

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

**SESSION LAW 2001-380
SENATE BILL 353**

**AN ACT TO PROVIDE A PERMANENT MECHANISM FOR THE COLLECTION
OF TAX DEBTS.**

The General Assembly of North Carolina enacts:

SECTION 1. The General Assembly finds that the Department of Revenue has documented that the State's cost of collecting overdue tax debts exceeds twenty percent (20%) of the amount of the overdue tax debts. The General Assembly finds that the cost of collecting overdue tax debts is currently borne by taxpayers who pay their taxes on time. It is the intent of the General Assembly by this act to shift this cost to the delinquent taxpayers who owe overdue tax debts.

SECTION 2. Article 9 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-243.1. Collection of tax debts.

- (a) Definitions. – The following definitions apply in this section:
- (1) Overdue tax debt. – Any part of a tax debt that remains unpaid 90 days or more after the notice of final assessment was mailed to the taxpayer. The term does not include a tax debt, however, if the taxpayer entered into an installment agreement for the tax debt under G.S. 105-237 within 90 days after the notice of final assessment was mailed and has not failed to make any payments due under the installment agreement.
 - (2) Tax debt. – The total amount of tax, penalty, and interest due for which a notice of final assessment has been mailed to a taxpayer after the taxpayer no longer has the right to contest the debt.
- (b) Outsourcing. – The Secretary may contract for the collection of tax debts. At least 30 days before the Department submits a tax debt to a contractor for collection, the Department must notify the taxpayer by mail that the debt may be submitted for collection if payment is not received within 30 days after the notice was mailed.
- (c) Secrecy. – A contract for the collection of tax debts is conditioned on compliance with G.S. 105-259. If a contractor violates G.S. 105-259, the contract is terminated, and the Secretary must notify the contractor of the termination. A contractor whose contract is terminated for violation of G.S. 105-259 is not eligible for an award of another contract under this section for a period of five years from the termination. These sanctions are in addition to the criminal penalties set out in G.S. 105-259.
- (d) Fee. – A collection assistance fee is imposed on an overdue tax debt that remains unpaid 30 days or more after the fee notice required by this subsection is mailed to the taxpayer. In order to impose a collection assistance fee on a tax debt, the Department must notify the taxpayer that the fee will be imposed if the tax debt is not paid in full within 30 days after the date the fee notice was mailed to the taxpayer. The Department may not mail the fee notice earlier than 60 days after the notice of final assessment for the tax debt was mailed to the taxpayer. The fee is collectible as part of the debt. The Secretary may waive the fee pursuant to G.S. 105-237 to the same extent as if it were a penalty.
- The amount of the collection assistance fee is twenty percent (20%) of the amount of the overdue tax debt. If a taxpayer pays only part of an overdue tax debt, the payment is credited proportionally to fee revenue and tax revenue.

(e) Use. – The fee is a receipt of the Department and must be applied to the costs of collecting overdue tax debts. The proceeds of the fee must be credited to a special account within the Department and may be expended only as provided in this subsection. The Department may apply the proceeds of the fee to pay contractors for collecting tax debts under subsection (b) of this section and to pay the fee the United States Department of the Treasury charges for setoff to recover tax owed to North Carolina. The remaining proceeds of the fee may be spent only pursuant to appropriation by the General Assembly. The fee proceeds do not revert but remain in the special account until spent for the costs of collecting overdue tax debts.

(f) Reports. – The Department must report to the Joint Legislative Commission on Governmental Operations and to the Revenue Laws Study Committee on its efforts to collect tax debts. Reports must be submitted quarterly beginning November 1, 2001, through November 1, 2002, and semiannually thereafter. Each report must include a breakdown of the amount and age of tax debts collected by collection agencies on contract, the amount and age of tax debts collected by the Department through warning letters, and the amount and age of tax debts otherwise collected by Department personnel. Each report must also include a long-term collection plan, a timeline for implementing each step of the plan, a summary of steps taken since the last report and their results, and any other data requested by the Commission or the Committee."

SECTION 3. G.S. 105A-13 reads as rewritten:

"§ 105A-13. Collection assistance fees.

