

House Bill 939

By: Representatives Price of the 48th, Fleming of the 121st, Tankersley of the 160th, Brockway of the 102nd, Willard of the 51st, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 7 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated,
2 relating to setoff debt collection, so as to revise terms; to revise the procedures for the
3 transfer of setoffs by the Administrative Office of the Courts to the court to whom the debt
4 is owed; to correct references; to provide for related matters; to repeal conflicting laws; and
5 for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Article 7 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to
9 setoff debt collection, is amended by revising subsection (a) of Code Section 48-7-162.1,
10 relating to submission of debts through Administrative Office of the Courts, as follows:

11 "(a) Submission of debts through the Administrative Office of the Courts shall be the sole
12 manner through which debts owed to courts may be submitted to the department for
13 collection under this article. The Administrative Office of the Courts shall be authorized
14 to enter into written contracts for the performance of administrative functions and duties
15 under this article by one or more administrative entities consisting of nonprofit Georgia
16 corporations, except for a public utility, in existence on or before January 1, 2012, whose
17 income is exempt from federal income taxation pursuant to Section 115 of the ~~Internet~~
18 Internal Revenue Code of 1986, or ~~third-party~~ third-party vendors approved by the
19 department."

20 **SECTION 2.**

21 Said article is further amended by revising paragraph (1) of subsection (b) and subsection (d)
22 of Code Section 48-7-164, relating to procedure for setoffs and notification of taxpayers,
23 certification of debts, transfer of refunds to claimant agency, notice to taxpayers, transferred
24 funds in escrow account, and costs borne by claimant agency, as follows:

25 "(b)(1) If a debtor identified by a claimant agency or the Administrative Office of the
 26 Courts is determined by the department to be entitled to a refund of at least \$25.00, the
 27 department shall transfer an amount equal to the refund owed, not to exceed the amount
 28 of the claimed debt certified, to the claimant agency or the Administrative Office of the
 29 Courts. The Administrative Office of the Courts may, in its discretion, transfer such
 30 amount to the court to whom the debt is owed, excluding the administrative collection
 31 assistance fee. When the refund owed exceeds the claimed debt and administrative
 32 collection assistance fee, the department shall send the excess amount to the debtor within
 33 a reasonable time after the excess is determined."

34 "(d) Upon receipt of funds transferred from the department pursuant to this Code section,
 35 the claimant agency, ~~or~~ the Administrative Office of the Courts, or the court to whom the
 36 debt is owed if such court is in possession of such funds pursuant to subsection (b) of this
 37 Code section shall deposit and hold the funds in an escrow account until a final
 38 determination of the validity of the debt. Any interest accruing on proceeds in such escrow
 39 account shall not constitute any part of the setoff funds being held in escrow and shall be
 40 retained by the claimant agency, ~~or~~ the Administrative Office of the Courts, or the court
 41 to whom the debt is owed if such court is in possession of such funds pursuant to
 42 subsection (b) of this Code section to cover administrative costs."

43

SECTION 3.

44 Said article is further amended by revising Code Section 48-7-165.1, relating to hearing and
 45 final determination of debt, as follows:

46 "48-7-165.1.

47 (a)(1) ~~Except as otherwise provided in subsection (d) of this Code section, if~~ If the
 48 Administrative Office of the Courts receives written notice from the debtor contesting the
 49 setoff or the sum upon which the setoff is based within 30 days of the debtor being
 50 notified of the debt setoff, the Administrative Office of the Courts shall notify the court
 51 to whom the debt is owed that the sum due and owing shall not be disbursed pursuant to
 52 this article until the court to whom the debt is owed has granted a hearing to the debtor
 53 and obtained a final determination on the debt under this Code section and provided
 54 evidence of such final determination to the Administrative Office of the Courts. Such
 55 sum due and owing shall not be disbursed to the debtor ~~or the court to whom the debt is~~
 56 ~~owed~~ prior to such final determination.

57 (2) The hearing required under this Code section shall be conducted after notice of such
 58 hearing is provided to the debtor by certified mail or personal service. When personal
 59 service is utilized, such personal service shall be made by the officers of the court

60 designated by the judges of that court or any other officers authorized by law to serve
61 process.

62 (b)(1) The officers of the court designated by the judges of that court submitting debts
63 to the Administrative Office of the Courts shall appoint a hearing officer for the purpose
64 of conducting hearings under this Code section. The officers of the court shall adopt
65 appropriate procedures to govern the conducting of hearings by the hearing officer. A
66 written or electronic copy of such procedures shall be provided to a debtor immediately
67 upon the receipt of notice from a debtor under subsection (a) of this Code section.

68 (2) Issues that have been previously litigated shall not be considered at a hearing. The
69 hearing officer shall determine whether the debt is owed to the court and the amount of
70 the debt. Such determination shall be in writing and shall be provided to the debtor and
71 the Administrative Office of the Courts within five days after the date the hearing is
72 conducted.

