

VIRGINIA ACTS OF ASSEMBLY -- 2009 SESSION

CHAPTER 571

An Act to amend and reenact §§ 58.1-520 and 58.1-530 of the Code of Virginia, relating to Setoff Debt Collection Act.

[S 1292]

Approved March 27, 2009

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-520 and 58.1-530 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-520. Definitions.

As used in this article:

"Claimant agency" means any administrative unit of state, county, city or town government, including department, institution, commission, authority, or the office of Executive Secretary of the Supreme Court, any circuit or district court and the Internal Revenue Service. All state agencies and institutions shall participate in the setoff program.

"Debtor" means any individual having a delinquent debt or account with any claimant agency which obligation has not been satisfied by court order, set aside by court order, or discharged in bankruptcy.

"Delinquent debt" means any liquidated sum due and owing any claimant agency, or any restitution ordered paid to a clerk of the court pursuant to Title 19.2, including any amount of court costs or fines which have accrued through contract, subrogation, tort, operation of law, or any other legal theory regardless of whether there is an outstanding judgment for that sum which is legally collectible and for which a collection effort has been or is being made.

"Mailing date of notice" means the date of notice appearing thereon.

"Refund" means any individual's (i) Virginia state or local income tax refund payable pursuant to §§ 58.1-309 and 58.1-546 or (ii) federal income tax refund payable pursuant to § 6402 of the Internal Revenue Code. This term also includes any refund belonging to a debtor resulting from the filing of a joint income tax return or a refund belonging to a debtor resulting from the filing of a return where husband and wife have elected to file a combined return and separately state their Virginia taxable incomes under the provisions of § 58.1-324 B 2.

§ 58.1-530. Priorities in claims to be setoff.

Priority in multiple claims to refunds allowed to be setoff under the provisions of this article 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 setoff under this article. However, claims filed by any court or administrative unit of state government shall have priority over claims filed by any county, city or town; and claims filed by any court, administrative unit of state government, county, city or town shall have priority over claims filed by the Internal Revenue Service.

Notwithstanding the priority set forth above according to time of filing, the Department has priority over all other claimant agencies for collection by setoff whenever it is a competing agency for a refund determined by the following classifications and in priority order as follows:

1. Claims of the Department;
2. Claims filed by the Department of Social Services, Division of Child Support Enforcement;
3. Claims filed by any court or other administrative unit of state government;
4. Claims filed by any county, city, or town; and
5. Claims filed by the Internal Revenue Service.

Priority for claims within the same classification shall be determined by the order in time in which the claimant agency filed a written notice with the Department of its intention to effect collection through setoff under this article. Claims filed by counties, cities and towns for an offset of the federal income tax refund shall be limited to claims for delinquent local taxes.

2. That the provisions of this act shall become effective on the effective date of federal legislation enacted by the United States Congress that allows local governments, with the assistance of their state government, to collect delinquent local tax debts using offsets from federal income tax refunds.