

SENATE BILL 3135

By McNally

AN ACT to amend Tennessee Code Annotated, Title 9, Chapter 4; Title 18; Title 36, Chapter 5; Title 41, Chapter 21, Part 9; Title 49, Chapter 4; Title 50, Chapter 7; Title 67, Chapter 1 and Title 71, Chapter 5, relative to tax refunds.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 9-4-604, is amended by designating the existing language as subsection (a) and by adding the following language as a new subsection (b):

(b) The comptroller of the treasury shall undertake a performance audit of the implementation of this section by the department of finance and administration. The comptroller of the treasury shall assess both the manner and extent to which the department of finance and administration has fulfilled the department's mandate to ensure that all debts, dues, and demands owing by a person to the state are liquidated and paid off prior to issuing a warrant upon the treasury in favor of such person. The comptroller shall report the comptroller's findings and recommendations to the finance, ways, and means committees and the government operations committees of the senate and the house of representatives on or before January 10, 2011.

SECTION 2. Tennessee Code Annotated, Section 41-21-903, is amended by deleting subsection (b) in its entirety and by substituting instead the following:

(b) Upon being developed, the form shall be submitted to each person who is an inmate as of the effective date of this act and to any person who thereafter is sentenced to imprisonment under the jurisdiction of the department. The form shall be periodically resubmitted to an inmate by the department for purposes of obtaining current information

regarding assets of the inmate. The department shall establish through rule the frequency with which such form shall be resubmitted.

SECTION 3. Tennessee Code Annotated, Section 41-21-909, is amended by adding the following language as a new subsection (d):

(d) The attorney general and reporter shall provide a report documenting the name of the inmate and the amount a court has ordered to be reimbursed to the state by such inmate pursuant to this part to the commissioner of finance and administration in the manner provided in § 67-1-1808(f).

SECTION 4. Tennessee Code Annotated, Section 67-1-801(b)(1), is amended by deleting the subdivision in its entirety and by substituting instead the following language:

When it is determined by administrative review that a person is entitled to a refund or credit of any tax collected or administered by the commissioner, and such person is not a debtor as defined in § 67-1-1808, interest shall be added to the amount of refund or credit due, beginning forty-five (45) days from the date the commissioner receives proper proof to verify that the refund or credit is due and payable.

SECTION 5. Tennessee Code Annotated, Section 67-1-801(b)(2), is amended by adding the following as a new, appropriately designated subdivision:

( ) Six (6) months from the date of filing a claim for refund in the case of a taxpayer who is a debtor as defined in § 67-1-1808.

SECTION 6. Tennessee Code Annotated, Section 67-1-1707, is amended by adding the following as a new, appropriately designated subsection:

( ) The commissioner shall, without written request, provide tax information to officers or employees of a claimant as defined in § 67-1-1808, if such tax information is necessary to accomplish and effectuate the purposes of § 67-1-1808. No officer or employee who receives tax information under this subsection shall disclose such

information to any person other than the person to whom it relates, except as otherwise may be authorized by law.

SECTION 7. Tennessee Code Annotated, Section 67-1-1802, is amended by adding the following language to the end of subdivision (a)(1):

All taxpayers shall verify under penalty of perjury upon a claim for refund form prescribed by the department that the taxpayer does not owe any debt to the department or any other claimant, as such terms are defined in § 67-1-1808.

SECTION 8. Tennessee Code Annotated, Section 67-1-1802(b)(1), is amended by deleting the subdivision in its entirety and by substituting instead the following language:

(A) Except for a claim filed by a taxpayer who is a debtor as defined in § 67-1-1808, a claim for refund filed pursuant to this section shall be finally determined within six (6) months following receipt of the claim. If the claim for refund is denied, then the commissioner shall promptly notify the taxpayer of the denial and the taxpayer's right to file a suit for refund in the appropriate chancery court of this state within one (1) year from the date that the claim for refund was filed with the commissioner.

