

State of Arizona  
House of Representatives  
Fiftieth Legislature  
First Regular Session  
2011

# HOUSE BILL 2236

AN ACT

AMENDING SECTION 42-1122, ARIZONA REVISED STATUTES; RELATING TO TAX REFUNDS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:  
2 Section 1. Section 42-1122, Arizona Revised Statutes, is amended to  
3 read:  
4 42-1122. Setoff for debts to state agencies and courts:  
5 revolving fund; definitions  
6 A. The department shall establish a liability setoff program by which  
7 refunds under sections 42-1118 and 43-1072 may be used to satisfy debts that  
8 the taxpayer owes to this state, A POLITICAL SUBDIVISION or a court. The  
9 program shall comply with the standards and requirements prescribed by this  
10 section.  
11 B. If a taxpayer owes an agency, POLITICAL SUBDIVISION or court a  
12 debt, the agency, POLITICAL SUBDIVISION or court, by November 1 of each year,  
13 may notify the department, furnishing at least the state agency, court or  
14 program identifier, the first name, last name, middle initial or middle name  
15 and suffix, social security number and any other available identification  
16 that the agency, POLITICAL SUBDIVISION or court deems appropriate of the  
17 debtor as shown on the records of the agency, POLITICAL SUBDIVISION or court,  
18 and the amount of the debt.  
19 C. The department shall match the information submitted by the agency,  
20 POLITICAL SUBDIVISION or court by at least two items of identification of the  
21 taxpayer with taxpayers who qualify for refunds under section 42-1118 and:  
22 1. Notify the agency, POLITICAL SUBDIVISION or court of a potential  
23 match, the taxpayer's home address and any additional taxpayer identification  
24 numbers used by the taxpayer. Even if the taxpayer is not entitled to a  
25 refund, the department of revenue shall provide to:  
26 (a) The court, the clerk of the court and the department of economic  
27 security, for child support and spousal maintenance purposes only, the home  
28 address of a taxpayer whose debt for overdue support is referred for setoff  
29 and any additional taxpayer identification numbers used by the taxpayer.  
30 (b) The court, the home address and any additional taxpayer  
31 identification numbers used by the taxpayer whose debt for a court obligation  
32 is referred for setoff and who is identified by the court as a probationer on  
33 absconder status.  
34 2. Request final agency, POLITICAL SUBDIVISION or court confirmation  
35 in writing or electronically as determined by the department within ten days  
36 of the match and of the continuation of the debt. If the agency, POLITICAL  
37 SUBDIVISION or court fails to provide confirmation within forty-five days  
38 after the request, the department shall release the refund to the taxpayer.  
39 D. An agency, POLITICAL SUBDIVISION or court may submit updated  
40 information, additions, deletions and other changes on a quarterly or more  
41 frequent basis, at the convenience of the agency, POLITICAL SUBDIVISION or  
42 court.  
43 E. On confirmation pursuant to subsection C, paragraph 2 of this  
44 section, the agency OR POLITICAL SUBDIVISION shall notify the taxpayer, by  
45 mail to the most recent address provided by the taxpayer to the department:

1           1. Of the intention to set off the debt against the refund due.

2           2. Of the taxpayer's right to appeal to the appropriate court, or to  
3 request a review by the agency OR POLITICAL SUBDIVISION pursuant to agency OR  
4 POLITICAL SUBDIVISION rule, within thirty days of the mailing of the notice.

5           F. In addition the taxpayer shall receive notice that if the refund is  
6 intercepted in error through no fault of the taxpayer, the taxpayer is  
7 entitled to the full refund plus interest and penalties from the agency,  
8 POLITICAL SUBDIVISION or court as provided by subsection 0 of this section.

9           G. The basis for a request for review as provided by subsection E of  
10 this section shall not include the validity of the claim if its validity has  
11 been established at an agency hearing, by judicial review in a court of  
12 competent jurisdiction in this or any other state or by final administrative  
13 decision and shall state with specificity why the taxpayer claims the  
14 obligation does not exist or why the amount of the obligation is incorrect.

15           H. If, within thirty days of the mailing of the notice, the taxpayer  
16 requests a review by the agency OR POLITICAL SUBDIVISION or provides the  
17 agency OR POLITICAL SUBDIVISION with proof that an appeal has been taken to  
18 the appropriate court, the agency OR POLITICAL SUBDIVISION shall immediately  
19 notify the department and the setoff procedure shall be stayed pending  
20 resolution of the review or appeal.

