

# Department of Finance and Administration

## Legislative Impact Statement

**Bill: HB1434**

**Bill Subtitle: CONCERNING THE SATISFACTION OF COURT-ORDERED RESTITUTION IN A CRIMINAL CASE THROUGH INTERCEPTION OF STATE INCOME TAX REFUNDS.**

---

**Basic Change :** Sponsor: Rep. Ballinger

The bill allows a victim who has a criminal restitution order to request a hearing to have the defendant's income tax refund seized to help satisfy the restitution order. This would allow individuals to participate in the income tax refund setoff program via prosecuting attorneys. The bill allows DFA to promulgate rules to implement the program.

**Revenue Impact :**

Estimate revenue neutral.

**Taxpayer Impact :**

Defendants would be subject to having refunds seized in their entirety to satisfy a restitution debt.

**Resources Required :**

Computer program changes.

**Time Required :**

Adequate time is provided.

**Procedural Changes :**

Claimant agency will need to register with income tax setoff program. Update computer programs and educate staff, tax community, circuit and district courts.

**Other Comments :**

None

**Legal Analysis :**

HB1434 adds a subsection to Title 5, Chapter 4, Subchapter 2 concerning orders of restitution to provide the victim with an avenue for enforcement of a restitution order by requesting the prosecuting attorney to petition the court for an order directing that the defendant debtor's income tax refund be captured for offset against the restitution debt. HB1434 provides that a hearing on the petition be set and provides a defendant with possible two defenses. The court must find that: (1) the defendant has knowingly failed to abide by the terms and conditions of the restitution order; and (2) there exist no mitigating factors that would justify the nonpayment of restitution. When the court has ordered an income tax refund setoff, the prosecuting attorney uses the procedures available under DFA's setoff program codified at § 26-36-301 et seq.

Under DFA's setoff program, circuit, county, district, and city courts are defined as claimant agencies that may use DFA's procedure to collect restitution orders that are not under appeal through income tax refund setoff provisions. Claimant agencies submit debtor names each year before income tax refunds begin to be issued. HB1434 provides the defendant with an opportunity to contest the setoff before the prosecutor may refer the debt to DFA. § 26-36-309 provides the debtor with notice and an opportunity to contest the validity of the claim before the claimant agency. Thus, under HB1434 as written, a defendant who has been ordered to pay restitution will have two opportunities to contest a setoff.