

Summer 2021

Collecting Medical Debt through South Carolina's Setoff Debt Collection Program: How It Works and Why It Doesn't

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Recommended Citation

Dixie N. McCollum, *Collecting Medical Debt through South Carolina's Setoff Debt Collection Program: How It Works and Why It Doesn't*, 72 S. C. L. REV. 1145 (2021).

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**COLLECTING MEDICAL DEBT THROUGH SOUTH CAROLINA'S
SETOFF DEBT COLLECTION PROGRAM: HOW IT WORKS AND WHY IT
DOESN'T**

Dixie N. McCollum*

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I. INTRODUCTION

In 2019, the United States was home to over 7,000 collection agencies, which together recovered approximately \$12.7 billion in revenue.¹ Past-due medical bills were among the most common debts pursued by these collectors.² Between 2015 and 2017, approximately 137.1 million Americans struggled with some form of medical debt—the most prevalent costs including

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1. CHERYL R. COOPER, CONG. RSCH. SERV., R46477, *THE DEBT COLLECTION MARKET AND SELECTED POLICY ISSUES* 1 (2020).

2. CONSUMER FIN. PROT. BUREAU, *CONSUMER EXPERIENCES WITH DEBT COLLECTION* 5 (2017), https://files.consumerfinance.gov/f/documents/201701_cfbp_Debt-Collection-Survey-Report.pdf [<https://perma.cc/29G4-XWB9>]; see Himmelstein et al., *Medical Bankruptcy in the United States: 2007 Results of a National Study*, *AM. J. MED.*, June 2009, at 1, 3.

hospital expenses, prescription drugs, and doctor's bills.³ Medical debt is also a leading cause for bankruptcy, with one million Americans declaring bankruptcy due to unpaid medical expenses in 2015 alone.⁴

South Carolina has one of the highest rates of past-due medical debt, which is a leading cause of bankruptcy for many South Carolinians.⁵ Delinquent medical debt is especially common among southern states due to their higher numbers of uninsured individuals and lower household incomes.⁶ One aspect that varies within the southern region, however, is how state governments deal with unpaid medical debt.

South Carolina allows creditors to collect medical debt, along with certain other forms of debt, by garnishing state income tax refunds.⁷ South Carolina authorizes this tax refund reduction predominantly through its Setoff Debt Collection Program (SDCP).⁸ Under the program, qualifying creditors may submit claims of unpaid debt to the South Carolina Department of Revenue

3. K. Robin Yabroff et al., *Prevalence and Correlates of Medical Financial Hardship in the USA*, J. GEN. INTERNAL MED., May 2019, at 1, 9; *Infographic: Diagnosing the Causes of Medical Debt in the US*, NAT'L DEBT RELIEF, <https://nationaldebtrelease.com/infographic-diagnosing-causes-medical-debt-us/> [<https://perma.cc/GY8C-7RK9>].

4. See LIZ HAMEL ET AL., THE BURDEN OF MEDICAL DEBT: RESULTS FROM THE KAISER FAMILY FOUNDATION/NEW YORK TIMES MEDICAL BILLS SURVEY 21 (2016), <https://www.kff.org/wp-content/uploads/2016/01/8806-the-burden-of-medical-debt-results-from-the-kaiser-family-foundation-new-york-times-medical-bills-survey.pdf> [<https://perma.cc/C5LQ-JXCJ>]. While there is no singular explanation for why medical debt may lead to bankruptcy, a combination of factors likely play a role. One reason may be that working wages can no longer compensate the growing rate of medical expenses. While medical insurance premiums have increased by 54% since 2009, earnings have only increased by 26%. *Benchmark Employer Survey Finds Average Family Premiums Now Top \$20,000*, KFF (Sept. 25, 2019), <https://www.kff.org/health-costs/press-release/benchmark-employer-survey-finds-average-family-premiums-now-top-20000> [<https://perma.cc/7GK6-DTHK>]. A consumer's insurance plan may not cover specific treatments or may be out of network for a particular need. Consumers often struggle to understand co-pays or insurance deductibles until contacted by a creditor about the payment. Medical debt also impacts consumers based on a variety of factors, such as race and age. For example, "[e]ven with assistance from Medicare, the average 65-year-old couple faces \$275,000 in medical bills throughout retirement." Kimberly Amadeo, *Medical Bankruptcy and the Economy*, THE BALANCE (Nov. 19, 2019), <https://www.thebalance.com/medical-bankruptcy-statistics-4154729> [<https://perma.cc/G2VZ-4FUM>].

5. See MICHAEL KARPAN & KYLE J. CASWELL, PAST-DUE MEDICAL DEBT AMONG NONELDERLY ADULTS 2012–15, at 4 https://www.urban.org/sites/default/files/publication/88586/past_due_medical_debt.pdf [<https://perma.cc/Z68T-WR2G>]. In 2015, South Carolina had the fifth highest rate of medical debt for citizens ages eighteen to sixty-four. *Id.*

6. *Id.* In addition to South Carolina, some of the highest ranking states include Mississippi, Arkansas, West Virginia, Indiana, Kentucky, Oklahoma, Alabama, Georgia, and North Carolina. *Id.*

7. *Setoff Debt & GEAR: Working Towards a Debt Free South Carolina*, S.C. DEP'T OF REVENUE, <https://dor.sc.gov/about/setoff-debt-and-gear> [<https://perma.cc/4M88-BKFC>] [hereinafter *Setoff Debt & GEAR*].

8. S.C. CODE ANN. § 12-56-10 to -120 (2014).

(SCDOR).⁹ SCDOR then processes the claims, identifies the debtors, and garnishes the debtors' tax refunds on behalf of their creditors.¹⁰ Alternatively, qualifying creditors can file claims through the South Carolina Association of Counties (SCAC) or the Municipal Association of South Carolina (MASC).¹¹ These two associations act as clearinghouse entities that process and send claims to SCDOR on creditors' behalf.¹²

While SDCP seems to be an adequate method for the state's collection of unpaid debts, it suffers from two major pitfalls: lack of transparency and lack of consumer protections. Specifically, although hospitals use SDCP to collect unpaid medical debts, it is unclear how those hospitals qualify for participation and why many choose to collect through SCAC rather than SCDOR. The lack of public information and disclosure regarding SCAC's involvement exasperates the issue.¹³ Further, although South Carolina has been referred to as a consumer-friendly state,¹⁴ SDCP does little to adequately protect individuals with past-due medical debts. SDCP's lack of transparency and consumer protections often go hand in hand because, although it is extremely difficult for taxpayers to access information on the program, they are nonetheless subject to tax refund garnishment with few, if any, options for recourse.

While large hospitals, such as Greenville Health System and Lexington Medical Center, have participated in SDCP, it is unclear exactly how they qualify for participation.¹⁵ Under the Setoff Debt Collection Act, a creditor,

9. § 12-56-50.

10. § 12-56-60(B).

11. § 12-56-20(1).

12. *About Setoff Debt*, S.C. ASS'N OF CNTYS., <https://www.sccounties.org/debt-collection/about-setoff-debt> [<https://perma.cc/BB6R-NF2X>].

13. *See About SCAC*, S.C. ASS'N OF CNTYS., <https://www.sccounties.org/about-scac> [<https://perma.cc/36GH-7JM8>]; *see also EO Operational Requirements: Private Foundations and Public Charities*, IRS (Aug. 27, 2020), <https://www.irs.gov/charities-non-profits/eo-operational-requirements-private-foundations-and-public-charities> [<https://perma.cc/BNR8-7YST>] (explaining that, unless a ruling determines otherwise, the IRS presumes a nonprofit—or 501(c)(3)—corporation is a private corporation).

14. *South Carolina Wage Garnishment Laws*, NOLO <https://www.nolo.com/legal-encyclopedia/south-carolina-wage-garnishment-laws.html> [<https://perma.cc/87AS-GLZD>] (discussing how South Carolina's restrictions on wage garnishment have bolstered the state's reputation as a consumer-friendly state); *see also Garnishment Process*, DEBT.ORG, <https://www.debt.org/garnishment-process/> [<https://perma.cc/4VAG-4X95>] (affirming that South Carolina is one of four states that do not allow wage garnishment for creditor debts).

15. Mary Katherine Wildeman, *A Loophole Lets SC Hospitals Take Millions from Residents' Tax Refunds for Unpaid Bills*, POST & COURIER (Apr. 20, 2019), https://www.postandcourier.com/business/a-loophole-lets-sc-hospitals-take-millions-from-residents-tax-refunds-for-unpaid-bills/article_92a381a4-4b77-11e9-b439-ffe02586b0af.html [<https://perma.cc/SUX4-QE5T>]. It should also be noted that Lexington Medical Center is currently in the process of switching from a "governmental organization" to a "nonprofit," although it is

including a hospital, must have some prescribed connection—although that connection may be tenuous—with the state to qualify for SDCP.¹⁶ Specifically, the Act allows a “state agency, board, committee, commission, public institution of higher learning, political subdivision, or other governmental or quasi-governmental entity” to participate in the program.¹⁷ The Act’s plain language does not include private healthcare providers. Thus, large private hospitals cannot qualify—or can they? While some legal sources indicate hospitals like Greenville Health System and Lexington Medical Center are “political subdivisions” or “governmental entities” due to their original ties to the state, many public reports categorize these organizations as private hospitals.¹⁸

There are also limited resources specifying why SCAC, a private association, is authorized to compile and submit claims on behalf of qualifying creditors.¹⁹ If qualifying creditors truly need a state connection to participate in SDCP,²⁰ why would the state allow a private entity to aid in collecting debt by state affiliated claimants? The lack of information surrounding this authorization is alarming, particularly given that large hospitals may be using SCAC to circumvent the submission process through SCDOR.²¹ SCAC’s involvement effectively adds to the mysteries surrounding SDCP.

unclear whether the hospital can or will continue participating in the program. Alia Paavola, *To Stay Competitive, Lexington Medical Center Wants to Become a Nonprofit*, BECKER’S HOSP. REV. (Aug. 13, 2020) <https://www.beckershospitalreview.com/strategy/to-stay-competitive-lexington-medical-center-wants-to-become-a-nonprofit.html> [<https://perma.cc/7G3F-6DYF>].