21           I. If the department does not receive notice of a timely appeal, it  
22 shall draw and deliver a warrant in the amount of the available refund up to  
23 the amount of the debt in favor of the agency OR POLITICAL SUBDIVISION and  
24 notify the taxpayer of the action by mail.

25           J. Subsections E, G, H and I of this section do not apply to a debt  
26 imposed by a court except that the taxpayer shall receive notice of the  
27 intent to set off the debt against the refund due and the right to appeal to  
28 the court that imposed the debt within thirty days of the mailing of the  
29 notice. The basis for the request for review shall not include the validity  
30 of the claim and shall state with specificity why the taxpayer claims the  
31 obligation does not exist or why the obligation is incorrect.

32           K. If the setoff accounts for only a portion of the refund due, the  
33 remainder of the refund shall be sent to the taxpayer. A court shall not use  
34 this section to satisfy a judgment or payment of a fine or civil penalty  
35 until the judgment has become final or until the time to appeal the  
36 imposition of a fine or civil penalty has expired.

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

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

6 N. If the refund is insufficient to satisfy the entire debt, the  
7 remainder of the debt may be collected by the agency, **POLITICAL SUBDIVISION**  
8 or court as provided by law or resubmitted for setoff against subsequent  
9 refunds.

10 O. In the case of a refund that is intercepted in error through no  
11 fault of the taxpayer under this section, the taxpayer shall be reimbursed by  
12 the agency, **POLITICAL SUBDIVISION** or court with interest pursuant to section  
13 42-1123. In addition, if all or part of a refund is intercepted in error due  
14 to an agency, **POLITICAL SUBDIVISION** or court incorrectly identifying a  
15 taxpayer as a debtor through no fault of the taxpayer, the agency, **POLITICAL**  
16 **SUBDIVISION** or court shall also pay the taxpayer a penalty as follows:

17 1. If the agency, **POLITICAL SUBDIVISION** or court reimburses the  
18 taxpayer sixteen through one hundred eighty days after the agency, **POLITICAL**  
19 **SUBDIVISION** or court receives notification that the refund was erroneously  
20 intercepted and the refund was received by the agency, **POLITICAL SUBDIVISION**  
21 or court, the penalty is equal to ten per cent of the amount of the refund  
22 that was intercepted.

23 2. If the agency, **POLITICAL SUBDIVISION** or court reimburses the  
24 taxpayer one hundred eighty-one through three hundred sixty-five days after  
25 the agency, **POLITICAL SUBDIVISION** or court receives notification that the  
26 refund was erroneously intercepted and the refund was received by the agency,  
27 **POLITICAL SUBDIVISION** or court, the penalty is equal to fifteen per cent of  
28 the amount of the refund that was intercepted.

29 3. If the agency, **POLITICAL SUBDIVISION** or court fails to reimburse  
30 the taxpayer within three hundred sixty-five days after the agency, **POLITICAL**  
31 **SUBDIVISION** or court receives notification that the refund was erroneously  
32 intercepted and the refund was received by the agency, **POLITICAL SUBDIVISION**  
33 or court, the penalty is equal to twenty per cent of the amount of the refund  
34 that was intercepted.

35 P. The time periods set forth in subsection O of this section shall be  
36 stayed during a review of an agency decision pursuant to section 25-522.

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

40 R. An agency, **POLITICAL SUBDIVISION** or court shall not enter into an  
41 agreement with a debtor for:

42 1. The assignment of any prospective refund to the agency, **POLITICAL**  
43 **SUBDIVISION** or court in satisfaction of the debt.

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

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

12           T. For the purposes of this section:

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

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

24           3. "Debt" means an amount over fifty dollars owed to an agency,  
25 **POLITICAL SUBDIVISION** or court by a taxpayer and may include a judgment in  
26 favor of this state or a political subdivision of this state, interest,  
27 penalties, charges, costs, fees, fines, civil penalties, surcharges,  
28 assessments, administrative charges or any other amount. Debt also includes  
29 monies owed by a taxpayer for overdue support and referred to the department  
30 of economic security or the clerk of the court for collection.

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

36           5. **"POLITICAL SUBDIVISION" MEANS A COUNTY OR AN INCORPORATED CITY OR**  
37 **TOWN IN THIS STATE.**