



SC REVENUE PROCEDURE #92-3

SUBJECT: Setoff Debt Collection Procedures

TAX MANAGER: Jean P. Croft

EFFECTIVE DATE: July 1, 1992

SUPERSEDES: S.C. Revenue Procedure #91-6, and all previous documents and any oral directives in conflict herewith.

REFERENCE: S.C. Code Ann. §§12-54-410 through 12-54-500 (Supp. 1991)
Act #361 of 1992

AUTHORITY: S.C. Code Ann. Section 12-4-320 (Supp, 1991)
S.C. Revenue Procedure #87-3

SCOPE: A Revenue Procedure is a statement describing agency procedures and is applicable only to employees of the South Carolina Tax Commission.

PURPOSE: To supersede SC Revenue Procedure #91-6; modify the procedure as a result of an amendment to Code Sections 12-54-420(1) and 12-54-460; and provide procedures and dates relating to the Set-off Debt Collection Act as amended in May 1992.

A. Definitions

For purposes of this procedure the following definitions as provided under Section 12-54-420 are applicable.

(1) 'Claimant agency' means a state agency, board, committee, commission, public institution of higher learning, political subdivision and the Internal Revenue Service. 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 [of the South Carolina Code].

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

(4) 'Delinquent debt' means any liquidated sum due and owing any claimant agency, including court costs, fines, penalties, and interest which have accrued through contract, subrogation, tort, operation of law, or any 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.

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

B. Application for Participation and Priority of Claims

(1) Before a request for setoff may be made, the claimant agency must notify the debtor of its intention to cause the debtor's refund to be set off. This notice must be given in person, left at the dwelling or usual place of business of the debtor, or sent by certified or registered mail to the debtor's last known address no less than thirty days before the claimant agency's request to the Commission. The notice shall include a statement which sets forth administrative appeal procedures available to the debtor and alternatives available to the debtor which could prevent setoff.

(2) On or before August 31st of each year, claimant agencies must furnish to the Commission an application with the information listed below. This application is effective only to initiate setoff against refunds in the subsequent calendar year.

a) The name, address and telephone number of the individual or section to whom the Commission should direct inquiries, if further information is required.

b) An estimate of the number of accounts to be forwarded for possible setoff.

c) A letter of authorization from the claimant agency head which includes the name, title and sample signature of the person(s) authorized to make requests for service.

(3) The transmitting medium used to send the information to the Commission must be one authorized by the Commission. Currently, the Commission has authorized the use of magnetic tapes and personal computer diskettes which meet Commission specifications as outlined in a letter to all applicants (claimant agencies). Exceptions will be made for those claimant agencies with no programming capability for this purpose. A written explanation as to physical inability to produce the required medium must be sent to the Commission with the application to participate. The Commission will advise the requesting agency, by September 30th, of the acceptability of the request. (Format and technology considerations will be provided by the Commission.) The Commission, as changes in technology and administrative needs warrant, may authorize or require the use of other types of transmitting media.

(4) Priority in multiple claims to refunds allowed to be setoff must be in the order in time which a claimant agency has filed an application of participation with the Commission. However, claims filed by any agency of state government have priority over claims filed by the Internal Revenue Service or an institution of higher learning. Notwithstanding this priority according to time of filing, the Commission has priority over all other claimant agencies for collection by setoff whenever it is a competing agency for a refund.

C. Certification of Debt File

(1) Between November 1st and December 31st, each year, claimants must forward their debt files (via an authorized transmitting medium) along with a statement certifying them for collection. Such statement should be signed by the claimant agency head or the person(s) authorized to make requests for service in B(2)(c) above and contain language similar to the following:

I hereby certify that this organization has complied with the requirements of S.C. Code 12-54-460 and that the information contained in the accompanying tape(s) is, to the best of my knowledge and belief, true, correct, and complete.

Debt files must be received by the Commission during the period from November 1st through December 31st. Pursuant to 12-54-460(A), the information certifying the debt files for collection must be received before December 31st in order to offset refunds to be made in the subsequent year. Debt files (via an authorized transmitting medium) should be mailed or delivered to:

Debt Setoff Files Librarian
South Carolina Tax Commission
P.O. Box 125
Columbia, South Carolina 29214

(2) Claimant agencies must submit to the Commission a list of claims which includes:

- a) Debtor's name
- b) Social security number
- c) Agency number (code)
- d) Agency I.D. number (fund)
- e) Debt amount

(3) It is extremely important that the above information is transmitted accurately. It shall be the responsibility of the claimant agency to ensure the accuracy of claims submitted. No claims will be processed unless submitted in required form.

(4) The certification of the list of claims is effective only against refunds issued in the subsequent calendar year.

D. Submission of Deletions of Accounts and Reductions in Debt Amount

The certified list of claims must be received by the Commission by December 31st of each calendar year. Changes such as deletions of incorrect accounts due to erroneous numbers, reductions in debt amount, and corrections to taxpayers' names may be made after December 31st. The amount of set-off requested cannot be increased and new accounts cannot be added after December 31st. After December 31st, deletions, reductions, and corrections can be made only by returning a corrected tape, diskette or other authorized transmitting medium.

NOTE: Due to an increase in workload during the income tax filing season, there may be a delay in placing tapes containing deletions and reductions into the appropriate database. Also, because returns are being filed while the changes are being made, some returns may be filed before such changes are actually entered into the database. Therefore, the Commission cannot guarantee that accounts will be adjusted for any deletions or reductions received after December 31st.

E. Refund Match to Claimant's Claim

Upon receiving the certification of the claimant agency, the Commission shall determine if the debtor is due a refund in excess of \$25. If a refund in excess of \$25 is due, the Commission shall setoff the delinquent debt against the amount of the refund. The Commission may retain up to \$25 to defray its administrative expense. When the claimant agency is the Internal Revenue Service, the Commission shall not charge an administrative fee and the total refund is available for setoff.

The Commission is not required to apportion refunds resulting from joint returns. The certified delinquent debt and debtor list provided by a claimant agency shall be presumed correct by the Commission.

F. Transmittal of Funds and Accounting of Setoff to Claimant Agency

At the time of transmittal of the funds to the claimant agency, the Commission shall provide the agency an accounting of the funds. The accounting will include the full name of the debtor, the debtor's social security number, amount of debt setoff, and the administrative fee charged.

G. Notification of Debtor

Upon receipt by a claimant agency of the funds collected and an accounting of the funds, the claimant agency shall notify the debtor in writing of the setoff. In addition, the claimant agency must notify the debtor when the liability from which the setoff arises is satisfied.

H. Review by Claimant Agency

If a debtor wishes to contest the setoff of a refund, he is entitled to a review with the claimant agency. If after review the claimant agency determines the setoff amount to be excessive, the claimant agency shall refund the appropriate amount to the taxpayer. If it is determined the claimant agency is not entitled to any of the amount setoff, it shall refund the entire amount plus the administrative fee charged by the Commission. The administrative fee refunded shall be paid from the claimant agencies' funds. The claimant agency, except the Office of Child Support Services of DSS, shall pay interest to the taxpayer to be calculated as provided in Section 12-54-20.

I. Indemnification of S. C. Tax Commission

S.C. Code 12-54-495 states that the claimant agencies will indemnify the Tax Commission.

By participating in this program, the claimant agencies acknowledge that they will indemnify the Commission against any injuries, actions, liabilities, or proceedings arising from performance under the debt setoff provisions. A statement to this effect will be included on the Application for Participation in Setoff Debt Collection Program.