16. S.C. CODE ANN. § 12-56-20(1) (2014); Wildeman, *supra* note 15.

17. § 12-56-20(1).

18. See Paavola, *supra* note 15; *Our Story: The “Greenville Health Authority,”* GREENVILLE HEALTH AUTH., <https://greenvillehealthauthority.org> [<https://perma.cc/6N38-DRWU>]; see also § 44-7-2010 (stating that health services districts are “body politics”); *Greenville Hops. Sys. v. S.C. Dep’t of Revenue*, No. 13 -ALJ-17-0523-CC, 2017 WL 2218507, at *3 (Admin. Ct. May 8, 2017); Wildeman, *supra* note 15; Kelly Gooch, *South Carolina Hospitals Access Legal Loophole to Use Tax Refunds for Medical Debt: 6 Things to Know*, BECKER’S HOSP. REV. (Apr. 22, 2019), <https://www.beckershospitalreview.com/finance/south-carolina-hospitals-access-legal-loophole-to-use-tax-refunds-for-medical-debt-6-things-to-know.html> [<https://perma.cc/S54C-WSY8>] (stating SDCP has allowed private hospitals to participate); Marissa Evans, *State Takes Minnesotans’ Tax Refunds for Debts Owed to Hospitals*, STAR TRIBUNE (Dec. 11, 2020, 4:27 PM), <https://www.startribune.com/state-takes-minnesotans-tax-refunds-for-debts-owed-to-hospitals/573167371/> [<https://perma.cc/TT5S-5K2C>] (noting South Carolina is the only other state that lets private hospitals collect medical debt through a state-run collection program).

19. See *About Setoff Debt*, *supra* note 12 (failing to provide adequate information on SCAC’s involvement in SDCP collections).

20. § 12-56-20(1).

21. Wildeman, *supra* note 15. SDCP participants may also submit claims through MASC, see § 12-56-20(1), but that is beyond the scope of this Note.

In addition to the lack of clarity as to how SDCP operates, the program fails to offer adequate consumer protections, especially for individuals with unpaid medical debt.²² For instance, under the program, the state can garnish a debtor's tax refund without actually notifying the debtor that an unpaid debt is owed.²³ Once the garnishment occurs, a debtor is left with little recourse to contest it.²⁴ South Carolina also fails to provide public resources for debtors to learn more about their rights and protections under the program. This is important because debtors are not the only consumers affected: non-liable spouses are subject to joint tax refund garnishment as well.²⁵ Although garnishing tax refunds risks sending financially overwhelmed individuals past the point of poverty, SDCP does little to protect these individuals.²⁶ This problem is exacerbated in instances of medical debt because individuals forced to incur medical debt in times of emergency are unfairly faulted under the program.²⁷

This Note analyzes SDCP's problems in depth and advocates for a more transparent, consumer-protectant approach to debt collection in South Carolina. It suggests that the state legislature revise the Setoff Debt Collection Act, which created SDCP, for greater transparency.²⁸ Using Minnesota's collection program as a workable model, the Act should specifically identify the requirements a hospital must meet to qualify for the program.²⁹ Further, because SCAC is a private association, South Carolina should provide publicly accessible information discussing why SCAC can collect on the state's behalf, how much revenue SCAC generates from the process, and which creditors collect through SCAC. Both SCDOR and SCAC should also furnish resources catered toward taxpayers so those individuals have adequate information on how SDCP may affect them. These resources should include sufficient details on the program and viable options for recourse if taxpayers believe their refunds were unfairly garnished. Given medical debt is a leading cause of bankruptcy,³⁰ without these changes, citizens susceptible to medical

22. See Wildeman, *supra* note 15.

23. § 12-56-62.

24. § 12-56-63(A).

25. § 12-56-62; see *Setoff Debt & GEAR*, *supra* note 7.

26. See Pete Strom, *SC Department of Revenue Steps Up State Debt Collection*, STROM L. FIRM (Jan. 24, 2020), <https://stromlaw.com/sc-department-of-revenue-steps-up-state-debt-collection/> [<https://perma.cc/KUJ5-ZNK4>].

27. See HAMEL ET AL., *supra* note 4, at 26 (discussing how medical debt can lead to bankruptcy as consumers are unlikely to know the cost of medical services in advance, particularly during emergencies).

28. §§ 12-56-20 to -120; see *infra* Part III.

29. MINN. STAT. ANN. § 270A (West, Westlaw through 2021 Reg. Sess.); see *infra* Part IV.

30. See Himmelstein et al., *supra* note 2; KARPMAN & CASWELL, *supra* note 5.

debt will be continuously exploited by a collection program on which the state provides no information.

This Note proceeds in five Parts. Part II explains setoff debt and unravels how SDCP operates in South Carolina. It also elaborates on the lack of transparency surrounding SDCP by analyzing the Setoff Debt Collection Act and SCAC's involvement in the program. It further seeks to uncover the mysteries as to how hospitals can participate in the program and what qualifications, if any, a creditor must have. Part III details the Setoff Debt Collection Act's terminology and highlights the ways in which many state-created hospitals have outgrown any initial connection with the state. This Part also explores SCAC's involvement in SDCP and divulges why the secrecy surrounding its role is problematic. It further draws attention to the program's prejudicial structure and unveils the many ways in which SDCP fails to provide adequate consumer protections. Part IV proposes that South Carolina's legislature reform SDCP to follow the Minnesota model. Alternatively, it advocates that, if SDCP is not reformed, it should be repealed to prevent South Carolina from abusing debtors who are unaware of SDCP's implications, especially in situations involving medical debt.³¹ Part V concludes by reiterating the inequities inherent in SDCP and encouraging the legislature to revise the program for more transparency, accountability, and fairness.

II. BACKGROUND: SDCP'S HISTORY AND OPERATIONS

SDCP has recently endured scrutiny for its expansive statutory language, which has allowed large hospitals to collect medical debts from the state's poorest individuals.³² According to a recent investigative study by the *Post and Courier*, many citizens are completely unaware SDCP exists until they notice a portion of their state tax refund check missing.³³ Indeed, nothing in the public record makes clear what setoff debt means or how setoff collection programs operate.

Black's Law Dictionary defines "setoff" as "a debtor's right to reduce the amount of a debt by any sum the creditor owes the debtor; the counterbalancing sum owed by the creditor."³⁴ Setoff is, thus, the process of offsetting—or in some way collecting on—a debt owed to a creditor. A

31. Throughout this Note, the names of many interviewees have been removed to allow for unvarnished insight on SDCP. By preserving anonymity, essential information regarding the program could be disclosed without compromising the interviewees. The interviews are numbered in chronological order, and the organization for which they have currently or formerly worked is properly identified.

32. Wildeman, *supra* note 15.

33. *Id.*

34. *Setoff*, BLACK'S LAW DICTIONARY (11th ed. 2019).

government debt setoff program is a particular type of setoff: “the repayment of an overpayment by setoff against the debtor’s state income tax refund.”³⁵ In essence, states may authorize this type of program to collect a non-tax debt from a debtor’s state tax refund.³⁶ Under this method, a local government or creditor files a claim with the state or an agency selected to process the claim, and before a state tax refund is issued, it is offset by the amount owed for the filed claim.³⁷ States initially implemented this type of setoff program in the 1970s, and today, the overwhelming majority of states have some variant of the program.³⁸

South Carolina has two versions of setoff debt programs: SDCP and the Governmental Enterprise Accounts Receivable Collections³⁹ (GEAR). Although SCDOR’s website fails to detail how the department processes claims from qualifying creditors, it provides an informational summary on setoff debt.⁴⁰ According to this summary, SDCP is dedicated to the “fair administration of debt collection and . . . protecting compliant citizens . . .”⁴¹ The program helps recover unpaid liabilities, which can “harm citizens who are paying their fair share and threaten the integrity of an agency’s funding system.”⁴² The summary discusses delinquent debts, alleging these debts make it difficult for governmental entities to fund essential services.⁴³ Given the language in SCDOR’s summary and throughout its website, the department clearly prioritizes providing SDCP information to creditors seeking to recover debt rather than to debtors wanting to learn more about the program.⁴⁴ In fact, SCDOR’s website does not provide any information

35. *Definition of Debt Setoff*, LAW INSIDER, <https://www.lawinsider.com/dictionary/debt-setoff> [<https://perma.cc/NZ9T-ZBYZ>].

36. William M. Parle & Robert E. England, *Tax Refund Offset Policies in the American States*, 20 STATE & LOC. GOV’T REV. 32, 32 (1988); Gary Sanders, *Are You Taking Advantage of Debt Set-Off?*, EDMUNDS GOVTECH (Aug. 23, 2011), <https://www.edmundsgovtech.com/are-you-taking-advantage-of-debt-set-off/> [<https://perma.cc/5676-X9QK>].

37. Parle & England, *supra* note 36, at 33–34.

38. *See, e.g., id.* at 32. It is unclear why refund setoff programs became popular among state legislatures during the 1970s and 1980s. Their sudden implementation may have been due to the “sluggish national economy” that put states under extreme pressure. *Id.* at 33.

39. *Setoff Debt & GEAR*, *supra* note 7. While SDCP is limited to state tax refunds, GEAR is more expansive. Under GEAR, collections are sought not only through state income tax returns but also through wage garnishment, tax liens, bank account levies, and license revocation. *Id.* Under SDCP, debts over \$25 can be collected, while GEAR is limited to debts over \$50. *Id.* Further, claimants must pay GEAR a contingency fee if participating directly through SCDOR, and claimants pay no fee if they participate through SDCP. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. *See id.* Although SCDOR’s website provides numerous informational sources on GEAR, it fails to provide adequate sources on SDCP. *Id.*

geared specifically toward debtors.⁴⁵ Thus, debtors searching for quick and easily accessible information about SDCP face extreme difficulty.