(B) A claim for refund filed by a taxpayer who is a debtor as defined in § 67-1-1808 shall be finally determined within one (1) year following receipt of the claim. If any portion of such claim for refund is denied, then the commissioner shall promptly notify the taxpayer of the denial and the taxpayer's right to file a suit for refund in the appropriate chancery court of this state within two (2) years from the date that the claim for refund was filed with the commissioner.

SECTION 9. Tennessee Code Annotated, Section 67-1-1802(b)(2), is amended by deleting the subdivision in its entirety and by substituting instead the following language:

(2) Except for a claim filed by a taxpayer who is a debtor as defined in § 67-1-1808, if a claim is not determined within the six-month period following receipt by the

commissioner of such claim, then the claim shall be deemed to be denied for the purpose of filing suit in chancery court. If a claim filed by a taxpayer who is a debtor as defined in § 67-1-1808 is not determined within the one-year period following receipt by the commissioner of such claim, the claim shall be deemed to be denied for the purpose of filing suit in chancery court.

SECTION 10. Tennessee Code Annotated, Section 67-1-1802(c)(1), is amended by deleting the subdivision in its entirety and by substituting instead the following language:

(A) Except for a suit filed by a taxpayer who is a debtor as defined in § 67-1-1808, a suit filed by a taxpayer challenging the denial or deemed denial of a claim for refund shall be filed in the appropriate chancery court of this state within one (1) year from the date that the claim for refund was filed with the commissioner.

(B) A suit filed by a taxpayer who is a debtor as defined in § 67-1-1808, challenging the denial or deemed denial of a claim for refund, shall be filed in the appropriate chancery court of this state within two (2) years from the date that the claim for refund was filed with the commissioner.

(C) The chancery court shall conduct a de novo trial of the suit; provided that, the court shall have no jurisdiction in cases in which the issue is the existence, continued existence, or amount of a debt set off against a tax refund. The remedies established in § 67-1-1808 are a taxpayer's sole and exclusive remedies to challenge the existence, continued existence, or amount of a debt set off against a tax refund.

SECTION 11. Tennessee Code Annotated, Title 67, Chapter 1, Part 18, is amended by adding the following as a new section:

Section 67-1-1808.

(a) As used in this section, unless the context otherwise requires:

(1) "Claimant" means any state agency, department, board, bureau, commission, or authority to which a taxpayer owes a debt or that acts on behalf of a person to collect such debt. Such term may also include a clerk who serves a court of criminal jurisdiction, if the clerk has determined to participate in the offset provisions of this section;

(2) "Debt" means any money, unpaid account, or sum due and owing any claimant by a taxpayer, or any money, unpaid account, or sum that is due and owing any person and is legally enforceable by the claimant;

(3) "Debtor" means a person owing a debt to a claimant and who files a claim for a tax refund, subject to the further requirements of this section;

(4) "Offset" or "set off" means the application of all or part of a taxpayer's refund of taxes to pay a taxpayer's debt owed to a claimant;

(5) "Person" or "taxpayer" means every individual, firm, partnership, joint venture, association, corporation, limited liability company, cooperative, trust, regulated investment company, receiver, and syndicate.

(b) Whenever a taxpayer has, on the date of payment, paid taxes in error or paid taxes against any statute, rule, regulation or clause of the constitution of the state or of the United States, and is due a refund pursuant to this part, and the taxpayer is a debtor, the commissioner shall offset the taxpayer's refund of taxes by the amount of the debt as provided in this section.

(c) This section shall apply to any claim for refund of state taxes. A tax refund shall not be offset to pay the debt of any person who is not the taxpayer due the refund. Whenever a claim for refund is filed by two (2) or more persons, who were jointly and severally liable for the taxes paid, the entire refund amount shall be subject to offset to pay the debt or debts of one (1) or more of the taxpayers.

