

**Fifty-ninth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2005**

SENATE BILL NO. 2103
(Finance and Taxation Committee)
(At the request of the Supreme Court)

AN ACT to amend and reenact subsection 1 of section 57-38.3-02 and sections 57-38.3-05 and 57-38.3-06 of the North Dakota Century Code, relating to definitions and procedures for purposes of income tax setoffs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

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

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

1. Within a time specified by the commissioner, a claimant agency seeking to collect a debt through setoff shall supply the information necessary, in a form and in the manner prescribed by the commissioner, to identify each debtor whose refund is sought to be set off and certify the amount of the debt or debts owed by each debtor.
2. If a debtor identified by a claimant agency is determined by the commissioner to be entitled to a refund of at least twenty-five dollars, the commissioner shall approve the transfer of an amount equal to the refund owed, not to exceed the amount of the claimed debt certified, to the claimant agency. When the refund owed exceeds the claimed debt, the commissioner shall send the excess amount to the debtor within a reasonable time after such excess is determined.
3. At the time of the approval of the transfer of funds to a claimant agency pursuant to subsection 2, the commissioner shall notify the claimant agency and the taxpayer or taxpayers whose refund is sought to be set off of the amount approved for setoff.
4. Upon receipt of notice from the commissioner pursuant to subsection 3, the claimant agency shall provide the taxpayer with written notice setting forth:
 - a. The name of the debtor.

- b. The manner in which the debt arose.
 - c. The amount of the claimed debt.
 - d. The intention to set off the taxpayer's refund against the debt.
 - e. The amount of the refund in excess of the claimed debt.
 - f. The taxpayer's opportunity to give written notice to contest the setoff within thirty days of the date of mailing of the notice.
 - g. The name and mailing address to which the application for a hearing must be sent.
 - h. The fact that failure to apply for such a hearing, in writing within the thirty-day period, will be deemed a waiver of the opportunity to contest the setoff.
5. In the case of a joint return, a notice provided pursuant to subsection 4 must also set forth:
- a. The name of the taxpayer named in the return, if any, against whom no debt is claimed.
 - b. The fact that a debt is not claimed against such taxpayer.
 - c. The fact that such taxpayer may be entitled to receive a refund if it is due the taxpayer regardless of the debt asserted against the taxpayer's spouse.
 - d. That in order to obtain a refund due to the taxpayer, such taxpayer must apply, in writing, for a hearing with the claimant agency named in the notice within thirty days of the date of the mailing of the notice.
 - e. The fact that failure to apply for such a hearing within thirty days of the mailing of such notice will be deemed a waiver of the opportunity to contest the setoff.
6. Upon Subdivisions f, g, and h of subsection 4 do not apply to debts submitted by the state court administrator for collection through setoff.
7. Except as provided in this subsection, upon receipt of funds transferred pursuant to subsection 2, the claimant agency shall deposit and hold such funds in an escrow account until a final determination of the validity of the debt. The state court administrator shall submit the transferred funds upon receipt to the state treasurer for deposit in the manner provided by law unless an application for a hearing under subsection 5 is received.

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

57-38.3-06. Hearing procedure.

1. If the claimant agency receives written application contesting the setoff or the claim upon which the setoff is based, it shall grant a hearing to the taxpayer to determine whether the setoff is proper or the claim is valid. A hearing to contest a setoff sought by the state court administrator is governed by supreme court rule. If the sum asserted as due and owing is not correct, an adjustment to the claimed sum may be made.
2. No issues may be reconsidered at the hearing which have been previously litigated in a court or in any administrative proceeding.
3. Appeals from actions taken at the hearing allowed under this section must be in accordance with the provisions of chapter 28-32. An appeal from a hearing requested under subsection 5 of section 58-38.3-05 to contest a setoff sought by the state court administrator is governed by supreme court rule.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-ninth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2103.

Senate Vote: Yeas 47 Nays 0 Absent 0

House Vote: Yeas 90 Nays 2 Absent 2

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2005.

Approved at _____ M. on _____, 2005.

Governor

Filed in this office this _____ day of _____, 2005,

at _____ o'clock _____ M.

Secretary of State