While SCDOR's website fails to provide anything more than an overview of SDCP's operations,⁴⁶ MASC's website and the Setoff Debt Collection Act provide a little more clarity.⁴⁷ Under SDCP, qualifying creditors, formally referred to as "claimant agencies," may submit claims of delinquent debt exceeding \$25 directly to SCDOR.⁴⁸ According to the Setoff Debt Collection Act, a claim must include vital information, such as the debtor's full name, address, social security number, and "any other identifying information"⁴⁹ Using this information, SCDOR then compares the list of submitted claims with the refunds it owes to taxpayers.⁵⁰ If there is a match, SCDOR offsets the debt by garnishing the taxpayer's refund and forwarding that amount to the creditor.⁵¹

SDCP is free for creditors—who receive the full amount they seek to collect—but not for debtors.⁵² On top of the amount owed, the debtor is charged an additional \$25 administration fee.⁵³ This fee is collected on SCDOR's behalf for its help in processing the past-due debt.⁵⁴ When SDCP was first enacted, SCDOR's administration fee provided an alternative method for generating state revenue.⁵⁵ This remains true today, as the statute is still in effect.⁵⁶ South Carolina, a fiscally conservative state, generally

45. *See id.* SCDOR's Frequently Asked Questions are all directed specifically to creditors looking to recover unpaid debt. *Id.* Even SCDOR's motto "Working towards a debt free South Carolina" shows SCDOR's bias toward creditors. *See id.* (emphasis omitted).

46. *Id.*

47. S.C. CODE ANN. §§ 12-56-10 to -120 (2014); *Setoff Debt Collection Program*, MUN. ASS'N OF S.C., <https://www.masc.sc/programs/debt-tax-collections/setoff-debt-collection-program> [<https://perma.cc/TJN3-F4KR>] [hereinafter *MASC Setoff Debt*]. Recall, MASC is one of two associations that are authorized to submit debt claims to SCDOR on behalf of claimant agencies. *Id.*

48. *See MASC Setoff Debt*, *supra* note 47.

49. § 12-56-30(C).

50. *MASC Setoff Debt*, *supra* note 47.

51. *Setoff Debt & GEAR*, *supra* note 7. Interestingly, unlike SCDOR and SCAC, MASC charges a \$25 administration fee to both the creditor and the debtor. *Compare Setoff Debt & GEAR*, *supra* note 7 (stating the claimant fee for SDCP is \$0), and *About Setoff Debt*, *supra* note 12 (stating SCAC services are free for participating creditors), with *MASC Setoff Debt*, *supra* note 47 (stating MCAC offsets each creditor's claim by a \$25 administration fee).

52. *Setoff Debt & GEAR*, *supra* note 7.

53. *Id.* The debtor also bears the burden of paying any interest that has accumulated from the debt. § 12-56-20(4).

54. *Setoff Debt & GEAR*, *supra* note 7.

55. COMM. REPORT ON WAYS & MEANS, STATEMENT OF ESTIMATED FISCAL IMPACT OF SETOFF DEBT COLLECTION ACT, H.B. 3766 (S.C. 1988). According to the House Ways and Means Committee's 1988 report, the program "would increase state revenues by approximately \$4,000,000 during the first fiscal year, and \$1,000,000 annually thereafter." *Id.*

56. §§ 12-56-10 to -120.

disfavors taxation.⁵⁷ By tacking on a fee to the collection program, SCDOR generates revenue without raising taxes.⁵⁸ In 2017, SCDOR earned \$12.6 million in collection program administration fees.⁵⁹

Each year, SCDOR publishes the amount recovered for each claimant agency in its Annual Report.⁶⁰ SCDOR's 2018–2019 report stated that, of 404,219 claims filed through SDCP and GEAR, approximately \$170 million was recovered.⁶¹ The Annual Report also lists all SDCP participants that submit claims directly through SCDOR.⁶² Of these claimant agencies, only two medical entities are listed in the program: the Medical University of South Carolina and the Medical University Hospital Authority.⁶³ In reality, however, forty-three health care organizations collect through SDCP, as outlined in Figure 1.⁶⁴ These hospitals are excluded from SCDOR's Annual Report because they collect debts primarily through SCAC rather than SCDOR.⁶⁵

Figure 1. Hospitals Participating in SDCP Through SCAC⁶⁶

Abbeville County Memorial Hospital
 Atrium Health – Epic
 Atrium Health – Anson (N.C.)
 Atrium Health – Carolinas Medical Center (N.C.)
 Atrium Health – Carolinas Rehabilitation (N.C.)
 Atrium Health – Cleveland (N.C.)
 Atrium Health – Carolinas Medical Center Randolph (N.C.)

57. See John S. Kiernan, *Tax Rates by State*, WALLETHUB (Mar. 10, 2020), <https://wallethub.com/edu/best-worst-states-to-be-a-taxpayer/2416> [https://perma.cc/BP8K-QT9R]. According to Kiernan's study, South Carolina ranked thirteenth among states with the lowest tax obligations. *Id.*

58. See *id.*

59. Wildeman, *supra* note 15.

60. S.C. DEP'T OF REVENUE, ANNUAL REPORT 2019-2020, at 11–13 (2020), https://dor.sc.gov/resources-site/publications/Publications/2018-2019_AnnualReport.pdf [https://perma.cc/K5AP-7FCZ] [hereinafter SCDOR REPORT].

61. *Id.* at 13. According to the report, "SCDOR collected a record \$13.2 billion in revenue dollars in Fiscal Year 2019" through "the administration and collection of 72 taxes and fees . . ." *Id.* at 1.

62. *Id.* at 11.

63. *Id.* at 12.

64. See *infra* Figure 1.

65. See *infra* Figure 1; Wildeman, *supra* note 15.

66. This information was obtained from Mary Katherine Wildeman from the *Post and Courier*. She received the information from SCDOR as a matter of public record.

Figure 1. Hospitals Participating in SDCP Through SCAC⁶⁶

Atrium Health – Kings Mountain (N.C.)
Atrium Health – Lincoln (N.C.)
Atrium Health – Medical Group
Atrium Health – Mercy (N.C.)
Atrium Health – Northeast (N.C.)
Atrium Health – Pineville (N.C.)
Atrium Health – Union (N.C.)
Atrium Health – University (N.C.)
Bamwell County Hospital
Carolinas Health Associates
CaroMont Regional Medical Center (N.C.)
Clarendon Memorial Hospital
Greenville Health Authority F/K/A Greenville Health System
Greenville Health Authority F/K/A Greenville Health System – Epic
Greenville Health Authority F/K/A Greenville Health System – Laurens
Greenville Health Authority F/K/A Oconee
Kershaw Health
Lexington Medical Center
Loris Community Hospital
Lower Florence County Hospital
New Hanover Regional Medical Center (N.C.)
Newberry County Hospital
Rhea Medical Center Physicians Group (Tenn.)
Self Regional Healthcare
Spartanburg Regional Healthcare System – Epic Hb
Spartanburg Regional Healthcare System – Epic Pb
Spartanburg Regional Healthcare System – Emergency Physicians

Figure 1. Hospitals Participating in SDCP Through SCAC⁶⁶

Spartanburg Regional Healthcare System – Medical Group of the Carolinas
Spartanburg Regional Healthcare System – Medical Group of the Carolinas Palmetto Hematology
Spartanburg Regional Healthcare System – Medical Group of the Carolinas Woman's Clinic
Spartanburg Regional Healthcare System – Pelham Medical Center
Spartanburg Regional Healthcare System – Spartanburg Medical Center
Spartanburg Regional Healthcare System – Union Medical Center
Wallace Thomson Hospital (Union Medical Center)

As this figure indicates, the majority of hospitals participate in SDCP through SCAC; however, it is unclear how, or even if, many of these hospitals are authorized to use the program. To uncover how hospitals initially began participating in SDCP, a review of the Setoff Debt Collection Act's statutory history is necessary.⁶⁷

The Setoff Debt Collection Act's enactment in 1988 created SDCP.⁶⁸ At that time, the Act allowed a "claimant agency"—defined as "state agency, board, committee, commission, public or private institution of higher learning, and the Internal Revenue Service"—to collect unpaid debt by seizing a debtor's tax refund.⁶⁹ This definition, however, has been gradually expanded to encompass a much broader range of participants.⁷⁰

In 1992, the South Carolina General Assembly amended its definition of "claimant agency" to include "political subdivision[s]."⁷¹ Under the amended definition, "[p]olitical subdivision" included MASC and SCAC when they submitted claims "on behalf of their members."⁷² Thus, any entity that could become a member of MASC and SCAC indirectly qualified as a claimant agency.⁷³ In 1994, the legislature again amended the Act by broadening the definition of "political subdivision" to include MASC and SCAC when they "submit[ted] claims on behalf of their members *or other political*

67. S.C. CODE ANN. §§ 12-56-10 to -120 (2014).

68. § 12-56-20(1) (originally enacted as Act No. 474 in 1988 and cited officially as S.C. CODE ANN. § 12-54-420(1) (Supp. 1988)).

69. § 12-56-20(1) (originally enacted as § 12-54-420(1) (Supp. 1989)).

70. *Id.*

71. § 12-56-20(1) (originally enacted as § 12-54-420(1) (Supp. 1993)).

72. *Id.*

73. *Id.*

*subdivisions.*⁷⁴ Consequently, a political subdivision could choose to participate in SDCP directly through SCDOR or indirectly through SCAC or MASC, regardless of whether it was a member of either association. A year later, the legislature moved SDCP to its own chapter of the South Carolina Code.

After several minor changes to SDCP, in 2002, “claimant agency” was expanded to include “any other governmental or quasi governmental entity of any state or the United States.”⁷⁵ The meanings of “governmental” and “quasi governmental” were left undefined.⁷⁶ Regardless, the Act allowed these types of entities, whether in South Carolina or a different state, to reach South Carolina debtors.⁷⁷ Lastly, in 2003, the definition of “[p]olitical subdivision” was amended to include MASC and SCAC “when these organizations submit claims on behalf of a county or local governmental or quasi-governmental entity.”⁷⁸ In totality, the statutory definition now reads as follows:

“Claimant agency” means a state agency, board, committee, commission, public institution of higher learning, *political subdivision*, or *other governmental or quasi-governmental entity* of any state or the United States. It includes the South Carolina Student Loan Corporation, housing authorities established pursuant to Articles 5, 7, and 9 of Chapter 3, Title 31 and the Internal Revenue Service, and the United States Department of Education. 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, Title 59. “Political subdivision” includes the *Municipal Association of South Carolina and the South Carolina Association of Counties* when these organizations submit claims on behalf of a county or local *governmental or quasi-governmental entity*. A political subdivision who submits a claim through an association is a claimant agency for the purpose of the notice and appeal provisions and other requirements of this chapter.⁷⁹

74. *Id.* (emphasis added).

