

VIRGINIA ACTS OF ASSEMBLY -- 1996 SESSION

CHAPTER 363

An Act to amend and reenact §§ 58.1-520, 58.1-524 through 58.1-528 and 58.1-530 of the Code of Virginia, relating to the Setoff Debt Collection Act.

[S 168]

Approved March 31, 1996

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-520, 58.1-524 through 58.1-528 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 ~~and~~, 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 Virginia state or local income tax refund payable pursuant to §§ 58.1-309 and 58.1-546. 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.

§ 58.1-524. Notification of Department by claimant agency; action of Department.

A. A claimant agency seeking to attempt collection of a delinquent debt through setoff shall notify ~~in writing~~ the Department and supply information necessary to identify the debtor whose refund is sought to be setoff. Notification to the Department and the furnishing of identifying information must occur on or before a date specified by the Department ~~in the year preceeding the calendar year during which the refund would be paid~~. Additionally, subject to the notification deadline specified above, the notification shall be effective only to initiate setoff for claims against refunds that would be made in the calendar year subsequent to the year in which notification is made to the Department. *The claimant agency shall verify that the delinquent debt is valid before notifying the Department requesting setoff, and shall promptly notify the Department when subsequent payments or other events render all or a portion of the debt invalid.*

B. The Department, upon receipt of notification, shall determine whether the debtor to the claimant agency is entitled to a refund from the Department. Upon determination by the Department that a debtor specified by *the* claimant agency qualifies for such a refund, the Department shall notify ~~in writing~~ the claimant agency that a refund is pending, specify its sum, and indicate the debtor's address as listed on the tax return.

C. The Department, upon certification as hereinafter provided in this article, shall set off the certified debt against the refund to which the debtor would otherwise be entitled.

§ 58.1-525. Notification of intention to set off and right to hearing.

A. The claimant agency, upon receipt of notification from the Department that a debtor is entitled to a refund, within ten days shall mail a written notification to the debtor at his or her last known address and shall send evidence of same in the manner required by rules promulgated by the Tax Commissioner to the Department of its assertion of rights to the refund or any part thereof. The notification shall inform the debtor of the claimant agency's intention to direct the Department to apply the refund or any portion thereof against the debt certified as due and owing. ~~For the Department to be obligated to continue holding refunds until receipt of certification of the debt, if any, pursuant to § 58.1-528, the evidence of the notification to the debtor by the claimant agency of its intention to set off must be received by the Department within fifteen days of the date of the Department's mailing to the respective claimant agency the notification of the debtor's entitlement to a refund.~~

B. The contents of the written notification to the debtor and the Department's ~~copy~~ *notification* of the setoff claim shall clearly set forth the basis for the claim to the refund, the intention to apply the refund

against the debt to the claimant agency, the debtor's opportunity to give written notice of intent to contest the validity of the claim before the claimant agency within thirty days of the date of the mailing of the notice, the mailing address to which the application for a hearing must be sent, and the fact that failure to apply for a hearing in writing within the thirty-day period will be deemed a waiver of the opportunity to contest the claim causing final setoff by default.

C. The written application by the debtor for a hearing shall be effective upon mailing the application postage prepaid and properly addressed to the claimant agency.

§ 58.1-526. Hearing procedure.

A. If a claimant agency *other than the Internal Revenue Service* receives written application of the debtor's intention to contest at hearing the claim upon which the intended setoff is based, it shall grant a hearing according to procedures established by that agency under its operating statutes to determine whether the claim is valid. ~~The Tax Commissioner may designate such sites as may be appropriate at which hearings will be held. Such hearing sites shall be chosen with due regard to the various geographic regions of the Commonwealth where debtors may reside.~~ Additionally, it shall be determined at the hearing whether the claimed sum asserted as due and owing is correct, and if not, an adjustment to the claim shall be made. *A debtor of the Internal Revenue Service shall contest the claim only in accordance with federal law and procedures.*

B. Pending final determination at hearing of the validity of the debt asserted by the claimant agency, no action shall be taken in furtherance of collection through the setoff procedure allowed under this article.

C. No person hearing the debtor's application contesting the claimant agency's claim shall have been involved in the prior circumstances which have culminated in such dispute.

D. No issue may be considered at the hearing which has been previously litigated.

§ 58.1-527. Appeals from hearings.

A. Within ten days after the decision of the claimant agency upon a hearing pursuant to § 58.1-526 has become final, the debtor aggrieved thereby may secure judicial review thereof by commencing an action in the circuit court of the county or of the city, or if the city has no circuit court, then in the circuit court of the county in which such city is geographically located, in which the debtor resides or in which the principal office of the claimant agency is geographically located. In such action against the claimant agency for review of its decision, the claimant agency shall be named a defendant in a petition for judicial review. *This section shall not be construed to confer jurisdiction on the circuit court to review questions of federal income tax law when the claimant agency is the Internal Revenue Service.*

B. Such petition shall also state the grounds upon which review is sought, shall be served upon the head of the claimant agency or upon such person as the claimant agency may designate. With its answer, the claimant agency shall certify and file with the court all documents and papers and a transcript of all testimony taken in the matter, together with its findings of fact and decision therein. In any judicial proceedings under this article, the findings of the claimant agency as to the facts shall be sustained if supported by the evidence. Such actions and the questions so certified shall be heard in a summary manner at the earliest possible date. An appeal may be taken from the decision of such court to the Supreme Court in conformity with the general law governing appeals in equity cases.

C. It shall not be necessary in any proceeding under this section to enter exceptions to the rulings of the claimant agency, and no bond shall be required upon an appeal to any court.

§ 58.1-528. Certification of debt by claimant agency; finalization of setoff.

A. Upon final determination of the debt due and owing the claimant agency or upon the debtor's default for failure to comply with § 58.1-525, the claimant agency shall within twenty days ~~certify the debt to notify the Department and in default thereof, to setoff the refund against the debt.~~ *If the claimant agency fails to notify the Department within twenty days, the Department shall no longer be obligated to hold the refund for setoff.*

B. Upon receipt by the Department of a ~~certified debt~~ *notification of final determination and setoff* from the claimant agency, the Department shall finalize the setoff by transferring the proceeds collected for credit or payment in accordance with the provisions of § 58.1-532 and by refunding any remaining balance to the debtor as if setoff had not occurred.

§ 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.