

Introduced by

Finance and Taxation Committee

(At the request of the Supreme Court)

1 A BILL for an Act to amend and reenact subsection 1 of section 57-38.3-02 and sections
2 57-38.3-05 and 57-38.3-06 of the North Dakota Century Code, relating to definitions and
3 procedures for purposes of income tax setoffs.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Subsection 1 of section 57-38.3-02 of the North Dakota
6 Century Code is amended and reenacted as follows:

7 1. "Claimant agency" means the department of human services, job service North
8 Dakota, workforce safety and insurance, the North Dakota guaranteed student loan
9 program, the industrial commission acting as the state housing finance agency
10 under chapter 54-17, ~~or~~ a housing authority created under section 23-11-02, or the
11 state court administrator on behalf of the state courts for purposes of court-ordered
12 finances, fees, or costs due the state. On or before September first of each year, the
13 state housing finance agency shall conduct an election by mail among housing
14 authorities of the state and certify to the tax commissioner which housing authority
15 received the greatest number of votes and is capable of compliance with the duties
16 of a claimant agency under section 57-38.3-05. During the ensuing calendar year,
17 the housing authority certified as selected under this subsection shall act as the
18 claimant agency for all housing authorities for the purposes of submitting debtor
19 information to the tax commissioner for fund transfers and for providing notice to
20 the debtor as required by section 57-38.3-05.

21 **SECTION 2. AMENDMENT.** Section 57-38.3-05 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **57-38.3-05. Procedure - Notification of taxpayer.**

- 1 1. Within a time specified by the commissioner, a claimant agency seeking to collect
2 a debt through setoff shall supply the information necessary, in a form and in the
3 manner prescribed by the commissioner, to identify each debtor whose refund is
4 sought to be set off and certify the amount of the debt or debts owed by each
5 debtor.
- 6 2. If a debtor identified by a claimant agency is determined by the commissioner to be
7 entitled to a refund of at least twenty-five dollars, the commissioner shall approve
8 the transfer of an amount equal to the refund owed, not to exceed the amount of
9 the claimed debt certified, to the claimant agency. When the refund owed exceeds
10 the claimed debt, the commissioner shall send the excess amount to the debtor
11 within a reasonable time after such excess is determined.
- 12 3. At the time of the approval of the transfer of funds to a claimant agency pursuant to
13 subsection 2, the commissioner shall notify the claimant agency and the taxpayer
14 or taxpayers whose refund is sought to be set off of the amount approved for
15 setoff.
- 16 4. Upon receipt of notice from the commissioner pursuant to subsection 3, the
17 claimant agency shall provide the taxpayer with written notice setting forth:
 - 18 a. The name of the debtor.
 - 19 b. The manner in which the debt arose.
 - 20 c. The amount of the claimed debt.
 - 21 d. The intention to set off the taxpayer's refund against the debt.
 - 22 e. The amount of the refund in excess of the claimed debt.
 - 23 f. The taxpayer's opportunity to give written notice to contest the setoff within
24 thirty days of the date of mailing of the notice.
 - 25 g. The name and mailing address to which the application for a hearing must be
26 sent.
 - 27 h. The fact that failure to apply for such a hearing, in writing within the thirty-day
28 period, will be deemed a waiver of the opportunity to contest the setoff.
- 29 5. In the case of a joint return, a notice provided pursuant to subsection 4 must also
30 set forth:

- 1 a. The name of the taxpayer named in the return, if any, against whom no debt
2 is claimed.
- 3 b. The fact that a debt is not claimed against such taxpayer.
- 4 c. The fact that such taxpayer may be entitled to receive a refund if it is due the
5 taxpayer regardless of the debt asserted against the taxpayer's spouse.
- 6 d. That in order to obtain a refund due to the taxpayer, such taxpayer must
7 apply, in writing, for a hearing with the claimant agency named in the notice
8 within thirty days of the date of the mailing of the notice.
- 9 e. The fact that failure to apply for such a hearing within thirty days of the mailing
10 of such notice will be deemed a waiver of the opportunity to contest the setoff.
- 11 6. ~~Upon~~ Subdivisions f, g, and h of subsection 4 do not apply to debts submitted by
12 the state court administrator for collection through setoff.
- 13 7. Except as provided in this subsection, upon receipt of funds transferred pursuant to
14 subsection 2, the claimant agency shall deposit and hold such funds in an escrow
15 account until a final determination of the validity of the debt. The state court
16 administrator shall submit the transferred funds upon receipt to the state treasurer
17 for deposit in the manner provided by law unless an application for a hearing under
18 subsection 5 is received.

19 **SECTION 3. AMENDMENT.** Section 57-38.3-06 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **57-38.3-06. Hearing procedure.**

- 22 1. If the claimant agency receives written application contesting the setoff or the claim
23 upon which the setoff is based, it shall grant a hearing to the taxpayer to determine
24 whether the setoff is proper or the claim is valid. A hearing to contest a setoff
25 sought by the state court administrator is governed by supreme court rule. If the
26 sum asserted as due and owing is not correct, an adjustment to the claimed sum
27 may be made.
- 28 2. No issues may be reconsidered at the hearing which have been previously litigated
29 in a court or in any administrative proceeding.
- 30 3. Appeals from actions taken at the hearing allowed under this section must be in
31 accordance with the provisions of chapter 28-32. An appeal from a hearing

- 1 requested under subsection 5 of section 58-38.3-05 to contest a setoff sought by
- 2 the state court administrator is governed by supreme court rule.