

REFERENCE TITLE: tax credit; earned income.

State of Arizona
House of Representatives
Fifty-fifth Legislature
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2022

HB 2369

Introduced by
Representatives Hernandez D: Blackwater-Nygren, Bolding, Jermaine,
Longdon, Pawlik, Tsosie

AN ACT

AMENDING SECTIONS 42-1122 AND 43-222, ARIZONA REVISED STATUTES; AMENDING
TITLE 43, CHAPTER 10, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING
SECTION 43-1073.02; RELATING TO INDIVIDUAL INCOME TAX CREDITS.

(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, political
5 subdivisions and courts; revolving fund;
6 definitions

7 A. The department shall establish a liability setoff program by
8 which refunds under ~~sections~~ SECTION 42-1118 and ~~43-1072~~ TITLE 43,
9 CHAPTERS 10 AND 11 may be used to satisfy debts that the taxpayer owes to
10 this state, a political subdivision or a court. The program shall comply
11 with the standards and requirements prescribed by this section.

12 B. If a taxpayer owes an agency, political subdivision or court a
13 debt, the agency, political subdivision or court, by November 1 of each
14 year, may notify the department, furnishing at least the state agency,
15 court or program identifier, the taxpayer's first name, last name, middle
16 initial or middle name and suffix and social security number and any other
17 available identification that the agency, political subdivision or court
18 deems appropriate of the debtor as shown on the records of the agency,
19 political subdivision or court, and the amount of the debt.

20 C. The department shall match the information submitted by the
21 agency, political subdivision or court by at least two items of
22 identification of the taxpayer with taxpayers who qualify for refunds
23 under section 42-1118 and shall:

24 1. Notify the agency, political subdivision or court of a potential
25 match, the taxpayer's home address and any additional taxpayer
26 identification numbers used by the taxpayer. Even if the taxpayer is not
27 entitled to a refund, the department of revenue shall provide to:

28 (a) The court, the clerk of the court and the department of
29 economic security, for child support and spousal maintenance purposes
30 only, the home address of a taxpayer whose debt for overdue support is
31 referred for setoff and any additional taxpayer identification numbers
32 used by the taxpayer.

33 (b) The court the home address and any additional taxpayer
34 identification numbers used by the taxpayer whose debt for a court
35 obligation is referred for setoff and who is identified by the court as a
36 probationer on absconder status.

37 2. Request final agency, political subdivision or court
38 confirmation in writing or electronically as determined by the department
39 within ten days after the match and of the continuation of the debt. If
40 the agency, political subdivision or court fails to provide confirmation
41 within forty-five days after the request, the department shall release the
42 refund to the taxpayer.

43 D. An agency, political subdivision or court may submit updated
44 information, additions, deletions and other changes on a quarterly or more

1 frequent basis,~~—~~ at the convenience of the agency, political subdivision
2 or court.

3 E. On confirmation pursuant to subsection C, paragraph 2 of this
4 section, the agency or political subdivision shall notify the
5 taxpayer,~~—~~ by mail to the most recent physical address or electronically
6 to the most recent ~~e-mail~~ EMAIL address provided by the taxpayer to the
7 department:

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

9 2. Of the taxpayer's right to appeal to the appropriate court or to
10 request a review by the agency or political subdivision pursuant to agency
11 or political subdivision rule, within thirty days after the ~~physical or~~
12 ~~electronic mailing of the~~ notice IS MAILED OR EMAILED.

13 F. In addition, the taxpayer shall receive notice that if the
14 refund is intercepted in error through no fault of the taxpayer, the
15 taxpayer is entitled to the full refund plus interest and penalties from
16 the agency, political subdivision or court as provided by subsection 0 of
17 this section.

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

25 H. If, within thirty days after the ~~physical or electronic mailing~~
26 ~~of the~~ notice IS MAILED OR EMAILED, the taxpayer requests a review by the
27 agency or political subdivision or provides the agency or political
28 subdivision with proof that an appeal has been taken to the appropriate
29 court, the agency or political subdivision shall immediately notify the
30 department and the setoff procedure shall be stayed pending resolution of
31 the review or appeal.

32 I. If the department does not receive notice of a timely appeal, it
33 shall draw and deliver a warrant in the amount of the available refund up
34 to the amount of the debt in favor of the agency or political subdivision
35 and notify the taxpayer of the action by physical mail or ~~e-mail~~ EMAIL.

36 J. Subsections E, G, H and I of this section do not apply to a debt
37 imposed by a court except that the taxpayer shall receive notice of the
38 intent to set off the debt against the refund due and the right to appeal
39 to the court that imposed the debt within thirty days after the ~~physical~~
40 ~~or electronic mailing of the~~ notice IS MAILED OR EMAILED. The basis for
41 the request for review shall not include the validity of the claim and
42 shall state with specificity why the taxpayer claims the obligation does
43 not exist or why the obligation is incorrect.

