 38 assistance payments obtained through an intentional false
 39 statement, intentional misrepresentation, or intentional failure to
 40 disclose a material fact.
- 41 s. The Employment Security Commission of North Carolina.
- 42 (2) 'Debtor' means any ~~individual owing any of the following individuals:~~
 43 a. An individual who owes money to or ~~having~~ has a delinquent
 44 account with any claimant agency ~~which~~ if the obligation has

1 not been adjudicated satisfied by court order, set aside by court
2 order, or discharged in bankruptcy.

3 b. An individual who is on probation, work release, or parole, is
4 required to pay restitution to a victim of a crime committed by
5 the individual, has been recorded by the clerk of court under
6 G.S. 15B-26 for failure to make the restitution payments, and
7 has not had the probation, work release, or parole revoked as a
8 result of the failure.

9 (3) 'Debt' means any of the following:

10 a. A liquidated sum due and owing any claimant agency which
11 has accrued through contract, subrogation, tort, operation of
12 law, or any other legal theory regardless of whether there is an
13 outstanding judgment for that sum.

14 b. The amount of restitution the clerk of court reports under G.S.
15 15B-26 that a debtor owes as restitution.

16 (4) 'Department' means the North Carolina Department of Revenue.

17 (5) 'Refund' means any individual's North Carolina income tax refund.

18 (6) 'Net proceeds collected' means gross proceeds collected through final
19 setoff against a debtor's refund minus any collection assistance fee
20 charged by the Department."

21 Sec. 3. Chapter 15B of the General Statutes is amended by adding a new
22 section to read:

23 **"§ 15B-26. Collection of restitution through setoff of a criminal's State income tax**
24 **refund.**

25 If a criminal is ordered to pay restitution to a crime victim as a condition of
26 probation, work release, or parole but the criminal does not make the required payments
27 and the criminal's probation, work release, or parole is not revoked, the crime victim
28 may apply to the clerk of the court in which the criminal was convicted to record the
29 amount of unpaid restitution as a debt. The crime victim must present a copy of the
30 order requiring the criminal to pay restitution and a statement signed by the crime
31 victim of the amount, if any, of restitution received from the criminal before the
32 criminal failed to make the required restitution payments.

33 If the clerk finds that the criminal is not making restitution payments as required and
34 that the requirement to pay restitution has not ended as a result of revocation of the
35 criminal's probation, work release, or parole, the clerk of court must record the amount
36 of unpaid restitution as a debt and notify the Administrative Office of the Courts. The
37 notification to the Administrative Office of the Courts must state the amount of unpaid
38 restitution recorded as a debt, the name of the criminal, and the name of the victim. The
39 Administrative Office of the Courts must proceed as a claimant agency under Chapter
40 105A of the General Statutes to collect the unpaid restitution from any individual
41 income tax refund due the criminal and remit to the victim the net proceeds of the
42 amount collected."

43 Sec. 4. This act becomes effective January 1, 1995, and applies to restitution
44 payments ordered on, before, or after that date.