

House Engrossed

FILED

**KEN BENNETT
SECRETARY OF STATE**

State of Arizona
House of Representatives
Fiftieth Legislature
First Regular Session
2011

CHAPTER 329

HOUSE BILL 2236

AN ACT

AMENDING SECTION 42-1122, ARIZONA REVISED STATUTES; RELATING TO TAX REFUNDS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 42-1122, Arizona Revised Statutes, is amended to
3 read:
4 42-1122. Setoff for debts to state agencies and courts:
5 revolving fund; definitions
6 A. The department shall establish a liability setoff program by which
7 refunds under sections 42-1118 and 43-1072 may be used to satisfy debts that
8 the taxpayer owes to this state, A POLITICAL SUBDIVISION or a court. The
9 program shall comply with the standards and requirements prescribed by this
10 section.
11 B. If a taxpayer owes an agency, POLITICAL SUBDIVISION or court a
12 debt, the agency, POLITICAL SUBDIVISION or court, by November 1 of each year,
13 may notify the department, furnishing at least the state agency, court or
14 program identifier, the first name, last name, middle initial or middle name
15 and suffix, social security number and any other available identification
16 that the agency, POLITICAL SUBDIVISION or court deems appropriate of the
17 debtor as shown on the records of the agency, POLITICAL SUBDIVISION or court,
18 and the amount of the debt.
19 C. The department shall match the information submitted by the agency,
20 POLITICAL SUBDIVISION or court by at least two items of identification of the
21 taxpayer with taxpayers who qualify for refunds under section 42-1118 and:
22 1. Notify the agency, POLITICAL SUBDIVISION or court of a potential
23 match, the taxpayer's home address and any additional taxpayer identification
24 numbers used by the taxpayer. Even if the taxpayer is not entitled to a
25 refund, the department of revenue shall provide to:
26 (a) The court, the clerk of the court and the department of economic
27 security, for child support and spousal maintenance purposes only, the home
28 address of a taxpayer whose debt for overdue support is referred for setoff
29 and any additional taxpayer identification numbers used by the taxpayer.
30 (b) The court, the home address and any additional taxpayer
31 identification numbers used by the taxpayer whose debt for a court obligation
32 is referred for setoff and who is identified by the court as a probationer on
33 absconder status.
34 2. Request final agency, POLITICAL SUBDIVISION or court confirmation
35 in writing or electronically as determined by the department within ten days
36 of the match and of the continuation of the debt. If the agency, POLITICAL
37 SUBDIVISION or court fails to provide confirmation within forty-five days
38 after the request, the department shall release the refund to the taxpayer.
39 D. An agency, POLITICAL SUBDIVISION or court may submit updated
40 information, additions, deletions and other changes on a quarterly or more
41 frequent basis, at the convenience of the agency, POLITICAL SUBDIVISION or
42 court.
43 E. On confirmation pursuant to subsection C, paragraph 2 of this
44 section, the agency OR POLITICAL SUBDIVISION shall notify the taxpayer, by
45 mail to the most recent address provided by the taxpayer to the department:

1 1. Of the intention to set off the debt against the refund due.

2 2. Of the taxpayer's right to appeal to the appropriate court, or to
3 request a review by the agency OR POLITICAL SUBDIVISION pursuant to agency OR
4 POLITICAL SUBDIVISION rule, within thirty days of the mailing of the notice.

5 F. In addition the taxpayer shall receive notice that if the refund is
6 intercepted in error through no fault of the taxpayer, the taxpayer is
7 entitled to the full refund plus interest and penalties from the agency,
8 POLITICAL SUBDIVISION or court as provided by subsection 0 of this section.

9 G. The basis for a request for review as provided by subsection E of
10 this section shall not include the validity of the claim if its validity has
11 been established at an agency hearing, by judicial review in a court of
12 competent jurisdiction in this or any other state or by final administrative
13 decision and shall state with specificity why the taxpayer claims the
14 obligation does not exist or why the amount of the obligation is incorrect.

