
State of South Carolina
Department of Revenue
301 Gervais Street, P. O. Box 125, Columbia, South Carolina 29214

SC REVENUE PROCEDURAL BULLETIN #02-2

SUBJECT: Governmental Enterprise Accounts Receivable Collections (“GEAR”)

EFFECTIVE DATE: Applies to all periods open under the statute.

SUPERSEDES: SC Revenue Procedural Bulletin #01-8 and all previous advisory opinions and any oral directives in conflict herewith.

REFERENCES: S.C. Code Ann. Section 12-4-580 (2000) as amended by Act No. 89, Section 44, 2001 Legislative Session
S.C. Code Ann. Section 12-56-10, *et. seq.* (2000)
S.C. Code Ann. Section 12-54-130 (2000)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2000)
S. C. Code Ann. Section 1-23-10(4) (2000)
SC Revenue Procedure #99-4

SCOPE: The purpose of a Revenue Procedural Bulletin is to provide immediate procedural guidance to the public and Department personnel. It is a written statement issued to assist in the administration of laws and regulations by providing guidance that may be followed in order to comply with the law. **A Revenue Procedural Bulletin does not have the force or effect of law, and is not binding on the public.** It is, however, binding on agency personnel until superseded or modified by a change in statute, regulation, court decision, or advisory opinion.

I. Introduction

Conservative estimates of uncollected governmental entity debt in South Carolina exceed two billion. (\$2,000,000,000.00). To the extent that a governmental entity is unable to collect all amounts that are due it, it can be difficult for the governmental entity to budget and fund essential governmental services. These unpaid liabilities also harm those citizens who are paying their fair share, and thereby threaten the integrity of our funding system.

Over the past several years, the Department of Revenue (“Department”) has begun to implement a program whereby the Department will assist in the collection of liabilities due other governmental entities. In the initial efforts, the Department has offset state income tax refunds in payment of liabilities owed governmental and educational entities under the Setoff Debt Collection Act of Chapter 56 of Title 12 (“Debt Setoff”). More recently, the Department has implemented the program known as Governmental Enterprise Accounts Receivable Collections or “GEAR.”

The GEAR program was enacted in 1996. Implementation of GEAR is part of the Department’s enterprise approach to using its core competencies. The program is designed to use the Department’s expertise to help other governmental entities¹ in collecting their liabilities.

Over the years, the Department has developed an experienced and highly trained collection staff that is skilled in collecting liabilities and in using the collection tools granted to the Department in an efficient and compassionate manner. Through GEAR, the Department believes that it can reduce the administrative burden on these governmental entities² by using our collections staff to help governmental entities collect their liabilities. These activities then relieve some of the burden of government on all citizens, and promote the integrity of the system by ensuring that we all remit our fair share.

The Department, as a state agency, is not subject to the South Carolina Consolidated Procurement Code when contracting with these governmental entities for this service. The Department is issuing this revenue procedural bulletin to provide governmental entities, debtors, and other parties who may be affected by the GEAR program, information and conditions under which the program is being administered.

II. **The Law**

Section 12-4-580 of the South Carolina Code of Laws (“Code”) as amended by Act No. 89, Section 44, 2001 Legislative Session reads as follows:

¹ Starting in 2002, state agencies will be reporting to legislative budget committees their outstanding accounts receivables and the collection efforts being used to collect those receivables. To the extent that a governmental entity is participating in the GEAR program, it may wish to report their enrollment in the GEAR program as a collection effort.

² South Carolina has 46 counties and approximately 285 municipalities, over 80 agencies, 85 school districts, numerous institutions of higher learning, and a multitude of special purpose districts and health care facilities, almost all of which have accounts receivable and staff attempting to collect those debts.

(A) The department and any other governmental entity may contract to allow the department to collect any outstanding liabilities owed the governmental entity. In administering the provisions of such agreements, the department has all the rights and powers of collection allowed it under this title for the collection of taxes and all such rights and powers authorized the governmental entity to which the liability is owed.

(B) The department may charge and retain a reasonable fee for any collection effort made on a governmental entity's behalf. The department may expend the funds resulting from any fees so charged and retained and may carry the funds forward from one fiscal year to the next. The amount of the fee must be negotiated between the governmental entity and the department.

(C) Governmental entities that contract with the department pursuant to this section shall indemnify the department against any injuries, actions, liabilities, or proceedings arising from the department's collecting or attempting to collect the liability owed to the governmental entity.