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

6 L. A revolving fund is established to recover and pay the cost of
7 operating the setoff program under this section. Monies in the fund may
8 also be used for the general operating expenses of the department. The
9 department may prescribe a fee to be collected from each agency, political
10 subdivision or court using the setoff procedure or from the taxpayer, and
11 the amount shall be deposited in the fund. The amount of the fee shall
12 reasonably reflect the actual cost of the service provided. Monies in the
13 revolving fund are subject to legislative appropriation.

14 M. If agencies, political subdivisions or courts have two or more
15 delinquent accounts for the same taxpayer, the refund may be apportioned
16 among them pursuant to rules prescribed by the department of revenue,
17 except that a setoff to the department of economic security for overdue
18 support has priority over all other setoffs.

19 N. If the refund is insufficient to satisfy the entire debt, the
20 remainder of the debt may be collected by the agency, political
21 subdivision or court as provided by law or resubmitted for setoff against
22 subsequent refunds.

23 O. In the case of a refund that is intercepted in error through no
24 fault of the taxpayer under this section, the taxpayer shall be reimbursed
25 by the agency, political subdivision or court with interest pursuant to
26 section 42-1123. In addition, if all or part of a refund is intercepted
27 in error due to an agency, political subdivision or court incorrectly
28 identifying a taxpayer as a debtor through no fault of the taxpayer, the
29 agency, political subdivision or court shall also pay the taxpayer a
30 penalty as follows:

31 1. If the agency, political subdivision or court reimburses the
32 taxpayer sixteen through one hundred eighty days after the agency,
33 political subdivision or court receives notification that the refund was
34 erroneously intercepted and the refund was received by the agency,
35 political subdivision or court, the penalty is equal to ten percent of the
36 amount of the refund that was intercepted.

37 2. If the agency, political subdivision or court reimburses the
38 taxpayer one hundred eighty-one through three hundred sixty-five days
39 after the agency, political subdivision or court receives notification
40 that the refund was erroneously intercepted and the refund was received by
41 the agency, political subdivision or court, the penalty is equal to
42 fifteen percent of the amount of the refund that was intercepted.

43 3. If the agency, political subdivision or court fails to reimburse
44 the taxpayer within three hundred sixty-five days after the agency,
45 political subdivision or court receives notification that the refund was

1 erroneously intercepted and the refund was received by the agency,
2 political subdivision or court, the penalty is equal to twenty percent of
3 the amount of the refund that was intercepted.

4 P. The time periods set forth in subsection O of this section shall
5 be stayed during a review of an agency decision pursuant to section
6 25-522.

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

10 R. An agency, political subdivision or court shall not enter into
11 an agreement with a debtor for:

12 1. ~~The assignment of~~ ASSIGNING any prospective refund to the
13 agency, political subdivision or court in satisfaction of the debt.

14 2. ~~Payment of~~ PAYING the debt if the debt has been confirmed to the
15 department for setoff under subsection C, paragraph 2 of this section.

16 S. If a tax refund is based on a joint income tax return and the
17 department of economic security receives a written claim from the
18 nonobligated spouse within forty-five days after the notice of a setoff
19 for overdue child support, the setoff only applies to that portion of the
20 refund due to the obligor. The nonobligated spouse shall provide to the
21 department of economic security copies of both the obligated and
22 nonobligated spouse's federal W-2 forms and evidence of estimated tax
23 payments supporting the proportionate share of each spouse's payment of
24 tax. The department of economic security shall retain the amount of the
25 setoff refund due to the obligated spouse determined by a proration based
26 on the tax payments of each spouse by estimated tax payment or tax
27 withheld from wages.

28 T. For the purposes of this section:

29 1. "Agency" means:

30 (a) A department, agency, board, commission or institution of this
31 state.

32 (b) A corporation that is under contract with this state and that
33 provides a service that would otherwise be provided by a department,
34 agency, board, commission or institution of this state, if the contract
35 specifically authorizes participation in the liability setoff program and
36 the attorney general's office has reviewed the contract and approves such
37 authorization. The participation in the liability setoff program shall be
38 limited to debt related to the services the corporation provides for or on
39 behalf of this state.

40 2. "Court" means all courts of record, justice courts and municipal
41 courts.

42 3. "Debt":

43 (a) Means an amount over \$50 that is owed to an agency, political
44 subdivision or court by a taxpayer and may include a judgment in favor of
45 this state or a political subdivision of this state, interest, penalties,

1 charges, costs, fees, fines, civil penalties, surcharges, assessments,
2 administrative charges or any other amount.