73 (3) If the debtor or the court disagrees with the determination of the hearing officer,
74 either party may appeal that determination by filing a petition in the superior court not
75 later than ten days following the date of the hearing officer's written determination. The
76 superior court judge shall conduct a hearing and shall render a final determination in
77 writing and shall transmit a copy to the hearing officer, the debtor, the court to whom the
78 debt is owed, and the Administrative Office of the Courts not later than ten days after the
79 date of that hearing.

80 (4) The losing party to such proceeding as provided for in paragraph (3) of this
81 subsection shall pay any filing fees and costs of service, except that the officers of the
82 court designated by the judges of that court shall be authorized to waive such fees and
83 costs. The court submitting the debt to the Administrative Office of the Courts shall be
84 responsible for attorneys' fees of the debtor who is contesting the setoff in cases where
85 the superior court finds in favor of the debtor.

86 (c) If a court submits a debt for collection under this article following final determination
87 of the debt in accordance with this Code section and the Administrative Office of the
88 Courts is notified by the department that no refund proceeds are available or sufficient for
89 setoff of the entire debt, such claim shall remain valid until sufficient refund proceeds are
90 available for setoff as provided in subsection (b) of Code Section 48-7-164 and are not
91 subject to further appeal."

92 **SECTION 4.**

93 Said article is further amended by revising Code Section 48-7-166, relating to final
94 determination of debt due, transfer from escrow account to credit of debtor's account of debt
95 due, notice of setoff, contents, refund of excess, and disbursement of funds, as follows:

96 "48-7-166.

97 (a)(1) Upon final determination of the amount of the debt due and owing by means of
 98 the hearing provided by Code Section 48-7-165 or by the taxpayer's default through
 99 failure to comply with subsection (c) of Code Section 48-7-164, the claimant agency shall
 100 remove the amount of the debt due and owing from the escrow account established
 101 pursuant to Code Section 48-7-164 and shall credit the amount to the debtor's obligation.

102 (2) Upon final determination of the amount of the debt due and owing as provided by
 103 Code Section 48-7-165.1, or by the taxpayer's default through failure to comply with
 104 subsection (c) of Code Section 48-7-164, the Administrative Office of the Courts or the
 105 court to whom the debt is owed if such court is in possession of such funds pursuant to
 106 subsection (b) of Code Section 48-7-164 shall remove the amount of the debt due and
 107 owing from the escrow account established pursuant to Code Section 48-7-164 and shall
 108 credit the amount to the debtor's obligation.

109 (b) Upon transfer of the debt due and owing from the escrow account to the credit of the
 110 debtor's account, the claimant agency or the ~~Administrative Office of the Courts~~ court to
 111 whom the debt is owed shall notify the debtor in writing of the finalization of the setoff.
 112 The department shall prepare a notice for use by the claimant agency or the ~~Administrative~~
 113 ~~Office of the Courts~~ court to whom the debt is owed. Such notice shall include a final
 114 accounting of the refund which was set off, including the amount of the refund to which
 115 the debtor was entitled prior to setoff, the amount of the debt due and owing, the amount
 116 of the refund in excess of the debt which has been returned to the debtor by the department
 117 pursuant to Code Section 48-7-164, and the amount of the funds transferred to the claimant
 118 agency or the Administrative Office of the Courts pursuant to Code Section 48-7-164 in
 119 excess of the debt finally determined to be due and owing at a hearing held pursuant to
 120 Code Section 48-7-165 or 48-7-165.1, if such a hearing was held or the amount of the
 121 funds transferred to the Administrative Office of the Courts pursuant to Code Section
 122 48-7-164 is in excess of the debt finally determined to be due and owing pursuant to Code
 123 Section 48-7-165.1 as determined in the filing of an appeal. At such time, the claimant
 124 agency, ~~or the Administrative Office of the Courts,~~ or the court to whom the debt is owed
 125 if such court is in possession of such funds pursuant to subsection (b) of Code Section
 126 48-7-164 shall refund to the debtor the amount of the claimed debt originally certified and
 127 transferred to it by the department in excess of the amount of debt finally found to be due
 128 and owing.

129 (c) Following finalization of the setoff pursuant to subsection (b) of this Code section, the
 130 Administrative Office of the Courts shall transfer the funds to the court if the court was not
 131 previously transferred the funds pursuant to subsection (b) of Code Section 48-7-164. Any
 132 funds ~~so~~ transferred by the Administrative Office of the Courts to the court shall be

133 disbursed by the court in the same manner as if such funds had been originally collected
134 by such court without having resorted to collection under this article."

135 **SECTION 5.**

136 All laws and parts of laws in conflict with this Act are repealed.