Senate Engrossed

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JANICE K. BREWER
SECRETARY OF STATE

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CHAPTER 246

SENATE BILL 1087

AN ACT

AMENDING SECTIONS 25-551 AND 42-1122, ARIZONA REVISED STATUTES; RELATING TO SPOUSAL MAINTENANCE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 25-551, Arizona Revised Statutes, is amended to read:

25-551. Clerk of the court

The clerk of the court may provide services to assist a person to collect spousal maintenance. These services may include providing information regarding collection and enforcement procedures, INTERCEPTING A TAXPAYER'S STATE INCOME TAX REFUND FOR COLLECTION PURPOSES, providing assistance in the preparation of forms and instructions necessary to initiate an enforcement action and providing information and referrals regarding services related to spousal maintenance and debt collection and enforcement.

Sec. 2. Section 42-1122, Arizona Revised Statutes, is amended to read:

42-1122. Setoff for debts to state agencies and courts; revolving fund; definitions

A. The department shall establish a liability setoff program by which refunds under sections 42-1118 and 43-1072 may be used to satisfy debts which the taxpayer owes this state or a court. The program shall comply with the standards and requirements prescribed by this section.

B. If a taxpayer owes an agency or court a debt, the agency or court, by November 1 of each year, may notify the department, furnishing at least the state agency, court or program identifier, the first name, last name, middle initial and social security number of the debtor, and the amount of the debt.

C. The department shall match the information submitted by the agency or court with taxpayers who qualify for refunds under section 42-1118 and:

1. Notify the agency or court of a potential match, the taxpayer's home address and any additional taxpayer identification numbers used by the taxpayer. Even if the taxpayer is not entitled to a refund, the department of revenue shall provide to:

(a) The court, the clerk of the court and the department of economic security, for child support and spousal maintenance purposes only, the home address of a taxpayer whose debt for overdue support is referred for setoff and any additional taxpayer identification numbers used by the taxpayer.

(b) The court, the home address and any additional taxpayer identification numbers used by the taxpayer whose debt for a court obligation is referred for setoff and who is identified by the court as a probationer on absconder status.

2. Request final agency or court confirmation within ten days of the match and of the continuation of the debt. If the agency or court fails to provide confirmation within forty-five days after the request, the department shall release the refund to the taxpayer.

D. An agency or court may submit updated information, additions, deletions and other changes on a quarterly or more frequent basis, at the convenience of the agency or court.

E. On confirmation pursuant to subsection C, paragraph 2 of this section, the agency shall notify the taxpayer, by mail to the most recent address provided by the taxpayer to the department, of the intention to set off the debt against the refund due and of the taxpayer's right to appeal to the appropriate court, or to request a review by the agency pursuant to agency rule, within thirty days of the mailing of the notice. The basis for a request for review shall not include the validity of the claim if its validity has been established at an agency hearing, by judicial review in a court of competent jurisdiction in this or any other state or by final administrative decision and shall state with specificity why the taxpayer claims the obligation does not exist or why the amount of the obligation is incorrect. If the setoff accounts for only a portion of the refund due, the remainder of the refund shall be sent to the taxpayer.

F. If, within thirty days of the mailing of the notice, the taxpayer requests a review by the agency or provides the agency with proof that an appeal has been taken to the appropriate court, the agency shall immediately notify the department and the setoff procedure shall be stayed pending resolution of the review or appeal.

G. If the department does not receive notice of a timely appeal, it shall draw and deliver a warrant in the amount of the available refund up to the amount of the debt in favor of the agency and notify the taxpayer of the action by mail.

H. Subsections E, F and G of this section do not apply to a debt imposed by a court. A court shall not use this section to satisfy a judgment or payment of a fine or civil penalty until the judgment has become final or until the time to appeal the imposition of a fine or civil penalty has expired.

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

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

K. If the refund is insufficient to satisfy the entire debt, the remainder of the debt may be collected by the agency or court as provided by law or resubmitted for setoff against subsequent refunds.

L. In the case of a refund that is intercepted in error under this section, the taxpayer shall be reimbursed by the agency or court with interest pursuant to section 42-1123.

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

N. An agency or court shall not enter INTO an agreement with a debtor for:

1. The assignment of any prospective refund to the agency or court in satisfaction of the debt.

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

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

P. For the purposes of this section:

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

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

3. "Debt" means an amount over fifty dollars owed to an agency or court by a taxpayer and may include a judgment in favor of this state or a political subdivision of this state, interest, penalties, charges, costs, fees, fines, civil penalties, surcharges, assessments, administrative charges or any other amount. Debt also includes monies owed by a taxpayer for overdue support and referred to the department of economic security OR THE CLERK OF THE COURT for collection.

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

APPROVED BY THE GOVERNOR MAY 1, 2006.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 1, 2006.