15 H. If, within thirty days of the mailing of the notice, the taxpayer
16 requests a review by the agency OR POLITICAL SUBDIVISION or provides the
17 agency OR POLITICAL SUBDIVISION with proof that an appeal has been taken to
18 the appropriate court, the agency OR POLITICAL SUBDIVISION shall immediately
19 notify the department and the setoff procedure shall be stayed pending
20 resolution of the review or appeal.

21 I. If the department does not receive notice of a timely appeal, it
22 shall draw and deliver a warrant in the amount of the available refund up to
23 the amount of the debt in favor of the agency OR POLITICAL SUBDIVISION and
24 notify the taxpayer of the action by mail.

25 J. Subsections E, G, H and I of this section do not apply to a debt
26 imposed by a court except that the taxpayer shall receive notice of the
27 intent to set off the debt against the refund due and the right to appeal to
28 the court that imposed the debt within thirty days of the mailing of the
29 notice. The basis for the request for review shall not include the validity
30 of the claim and shall state with specificity why the taxpayer claims the
31 obligation does not exist or why the obligation is incorrect.

32 K. If the setoff accounts for only a portion of the refund due, the
33 remainder of the refund shall be sent to the taxpayer. A court shall not use
34 this section to satisfy a judgment or payment of a fine or civil penalty
35 until the judgment has become final or until the time to appeal the
36 imposition of a fine or civil penalty has expired.

37 L. A revolving fund is established to recover and pay the cost of
38 operating the setoff program under this section. The department may
39 prescribe a fee to be collected from each agency, POLITICAL SUBDIVISION or
40 court utilizing the setoff procedure or from the taxpayer, and the amount
41 shall be deposited in the fund. The amount of the fee shall reasonably
42 reflect the actual cost of the service provided. Monies in the revolving
43 fund are subject to legislative appropriation.

1 M. If agencies, POLITICAL SUBDIVISIONS or courts have two or more
2 delinquent accounts for the same taxpayer, the refund may be apportioned
3 among them pursuant to rules prescribed by the department of revenue, except
4 that a setoff to the department of economic security for overdue support has
5 priority over all other setoffs.

6 N. If the refund is insufficient to satisfy the entire debt, the
7 remainder of the debt may be collected by the agency, POLITICAL SUBDIVISION
8 or court as provided by law or resubmitted for setoff against subsequent
9 refunds.

10 O. In the case of a refund that is intercepted in error through no
11 fault of the taxpayer under this section, the taxpayer shall be reimbursed by
12 the agency, POLITICAL SUBDIVISION or court with interest pursuant to section
13 42-1123. In addition, if all or part of a refund is intercepted in error due
14 to an agency, POLITICAL SUBDIVISION or court incorrectly identifying a
15 taxpayer as a debtor through no fault of the taxpayer, the agency, POLITICAL
16 SUBDIVISION or court shall also pay the taxpayer a penalty as follows:

17 1. If the agency, POLITICAL SUBDIVISION or court reimburses the
18 taxpayer sixteen through one hundred eighty days after the agency, POLITICAL
19 SUBDIVISION or court receives notification that the refund was erroneously
20 intercepted and the refund was received by the agency, POLITICAL SUBDIVISION
21 or court, the penalty is equal to ten per cent of the amount of the refund
22 that was intercepted.

23 2. If the agency, POLITICAL SUBDIVISION or court reimburses the
24 taxpayer one hundred eighty-one through three hundred sixty-five days after
25 the agency, POLITICAL SUBDIVISION or court receives notification that the
26 refund was erroneously intercepted and the refund was received by the agency,
27 POLITICAL SUBDIVISION or court, the penalty is equal to fifteen per cent of
28 the amount of the refund that was intercepted.