(d) The following debts shall be used to offset a refund of taxes:

(1) State tax liabilities due pursuant to this title;

(2) Child support due pursuant to title 36, chapter 5;

(3) Amounts owed to the unemployment compensation fund pursuant to title 50, chapter 7;

(4) Obligations owing to the bureau of TennCare for overpayment of medical assistance benefits pursuant to title 71, chapter 5;

(5) Student loan or other obligation due to the Tennessee student assistance corporation pursuant to title 49, chapter 4;

(6) Fees, costs or restitution collected by a clerk who serves a court of criminal jurisdiction, if reported pursuant to subsection (f);

(7) Costs of care due pursuant to title 41, chapter 21, part 9;

(8) Judgments and liens in favor of a claimant; and

(9) Any other debts owed to a claimant.

(e) In the event that a taxpayer owes debts to several claimants, priority of set off against any refund shall be as follows:

(1) State tax liabilities;

(2) Child support;

(3) Judgments and liens in favor of a claimant in order of the date entered or perfected; and

(4) All other debts owed to any other claimant in the order in which the debt was incurred.

(f)

(1) The department of finance and administration shall establish and maintain a centralized electronic database system of all debts owed to every

state agency, department, board, bureau, commission, authority and clerk who serves a court of criminal jurisdiction, if reported by such clerk. In accordance with procedures developed by the department of finance and administration, a state agency, department, board, bureau, commission or authority shall provide a report to the commissioner of finance and administration or the commissioner's designee documenting the name of each person owing a debt to the claimant, the amount of the debt, and the date on which the debt was incurred. The clerk who serves a court of criminal jurisdiction shall provide a report in accordance with this subsection (f), if the clerk has determined to participate in the offset provisions of this section.

(2) Each such claimant filing a report for a debt owing the claimant shall notify the department of finance and administration within fifteen (15) days of the date on which any debt that has been reported is satisfied.

(g)

(1) Upon receipt of a timely filed claim for refund, the commissioner or the commissioner's designee shall provide notification of such receipt to the department of finance and administration and to the comptroller of the treasury.

(2) Such notification, submitted by paper or by electronic means, shall contain:

(A) The name and address of the taxpayer;

(B) The taxpayer's social security number, federal employment identification number, if available, or other such identification number issued by the federal government; and

(C) Any other information that would assist the department of finance and administration in determining the existence of a debt owed by

the taxpayer identified, and that would assist the comptroller in determining whether the taxpayer may be the owner of unclaimed property held in trust on the owner's behalf.

(3)

(a) Within ten (10) days of receipt of the notification required by subdivision (g)(1), the commissioner of finance and administration or the commissioner's designee shall notify the department of revenue as to the existence of any debt owed by such taxpayer to any claimant. The commissioner of finance and administration shall submit to the department of revenue a list of any claimants to whom the taxpayer owes a debt, the amount of the debt, and the date on which the debt was incurred.

(b) Within ten (10) days of receipt of the notification required by subdivision (g)(1), the comptroller of the treasury shall contact the department of finance and administration and submit a list of names of those persons who may be the owner of unclaimed property. If any person is also on a list of any claimants to whom the person owes a debt, the amount of the debt owing shall be set off against the amount of the unclaimed property otherwise due such person.

(4) Upon receipt of the information as provided in subdivision (g)(3)(a), the commissioner of revenue shall determine if the taxpayer is entitled to a refund. If the taxpayer is entitled to a refund, then the commissioner shall notify each identified claimant of the department's intent to issue a refund and:

(A) The name and address of the taxpayer;

(B) The original tax refund amount;

- (C) The proposed offset amount; and
- (D) The proposed net tax refund amount.

(h)

(1) Following receipt of the notification provided in subdivision (g)(4) and prior to an offset of a tax refund, a claimant shall provide written notice to the debtor, and to the commissioner of revenue, of the claimant's intent to set off all or part of the tax refund to pay the debt. Such notice shall set forth the:

- (A) Original tax refund amount;
- (B) Proposed offset amount;
- (C) Proposed net tax refund amount;
- (D) Basis for a claim to the debt and set off; and
- (E) Taxpayer's right to appeal the proposed offset as provided in

subdivision (h)(2).

