

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.

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

A Bill

HOUSE BILL 2050

5 By: Representative Maxwell
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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
36 Division of the Department of Finance and Administration.



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 26-36-321. Setoff for debt to Internal Revenue Service.

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

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

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

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

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

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

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