29 3. If the agency, POLITICAL SUBDIVISION or court fails to reimburse
30 the taxpayer within three hundred sixty-five days after the agency, POLITICAL
31 SUBDIVISION or court receives notification that the refund was erroneously
32 intercepted and the refund was received by the agency, POLITICAL SUBDIVISION
33 or court, the penalty is equal to twenty per cent of the amount of the refund
34 that was intercepted.

35 P. The time periods set forth in subsection O of this section shall be
36 stayed during a review of an agency decision pursuant to section 25-522.

37 Q. Except as is reasonably necessary to accomplish the purposes of
38 this section, the department shall not disclose under this section any
39 information in violation of chapter 2, article 1 of this title.

40 R. An agency, POLITICAL SUBDIVISION or court shall not enter into an
41 agreement with a debtor for:

42 1. The assignment of any prospective refund to the agency, POLITICAL
43 SUBDIVISION or court in satisfaction of the debt.

44 2. Payment of the debt if the debt has been confirmed to the
45 department for setoff under subsection C, paragraph 2 of this section.

1 S. If a tax refund is based on a joint income tax return and the
2 department of economic security receives a written claim from the
3 nonobligated spouse within forty-five days after the notice of a setoff for
4 overdue child support, the setoff only applies to that portion of the refund
5 due to the obligor. The nonobligated spouse shall provide to the department
6 of economic security copies of both the obligated and nonobligated spouse's
7 federal W-2 forms and evidence of estimated tax payments supporting the
8 proportionate share of each spouse's payment of tax. The department of
9 economic security shall retain the amount of the set off refund due to the
10 obligated spouse determined by a proration based on the tax payments of each
11 spouse by estimated tax payment or tax withheld from wages.

12 T. For the purposes of this section:

13 1. "Agency" means a department, agency, board, commission or
14 institution of this state. Agency also means a corporation that is under
15 contract with this state and that provides a service that would otherwise be
16 provided by a department, agency, board, commission or institution of this
17 state, if the contract specifically authorizes participation in the liability
18 setoff program and the attorney general's office has reviewed the contract
19 and approves such authorization. The participation in the liability setoff
20 program shall be limited to debt related to the services the corporation
21 provides for or on behalf of this state.

22 2. "Court" means all courts of record, justice courts, municipal
23 courts and police courts.

24 3. "Debt" means an amount over fifty dollars owed to an agency,
25 POLITICAL SUBDIVISION or court by a taxpayer and may include a judgment in
26 favor of this state or a political subdivision of this state, interest,
27 penalties, charges, costs, fees, fines, civil penalties, surcharges,
28 assessments, administrative charges or any other amount. Debt also includes
29 monies owed by a taxpayer for overdue support and referred to the department
30 of economic security or the clerk of the court for collection.

31 4. "Overdue support" means a delinquency in court ordered payments for
32 spousal maintenance or support of a child or for spousal maintenance to the
33 parent with whom the child is living if child support is also being enforced
34 pursuant to an assignment or application filed under 42 United States Code
35 section 654(6) or other applicable law.

36 5. "POLITICAL SUBDIVISION" MEANS A COUNTY OR AN INCORPORATED CITY OR
37 TOWN IN THIS STATE.

APPROVED BY THE GOVERNOR APRIL 29, 2011.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 29, 2011.

Passed the House March 1, 2011

Passed the Senate April 19, 2011

by the following vote: 57 Ayes,

by the following vote: 30 Ayes,

0 Nays, 3 Not Voting

0 Nays, 0 Not Voting

[Signature]
Speaker of the House

[Signature]
President of the Senate

Cheryl Laube
Chief Clerk of the House

[Signature]
~~Assistant~~ Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

20 day of April, 2011

at 8:30 o'clock A. M.

[Signature]
Secretary to the Governor

Approved this 29th day of

April

at 11:40 o'clock A. M.

[Signature]
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 29th day of April, 2011

at 7:30 o'clock P. M.

[Signature]
Secretary of State

H.B. 2236