(D) As used in this section:

(1) "governmental entity" means the State and any state agency, board, committee, department, private or public institution of higher learning; all political subdivisions of the State; and all federal agencies, boards, and departments. "Political subdivision" includes the Municipal Association of South Carolina and the South Carolina Association of Counties when these organizations submit claims on behalf of their members.

(2) "liabilities owed the governmental entity" means a debt which is certified by the governmental entity to be owed it for which all rights of administrative or judicial appeal have been exhausted or all time limits of these appeals have expired.

III. **The Tools of Collection**

As noted in Section II above and Section VI following, before the Department receives a liability under the GEAR program, the governmental entity certifies that all appeal rights have been exhausted or have expired. The governmental entity also notifies the debtor that the liability is being transferred to the Department for collection. If the debtor does not satisfy the liability during the governmental entity's collection efforts, then the Department has a number of tools designed to enable it to efficiently collect those liabilities.

The first action the Department will usually take in connection with a GEAR liability is to write the debtor concerning the outstanding liability and advise him that the governmental entity has given the liability to the Department to collect. This notice advises that further action to collect the liability will be taken if the debtor does not pay the liability promptly. A Department representative may also call upon the debtor. Under the Debt Setoff program, the

Department also has the ability to offset a debtor's income tax refund. If the liability is not satisfied through these methods, the Department may also levy against the bank accounts or property of the debtor and may seek to garnish the wages of the debtor.

The Department may use all powers it has for "collection of taxes" in collecting GEAR liabilities. The remedy of garnishment is provided for in Code Sections 12-54-130 (wages) and 12-53-20 (intangibles). Code Section 12-54-130 permits withholding of 25% of the debtor's compensation if the debtor neglects or refuses to pay the liability within 10 days of notice and demand. Often a debtor will contact the Department and our representatives will negotiate an installment pay agreement as an alternative to immediate full payment or garnishment. The Department has established the following additional guidelines that it will follow regarding the garnishment of wages in connection with a liability received through the GEAR program.

1. As a general rule, the Department will not seek garnishment of wages for any GEAR liability that it receives that is under \$300. (*See also* Section IV.) However, if the governmental entity requests that the Department garnish the wages of the debtor, the Department may agree to do so, even if the liability does not exceed \$300. For example, if a single person or entity owes liabilities totaling over \$300, but no single liability amounting to \$300, the Department may agree to use its powers of garnishment upon the governmental entity's request.
2. The Department will abide by the request of any governmental entity that the Department not use garnishment or levy when the debtor's income is below a level specified by the entity. For example, the governmental entity could request that only debtors with an annual gross income exceeding \$25,000 be subject to garnishment in payment of the governmental entity's account.
3. If a debtor's gross income is below 120% of the federal poverty level, as a general rule, the Department will not use garnishment to collect non-tax GEAR liabilities without an express request from the governmental entity. For the period October 1, 2001, to September 30, 2002, the federal poverty level for an individual is \$8,592.00 per year. Therefore, 120% of the federal poverty level is \$10,310.40 per year or \$859.20 per month. The Department will make the income determination by inquiry of the employer implementing the garnishment and use of other information available to the Department when such use does not violate laws governing confidentiality and unauthorized access. To the extent allowed by applicable law, the Department will consider all income sources of the debtor in determining whether the debtor's gross income is 120% below the federal poverty level.
4. Except as otherwise specified by the governmental entity, if the Department determines that a debtor has gross income in excess of five times the federal poverty level, the Department will use all means available to collect the liability. For the period October 1, 2001 to September 30, 2002, 500% of the federal poverty level for an individual is \$3,580.00 a month or \$42,960 a year. The Department will make the income

determination by inquiry of the employer implementing the garnishment and use of other information available to the Department when such use does not violate laws governing confidentiality and unauthorized access. To the extent allowed by applicable law, the Department will consider all income sources of the debtor in determining whether the debtor's gross income is five times the federal poverty level.

IV. Other Collection Matters

1. Generally, a liability must be greater than \$50 to be accepted for collection under the GEAR program. Exceptions include accumulation of multiple liabilities that exceed the threshold and liabilities that have been reduced through debt setoff.
2. The Department will consider the totality of the circumstances surrounding the liability and the debtor(s) in determining what action to pursue to collect the liability. For example, if two or more debtors are jointly and severally liable for a liability, the Department may choose to pursue collection against one of the debtors or both of the debtors. Likewise, if a debtor has several means of income, for example, he has two jobs and rental income from property, the Department may seek to garnish the wages from one or both of his jobs or may seek to levy on the property generating the rental income.
3. Unless the governmental entity requests otherwise, the Department may at anytime during the collection process, establish an installment pay plan with a debtor that would allow him to pay his liability over a period of time in lieu of other collection action by the Department. Default on an installment pay plan may result in the Department's instituting other collection efforts.