(a) State Setoff. – To recover the costs incurred by the Department in collecting debts under this Chapter, a collection assistance fee of no more than fifteen dollars (\$15.00) is imposed on each debt collected through setoff. The Department must collect this fee as part of the debt and retain it. The Department must set the amount of the collection assistance fee based on its actual cost of collection under this Chapter for the immediately preceding year. If the Department is able to collect only part of a debt through setoff, the collection assistance fee has priority over the remainder of the debt. The collection assistance fee shall not be added to child support debts or collected as part of child support debts. Instead, the Department shall retain from collections under Division II of Article 4 of Chapter 105 of the General Statutes the cost of collecting child support debts under this Chapter.

~~(b) Federal Setoff. – A collection assistance fee of fifteen dollars (\$15.00) applies to a setoff made by the United States Department of the Treasury to recover tax owed to North Carolina. The Department of Revenue must add the fee to the amount of the tax liability submitted to the United States Department of the Treasury for setoff. The Department of Revenue must collect the fee as part of the debt and retain it. If a federal setoff covers only part of the tax due, the collection assistance fee has priority over the tax due.~~

SECTION 4. G.S. 105-269 reads as rewritten:

"§ 105-269. Extraterritorial authority to enforce payment.

(a) ~~The Secretary of Revenue, Secretary,~~ with the assistance of the Attorney General, is ~~hereby empowered~~ authorized to bring suits in the courts of other states to collect taxes legally due this State. The officials of other states ~~which~~ that extend a like comity to this State are empowered to sue for the collection of ~~such~~ taxes in the courts of this State. A certificate by the Secretary of State, under the Great Seal of the State, that ~~such~~ these officers have authority to collect the tax ~~shall be~~ is conclusive evidence of ~~such~~ this authority. ~~Whenever it shall be deemed expedient by the Secretary of Revenue~~ the Secretary considers it expedient to employ local counsel to assist in bringing suit in an out-of-state court, the Secretary, with the concurrence of the Attorney General, may employ ~~such~~ local counsel on the basis of a negotiated retainer or in accordance with prevailing commercial law league rates.

~~(b) The Secretary of Revenue may, in accordance with the procedure prescribed in G.S. 143-49(3), contract for the collection of taxes legally due this State from taxpayers located in other states. The Secretary may furnish to a contractor hired~~

~~pursuant to this subsection any information he considers necessary to identify and locate a taxpayer, establish the tax liability of a taxpayer, or effect collection of the amount due."~~

SECTION 5. G.S. 105-259(b) is amended by adding a new subdivision to read:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

(26) To contract for the collection of tax debts pursuant to G.S. 105-243.1."

SECTION 6. Section 5(a) of S.L. 1999-341, as amended by Section 16 of S.L. 2000-120, reads as rewritten:

"Section 5.(a) The Secretary of Revenue shall contract during the 1999-2001 fiscal biennium for the collection of delinquent tax debts owed by nonresidents and foreign entities. To implement this section, the Secretary may draw funds for the 1999-2000 fiscal year from net collections that would otherwise be credited to the General Fund under G.S. 105-269.14, enacted by Section 2 of this act. For the 2000-2001 fiscal year, and 2001-2002 fiscal years, the Secretary may retain the costs of implementing this section from the amounts collected pursuant to the contracts authorized by this section. The Secretary of Revenue shall report annually to the Revenue Laws Study Committee on its collections pursuant to this contract during the biennium."

SECTION 7. The Department of Revenue may draw up to five hundred thousand dollars (\$500,000) for the 2001-2002 fiscal year from the collection assistance fee account created in G.S. 105-243.1 in order to pay for assistance in developing a request for proposals for a performance-based contract to implement the recommendations of the study authorized in Section 6 of S.L. 1999-341, as amended by Section 17 of S.L. 2000-120. The fee proceeds may be used for this purpose only to the extent the contract is for collecting overdue tax debts as defined in G.S. 105-243.1.

SECTION 8. G.S. 105-243.1(b), as enacted by this act, reads as rewritten:

"(b) Outsourcing. – The Secretary may contract for the collection of tax ~~debts.~~ debts owed by nonresidents and foreign entities. At least 30 days before the Department submits a tax debt to a contractor for collection, the Department must notify the taxpayer by mail that the debt may be submitted for collection if payment is not received within 30 days after the notice was mailed."

SECTION 9. Section 3 of this act becomes effective November 1, 2001. Section 6 of this act is effective on and after July 1, 2001. Section 8 of this act becomes effective October 1, 2003. The remainder of this act is effective when it becomes law and applies to tax debts that remain unpaid on or after that date.

In the General Assembly read three times and ratified this the 9th day of August, 2001.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 2:19 p.m. this 20th day of August, 2001