75. Act of June 24, 2002, S.B. 852, 2002 S.C. Laws Act 334 § 9 (West).

76. *Id.*

77. *Id.*

78. Act of June 18, 2003, S.B. No. 274, 2002 S.C. Laws Act 69 § 2 (West). It is worth noting that many of SDCP’s changes occurred through legislative acts. These acts were often so lengthy (e.g., forty-six pages) that the public would have no notice of the program’s gradual expansion without reading through each act. *See, e.g., id.*

79. S.C. CODE ANN. § 12-56-20(1) (2014) (emphasis added).

These definitions permit almost any creditor to participate in SDCP so long as the creditor can fit within the vague terminology of governmental entity, quasi-governmental entity, or political subdivision.⁸⁰ If the creditor can show at least some tenuous connection with the state or one of its counties, it may qualify for South Carolina's collection process.⁸¹ Large hospitals supposedly fit the bill.⁸² In 2017, according to data acquired by the *Post and Courier*, health organizations that used SDCP seized \$92.9 million in past-due medical debt in more than 172,000 collection cases.⁸³ Greenville Health System and Lexington Medical Center collected nearly \$25 million and over \$19 million, respectively, from patient tax refunds that same year.⁸⁴

Many of the hospitals participating in SDCP do so indirectly through SCAC. Yet, if they qualify as a claimant agency under the statute, why do they not participate through SCDOR? Further, if hospitals are somehow connected to the state, why is SCAC—a private entity—involved in collecting debts on their behalf?

According to SCAC's website, the association acts as a "clearinghouse" between claimant agencies and SCDOR to return money that debtors owe to the state's counties.⁸⁵ Through little-known mechanisms, qualifying creditors submit claims to SCAC.⁸⁶ The association then compiles data files of the claims and sends these files to SCDOR each December.⁸⁷ In January of the following year, SCDOR processes "three matches a week from January through June and one match a week from July through December."⁸⁸ Like SCDOR, SCAC can tack on a \$25 administration fee to each income tax refund it helps garnish.⁸⁹ Also analogous to SCDOR's process, the

80. See Wildeman, *supra* note 15. For a discussion of SDCP's technology, see *infra* Part III.

81. Wildeman, *supra* note 15. The Code's language also seems to suggest not only that SCAC has the authority to process debts on a claimant's behalf but also that it could qualify as a claimant agency because it constitutes a political subdivision under the Code. However, an in-depth discussion of this classification is beyond the scope of this Note.

82. See Wildeman, *supra* note 15.

83. *Id.*

84. *Id.* SCAC data suggests that, from 2016 to the beginning of 2020, Lexington Medical Center reclaimed at least \$66,228,800 in medical debt through SDCP. Isabella Cueto, *Lexington Medical Center Sued over Medical Debt Collection*, THE STATE (Feb. 5, 2020, 10:50 AM), <https://www.thestate.com/news/business/health-care/article239834473.html> [<https://perma.cc/JR9N-CTW6>].

85. *About Setoff Debt*, *supra* note 12.

86. See *id.* Delinquent debts of \$50 or more can be submitted through SCAC. *Id.* Alternatively, SCDOR allows a claimant to submit delinquent debts of \$25 or more. *Setoff Debt & GEAR*, *supra* note 7.

87. *About Setoff Debt*, *supra* note 12.

88. *Id.*

89. S.C. CODE ANN. § 12-56-63(B) (2014).

administration fee is garnished from the debtor's tax refund.⁹⁰ Claimant agencies participate for free.⁹¹ Further, although SCAC may submit claims on behalf of claimant agencies, a claimant must adhere to the notice and hearing requirements before submitting a claim to either entity.⁹² Hence, SCAC merely substitutes SCDOR's role in the collections process without actually garnishing tax refunds. Garnishment is left exclusively to SCDOR.⁹³ However, if this is the case, why has the state authorized SCAC's involvement, and why does it allow SCAC to charge the state's taxpayers for its assistance to creditors?

There is also limited information on why a hospital would choose to participate in debt collection through SCAC rather than SCDOR.⁹⁴ In an interview, one source noted that SCAC is a beneficial option for claimants because, unlike SCDOR, it has staff members dedicated to helping claimants file claims.⁹⁵ The association also has the technology and knowledge to make this process run smoothly.⁹⁶ In short, SCAC seems to provide a more convenient approach for submitting claims of unpaid debt.⁹⁷

However, as described above,⁹⁸ although SCDOR publishes a list of creditors that participate through its debt collection process, SCAC does not.⁹⁹ SCAC's website lacks information on which claimant agencies use its debt collection process and how much money the association generates through administration fees.¹⁰⁰ SCAC does not make this information publicly available; instead, citizens must contact SCDOR to obtain the participation list as a matter of public record.¹⁰¹ Thus, while there is little doubt hospitals utilize SCAC for convenience, this utilization raises an eyebrow as to whether SCAC's additional layer of privacy has anything to do with hospitals' decisions to file claims specifically through this association.

90. *See id.*; *see also About Setoff Debt*, *supra* note 12.

91. *About Setoff Debt*, *supra* note 12.

92. § 12-56-63(B).

93. *See id.*

94. *See Wildeman*, *supra* note 15.

95. *See Telephone Interview with Source 1, S.C. Ass'n of Cnty. (Nov. 19, 2020)*; *see also supra* note 31.

96. *See id.*

97. *See id.* According to Source 1, SCAC views SDCP as a last resort. *Id.* Each claimant should make every effort to go through a regular collections procedure before submitting a debt to SDCP. Source 1 reiterated: "This is a last resort to collect from people who are actively avoiding or failing to pay" past-due medical bills. *Id.*; *see also supra* note 31.

98. *See supra* note 62 and accompanying text.

99. *See About Setoff Debt*, *supra* note 12 (failing to provide a public list of claimant agencies who use SCAC for debt collection).

100. *See id.*

101. Telephone Interview with Source 1, *supra* note 95; *see also supra* note 31.

Similar to the Setoff Debt Collection Act, SCAC also fails to specify the qualifications a claimant must meet to participate in SDCP.¹⁰² To qualify as a claimant agency, SCAC merely requires a potential claimant's attorney to write a letter certifying that the creditor qualifies under SDCP's definition of "claimant agency."¹⁰³ The letter must certify that the attorney has "done the [proper] research"¹⁰⁴ In essence, a potential claimant agency must write a letter indicating that it is, indeed, a claimant agency under SDCP. Given this qualification method, there is likely a low bar as to which creditors qualify for the state's program.¹⁰⁵ Thus, the process for qualification seems surprisingly pro forma and lacks both transparency and preconceived standards.

Lastly, it is worth noting that hospital participation in SDCP is not inherently bad.¹⁰⁶ SDCP can be extremely beneficial to rural hospitals that struggle to keep their doors open and perhaps cannot afford to forgive past-due debts.¹⁰⁷ However, rural hospitals are not the primary beneficiaries of SDCP; rather, large hospitals have come to dominate SDCP.¹⁰⁸ These hospitals include Lexington Medical Center, Spartanburg Regional Healthcare System, and Greenville Health System affiliates.¹⁰⁹ Such hospitals rarely, if ever, publicize their participation in SDCP, and such participation—while public record—can only be obtained by contacting SCDOR directly, which can be a very time-consuming process.¹¹⁰ Although there is certainly a concern as to whether these hospitals have abused their participation in SDCP, that is not the main focus of this Note. Rather, this Note seeks to draw attention to the lack of clarity surrounding SDCP and how some hospitals may participate in the program without proper qualifications. This Note does not focus on whether hospital participation is inherently good or bad but rather on how the lack of information surrounding SDCP, which includes qualifications for participation, adversely affects taxpayers who are subject to the program.

102. See *About Setoff Debt*, *supra* note 12.

103. Telephone Interview with Source 1, *supra* note 95; see also *supra* note 31.

104. *Id.*

105. See *id.*

106. See Wildeman, *supra* note 15.

107. *Id.*

108. *Id.*

109. *Id.*

110. See *id.* Additionally, Schipp Ames, Vice President for Strategic Marketing and Communications at the South Carolina Hospital Association, "said his organization is willing to discuss reform legislation, including addressing whether larger, private, urban hospitals should be able to use the setoff program." Harris Meyer, *Some Hospitals Seize Patients' Tax Refunds*, MOD. HEALTHCARE (June 15, 2019, 1:05 AM), <https://www.modernhealthcare.com/finance/some-hospitals-seize-patients-tax-refunds> [https://perma.cc/PH85-4YBQ]. Ames also stated, "There needs to be a clear understanding of when this can be used" *Id.*

III. ANALYSIS: THE TROUBLE WITH SDCP

A. *The Lack of Transparency*

Although a lack of transparency plagues many aspects of SDCP, Section A focuses on entity participation in SDCP and SCAC's involvement in the collections process. This analysis does not seek to uncover how certain hospitals participate in SDCP, but rather, it seeks to illustrate the vast confusion surrounding SDCP. For instance, it exemplifies how many state-created hospitals now resemble private organizations, yet their participation is still permitted because of the Setoff Debt Collection Act's vague terminology. This is most easily illustrated through entity participation and SCAC's involvement in SDCP. Hopefully, these issues will draw attention to how SDCP, in its entirety, is poorly designed. For example, if an issue as simple as who can participate cannot easily be ascertained, the program needs revising.

As the *Post and Courier* pointed out in its critical investigation of SDCP, hospitals, such as Greenville Health System (GHS) and Lexington Medical Center (LMC), have used SDCP as a loophole.¹¹¹ It is not at all clear that private medical debt, and specifically medical debt owed to private hospitals, fits within the word or spirit of SDCP's authorization or in the limited expansions for hospitals that have been subject to public scrutiny.