V. Pre-existing Collection Contracts

Participation in the GEAR program is not mandatory. When governmental entities can negotiate more favorable collection terms with private collection agencies, it may be in everyone's best interest that these tools be exhausted before a liability is enrolled in the GEAR program. The Department's goal of efficient and effective collection of each person's fair share is furthered by this private partnership and the Department does not intend to interfere with any pre-existing contractual obligations. Before referring a liability to the Department pursuant to a GEAR agreement, governmental entities must ascertain whether the referral breaches any pre-existing contracts with a private collection agency. For example, some institutions of higher learning have contracted through a statewide RFP for services with a selected private collection agency, which may or may not limit use of the GEAR program for liabilities less than nine to twelve months old. Since the Department has no way of knowing whether a particular liability has been referred, the Department is requiring that - upon referring a GEAR liability to the

Department - the governmental entity certify that each referral under the GEAR program will not breach another contract. If the Department later finds that, notwithstanding the certification, a particular liability is referred to another, the Department will stop collection, return the liability to the governmental entity, and ask the governmental entity to recertify the remaining liabilities referred to the GEAR program.

The Department notes that the enterprise government concept acknowledges that all state agencies and political subdivisions are part of one entity. Nothing in this document is intended to suggest that the State, its agencies, and political subdivisions are separate entities for purposes of enterprise debt collection. Rather, the Department wishes to acknowledge and encourage all debt collection efforts in the most economical and efficient manner to better fund governmental services for all of South Carolina's citizens.

VI. Due Process Requirements for Debts Certified to the Department

Code Section 12-4-580 provides that for the Department to collect the liability, the "liabilities owed the governmental entity" must be debt "which is certified by the governmental entity to be owed it for which all rights of administrative or judicial appeal have been exhausted or all time limits for these appeals have expired." See Code Section 12-4-580(D)(2). For purposes of this temporary revenue procedural bulletin, these requirements will be called the "due process provisions."

The governmental entity may use the due process provisions of the Debt Setoff Program to comply with the GEAR statute's requirements. In that event, the Department will accept the following "Notice to the Department of Certification for GEAR Collection."

(Name of Governmental Entity) hereby certifies that each of the debts attached meets the requirements of the definition of "liabilities owed the governmental entity" in South Carolina Code Section 12-4-580(D)(2), that all rights of notice and appeal contained in the Setoff Debt Collection Act, South Carolina Code Sections 12-56-10, et seq., have been given each debtor, and that all applicable rights granted by law, regulation, judicial or other order, or administrative procedures have been allowed the debtor and have been exhausted or the time limits have expired.

[Name of entity, authorized signature, title, date]

The Department has provided to each participant a copy of its summary of the Debt Setoff program, the GEAR program, and their requirements. Other procedures may satisfy the GEAR due process provisions. The Department is available to consult with any governmental entity or its counsel with questions about what may be required by the statutes and laws governing the governmental entity's due process obligations.

VII. Fees for GEAR Participation

The statute provides that the Department may charge a reasonable fee negotiated with the governmental entity. The standard collection fee for the Department for all future GEAR contracts will be 28.5% of the liability collected. This rate is in addition to the fee charged to participate in the Debt Setoff program contained in Chapter 56 of Title 12. As noted in Section V., these rates will often apply to liabilities that remain after the failure of the governmental entity's internal efforts and those of private collection agencies that offer more competitive terms. The Department may negotiate a different rate with any of the governmental entities specified in Code Section 12-4-580(D)(1). The Department may negotiate other fee structures based upon various factors, including, but not limited to, the type, volume, and age of the debt, or the type of collection tools being utilized. As to hospitals and public and private institutions of higher learning, the Department will not increase or decrease the 28.5% fee except upon thirty days' prior public notice through the Department's on-line Policy Listserve. A person can subscribe to the Policy Listserve by going to the Department's website at www.sctax.org and subscribing to the advisory opinion e-mail subscription service (request@listserve.sctax.org.)

VIII. For More Information

For answers to questions concerning the GEAR program contact John Sullivan at (803) 898-5605 or Sonya Atkinson at (803) 898-5680.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Elizabeth Carpentier
Elizabeth Carpentier, Director

March 18, 2002
Columbia, South Carolina