

House Bill 162

By: Representatives Price of the 48th, Willard of the 51st, Kelley of the 16th, Fleming of the 121st, and Beskin of the 54th

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 the procedures for the transfer of setoffs by
3 the Administrative Office of the Courts to the court to whom the debt is owed; to correct
4 references; to provide for related matters; to repeal conflicting laws; and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

6 style="text-align:center">**SECTION 1.**

7 Article 7 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to
8 setoff debt collection, is amended by revising paragraph (1) of subsection (b) and subsection
9 (d) of Code Section 48-7-164, relating to procedure for setoffs and notification of taxpayers,
10 certification of debts, transfer of refunds to claimant agency, notice to taxpayers, transferred
11 funds in escrow account, and costs borne by claimant agency, as follows:

12 "(b)(1) If a debtor identified by a claimant agency or the Administrative Office of the
13 Courts is determined by the department to be entitled to a refund of at least \$25.00, the
14 department shall transfer an amount equal to the refund owed, not to exceed the amount
15 of the claimed debt certified, to the claimant agency or the Administrative Office of the
16 Courts. The Administrative Office of the Courts may, in its discretion, transfer such
17 amount to the court to whom the debt is owed, excluding the administrative collection
18 assistance fee. When the refund owed exceeds the claimed debt and administrative
19 collection assistance fee, the department shall send the excess amount to the debtor within
20 a reasonable time after the excess is determined."

21 "(d) Upon receipt of funds transferred from the department pursuant to this Code section,
22 the claimant agency, ~~or~~ the Administrative Office of the Courts, or the court to whom the
23 debt is owed if such court is in possession of such funds pursuant to subsection (b) of this
24 Code section shall deposit and hold the funds in an escrow account until a final
25 determination of the validity of the debt. Any interest accruing on proceeds in such escrow
26 account shall not constitute any part of the setoff funds being held in escrow and shall be

27 retained by the claimant agency, ~~or the Administrative Office of the Courts, or the court~~
 28 to whom the debt is owed if such court is in possession of such funds pursuant to
 29 subsection (b) of this Code section to cover administrative costs."

30

SECTION 2.

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

33 "48-7-165.1.

34 (a)(1) ~~Except as otherwise provided in subsection (d) of this Code section, if~~ If the
 35 Administrative Office of the Courts receives written notice from the debtor contesting the
 36 setoff or the sum upon which the setoff is based within 30 days of the debtor being
 37 notified of the debt setoff, the Administrative Office of the Courts shall notify the court
 38 to whom the debt is owed that the sum due and owing shall not be disbursed pursuant to
 39 this article until the court to whom the debt is owed has granted a hearing to the debtor
 40 and obtained a final determination on the debt under this Code section and provided
 41 evidence of such final determination to the Administrative Office of the Courts. Such
 42 sum due and owing shall not be disbursed to the debtor ~~or the court to whom the debt is~~
 43 ~~owed~~ prior to such final determination.

44 (2) The hearing required under this Code section shall be conducted after notice of such
 45 hearing is provided to the debtor by certified mail or personal service. When personal
 46 service is utilized, such personal service shall be made by the officers of the court
 47 designated by the judges of that court or any other officers authorized by law to serve
 48 process.

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

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

60 (3) If the debtor or the court disagrees with the determination of the hearing officer,
 61 either party may appeal that determination by filing a petition in the superior court not
 62 later than ten days following the date of the hearing officer's written determination. The

63 superior court judge shall conduct a hearing and shall render a final determination in
 64 writing and shall transmit a copy to the hearing officer, the debtor, the court to whom the
 65 debt is owed, and the Administrative Office of the Courts not later than ten days after the
 66 date of that hearing.

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

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

79

SECTION 3.

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

83 "48-7-166.

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

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

96 (b) Upon transfer of the debt due and owing from the escrow account to the credit of the
 97 debtor's account, the claimant agency or the ~~Administrative Office of the Courts~~ court to
 98 whom the debt is owed shall notify the debtor in writing of the finalization of the setoff.

99 The department shall prepare a notice for use by the claimant agency or the ~~Administrative~~
 100 ~~Office of the Courts~~ court to whom the debt is owed. Such notice shall include a final
 101 accounting of the refund which was set off, including the amount of the refund to which
 102 the debtor was entitled prior to setoff, the amount of the debt due and owing, the amount
 103 of the refund in excess of the debt which has been returned to the debtor by the department
 104 pursuant to Code Section 48-7-164, and the amount of the funds transferred to the claimant
 105 agency or the Administrative Office of the Courts pursuant to Code Section 48-7-164 in
 106 excess of the debt finally determined to be due and owing at a hearing held pursuant to
 107 Code Section 48-7-165 or 48-7-165.1, if such a hearing was held or the amount of the
 108 funds transferred to the Administrative Office of the Courts pursuant to Code Section
 109 48-7-164 is in excess of the debt finally determined to be due and owing pursuant to Code
 110 Section 48-7-165.1 as determined in the filing of an appeal. At such time, the claimant
 111 agency, ~~or the Administrative Office of the Courts,~~ or the court to whom the debt is owed
 112 if such court is in possession of such funds pursuant to subsection (b) of Code Section
 113 48-7-164 shall refund to the debtor the amount of the claimed debt originally certified and
 114 transferred to it by the department in excess of the amount of debt finally found to be due
 115 and owing.

116 (c) Following finalization of the setoff pursuant to subsection (b) of this Code section, the
 117 Administrative Office of the Courts shall transfer the funds to the court if the court was not
 118 previously transferred the funds pursuant to subsection (b) of Code Section 48-7-164. Any
 119 funds ~~so~~ transferred by the Administrative Office of the Courts to the court shall be
 120 disbursed by the court in the same manner as if such funds had been originally collected
 121 by such court without having resorted to collection under this article."

122 **SECTION 4.**

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