SDCP's definition of "claimant agency" has been expanded over time to include overly ambiguous terminology.¹¹² As a result, drawing the line between which creditors can and cannot participate in SDCP becomes arduous. What exactly *is* a quasi-governmental entity or political subdivision? What *is* a governmental entity? While these terms may seem familiar on the surface, it is easy to see how these words—without proper definitions—can qualify nearly any collector who wishes to participate. Given that hospitals collect debt through SDCP, this Section attempts to uncover how those organizations meet SDCP's definition of "claimant agency."¹¹³

The Setoff Debt Collection Act fails to define either governmental or quasi-governmental entity.¹¹⁴ Alternatively, while it defines political subdivision, the definition is vague and merely indicates the term includes governmental and quasi-governmental entities.¹¹⁵ Consequently, the public is left with virtually no indication as to which entities qualify under these terms.

111. Wildeman, *supra* note 15.

112. For the definition of "claimant agency" and its statutory history, see *supra* Part II.

113. For a list of hospitals that collect debt through SCAC, see *supra* Figure 1.

114. S.C. CODE ANN. § 12-56-20(1) (2014).

115. *Id.*

The South Carolina Code is riddled with the term “governmental entity,” yet it is without any conclusive definition.¹¹⁶ Accordingly, in every interview conducted for this Note, each interviewee admitted the terms governmental entity and quasi-governmental entity are undefined by statute.¹¹⁷ Interestingly, Source 1 stated that the terms are not only undefined but that their lack of definition has never been challenged in court.¹¹⁸

When asking another source why the Setoff Debt Collection Act includes such vague terminology, the source explained that the addition of governmental and quasi-governmental entities was in response to litigation against the state.¹¹⁹ At the time SDCP was created, several private collection agencies had contracts with the state through the Budget and Control Board.¹²⁰ While it is perfectly legal for SCDOR to collect debt, these private collection agencies argued that, if the state were allowed to collect debts on behalf of claimants, there would be essentially no way for the agencies to also collect past-due debts.¹²¹ According to Source 3, these private debt collectors adamantly believed they were placed at a disadvantage and such a law would cause them to lose business.¹²² To ameliorate the issue, the state agreed to limit collection efforts to governmental and quasi-governmental entities.¹²³ Source 3 reiterated that it was only by agreement that SCDOR chose to limit itself to these kinds of entities; it was not as a matter of law.¹²⁴ However, this still provides little insight on what qualifications are necessary to fit within these vague terms. Thus, although the statutory addition of governmental and quasi-governmental entities was purposeful, it is still unclear which entities fit within these definitions.

The South Carolina Code also fails to elaborate on what constitutes a political subdivision. The best legal guidance on which entities fit the term under SDCP was provided in an informal opinion issued by the attorney

116. See § 12-4-580(D)(1); § 15-78-60; § 6-15-20. GEAR, SDCP's sister program, defines “governmental entity,” yet the language mimics SDCP's definition of “claimant agency.” GEAR's definition is as follows: “the [s]tate and a state agency, board, committee, department, or public institution of higher learning; all political subdivisions of the [s]tate; all federal agencies, boards, and commissions; and a federal, state, county, or local governmental or quasi-governmental entity.” § 12-4-580(D)(1).

117. Telephone Interview with Source 2, S.C. Dep't of Revenue (Oct. 11, 2020); see Telephone Interview with Source 1, *supra* note 95; Interview with Burnett Maybank, Former Director, S.C. Dep't of Revenue, in Columbia, S.C. (Nov. 10, 2020).

118. Telephone Interview with Source 1, *supra* note 95; see also *supra* note 31.

119. See Telephone Interview with Source 3, S.C. Dep't of Revenue (Nov. 12, 2020); see also *supra* note 31.

120. *Id.*

121. *Id.*

122. *Id.*; see also Telephone Interview with Source 1, *supra* note 95 (reaffirming Source 3's reasoning).

123. Telephone Interview with Source 3, *supra* note 119.

124. *Id.*

general in 2001.¹²⁵ In the opinion, the inquiring party—Senator McGill—stated that Williamsburg County Memorial Hospital (Hospital) was a qualifying “claimant agency” because it was established as a hospital public service.¹²⁶ However, Hospital wished to transfer its assets and responsibilities to Williamsburg Regional Hospital (WRHC), which was considered a public benefit nonprofit corporation.¹²⁷ In response, Senator McGill inquired whether WRHC qualifies as a “claimant agency,” noting that WRHC was created solely to handle Hospital’s assets and that its Board of Directors was appointed by the governor.¹²⁸ The Attorney General’s Office replied that, although no case law specifically applied the definition to public benefit nonprofit hospitals like WRHC, “the courts of South Carolina have upheld the often necessary relationship between public bodies and private entities in the management of regional hospitals.”¹²⁹ The office rested its decision on a 1954 court case, which stated: “The . . . operation of hospitals by the State and its subdivisions ha[s] long been an approved and common activity.”¹³⁰ Consequently, if a public hospital transfers the majority of its assets to a seemingly private corporation, the new entity may still qualify as a political subdivision because, according to case law decided over sixty years ago, this is a long-recognized practice.¹³¹ Yet “claimant agency” itself is still undefined.

South Carolina’s State Fiscal Accountability Authority confirms this conclusion.¹³² According to its web page on political subdivisions, the term has “no single, universal definition.”¹³³ The agency goes on to define the term as “all counties, municipalities, school districts, public service or special purpose districts.”¹³⁴ The page further states that determining whether an entity fits within the definition is straightforward.¹³⁵ However, if this were the case, hospitals like GHS would be excluded. The point of confusion is what “public service” actually means; the term is rather unclear. It may mean a hospital that is a political subdivision or is owned by one, or it may mean a hospital that is open to the public. While the former would qualify for SDCP,

125. See Letter from Susannah Cole, Assistant Att’y Gen., The State of S.C. Off. of the Att’y Gen., to J. Yancey McGill, S.C. Senator (Aug. 3, 2001) (on file with the *South Carolina Law Review*).

126. *Id.* at 1.

127. *Id.*

128. *Id.*

129. *Id.* at 2.

130. *Bolt v. Cobb*, 225 S.C. 408, 413, 82 S.E.2d 789, 792 (1954).

131. *Id.*

132. See *Political Subdivisions*, PROCUREMENT SERVS., <https://procurement.sc.gov/polsu/b/cities-counties> [<https://perma.cc/YKA6-K9KL>].

133. *Id.*

134. *Id.*

135. *Id.*

the latter may not. Qualification hinges on which definition of “public” is applied. Thus, these sources infer a “political subdivision” may include an entity created to manage the assets of a state-owned hospital, an entity that has a board of directors appointed by the state, or an entity that is owned by another political subdivision.¹³⁶

South Carolina Jurisprudence, a state-specific legal encyclopedia, provides little guidance for distinguishing between a public and private hospital.¹³⁷ The encyclopedia states: “Whether a hospital is private or public is determined by a case by case analysis.”¹³⁸ It then references *Wood v. Hilton Head Hospital, Inc.* as the foundation for that claim.¹³⁹

In *Wood*, the South Carolina Supreme Court held that it lacked jurisdiction to rule on whether Hilton Head Hospital (HHH), a private hospital, wrongfully revoked a doctor’s medical privileges.¹⁴⁰ The plaintiff-doctor argued the court should have jurisdiction because HHH was a “public or quasi-public institution.”¹⁴¹ He relied on the following evidence: HHH was exempt from taxation, affected with public trust, and financed by a county bond for construction.¹⁴² The court relied on Maryland case law to distinguish between a public and private corporation:

A public corporation is an instrumentality of the State, founded and owned by the State in the public interest, supported by public funds, and governed by managers deriving their authority from the State. On the other hand, a corporation, organized by permission of the Legislature, supported largely by voluntary contributions, and managed by officers and directors who are not representatives of the State or any political subdivision, is a private corporation, although engaged in charitable work or performing duties similar to those of public corporations¹⁴³

Thus, the court determined that HHH’s mere use of public funding did not determine the hospital’s status.¹⁴⁴ Unless the county itself could be subject to liability for the bond issued, HHH could not be considered a public

136. See Letter from Susannah Cole to J. Yancey McGill, *supra* note 125; S.C. CODE ANN. § 44-7-2010 (2018).

137. 18 S.C. JURIS. HOSP. *Establishment and Maintenance of Private Hospitals* § 11 (2020).

138. *Id.*

139. *Id.*; *Wood v. Hilton Head Hosp., Inc.*, 292 S.C. 403, 405, 356 S.E.2d 841, 842 (1987).

140. See *Wood*, 292 S.C. at 404, 406, 356 S.E.2d at 841, 842.

141. *Id.* at 405, 356 S.E.2d at 842.

142. *Id.*

143. *Id.* at 405–06, 356 S.E.2d at 842 (quoting *Levin v. Sinai Hosp. of Balt. City*, 46 A.2d 298, 300 (Md. 1946)).

144. *Id.* at 406, 356 S.E.2d at 842.

hospital.¹⁴⁵ The court concluded by stating HHH was “not significantly related to the state or federal government such that it would be transformed into a public institution.”¹⁴⁶ While this offers some guidance for when a hospital may be considered public or private, the line between the two entities is often blurred.

A closer look at GHS’s history provides insight on how a hospital may have both public and private aspects. In 1947, GHS, originally called Greenville Health Authority (GHA), was created as a public hospital in Greenville, South Carolina.¹⁴⁷ In 2016, GHA entered a lease to transfer its assets to a nonprofit corporation called Upstate Affiliation Organization (UAO).¹⁴⁸ Under the lease, GHA also gave UAO the right to use the name GHS.¹⁴⁹ Since this time, UAO has gone exclusively by GHS.¹⁵⁰ GHA, however, is technically still a public hospital although its assets reside in GHS.¹⁵¹ Thus, while the health organization has both private and public characteristics, GHA’s archaic connection to the state permits it to continuously collect debt through SDCP.¹⁵² This is true even though GHS’s web page states that the hospital is a “private not-for-profit academic healthcare delivery system”¹⁵³

To further complicate matters, in an answer to a complaint filed against GHS, the organization acknowledged that it qualifies as a governmental entity under the South Carolina Torts Claim Act but asserted that it “delegated responsibility for operating hospitals and otherwise providing healthcare services in South Carolina to [UAO].”¹⁵⁴ The complaint indicated GHA also uses the trademark name GHS such that GHA and UAO are often considered one entity.¹⁵⁵ In the complaint, a patient requested documents through the Freedom of Information Act.¹⁵⁶ GHS argued UAO had control over all documentation, and because “UAO . . . is not a public entity[,]” it could deny

145. *See id.*

146. *Id.*

147. *See* GREENVILLE HEALTH SYS., INDEPENDENT AUDITORS’ REPORT 2 (2017), <https://www.ghs.org/wp-content/uploads/2018/02/2017-GHA-Authority-FINAL-FS-September-30-2017.pdf> [<https://perma.cc/MDW5-6NKD>].

