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REFERENCE TITLE: tax credit; earned income

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Senate
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2021

SB 1040

Introduced by
Senator Bowie

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 or
2 court.

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

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

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

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

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

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

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

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

43 K. If the setoff accounts for only a portion of the refund due, the
44 remainder of the refund shall be sent to the taxpayer. A court shall not
45 use this section to satisfy a judgment or payment of a fine or civil

1 penalty until the judgment has become final or until the time to appeal
2 the imposition of a fine or civil penalty has expired.

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

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

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

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

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

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

40 3. If the agency, political subdivision or court fails to reimburse
41 the taxpayer within three hundred sixty-five days after the agency,
42 political subdivision or court receives notification that the refund was
43 erroneously intercepted and the refund was received by the agency,
44 political subdivision or court, the penalty is equal to twenty percent of
45 the amount of the refund that was intercepted.

1 P. The time periods set forth in subsection 0 of this section shall
2 be stayed during a review of an agency decision pursuant to section
3 25-522.

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

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

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

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

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

25 T. For the purposes of this section:

26 1. "Agency" means:

27 (a) A department, agency, board, commission or institution of this
28 state.

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

37 2. "Court" means all courts of record, justice courts and municipal
38 courts.

39 3. "Debt":

40 (a) Means an amount over \$50 that is owed to an agency, political
41 subdivision or court by a taxpayer and may include a judgment in favor of
42 this state or a political subdivision of this state, interest, penalties,
43 charges, costs, fees, fines, civil penalties, surcharges, assessments,
44 administrative charges or any other amount.

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

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

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

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

14 43-222. Income tax credit review schedule

15 The joint legislative income tax credit review committee shall
16 review the following income tax credits:

17 1. For years ending in 0 and 5, sections 43-1079.01, 43-1087,
18 43-1088, 43-1089.04, 43-1167.01 and 43-1175.

19 2. For years ending in 1 and 6, sections 43-1072.02, 43-1073.02,
20 43-1074.02, 43-1083, 43-1083.02, 43-1164.03 and 43-1183.

21 3. For years ending in 2 and 7, sections 43-1073, 43-1085, 43-1086,
22 43-1089, 43-1089.01, 43-1089.02, 43-1089.03, 43-1164 and 43-1169.

23 4. For years ending in 3 and 8, sections 43-1074.01, 43-1081,
24 43-1168, 43-1170 and 43-1178.

25 5. For years ending in 4 and 9, sections 43-1073.01, 43-1076,
26 43-1081.01, 43-1083.03, 43-1084, 43-1164.04, 43-1164.05, and 43-1184.

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

29 43-1073.02. Earned income tax credit

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

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

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

44 D. IF THE ALLOWABLE AMOUNT UNDER SUBSECTION A OF THIS SECTION
45 EXCEEDS THE AMOUNT OF TAX DUE UNDER THIS TITLE, AFTER APPLYING ALL OTHER

1 CREDITS TO WHICH THE CLAIMANT MAY BE ENTITLED AND AFTER ANY SETOFF UNDER
2 SECTION 42-1122, THE EXCESS SHALL BE PAID IN THE SAME MANNER AS A REFUND
3 UNDER SECTION 42-1118.

4 Sec. 4. Purpose

5 Pursuant to section 43-223, Arizona Revised Statutes, the
6 legislature enacts section 43-1073.02, Arizona Revised Statutes, as added
7 by this act, to provide an economic benefit to low-income persons and
8 families in this state.

9 Sec. 5. Retroactivity

10 Section 43-1073.02, Arizona Revised Statutes, as added by this act,
11 applies retroactively to taxable years beginning from and after December
12 31, 2020.