

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

**MEMORANDUM OF  
UNDERSTANDING AND AGREEMENT**

SOUTH CAROLINA )  
ASSOCIATION OF COUNTIES )  
(SCAC) )  
AND )  
\_\_\_\_\_)  
(Name of Claimant Agency)

**PARTICIPATION  
IN THE  
SETOFF DEBT  
COLLECTION PROGRAM**

This AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by and between the above referenced Claimant Agency and the South Carolina Association of Counties (SCAC) in furtherance of Act No. 114, 1999 S.C. Acts codifying the 1999 amendments to the Setoff Debt Collection Act, S.C. Code §12-56-10 *et seq.*

conditions contained herein, it is hereby understood and agreed by and between the Claimant Agency and SCAC that:

WHEREAS, the Setoff Debt Collection Act, S.C. Code §12-56-10 *et seq.* (2003), authorizes the South Carolina Department of Revenue, hereinafter Department, to render assistance to collect any delinquent account or debt owing to any Claimant Agency by the Department's setting off any income tax refunds due a debtor by the sum certified by the Claimant Agency as a delinquent debt; and

1. The Claimant Agency is a state agency, board, committee, commission, public institution of higher learning, political subdivision of the State South Carolina, South Carolina Student Loan Corporation, a housing authority established pursuant to Articles 5, 7, and 9 of Chapter 3 of Title 31 of the South Carolina Code or a member of SCAC and is authorized to participate in the Setoff Debt Collection Act.

WHEREAS, THE Claimant Agency desires to enter into this Agreement with SCAC in order to participate in the Setoff Debt Collection Act to increase the collection rate of delinquent debts owed to Claimant Agency; and

2. The Claimant Agency hereby designates, appoints, and authorizes SCAC to process for submission to the Department the Claimant Agency's delinquent debts.

WHEREAS, SCAC is a political subdivision for purposes of the Setoff Debt Collection Act and is authorized to submit claims on behalf of its members, other political subdivisions and Claimant Agencies as defined in S.C. Code §12-56-10 *et seq.* (1999);

Delinquent debt means any sum due and owing Claimant Agency, including collection costs and administrative fees, 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. Delinquent debt does not include sums owed to a county hospital 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.

NOW, THEREFORE in consideration of the mutual covenants and agreements, terms and

3. SCAC agrees to submit delinquent debts to the Department. The Claimant Agency is responsible for complying with the notice and appeal provisions and other requirements of the Setoff Debt Collection Act.

4. Upon execution of this Agreement, Claimant Agency shall file a "Participation Form" with SCAC designating a Setoff Debt Coordinator with SCAC. The Setoff Debt Coordinator shall be the designated contact between SCAC and Claimant Agency for all communications and is authorized by Claimant Agency to carry out the requirements of the Setoff Debt Collection Act, S.C. Code §12-56-10 *et seq.* (2003). The Setoff Debt Coordinator shall supply SCAC with any and all information which in the opinion of SCAC is necessary for the proper implementation of this Agreement.

5. The Claimant Agency shall use SCAC's "Entity User Setoff Debt Software Program" or an ASCII file or Excel file layout specified by SCAC to prepare diskettes or electronic transfer files referred to herein as "debt files" and "adjustment to debt files." If, in the opinion of SCAC, changes to the "Entity User Setoff Debt Software Program" or specifications for an ASCII file or Excel file are necessary to carry out this program, SCAC shall timely notify the Claimant Agency. The Claimant Agency covenants and agrees that it shall immediately implement any changes required by SCAC.

SCAC shall not accept a debt file or adjustment to debt file that is not prepared as specified by SCAC. SCAC will accept debt files on diskettes or files that are electronically transferred through SCAC's File Transfer Protocol (FTP) software. Paper hard copies shall not be accepted.

Each "debt file" submitted to SCAC is deemed to bear a certification that the debts are owed and due the Claimant Agency, for which prior efforts to collect have been made, and which Claimant Agency instructs SCAC to submit to the Department for collection from a

debtor's tax refund. Each "adjustment to debt file" is deemed an authorization to SCAC to notify Department to reduce a previously submitted debt to the amount stated. A "debt file" and an "adjustment to debt file" shall have the certification provided in paragraph 6 affixed to it.

6. SCAC is not, and shall not be liable for a wrongful or improper setoff. Each "debt file," supplemental "debt file" or "adjustment to debt file" shall have affixed to it a "Certification Form" provided by SCAC which states:

"I hereby certify that the Claimant Agency for whom the attached data diskette was prepared has complied with all the requirements of the Setoff Debt Collection Act; that the Claimant Agency has properly given each individual debtor whose name appears in the data diskette the notice of intention to set off and the Claimant Agency's appeal procedures pursuant to S.C. Code §12-56-62; that the information contained in the attached data diskette has been reviewed by me and is, to the best of my knowledge and belief, true, correct, and complete."

7. Not less than thirty (30) days before filing a debt file with SCAC, Claimant Agency shall provide the debtor with the statutory notice advising the debtor of Claimant Agency's intention to cause the debtor's tax refund to be set off.

8. Only after the required statutory thirty (30) day notice is provided to debtor by Claimant Agency may Claimant Agency transmit a "debt file" to SCAC. Debt files shall be received in the SCAC offices on or before November 1 of the preceding calendar year in which the refund would be paid.

