



HENRY McMASTER  
ATTORNEY GENERAL

August 25, 2009

John B. Williams, Esquire  
Moncks Corner Town Attorney  
209 East Main Street  
Moncks Corner, South Carolina 29461

Dear Mr. Williams:

In a letter to this office you referenced that the Town of Moncks Corner participates in the Municipal Association's Setoff Debt Collection Program pursuant to this State's Setoff Debt Collection Act, S.C. Code Ann. §§ 12-56-10 et seq. Pursuant to such provisions, the Town can collect fines owed to the municipal court by offsetting a refund received by an individual that files a State income tax return. As stated in an opinion of this office dated August 3, 2001, pursuant to such provisions, the State Department of Revenue is authorized to setoff any funds, including tax refunds, due a taxpayer against a delinquent of a taxpayer owed to a claimant agency. A "delinquent debt" is defined by Section 12-56-20(4) as

...a sum due and owing a claimant agency, including collection costs, court costs, fines, penalties, and interest which have accrued through contract, subrogation, tort, operation of law, or 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. It does not include sums owed to county hospitals 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. "Delinquent debt" also includes any fine, penalty, cost, fee, assessment, surcharge, service charge, restitution, or other amount imposed by a court or as a direct consequence of a final court order which is received by or payable to the clerk of the appropriate court or treasurer of the entity where the court is located. (emphasis added).

Such statute appears to distinguish between a particular "sum due and owing a claimant agency...for which a collection effort has been or is being made...." and other delinquent debts, including a fine or penalty imposed by a court. No reference is made as to fines or penalties being turned over to a collection agency.

You also referenced this State's Nonresident Traffic Violator Compact, S.C. Code Ann. §§ 56-25-10 et seq. which authorizes the suspension of a driver's license for failing to comply with the terms of a traffic citation. You indicated that the Town Administrator has inquired about the

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propriety of reporting outstanding court fines of individuals who do not file a State income tax return, or receive a refund for the same, to a credit collection agency for the purpose of debt collection. You have questioned whether such action would be appropriate as a means of collecting such outstanding fines in addition to proceeding pursuant to the Nonresident Traffic Violator Compact.

As to whether fines and penalties may generally be turned over to a collection agency, I am unaware of any State statutory provisions specifically providing for such. However, the State Department of Revenue is specifically authorized pursuant to S.C. Code Ann. § 12-4-340 "...for the purposes of collecting delinquent taxes due from a taxpayer, may contract with a collection agency, within or without the State, for the collection of delinquent taxes, including penalties and interest as provided in Section 12-54-227." See also: S.C. Code Ann. § 41-31-390(B)(as to the State Employment Security Commission, "[t]he commission may contract with a collection agency or the Department of Revenue for the purpose of collecting delinquent payments of contributions, interest, penalties, employment security administrative contingency assessments, and any other reasonable costs authorized by subsection (A)."

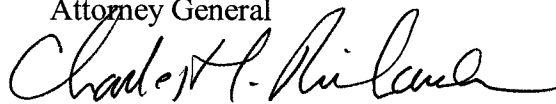
In my research I have found that at least in Tennessee, there is specific statutory authority, Tenn. Code Ann. § 40-24-105(c) which authorizes a district attorney general or the criminal or general sessions court clerk to retain an agent to collect fines.

Referencing the above, in the absence of specific statutory authority expressly permitting such, in the opinion of this office, a town would not be permitted to report outstanding court fines of individuals who do not file a State income tax return, or receive a refund for the same, to a credit collection agency for the purpose of debt collection. Such would not appear to be an appropriate means of collecting such outstanding fines.

With kind regards, I am,

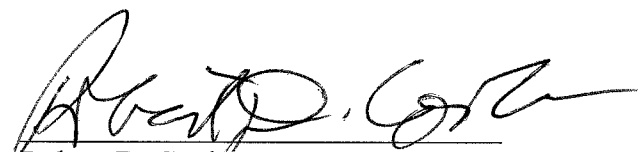
Very truly yours,

Henry McMaster  
Attorney General



By: Charles H. Richardson  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Deputy Attorney General