Senate Engrossed House Bill

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JANICE K. BREWER
SECRETARY OF STATE

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CHAPTER 70

HOUSE BILL 2346

AN ACT

AMENDING SECTIONS 42-1122 AND 42-2003, ARIZONA REVISED STATUTES; RELATING TO TAXPAYER INFORMATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. 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 ~~may~~, 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 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.

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. ~~The provisions of~~ 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. ~~Beginning July 1, 1999,~~ 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 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. ~~In~~ 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 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.

Sec. 2. Section 42-2003, Arizona Revised Statutes, is amended to read:

42-2003. <u>Authorized disclosure of confidential information</u>

A. Confidential information relating to:

1. A taxpayer may be disclosed to the taxpayer, its successor in interest or a designee of the taxpayer who is authorized in writing by the taxpayer. A principal corporate officer of a parent corporation may execute a written authorization for a controlled subsidiary.

2. A corporate taxpayer may be disclosed to any principal officer, any person designated by a principal officer or any person designated in a resolution by the corporate board of directors or other similar governing body.

3. A partnership may be disclosed to any partner of the partnership. This exception does not include disclosure of confidential information of a particular partner unless otherwise authorized.

4. An estate may be disclosed to the personal representative of the estate and to any heir, next of kin or beneficiary under the will of the decedent if the department finds that the heir, next of kin or beneficiary has a material interest which will be affected by the confidential information.

5. A trust may be disclosed to the trustee or trustees, jointly or separately, and to the grantor or any beneficiary of the trust if the department finds that the grantor or beneficiary has a material interest which will be affected by the confidential information.

6. Any taxpayer may be disclosed if the taxpayer has waived any rights to confidentiality either in writing or on the record in any administrative or judicial proceeding.

7. The name and taxpayer identification numbers of persons issued direct payment permits may be publicly disclosed.

B. Confidential information may be disclosed to:

1. Any employee of the department whose official duties involve tax administration.

2. The office of the attorney general solely for its use in preparation for, or in an investigation which may result in, any proceeding involving tax administration before the department or any other agency or board of this state, or before any grand jury or any state or federal court.

3. The department of liquor licenses and control for its use in determining whether a spirituous liquor licensee has paid all transaction privilege taxes and affiliated excise taxes incurred as a result of the sale of spirituous liquor at the licensed establishment and imposed on the licensed establishments by this state and its political subdivisions.

4. Other state tax officials whose official duties require the disclosure for proper tax administration purposes if the information is sought in connection with an investigation or any other proceeding conducted by the official. Any disclosure is limited to information of a taxpayer who is being investigated or who is a party to a proceeding conducted by the official.

5. The following agencies, officials and organizations, if they grant substantially similar privileges to the department for the type of information being sought, pursuant to statute and a written agreement between the department and the foreign country, agency, state, Indian tribe or organization:

(a) The United States internal revenue service, alcohol and tobacco tax and trade bureau of the United States treasury, United States bureau of alcohol, tobacco, firearms and explosives of the United States department of justice, United States drug enforcement agency and federal bureau of investigation.

(b) A state tax official of another state.

(c) An organization of states that operates an information exchange for tax administration purposes.

(d) An agency, official or organization of a foreign country with responsibilities that are comparable to those listed in subdivision (a), (b) or (c) of this paragraph.

(e) An agency, official or organization of an Indian tribal government with responsibilities comparable to the responsibilities of the agencies, officials or organizations identified in subdivision (a), (b) or (c) of this paragraph.

6. The auditor general, in connection with any audit of the department subject to the restrictions in section 42-2002, subsection C.

7. Any person to the extent necessary for effective tax administration in connection with:

(a) The processing, storage, transmission, destruction and reproduction of the information.

(b) The programming, maintenance, repair, testing and procurement of equipment for purposes of tax administration.

8. The office of administrative hearings relating to taxes administered by the department pursuant to section 42-1101, but the department shall not disclose any confidential information:

(a) Regarding income tax, withholding tax or estate tax.

(b) On any tax issue relating to information associated with the reporting of income tax, withholding tax or estate tax.

9. The United States treasury inspector general for tax administration for the purpose of reporting a violation of internal revenue code section 7213A (26 United States Code section 7213A), unauthorized inspection of returns or return information.

10. The financial management service of the United States treasury department for use in the treasury offset program.

C. Confidential information may be disclosed in any state or federal judicial or administrative proceeding pertaining to tax administration if the taxpayer is a party to the proceeding.

D. Identity information may be disclosed for purposes of notifying persons entitled to tax refunds if the department is unable to locate the persons after reasonable effort.

E. The department, upon the request of any person, shall provide the names and addresses of bingo licensees as defined in section 5-401 or verify whether or not a person has a privilege license and number or withholding license and number.

F. A department employee, in connection with the official duties relating to any audit, collection activity or civil or criminal investigation, may disclose return information to the extent that disclosure is necessary to obtain information which is not otherwise reasonably available. These official duties include the correct determination of and liability for tax, the amount to be collected or the enforcement of other state tax revenue laws.