148. *Id.* (“The UAO and GHA entered into a lease and contribution agreement effective October 1, 2016 under which UAO assumed substantially all of operations, assets and liabilities of GHA . . .”).

149. *Id.*

150. *Id.*

151. *See id.*

152. *See id.* at 3–4; Wildeman, *supra* note 15.

153. *About Greenville Health System*, PRISMA HEALTH, <https://www.ghs.org/newsroom/aboutus> [<https://perma.cc/LQY5-XZXY>].

154. Answer by Defendant at 2–3, *McMillan v. Greenville Health Sys.*, No. 2017-CP-23-05869 (Greenville Cnty. Ct. Com. Pl. Nov. 13, 2017).

155. *See id.* at 3.

156. *See id.* at 2.

handing over the documents.¹⁵⁷ Not only does GHS's answer highlight the confusion over its public and private nature, but it also illustrates how hospitals repeatedly pick and choose when they want to be classified as either type. GHS admitted it was a governmental entity, yet it escaped liability to the patient by claiming UAO "assumed responsibility for all health care services formerly provided by GHS"¹⁵⁸ Thus, by transferring its management and assets to another corporation while still retaining its original public entity, GHS tied itself to the state and simultaneously avoided liability.

Another example is LMC. Although LMC appears to be a private hospital, it is actually owned by Lexington County Health Services District (LCHSD), which, in turn, is owned by Lexington County.¹⁵⁹ South Carolina Code § 44-7-2010 authorizes counties to form regional health services districts under the South Carolina Education Improvement Act of 1984.¹⁶⁰ LMC, therefore, has a loose tie to the state because it is owned by one of the state's health districts. However, when examining § 44-7-2010, questions arise as to why the language authorizing a health services district does not align with the language used in SDCP's definition of claimant agency.¹⁶¹

Although § 44-7-2010 authorizes LMC's tie to the state, exactly how LMC can participate in SDCP remains unclear. For instance, § 44-7-2010 defines a health services district as a "body politic" rather than a political subdivision or governmental entity.¹⁶² But is body politic synonymous with these terms?

A recent class action in South Carolina's bankruptcy court further illustrates the confusion.¹⁶³ The complaint was filed against LHSD but explicitly asserted allegations against LMC.¹⁶⁴ The plaintiffs asserted all of their allegations against LMC, calling LMC a tradename of LHSD.¹⁶⁵ This is because LHSD is owned by the county whereas LMC is owned by LHSD.¹⁶⁶ The complaint described LMC as a "private, non-profit hospital."¹⁶⁷ This

157. *Id.* at 3.

158. *Id.* at 2–3.

159. See S.C. CODE ANN. § 44-7-2010 (2018); *Lexington Medical Center Proposes Major Change*, LEXINGTON CNTY. CHRON. (Oct. 13, 2020, 7:00 AM), <https://www.lexingtonchronicle.com/news/lexington-medical-center-proposes-major-change> [<https://perma.cc/J8T9-TAPH>].

160. § 44-7-2010.

161. Compare *id.*, with § 12-56-20(1).

162. § 44-7-2010 ("The enactment shall designate the name of the health services district and shall declare it to be a body politic and corporate within the counties and municipalities so designated.").

163. Complaint, *Jones v. Lexington Health Servs. Dist., Inc.*, No. 20-80002 (Bankr. D.S.C. July 8, 2020).

164. See *id.*

165. See *id.* at 2.

166. See § 44-7-2010.

167. Complaint, *supra* note 163, at 1.

alone depicts the odd disconnect between which medical entity is state-run, which is private, and which is truly being sued. In fact, when speaking to Dave Maxfield, a lead attorney in the case, he stated that the exact relationship between the named entity listed in the complaint—LHSD—and LMC is not entirely clear.¹⁶⁸

The complaint asserted that LHSD continuously used, or threatened to use, SDCP against debtors who previously filed for bankruptcy.¹⁶⁹ Once a debtor files for bankruptcy, the bankruptcy court notifies all potential creditors that the court has issued an automatic stay.¹⁷⁰ Federal law prohibits a creditor from continuing to garnish wages after this notification.¹⁷¹ Nonetheless, LMC continued to seize portions of multiple debtors' tax refunds and refused to refund any of the improperly collected money.¹⁷² In its responsive motion to dismiss, LHSD argued that, because it qualified as a "political subdivision" under § 12-60-80(C), it was unable to be named as a party to a class action suit.¹⁷³

LHSD's attorney referred to LMC as a political subdivision,¹⁷⁴ but the term used in § 44-7-2010 is body politic.¹⁷⁵ Assuming these terms are synonymous, does LMC qualify for SDCP because it is a political subdivision owned by another political subdivision? Or rather, is LMC merely a quasi-governmental entity tied to a state-created body politic? Further, if political subdivision and body politic are not synonymous, what characteristics distinguish the two? And where does governmental entity fit in all this? Perhaps the term equates to body politic. As one can see, dissecting SDCP's language reveals a rabbit hole of unanswered questions. Unfortunately, these questions may remain unanswered because, despite failing to define the terms, the legislature uses them as qualifiers for SDCP participation.

In sum, relevant precedent suggests political subdivision is likely analogous to public service or body politic. Governmental entity may also be

168. Telephone Interview with Dave Maxfield, Consumer Prot. Att'y, Dave Maxfield Consumer Prot. L. (Oct. 29, 2020).

169. See Complaint, *supra* note 163, at 2.

170. See 11 U.S.C. § 362(a).

171. See, e.g., Complaint, *supra* note 163, at 2.

172. See, e.g., *id.* at 5.

173. S.C. CODE ANN. 12-60-80(C) (2014) ("Notwithstanding subsections (A) and (B), a claim or action for the refund of taxes may not be brought as a class action in the Administrative Law Court or any court of law in this [s]tate, and the department, political subdivisions, or their instrumentalities may not be named or made a defendant in any other class action brought in this [s]tate."); see Order Denying Motion to Dismiss Adversary Proceeding, *Jones v. Lexington Heath Servs. Dist., Inc.* (*In re Jones*), 618 B.R. 757 (Bankr. D.S.C. July 8, 2020) (No. 18-06304) (referencing the defendant's answer) [hereinafter Order Denying Motion to Dismiss].

174. Order Denying Motion to Dismiss, *supra* note 173, at 3 (referencing the defendant's answer).

175. See § 44-7-2010.

synonymous to these terms, although this is uncertain given SDCP's language. It is also unclear when a hospital crosses the line from being a governmental entity to being a quasi-governmental entity or when it is predominantly private in nature. Further, a hospital qualifying for SDCP may prove a state connection through the following ways: being owned by a political subdivision; having board members elected by, or receiving power from, the state; or leasing property from the government. Research also suggests large hospitals tend to use their ties with the state to avoid liability.

This Note's attempt to shed light on hospital participation illustrates the overwhelming confusion surrounding SDCP. Even legal professionals find SDCP's language confusing.¹⁷⁶ Because of this, it is unlikely the public understands how hospitals qualify for participation. Individuals who have their tax refunds garnished deserve to know which creditors can siphon their money. The fact that a question this basic cannot be easily answered illuminates SDCP's inadequacy. While there is nothing wrong with a hospital that is tied to the state collecting through SDCP, the program's language should transparently declare which hospitals are eligible to participate and how those hospitals are tied to the state. As it stands, the Setoff Debt Collection Act's ambiguous language creates unnecessary confusion and shields taxpayers from knowledge as to which creditors can legally collect from them.

In addition to the question of who can participate in SDCP, there is also a lack of clarity surrounding SCAC's role in the program. If hospitals using SDCP are, indeed, tied to the state, why has the legislature authorized SCAC—a purely private association—to submit claims on their behalf? The difficulty in answering this question exemplifies, once again, how SDCP creates unnecessary secrecy between the state and private sector.

Information regarding SCAC's involvement is nearly impossible to uncover. SCAC does not disclose any evidence regarding its intermediary role between claimant agencies collecting through SDCP and SCDOR nor does it reveal the reasons it is involved in a state-run collection program.¹⁷⁷ Source 3, once again, was the only interviewee who could shed light on this issue. According to that source, SCAC's involvement is "political."¹⁷⁸

176. See, e.g., Telephone Interview with Dave Maxfield, *supra* note 168.

177. SCAC's involvement may also pose issues with the state's nondelegation doctrine, although this is a nuanced argument that has never been litigated. See U.S. CONST. art. I, § 1; *Nondelegation Doctrine*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/nondelegation_doctrine [<https://perma.cc/825A-FHV6>]. However, it should be noted that this may not present a violation because, as former SCDOR Director Burnett Maybank has stated, SCDOR believes there is a "major distinction between collecting a tax and collecting a debt." Interview with Burnett Maybank, *supra* note 117.

178. Telephone Interview with Source 3, *supra* note 119; see also *supra* note 31.

As previously mentioned, governmental and quasi-governmental entities were added to the Setoff Debt Collection Act to prevent private debt collectors from suing the state.¹⁷⁹ Source 3 pointed out that the same line of reasoning applies to SCAC's involvement in SDCP.¹⁸⁰ SCDOR was looking for an intermediate collection agency to prevent further litigation.¹⁸¹ Simultaneously, SCAC—as a lobbying group—was able to leverage the parties involved in litigation until all sides were satisfied with its intermediary placement, regardless of its nongovernmental status.¹⁸² Meanwhile, county officials knew the program would be a great source of revenue, so they did not interfere with SCAC's negotiation.¹⁸³

Although Source 3 provided insight on how the state authorized SCAC's involvement, the association's secrecy is still a point of concern. For example, SCAC does not publish a list of participating claimant agencies nor does it disclose how much revenue is generated from administration fees.¹⁸⁴ SCAC provides little to no information on how it collects on claimants' behalf, and it provides no information for debtors seeking to contest their tax refund garnishment.¹⁸⁵ All of these inquiries illustrate how SDCP, again, lacks adequate transparency. South Carolina's taxpayers deserve to understand how SDCP operates, and this understanding is severely hindered by SCAC's unfounded dedication to secrecy.