(2)

(A)

(i) If any debt has been previously determined to exist and to be due and owing as a result of a final order issued pursuant to title 4, chapter 5, or a judgment entered by any court of record, then a debtor shall be afforded an opportunity for a hearing to determine the continued existence of the debt and whether it remains outstanding. No hearing shall be conducted as provided in this subdivision unless the time limits for appealing any prior final order or judgment have expired as provided by law.

(ii) Any debtor who desires a hearing shall submit to the department of revenue a written request for a hearing within

twenty (20) days of receipt of the notice provided in subdivision (h)(1). If a hearing is requested, then it shall be held by the commissioner of revenue or the commissioner's designee as provided in the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. The commissioner may request that an administrative judge or hearing officer employed in the office of the secretary of state conduct the hearing as provided in the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(B)

(i) If any debt has not been determined to exist, or to be due and owing as a result of a prior final order or judgment, as provided in subdivision (h)(2)(A), then a debtor shall be afforded an opportunity for a hearing, in accordance with this subdivision (h)(2)(B)(ii), to determine the existence of the debt, and if so, whether the claimed debt asserted as due and owing is correct.

(ii) Any debtor who desires a hearing shall submit to the claimant a written request for a hearing within twenty (20) days of receipt of the notice provided in subdivision (h)(1). The claimant shall notify the department of revenue as to whether the taxpayer filed a timely request for hearing upon the expiration of the twenty-day period for filing such request or receipt of a request for a hearing. If a hearing is requested, then it shall be held by the claimant or the claimant's designee as provided in the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. If

the amount due is incorrect, a proper adjustment shall be made.

After entry of a final order following any hearing, the claimant shall send a copy of the final order to the commissioner of revenue.

(3) All final orders issued pursuant to title 4, chapter 5, as provided in subdivision (h)(2)(A) or (B), shall set forth the amount owed by the taxpayer to the claimant that is subject to set off.

(i)

(1) The commissioner of revenue shall set off the appropriate amount of a debt against the tax refund if a taxpayer fails to file a timely request for a hearing, or upon receipt of a final order, or as soon thereafter as practicable. Any portion of a tax refund remaining after offset shall be refunded or credited to a taxpayer, as requested in the claim for refund

(2) The commissioner of finance and administration or the commissioner's designee shall ensure that the appropriate amount of the refund subject to set off is used to satisfy any debts owed by the taxpayer.

(3) The commissioner of revenue shall notify the taxpayer in writing and provide an accounting of the action taken on any refund whenever the commissioner sets off a taxpayer's refund pursuant to this section.

(j) Notwithstanding title 67, chapter 1, part 17, or any other provision of law prohibiting disclosure of a taxpayer's identity or tax information, all information exchanged among the department of revenue, department of finance and administration, and any claimant necessary to accomplish the purpose of this section is lawful.

(k) The department of revenue, department of finance and administration, and any claimant may coordinate with each other using an automated process to effectuate

the provisions of this section including, but not limited to, an electronic matching process to verify that a taxpayer is a debtor.

(l) In addition to the performance audit required pursuant to § 9-4-604(b), the comptroller of the treasury shall undertake a performance audit of the implementation and enforcement of this act by the departments of revenue and finance and administration commencing two (2) years after the effective date of this act. The comptroller of the treasury shall assess the effectiveness of the act including, but not limited to, the extent to which claimants have submitted reports to the commissioner of finance and administration; the efficiency of the administrative procedures established for notice and hearing of appeals; and the amount of revenue recovered relative to the cost of implementation and maintenance. On or before January 15, 2013, the comptroller of the treasury shall report the comptroller's findings and recommendations to the finance, ways, and means committees and the government operations committees of the senate and the house of representatives.

SECTION 12. Any claimant may promulgate rules to effectuate the provisions of this act relating to internal procedures for reporting debts and conducting administrative hearings. The department of revenue in conjunction with the department of finance and administration may promulgate such other rules to carry out the remaining provisions of this act.

SECTION 13. This act shall take effect on becoming a law, the public welfare requiring it, and shall apply to any claim for refund filed with the department of revenue on or after July 1, 2009, that has not been finally determined.