G. If an organization is exempt from this state's income tax as provided in section 43-1201 for any taxable year, the name and address of the organization and the application filed by the organization upon which the department made its determination for exemption together with any papers submitted in support of the application and any letter or document issued by the department concerning the application are open to public inspection.

H. Confidential information relating to transaction privilege tax, use tax, severance tax, jet fuel excise and use tax and rental occupancy tax may be disclosed to any county, city or town tax official if the information relates to a taxpayer who is or may be taxable by the county, city or town. Any taxpayer information released by the department to the county, city or town:

1. May only be used for internal purposes.

2. May not be disclosed to the public in any manner that does not comply with confidentiality standards established by the department. The county, city or town shall agree in writing with the department that any release of confidential information that violates the confidentiality standards adopted by the department will result in the immediate suspension of any rights of the county, city or town to receive taxpayer information under this subsection.

I. The department may disclose statistical information gathered from confidential information if it does not disclose confidential information attributable to any one taxpayer. In order to comply with the requirements of section 42-5029, subsection A, paragraph 3, the department may disclose to the state treasurer statistical information gathered from confidential information, even if it discloses confidential information attributable to a taxpayer.

J. The department may disclose the aggregate amounts of any tax credit, tax deduction or tax exemption enacted after January 1, 1994. Information subject to disclosure under this subsection shall not be disclosed if a taxpayer demonstrates to the department that such information would give an unfair advantage to competitors.

K. Except as provided in section 42-2002, subsection B, confidential information, described in section 42-2001, paragraph 2, subdivision (a), item (iii), may be disclosed to law enforcement agencies for law enforcement purposes.

L. The department may provide transaction privilege tax license information to property tax officials in a county for the purpose of identification and verification of the tax status of commercial property.

M. The department may provide transaction privilege tax, luxury tax, use tax, property tax and severance tax information to the ombudsman-citizens aide pursuant to title 41, chapter 8, article 5.

N. Except as provided in section 42-2002, subsection C, a court may order the department to disclose confidential information pertaining to a party to an action. An order shall be made only upon a showing of good cause

and that the party seeking the information has made demand upon the taxpayer for the information.

O. This section does not prohibit the disclosure by the department of any information or documents submitted to the department by a bingo licensee. Before disclosing the information the department shall obtain the name and address of the person requesting the information.

P. If the department is required or permitted to disclose confidential information, it may charge the person or agency requesting the information for the reasonable cost of its services.

Q. Except as provided in section 42-2002, subsection C, the department of revenue shall release confidential information as requested by the department of economic security pursuant to section 42-1122 or 46-291. Information disclosed under this subsection is limited to the same type of information that the United States internal revenue service is authorized to disclose under section 6103(l)(6) of the internal revenue code.

R. EXCEPT AS PROVIDED IN SECTION 42-2002, SUBSECTION C, THE DEPARTMENT OF REVENUE SHALL RELEASE CONFIDENTIAL INFORMATION AS REQUESTED BY THE COURTS AND CLERKS OF THE COURT PURSUANT TO SECTION 42-1122.

~~R.~~ S. To comply with the requirements of section 42-5031, the department may disclose to the state treasurer, to the county stadium district board of directors and to any city or town tax official that is part of the county stadium district confidential information attributable to a taxpayer's business activity conducted in the county stadium district.

~~S.~~ T. The department shall release confidential information as requested by the attorney general for purposes of determining compliance with and enforcing section 44-7101, the master settlement agreement referred to therein and subsequent agreements to which the state is a party that amend or implement the master settlement agreement. Information disclosed under this subsection is limited to luxury tax information relating to tobacco manufacturers, distributors, wholesalers and retailers and information collected by the department pursuant to section 44-7101(2)(j).

~~T.~~ U. For proceedings before the department, the office of administrative hearings, the board of tax appeals or any state or federal court involving penalties that were assessed against a return preparer or electronic return preparer pursuant to section 42-1103.02 or 42-1125.01, confidential information may be disclosed only before the judge or administrative law judge adjudicating the proceeding, the parties to the proceeding and the parties' representatives in the proceeding prior to its introduction into evidence in the proceeding. The confidential information may be introduced as evidence in the proceeding only if the taxpayer's name, the names of any dependents listed on the return, all social security numbers, the taxpayer's address, the taxpayer's signature and any attachments containing any of the foregoing information are redacted and if either:

1. The treatment of an item reflected on such return is or may be related to the resolution of an issue in the proceeding.

2. Such return or return information relates or may relate to a transactional relationship between a person who is a party to the proceeding and the taxpayer which directly affects the resolution of an issue in the proceeding.

~~U.~~ V. The department may disclose to the attorney general confidential information received under section 44-7111 and requested by the attorney general for purposes of determining compliance with and enforcing section 44-7111. The department and attorney general shall share with each other the information received under section 44-7111, and may share the information with other federal, state or local agencies only for the purposes of enforcement of section 44-7101, section 44-7111 or corresponding laws of other states.

APPROVED BY THE GOVERNOR APRIL 8, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIIL 9, 2004.