B. The Lack of Consumer Protections

Aside from SDCP's general lack of transparency, the program also lacks adequate consumer protections for debtors. Under the Consumer Bill of Rights, all consumers have the right to be informed, the right to be heard, and the right to have problems corrected.¹⁸⁶ Yet South Carolina treads dangerously close to violating all three of these rights with SDCP.¹⁸⁷ Debtors are often uninformed of setoff until after it happens, and they have few outlets to contest

179. See *supra* Section III.A (outlining why SDCP includes governmental and quasi-governmental entities).

180. Telephone Interview with Source 3, *supra* note 119.

181. *Id.*

182. *Id.*

183. *Id.*

184. Wildeman, *supra* note 15.

185. See *id.*

186. Special Message to Congress on Protecting the Consumer Interest, 1 PUB. PAPERS 235 (Mar. 15, 1962). The concept of the Consumer Bill of Rights was first introduced by President Kennedy in 1962. *Id.* Since this time, the rights have been expanded and adopted by Consumers International. *What Are Consumer Rights?*, CONSUMERS INT'L, <https://www.consumersinternational.org/who-we-are/consumer-rights/> [<https://perma.cc/8NE8-V43K>].

187. See *South Carolina Wage Garnishment Laws*, *supra* note 14.

setoff once it occurs.¹⁸⁸ SDCP provides no protections for debtors who incur medical debt during times of emergency, and the state fails to offer online resources for debtors inquiring about SDCP.¹⁸⁹ The goal in this Section is to expand on these issues before proposing solutions to them.

SDCP's first insufficient consumer protection is actual notice. While a claimant agency is required to notify a debtor at least thirty days before it submits a claim to the program, whether the debtor actually receives the notice is irrelevant.¹⁹⁰ Under the Setoff Debt Collection Act, a claimant agency's certification that notice was sent is "presumptive proof" that SDCP's notice requirements are satisfied, "even if the notice actually has not been received by the debtor."¹⁹¹ Thus, as long as the claimant can prove the notice was sent, the requirement is satisfied regardless of whether the claimant received it.¹⁹² This process unfairly affects financially unstable individuals. Because those individuals frequently tend to relocate, they may be unaware that a debt is owed—or, rather, that it can be taken without their consent.¹⁹³

The issue of notice was challenged in the South Carolina Supreme Court nearly two decades ago, but debtors' cries for relief ultimately fell on deaf ears.¹⁹⁴ In *Gardner v. South Carolina Department of Revenue*, several former patients sued Spartanburg Regional Hospital for seizing tax refunds, arguing they did not receive proper notice of setoff.¹⁹⁵ The court took a hard-line approach.¹⁹⁶ It ruled that, "[e]ven where a party receives no notice, he must establish that, had he received notice, he would have taken pertinent action and could have reduced his liability."¹⁹⁷ If a court determines the debtor was not prejudiced by the inadequate notice, the claimant agency does not have to return the debtor's tax refund.¹⁹⁸ Therefore, not only may a debtor fail to

188. S.C. CODE ANN. § 12-56-62 (2014); Wildeman, *supra* note 15.

189. See *Setoff Debt & GEAR*, *supra* note 7 (failing to provide any online information catered toward debtors).

190. § 12-56-62 ("The notice of intention to setoff must be given by mailing the notice, with postage prepaid, addressed to the debtor at the address provided to the claimant agency when the debt was incurred or at the debtor's last known address. The giving of the notice by mail is complete upon the expiration of thirty days after deposit of the notice in the mail. A certification by the claimant agency that the notice has been sent is presumptive proof that the requirements as to notice are met, even if the notice actually has not been received by the debtor. The notice must include a statement of appeal procedures available to the debtor")

191. *Id.*

192. *Id.*

193. Wildeman *supra*, note 15.

194. *Gardner v. S.C. Dep't of Revenue*, 353 S.C. 1, 11, 577 S.E. 2d. 190, 195 (2003).

195. *Id.* at 9, 15, 577 S.E.2d at 194, 197.

196. *Id.* at 15, 577 S.E.2d at 197.

197. *Id.* (citing *Boley v. Brown*, 10 F.3d 218 (4th Cir. 1993)).

198. *Id.* at 14, 577 S.E. 2d. at 197. The court also noted the strict standard of bringing a class action suit in South Carolina and ultimately forbade the plaintiffs from forming a class

receive actual notice, but the debtor is ultimately at a creditor's mercy when trying to contest the issue.

Notably, the Setoff Debt Collection Act was amended after the *Gardner* decision to provide two additional consumer protections: claimant agencies were required to notify debtors that interest on the debt owed could also be collected via tax refund and that tax refunds could be offset annually until the debt was completely satisfied.¹⁹⁹ However, aside from these changes, a claimant agency still has no obligation to provide a debtor with actual notice, and the process for protesting a garnishment remains difficult.²⁰⁰

For instance, SDCP currently provides debtors with a protest process, but the process favors claimant agencies and encompasses financial hurdles that debtors are unlikely to overcome.²⁰¹ Under SDCP, before a claimant can submit a claim for debt collection, it must appoint a hearing officer to listen to any protests the debtor may have.²⁰² If a debtor wishes to protest an impending setoff, the debtor must have an informal hearing with the hearing officer.²⁰³ At the end of this hearing, the hearing officer decides whether the debtor has a valid protest.²⁰⁴ If the officer rejects the protest, the setoff continues "regardless of a subsequent appeal by the debtor."²⁰⁵

Because the protest process rests solely in the hands of the claimant agency, debtors have only one method to obtain an impartial ruling on their setoff.²⁰⁶ Although the setoff proceeds immediately after the hearing officer rejects the debtor's initial protest, the debtor can appeal the hearing officer's decision to the Administrative Law Court as a last resort.²⁰⁷ The number of debtors who have exercised this option is extremely low.²⁰⁸ While SCDOR alone conducts approximately 400,000 setoffs through SDCP annually, only twelve debtors have challenged their intended setoff over a twenty-year

action. *Id.* at 21, 577 S.E. 2d. at 200. It held that only the named plaintiffs had standing to challenge the agencies' notice and fees. *Id.*

199. S.B. 274, 115th Gen. Assemb., Reg. Sess. (S.C. 2003).

200. S.C. CODE ANN. § 12-56-62 (2014).

201. § 12-56-65.

202. § 12-56-65(A) ("This hearing officer is vested with the authority to decide a protest in favor of either the debtor or the claimant agency."). If a debtor receives notice of the claimant's intention to set off debt and wishes to protest the setoff before it occurs, the debtor must file a written protest within thirty days of the notice's date. § 12-56-63. If a debtor wishes to protest the garnishment of an income return, he or she may make a claim for refund within one year of garnishment date. § 12-56-65(H).

203. § 12-56-65(B).

204. *Id.*

205. *Id.*

206. § 12-56-65(C).

207. *Id.* The protest must also be filed in the Administrative Law Court (ALC) within thirty days and comply with that court's rules. Once a tax refund offset takes place, a debtor has one year to seek review from the ALC. *Id.*

208. Wildeman, *supra* note 15.

period.²⁰⁹ One reason for this may be that debtors are too poor to hire legal counsel.²¹⁰ While no formal data shows how often hearing officers decide in favor of the debtor, this number is probably low. As the *Post and Courier* investigation pointed out, claimant agencies are ultimately authorized to “[bypass] the court system entirely in their quest to recoup debts.”²¹¹ As a result, debtors must succumb to seizure of their tax refunds.

SDCP also fails to protect non-liable spouses whose joint tax refunds are garnished because of debts incurred by a liable spouse.²¹² If a debtor is married and files jointly, the debtor's joint refund is reduced even if the debtor's spouse has no delinquent debt.²¹³ The Setoff Debt Collection Act specifically states: “Apportionment is not required in the case of a refund resulting from filing a joint return.”²¹⁴ The Act goes on to declare that consumers have no interest in their refunds until all claimant agencies are paid, and debts submitted by claimant agencies are presumptively correct.²¹⁵ Nothing in the Act requires SCDOR to ensure that the debts are valid and have not been inflated. Consequently, debtors are often at the mercy of claimant agencies because, under SDCP, those agencies hold virtually all of the power. It is also worth noting there is no statute of limitations for when a debt can be submitted for collection to SCDOR. While SCDOR has a statute of limitations for assessing taxes,²¹⁶ there is no comparable statute for debt collection.

Further, as discussed earlier, the SDCP information listed on SCDOR's website is specifically geared toward creditors.²¹⁷ The website's overview of SDCP begins by noting that unpaid liabilities hinder governmental entities from budgeting and funding essential services.²¹⁸ SCDOR's page also uses questions, such as, “Can my agency participate?” and “How does a claimant agency contact the SCDOR for more information?”²¹⁹ These questions illustrate SCDOR's affinity for speaking directly to creditors wishing to collect debt rather than to debtors with an impending setoff. In fact, SCDOR's

209. *Id.*; S.C. DEP'T OF REVENUE, *supra* note 60, at 13.

210. *See Wildeman, supra* note 15.

211. *Id.* Claimant agencies cannot bypass a court entirely. As previously noted, under statute, a debtor can appeal the hearing officer's decision, file the refund claim within a year of collection, and retain the right to a jury trial regarding the indebtedness. S.C. CODE ANN. § 12-56-67 (2014). However, given that very few debtors contest a hearing officer's decision and that many do not know how to contest the decision at all, claimant agencies appear to bypass the court system.

212. *See* § 12-56-60(B).

213. *See id.*

214. *Id.*

215. *Id.*

216. § 12-54-85.

217. *See Setoff Debt & GEAR, supra* note 7.

218. *Id.*

219. *Id.*

website does not include a single Frequently Asked Question pertaining to debtors and their right to contest setoffs.²²⁰ Thus, debtors searching for quick and accessible information on SDCP and their rights under the program have no available resources to do so. This is a crucial point that demonstrates how SDCP's lack of transparency, coupled with its lack of consumer protections, has ultimately allowed state power to dominate individuals with past-due medical debt.

