

### **IC 6-8.1-9.5**

#### Chapter 9.5. Set Off of Refunds

### **IC 6-8.1-9.5-1**

#### **Definitions**

Sec. 1. For purposes of this chapter:

"Claimant agency" means any state department, institution, commission, committee, board, division, bureau, authority, officer, official, or clerk of a circuit court.

"Debtor" means any person or legal entity that is delinquent in paying a debt to a claimant agency that has not been adjudicated, satisfied by court order, set aside by court order, or discharged in bankruptcy.

"Debt" means any liquidated amount owed and due to a Title IV-D agency of another state, or to any claimant agency which has accrued through contract, subrogation, assignment for purposes of collection, tort, operation of law, or any other legal theory, regardless of whether there is an outstanding judgment for that sum.

*As added by Acts 1981, P.L.97, SEC.1. Amended by P.L.53-1985, SEC.3; P.L.277-2003, SEC.1.*

### **IC 6-8.1-9.5-2**

#### **Debt owed to claimant agency; agency's entitlement to debtor's refund**

Sec. 2. If a debtor owes a claimant agency a certified delinquent debt that agency is entitled to have the department set off the tax refund against the delinquent debt.

*As added by Acts 1981, P.L.97, SEC.1.*

### **IC 6-8.1-9.5-3**

#### **Application by agency**

Sec. 3. (a) To obtain a set off by the department, a claimant agency must file an application for the set off with the department before November 30 of the year preceding the calendar year in which a tax refund is payable by the department. The department shall prescribe the form of and the contents of the application.

(b) An application filed pursuant to this section is effective only for the purpose of set off of tax refunds that are payable in the calendar year that succeeds the calendar year in which an application is filed.

*As added by Acts 1981, P.L.97, SEC.1.*

### **IC 6-8.1-9.5-4**

#### **Determination of entitlement to refund; notification of claimant agency**

Sec. 4. After the department receives an application for a set off pursuant to section 3 of this chapter, the department shall determine whether the debtor is entitled to a tax refund. If the department determines the debtor is entitled to a tax refund, it shall notify the claimant agency of this fact.

*As added by Acts 1981, P.L.97, SEC.1.*

#### **IC 6-8.1-9.5-5**

##### **Notice by claimant agency of intent to have refund set off**

Sec. 5. After a claimant agency receives notice that a debtor is entitled to a tax refund from the department, the claimant agency must within fifteen (15) days of the receipt of the notice of a tax refund send written notice to the debtor and the department of its intent to have the tax refund set off. This notice must clearly set forth the basis for the claim to the debt and set off.

*As added by Acts 1981, P.L.97, SEC.1.*

#### **IC 6-8.1-9.5-6**

##### **Contest of agency's claim; notice**

Sec. 6. A debtor who receives written notice pursuant to section 5 of this chapter is entitled to contest the claimant agency's right to the debt and set off at a hearing only if the debtor within thirty (30) days of his receipt of notice mails to the claimant agency written notice that he intends to contest the claimant agency's right to the debt.

*As added by Acts 1981, P.L.97, SEC.1.*

#### **IC 6-8.1-9.5-7**

##### **Hearing on contested claim**

Sec. 7. If a claimant agency receives written notice that a debtor intends to contest its claim to a debt and set off, the claimant agency shall hold a hearing under IC 4-21.5-3.

*As added by Acts 1981, P.L.97, SEC.1. Amended by P.L.7-1987, SEC.7.*

#### **IC 6-8.1-9.5-8**

##### **Certification of debt; payment to agency**

Sec. 8. After a final determination of the validity of a debt due a claimant agency pursuant to sections 6 and 7 of this chapter, the claimant agency shall certify to the department the amount owed by the debtor to the claimant agency that is subject to set off. Upon receipt of certification of a debt the department shall set off the appropriate amount and pay it to the appropriate claimant agency.

*As added by Acts 1981, P.L.97, SEC.1.*

#### **IC 6-8.1-9.5-9**

##### **Notice to debtor of action taken; accounting**

Sec. 9. If the department sets off a debtor's tax refund pursuant to this chapter, it shall serve the debtor written notice of the action and an accounting of the action taken on any refund.

*As added by Acts 1981, P.L.97, SEC.1.*

#### **IC 6-8.1-9.5-10**

##### **Collection fee**

Sec. 10. The department of revenue may charge the claimant

agency a fee of fifteen percent (15%) of any funds it sets off under this chapter as a collection fee for its services. The department must bill the claimant agency in order to collect this fee. However, the department may not assess a fee to a state agency or custodial parent for seeking a setoff to a state or federal income tax refund for past due child support.

*As added by Acts 1981, P.L.97, SEC.1. Amended by P.L.53-1985, SEC.4; P.L.103-2007, SEC.4.*

#### **IC 6-8.1-9.5-11**

##### **Combined returns**

Sec. 11. If set off is sought pursuant to the provisions of this chapter against the combined refund of taxpayers who have previously filed a combined return, the entire refund is subject to set off unless there is a timely defense raised by a co-refundee who is not a debtor as defined in this chapter. If a timely defense is raised that the refund is based on a combined application of a debtor and a nondebtor, then set off shall only be effected against the debtor's share of the refund.

*As added by Acts 1981, P.L.97, SEC.1.*

#### **IC 6-8.1-9.5-12**

##### **Multiple claims; priority**

Sec. 12. Priority in multiple claims to refunds allowed to be set off under this chapter shall be in the order in time which a claimant agency has filed a written notice with the department of its intention to effect collection through set off under this chapter.

*As added by Acts 1981, P.L.97, SEC.1.*

#### **IC 6-8.1-9.5-13**

##### **Disclosure of information and records; taxpayers; child support obligations**

Sec. 13. (a) Notwithstanding IC 6-8.1-7 or any other provision of law prohibiting disclosure of a taxpayer's records or information, all information exchanged among the department, the claimant agency, and the debtor necessary to accomplish the purpose of this chapter is lawful.

(b) Whenever the child support bureau of the department of child services seeks to enforce a child support obligation through a setoff against a debtor's tax refund, the department shall make the following information available to that agency and to any other state's Title IV-D agency that is enforcing the child support order against the debtor:

(1) The debtor's Social Security account number (or numbers, if the debtor has more than one (1) number).

(2) The debtor's home address.

*As added by Acts 1981, P.L.97, SEC.1. Amended by P.L.53-1985, SEC.5; P.L.2-1992, SEC.73; P.L.145-2006, SEC.20.*