9. Upon receipt of Claimant Agency's "debt file," SCAC shall compile the information and submit the data to the Department on or before the close of business a December 15.

10. Debts totaling less than fifty (\$50.00) dollars per individual at the time the debt is first submitted to SCAC for setoff may not be submitted. This provision does not prohibit submitting in subsequent years, under ¶ 12 of this Memorandum, those debts which were fifty (\$50.00) or more when first submitted to SCAC even though, in subsequent years, that debt is less than fifty (\$50.00) because of successful interception(s) resulting in partial payment of the delinquent debt.

If a debtor is due a refund of more than twenty-five dollars (\$25.00), the Department sets the tax refund off in the amount of the delinquent debt plus twenty-five dollars (\$25.00).

Pursuant to the S.C. Code § 12-56-63 of the Setoff Debt Collection Act, as amended, the South Carolina Department of Revenue shall add to each debt setoff the sum of \$25 to defray its administrative cost, and SCAC, as claimant agent for the Entity, shall add \$25 to each “successful interception” as provided below, which shall be retained by SCAC to defray its administrative costs.

“Successful interception” means the Department matched a debt submitted by SCAC against a tax refund for interception and payment towards a delinquent debt owed to Claimant Agency. Payment shall be made as provided in paragraph 11.

11. Payment to SCAC by Claimant Agency for each successful interception is made as follows: SCAC will add the amount of the debt due Claimant Agency in the amount of twenty-five dollars ( 25.00) and retain said twenty-five dollars (\$25.00); provided, however, SCAC will not collect more than twenty-five dollars (\$25.00) from any one individual in a calendar year.

12. In the event of partial payment of a delinquent debt, the balance of the debt may be submitted in a following year and twenty-five

dollars (\$25.00) shall be paid to SCAC for successful interception of a tax return in a subsequent year notwithstanding the previous year’s interception and payment.

13. Claimant Agency acknowledges that Claimant Agency is responsible for the notice and hearing requirements of the Setoff Debt Collection Act and that SCAC is exempt from these provisions of the Setoff Debt Collection Act. The Claimant Agency affirms to SCAC that it will comply with the notice and hearing procedures required by S.C. Code §12-56-10 *et seq.*

14. The Claimant Agency shall file an “Appointment of Hearing Officer” form with SCAC certifying the appointment of a hearing officer. If the appointed hearing officer is unable to serve at any time, the Claimant Agency shall appoint another officer and file a new “Appointment of Hearing Officer” form with SCAC.

15. Within seven (7) calendar days of Claimant Agency’s receipt of a debtor’s Notice of Protest, the Claimant Agency shall send the Notice of Protest to the Department and send a copy to SCAC. At the same time, Claimant Agency shall notify SCAC with an “adjustment to debt file” diskette marking the protested delinquent debt as a protest account.

The Claimant Agency shall conduct a protest hearing in conformity with S.C. Code §12-56-65 and shall provide the Department and SCAC with a copy of the “Certification of Hearing” and “Decision of Hearing Officer” no later than seven (7) calendar days from the date these forms are executed by the hearing officer. If further appeal is taken, Claimant Agency shall immediately file copies of all pleadings and papers with the Department and SCAC.

Upon resolution of a protest, Claimant Agency shall notify SCAC of the resolution of the protest by sending an “adjustment to debt file”

diskette either reducing the balance or taking the debt out of protest status.

16. If the Claimant Agency is found to be entitled to no part of the amount of a setoff, it shall make a refund to the debtor in an amount equal to the amount of the debt plus the fee to the Department and the fee paid to SCAC along with interest, if any, as required by the Setoff Debt Collection Act.

17. SCAC shall remit to the Claimant Agency through a check or an electronic bank deposit funds received from the Department within a reasonable time from the date of receipt from the Department. Thereafter, SCAC shall provide the Claimant Agency an accounting of the funds collected which will include the name of the debtor, the debtor's social security number, and the amount of the setoff. The Claimant Agency shall provide debtors with proper notice of payment and balance, if any, as required by the Setoff Debt Collection Act.

18. The Claimant Agency shall hold SCAC free and harmless and shall indemnify SCAC against any and all damages, claims, causes of action, injuries, actions, liabilities, or proceedings arising from the performance of SCAC.

19. This Memorandum of Understanding and Agreement shall remain and continue in full force and effect from year to year unless modified or terminated in writing by either party upon ninety (90) days written notice to the other party; provided, however, that any debts submitted by the Claimant Agency to SCAC shall continue to be covered under the terms and conditions of the agreement until SCAC is notified by the Department that it has completed the collection cycle for that setoff year.

20. This Memorandum of Understanding is solely between SCAC and the Claimant Agency and is not intended to benefit any other person or entity. No debtor and/or taxpayer or their

spouse, family member, successor or assign is intended to be a third party beneficiary of this Memorandum of Understanding.

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum of Understanding and Agreement to be properly executed on the day and year first above written.

Attest:

**On Behalf of the Claimant Agency:**

By:

Signature \_\_\_\_\_

Printed Name \_\_\_\_\_

Title \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

**On behalf of the S.C. Association of Counties:**

By:

Signature \_\_\_\_\_

Michael B. Cone, Executive Director  
Post Office Box 8207  
Columbia, SC 29202  
(803) 252-7255

At Columbia, South Carolina  
this \_\_\_\_ day of \_\_\_\_\_, 200\_\_