3 (b) Includes monies that are owed by a taxpayer for overdue support
4 and that are referred to the department of economic security or the clerk
5 of the court for collection.

6 4. "Overdue support" means a delinquency in ~~court-ordered~~
7 **COURT-ORDERED** payments for spousal maintenance or support of a child or
8 for spousal maintenance to the parent with whom the child is living if
9 child support is also being enforced pursuant to an assignment or
10 application filed under 42 United States Code section 654(6) or other
11 applicable law.

12 5. "Political subdivision" means a county or an incorporated city
13 or town in this state.

14 Sec. 2. Section 43-222, Arizona Revised Statutes, is amended to
15 read:

16 **43-222. Income tax credit review schedule**

17 The joint legislative income tax credit review committee shall
18 review the following income tax credits:

19 1. For years ending in 0 and 5, sections 43-1079.01, 43-1088,
20 43-1089.04, 43-1167.01 and 43-1175.

21 2. For years ending in 1 and 6, sections 43-1072.02, 43-1074.02,
22 43-1075, 43-1076.01, 43-1077, 43-1078, 43-1083, 43-1083.02, 43-1162,
23 43-1164.03 and 43-1183.

24 3. For years ending in 2 and 7, sections 43-1073, **43-1073.02**,
25 43-1085, 43-1086, 43-1089, 43-1089.01, 43-1089.02, 43-1089.03, 43-1164,
26 43-1169 and 43-1181.

27 4. For years ending in 3 and 8, sections 43-1074.01, 43-1081,
28 43-1168, 43-1170 and 43-1178.

29 5. For years ending in 4 and 9, sections 43-1073.01, 43-1076,
30 43-1081.01, 43-1083.03, 43-1084, 43-1164.04, 43-1164.05 and 43-1184.

31 Sec. 3. Title 43, chapter 10, article 5, Arizona Revised Statutes,
32 is amended by adding section 43-1073.02, to read:

33 **43-1073.02. Earned income tax credit**

34 **A. A CREDIT IS ALLOWED AGAINST THE TAXES DUE UNDER THIS TITLE FOR A**
35 **TAXABLE YEAR FOR AN INDIVIDUAL WHO QUALIFIES FOR AN EARNED INCOME TAX**
36 **CREDIT UNDER SECTION 32 OF THE INTERNAL REVENUE CODE. THE AMOUNT OF THE**
37 **CREDIT UNDER THIS SECTION IS FIVE PERCENT OF THE AMOUNT OF THE FEDERAL**
38 **EARNED INCOME TAX CREDIT ALLOWED TO THE TAXPAYER FOR THE TAXABLE YEAR.**

39 **B. THE DEPARTMENT SHALL MAKE SUITABLE CLAIM FORMS AVAILABLE WITH**
40 **THE INDIVIDUAL INCOME TAX RETURNS. A CLAIM FOR CREDIT UNDER THIS SECTION**
41 **IS NOT ALLOWED UNLESS THE CLAIM IS ACTUALLY FILED WITH THE CLAIMANT'S**
42 **INCOME TAX RETURN, EXCEPT THAT CLAIMANTS WHO CERTIFY ON THE CLAIM FORM**
43 **THAT THEY HAVE NO INCOME TAX LIABILITY FOR THE TAXABLE YEAR AND WHO DO NOT**
44 **MEET THE FILING REQUIREMENTS OF SECTION 43-301 ARE NOT REQUIRED TO FILE**
45 **THE INCOME TAX RETURN.**

1 C. ONLY ONE CLAIMANT PER HOUSEHOLD PER TAXABLE YEAR IS ENTITLED TO
2 A CREDIT UNDER THIS SECTION.

3 D. IF THE ALLOWABLE AMOUNT UNDER SUBSECTION A OF THIS SECTION
4 EXCEEDS THE AMOUNT OF TAX DUE UNDER THIS TITLE, AFTER APPLYING ALL OTHER
5 CREDITS TO WHICH THE CLAIMANT MAY BE ENTITLED AND AFTER ANY SETOFF UNDER
6 SECTION 42-1122, THE EXCESS SHALL BE PAID IN THE SAME MANNER AS A REFUND
7 UNDER SECTION 42-1118.

8 Sec. 4. Purpose

9 Pursuant to section 43-223, Arizona Revised Statutes, the
10 legislature enacts section 43-1073.02, Arizona Revised Statutes, as added
11 by this act, to provide an economic benefit to low-income persons and
12 families in this state.

13 Sec. 5. Retroactivity

14 Section 43-1073.02, Arizona Revised Statutes, as added by this act,
15 applies retroactively to taxable years beginning from and after December
16 31, 2021.