IV. A BETTER APPROACH TO DEBT COLLECTION

Because SDCP lacks both transparency and adequate consumer protections, this Note advocates for specific reforms to the program. Not only is the public ill-informed on which creditors may participate in SDCP, but debtors who fall victim to the program either have no idea what the program is or cannot afford to protest setoff once it occurs. Although South Carolina markets itself as a consumer-friendly state, SDCP currently does very little to protect consumers.²²¹ To ameliorate the issue, South Carolina should follow the successful model used in Minnesota, which provides the benefits of a state collection program while simultaneously offering transparency to the public and protection to vulnerable consumers.²²²

Like South Carolina, Minnesota has a collection program that allows the state to garnish tax refunds from individuals with past-due debts.²²³ Minnesota also allows hospitals to participate in the program.²²⁴ However, unlike South Carolina, the structure of Minnesota's program and the information on it provide public transparency. The program's authorization statute clarifies what the program does and concretely identifies which creditors can participate.²²⁵ Additionally, the Minnesota Department of Revenue (MDOR) offers helpful resources for debtors who may be confused as to why their tax refunds were garnished, and the program provides several consumer protection mechanisms to protect the state's poorest individuals from medical debt.²²⁶ By following a similar structure, South Carolina should expand the public resources available for consumers and revise SDCP to provide greater clarity.

220. *See id.*

221. §§ 12-56-10 to -120.

222. *Revenue Recapture*, MINN. DEP'T OF REVENUE, <https://www.revenue.state.mn.us/revenue-recapture> [<https://perma.cc/G4EG-4LQR>].

223. MINN. STAT. ANN. § 270A.06 (West, Westlaw through 2021 Reg. Sess.).

224. § 270A.03.

225. *See id.*

226. *See generally id.* (providing clear definitions for, and explanations of, setoff debt collection).

A. Clarify the SDCP Statute and Establish Adequate Qualifications for Participation

The statute enacting Minnesota's collection program provides significantly more transparency than the Setoff Debt Collection Act.²²⁷ News reports in both South Carolina and Minnesota note that these states are the only ones that allow private hospitals to participate in state collection programs.²²⁸ The difference, however, is that while Minnesota's statute explicitly allows private hospitals to participate in the collection program, South Carolina's statute does not.²²⁹ Minnesota's definition of claimant agency explicitly includes "a hospital district [and] a private nonprofit hospital that leases its building from the county or city in which it is located"²³⁰ Through this language, the public has a much better understanding of which hospitals can and cannot participate in the program.

If South Carolina continues to allow hospitals to participate in SDCP, it should adopt a provision, similar to Minnesota's, that reflects their explicit inclusion. Instead of stating that a claimant agency includes a governmental entity, quasi-governmental entity, and political subdivision, South Carolina should explicitly state that hospitals can participate in SDCP if they lease space from a county, have enough state-elected board officials, or satisfy some other requirement. Like Minnesota's Act, South Carolina's Act should identify and define exactly how and when a hospital, such as GHS or LMC, can qualify for SDCP. This simple revision is a stepping-stone to providing more public transparency.

Despite both states allowing creditors to participate in debt collection by verifying that they meet the definition of a qualifying claimant, the vague language of South Carolina's statute allows almost any creditor to participate because critical terms, such as "governmental entity" and "quasi-governmental entity," are left undefined.²³¹ Conversely, Minnesota's statute clearly states which creditors can participate.²³² Further, although Minnesota's definition of claimant agency includes the term "state agency," "agency" is defined elsewhere in Minnesota's code.²³³ Thus, even assuming the term seems unclear on its face, the statute cross-references to the specific

227. *See id.*

228. Wildeman, *supra* note 15; Evans, *supra* note 18.

229. *See supra* Part II. Compare § 270A.03.2 (defining "hospital" in its definition of claimant agency), with S.C. CODE ANN. § 12-56-20(1) (2014) (failing to define "hospital" in its definition of claimant agency).

230. § 270A.03.2.

231. *See* § 12-56-20(1).

232. § 270A.03.2.

233. § 14.02.2.

section where it is explicitly defined.²³⁴ As a result, the verification process for creditors is more difficult to abuse. South Carolina's Act should also follow Minnesota's lead by identifying exactly how and when a hospital can qualify for SDCP and defining phrases like "political subdivision" if they are to remain. These simple revisions are essential to providing more public transparency.

Lastly, the title of Minnesota's collection program arguably provides more clarity for consumers than South Carolina's SDCP. Minnesota's program is titled the Revenue Recapture Program (RRP).²³⁵ While it is unlikely the average citizen knows what setoff debt means, most individuals are familiar with the words "revenue" and "recapture." The terms are commonplace vocabulary. Although there is no perfect title for a collection program, RRP's title appears to be more consumer-friendly than SDCP's title.

B. Increase Consumer Protections

The statute creating RRP also provides specific consumer protections, thus limiting the type of debtors that a claimant agency can reach.²³⁶ The statute limits the definition of "debt" by excluding debts for medical care and hospitalization if the debtor's income is below a specified amount.²³⁷ For example, claimant agencies are precluded from collecting medical debt from single debtors with an income of \$13,280 or less, from debtors with one dependent and an income of \$17,010 or less, and so forth.²³⁸ RRP thereby shields poor individuals with medical debt from hospitals' reaches. Given that medical debt is a leading cause of bankruptcy in South Carolina, the state should adopt a similar provision to protect citizens who have inadvertently incurred medical debts that they cannot afford to pay.²³⁹

RRP further protects non-liable spouses from having their joint tax refunds seized.²⁴⁰ Under Minnesota law, if MDOR garnishes a joint state tax return, non-liable spouses may request their share from the claimant agency.²⁴¹ Upon request, the claimant agency shall determine the non-liable

234. § 270A.03.2.

235. *Revenue Recapture*, *supra* note 222.

236. § 270A.03.5.

237. *Id.*

238. *Id.* Minnesota's informational summary on RRP further states: "Obligations of low-income individuals (incomes between \$12,620 and \$23,840 for care provided in 2016, depending upon family size) to repay debts for medical care, including hospitalization, cannot be recaptured." JOEL MICHAEL & SEAN WILLIAMS, HOUSE RSCH., REVENUE RECAPTURE PROGRAM (Dec. 2017), <https://www.house.leg.state.mn.us/hrd/pubs/ss/ssrevrec.pdf> [<https://perma.cc/5F4C-62PK>].

239. *See* KARPMAN & CASWELL, *supra* note 5.

240. § 270A.03.7.

241. *Revenue Recapture*, *supra* note 222.

spouse's refund amount and refund that amount to the spouse.²⁴² In contrast, SDCP provides no recourse for non-liable spouses.²⁴³ Even if one spouse is not liable for the debts incurred by the other spouse, SCDOR reserves the right to garnish joint tax refunds regardless of which spouse is at fault.²⁴⁴ Rather than continuing to follow this approach, South Carolina should protect non-liable spouses who are not at fault for their spouse's debt.

Further, unlike SCDOR, MDOR oriented its website to help debtors rather than creditors.²⁴⁵ In fact, MDOR's website uses the second person pronoun "you" throughout its summary of RRP to speak directly to debtors who wish to know their rights regarding tax refund garnishment.²⁴⁶ MDOR's website also has a section titled "Your Rights," which tells debtors how they can contest tax refund garnishment.²⁴⁷ SCDOR should adopt a web page similar to Minnesota's so that debtors can understand how SDCP may affect them.

C. *Reconsider the Role of SCAC (and MASC)*

In addition to these suggestions, South Carolina should either disallow SCAC's participation in the debt collection process or provide more clarity as to which claimants participate through the association. Currently, SCAC's secrecy unnecessarily hinders adequate transparency to the state's taxpayers. To combat this concern, SCAC should provide readily accessible information discussing how it is authorized to collect on behalf of the state and how much revenue it generates from the collection process. SCAC can easily achieve this goal by publishing an annual report, similar to the one published by SCDOR, that includes details about SDCP.

Moreover, SCAC should create a publicly accessible list of qualifications for claimant agency certification. If a creditor's participation relies solely on its attorney's certification, the risk of abuse of discretion is vast. The point is exacerbated by SCAC's failure to disclose which of its members participate in SDCP. By permitting public access to this information, debtors can rightfully determine who is authorized to collect from them and can educate themselves on the debt collection process. Although MASC's participation

242. *Id.*

243. S.C. CODE ANN. § 12-56-60(B) (2014) ("Apportionment is not required in the case of a refund resulting from filing a joint return.").

244. *Id.*

245. *Compare Revenue Recapture*, *supra* note 222 (MDOR's website's information is very user friendly for taxpayers looking to learn about debt collection by explaining taxpayer rights), with *Setoff Debt & GEAR*, *supra* note 7 (SCDOR's readily available information on the state's collection program is geared primarily toward creditors looking to collect debts).

246. *Revenue Recapture*, *supra* note 222.

247. *Id.*

stretches beyond the scope of this Note, it, too, is a nonprofit organization, and thus, the concerns surrounding SCAC may be extended to MASC as well.

Lastly, if SCAC can continue participating in SDCP, its administration fee should be collected from the creditor rather than the debtor. Tacking an additional fee to the debt of an already financially overwhelmed taxpayer seems unnecessary. To allow SDCP to impact both creditors and debtors, the \$25 administration fee should be doubled and paid more equally by the creditor. While SCDOR and SCAC could continue collecting their usual \$25 fee, the additional \$25 could be added to a public fund that provides legal assistance to debtors who wish to challenge their debts. This would not only disincentivize creditors from collecting on small, arbitrary debts, but it would also provide minimal legal assistance to debtors who cannot afford to challenge their refund garnishment.

V. CONCLUSION

South Carolina's SDCP lacks sufficient transparency and consumer protections. It is unfair for the state to continue implementing a program that collects millions of dollars from citizens' state income tax refunds without supplying those citizens with adequate information on the program's operations. The public deserves to know which creditors can participate in SDCP and where their authority is derived from. Given the lack of clarity surrounding the program, it is even more crucial to provide adequate consumer protections, especially for taxpayers with medical debt. This Note thereby encourages South Carolina to revise SDCP by following Minnesota's model for transparent, accountable, and fair medical debt collection practices.