

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.  
Act 713 of the Regular Session

1 State of Arkansas  
2 87th General Assembly  
3 Regular Session, 2009  
4

# A Bill

HOUSE BILL 2050

5 By: Representative Maxwell  
6  
7

## For An Act To Be Entitled

9 AN ACT TO AUTHORIZE A SETOFF AGAINST AN ARKANSAS  
10 INDIVIDUAL INCOME TAX REFUND FOR A TAX DEBT OWED  
11 BY AN ARKANSAS TAXPAYER TO THE INTERNAL REVENUE  
12 SERVICE; TO PROVIDE A PROCEDURE FOR A NONDEBTOR  
13 TAXPAYER TO CHALLENGE THE SETOFF OF A JOINT  
14 INCOME TAX REFUND; AND FOR OTHER PURPOSES.  
15

## Subtitle

16 AUTHORIZES INCOME TAX REFUND SETOFF FOR  
17 AN INTERNAL REVENUE SERVICE TAX DEBT AND  
18 PROVIDES A PROCEDURE TO CHALLENGE THE  
19 SETOFF OF A JOINT REFUND.  
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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25 SECTION 1. Arkansas Code § 26-36-315 is amended to read as follows:  
26 26-36-315. Joint refunds.

27 (a) Where a taxpayer who is a debtor as defined in this subchapter has  
28 filed a joint return for which he or she is due a refund or has filed a  
29 separate return on the same form resulting in a joint refund, the entire  
30 amount of the refund shall be subject to setoff. ~~Notice of setoff shall be~~  
31 ~~sent to all parties entitled to the refund, and the nondebtor taxpayer may~~  
32 ~~raise any defense available to the debtor.~~

33 (b)(1) The Director of the Department of Finance and Administration  
34 shall notify each taxpayer due a joint refund of the amount and the date of a  
35 proposed setoff for a debt certified by a claimant agency to the Revenue



1 Division of the Department of Finance and Administration.

2 (2) The notice under subdivision (b)(1) of this section shall be  
3 in writing and sent to the address listed on the taxpayer's most recently  
4 filed income tax return.

5 (c)(1)(A) A taxpayer who claims that he or she is not a debtor of a  
6 claimant agency may seek administrative relief by filing a written protest  
7 under oath within thirty (30) days after the notice under subdivision (b)(1)  
8 of this section is received.

9 (B) The written protest shall be signed by the nondebtor  
10 taxpayer or the nondebtor taxpayer's authorized agent and include the  
11 nondebtor taxpayer's reasons for opposing the proposed setoff.

12 (2) The nondebtor taxpayer may request the director to consider  
13 his or her request for relief upon written documents furnished by the  
14 nondebtor taxpayer or upon the written document and the evidence produced by  
15 the nondebtor taxpayer at a hearing conducted under the Arkansas Tax  
16 Procedure Act, § 26-18-101 et seq.

17 (3) The nondebtor taxpayer's protest shall include documentation  
18 supporting the proportionate share of the nondebtor taxpayer's payment of tax  
19 and the resulting amount of the joint refund that the nondebtor taxpayer  
20 claims is not subject to setoff.

21 (d) A nondebtor taxpayer who requests the director to render his or  
22 her decision based on written documents is not entitled by law to any other  
23 administrative hearing before the director's rendering of his or her  
24 decision.

25 (e) Administrative relief shall not be available to a nondebtor  
26 taxpayer who fails to protest a proposed setoff within the thirty (30) days  
27 after the notice under subdivision (b)(1) of this section is received.

28 (f)(1) If a taxpayer requests a hearing in person rather than on  
29 written documents, a hearing officer shall set the time and place for hearing  
30 on the written protest and shall give the nondebtor taxpayer reasonable  
31 notice of the hearing.

32 (2) At the hearing, the nondebtor taxpayer may be represented by  
33 an authorized representative and may present evidence in support of his or  
34 her position.

35 (3) After the hearing, the hearing officer shall render his or  
36 her decision in writing and shall serve copies upon both the nondebtor

1 taxpayer and the claimant agency.

2 (g) The hearings on written protests and determinations made by the  
 3 hearing officer are not subject to the Arkansas Administrative Procedure Act,  
 4 § 25-15-201 et seq.

5 (h)(1) After the issuance and service on the taxpayer of a decision of  
 6 the hearing officer to sustain the setoff of the joint refund, a nondebtor  
 7 taxpayer may seek judicial relief from the decision by filing suit within  
 8 thirty (30) days after the date of the final determination of the hearing  
 9 officer.

10 (2) Jurisdiction for a suit to contest a determination of the  
 11 hearing officer under this section shall be in the Pulaski County Circuit  
 12 Court or the circuit court of the county where the nondebtor taxpayer resides  
 13 and the matter shall be tried de novo.

14 (i) This section is the sole means by which a nondebtor taxpayer may  
 15 challenge a proposed setoff for the benefit of a claimant agency.

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 17 SECTION 2. Arkansas Code Title 26, Chapter 36, Subchapter 3 is amended  
 18 to add an additional section to read as follows:

19 26-36-321. Setoff for debt to Internal Revenue Service.

20 (a) As used in this subchapter, "claimant agency" also means the  
 21 Internal Revenue Service.

22 (b) The Director of the Department of Finance and Administration may  
 23 enter into an agreement with the Internal Revenue Service to setoff state  
 24 income tax refunds to satisfy a past-due and legally enforceable debt to the  
 25 Internal Revenue Service.

26 (c) This subchapter shall apply to the setoff authorized by this  
 27 section, except to the extent that any provision conflicts with this section.

28 (d) In addition to the applicable requirements and procedures under  
 29 this subchapter, a setoff is not allowed for debts to the Internal Revenue  
 30 Service unless the Internal Revenue Service complies with all notice and  
 31 procedural requirements under federal law concerning the levy of a state tax  
 32 refund.

33 (d) The setoff and payment to Internal Revenue Service of an income  
 34 tax refund due to a taxpayer in this section shall be made from a refund  
 35 amount due to the taxpayer after the setoff of the taxpayer's refund to  
 36 claimant agencies other than the Internal Revenue Service.

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SECTION 3. Effective Date. This act is effective for tax years beginning on or after January 1, 2009.

APPROVED: 3/31/2009