

## **CHAPTER 57-38.3 SETOFF OF INCOME TAX REFUND**

### **57-38.3-01. Legislative intent - Liberal construction.**

It is the intent of the legislative assembly to establish a policy and to provide a system whereby all claimant agencies of the state of North Dakota, in conjunction with the commissioner, shall cooperate in identifying debtors who owe money to the state through its various claimant agencies and who qualify for refunds approved by the commissioner. It is also the intent of this chapter to establish procedures for setting off against any such refund the sum of any debt owed to the state. To this end, this chapter should be liberally construed.

### **57-38.3-02. Definitions.**

As used in this chapter:

1. "Claimant agency" means the department of health and human services, job service North Dakota, workforce safety and insurance, state institutions of higher education, the North Dakota student loan service center, the insurance commissioner, the North Dakota guaranteed student loan program, the industrial commission acting as the state housing finance agency under chapter 54-17, a housing authority created under section 23-11-02, or the state court administrator on behalf of the state courts for purposes of court-ordered fines, fees, or costs due the state. On or before September first of each year, the state housing finance agency shall conduct an election by mail among housing authorities of the state and certify to the tax commissioner which housing authority received the greatest number of votes and is capable of compliance with the duties of a claimant agency under section 57-38.3-05. During the ensuing calendar year, the housing authority certified as selected under this subsection shall act as the claimant agency for all housing authorities for the purposes of submitting debtor information to the tax commissioner for fund transfers and for providing notice to the debtor as required by section 57-38.3-05.
2. "Commissioner" means the North Dakota tax commissioner or the commissioner's designee.
3. "Debt" means any liquidated sum due and owing, or required to be collected by, any claimant agency which has accrued through contract, subrogation, tort, or operation of law, regardless of whether there is an outstanding judgment for that sum.
4. "Debtor" means any individual owing money to or having a delinquent or defaulted account or loan with any claimant agency, which obligation has not been adjudicated satisfied by court order, set aside by court order, or discharged in bankruptcy, or otherwise canceled under the Higher Education Act of 1965 [Pub. L. 89-329; 79 Stat. 1219; 20 U.S.C. 1001 et seq.].
5. "Refund" means the North Dakota income tax refund which the commissioner determines to be due any individual taxpayer.

### **57-38.3-03. Remedy additional.**

The collection remedy authorized by this chapter is in addition to and not in substitution for any other remedy available by law.

### **57-38.3-04. Collection of debts through setoff.**

1. A claimant agency may submit any debts in excess of twenty-five dollars to the commissioner for collection through setoff, together with any information the commissioner may require, under the procedure established by this chapter, except in cases in which the validity of the debt is legitimately in dispute, an alternate means of collection is pending and believed to be adequate, or such collection would result in a loss of federal funds or federal assistance.
2. Upon request of a claimant agency, the commissioner shall set off any refund, as defined herein, against the sum certified by the claimant agency as provided in this chapter.

3. A claim made by any child support unit of the department of health and human services has priority in setting off any refund. Other claims rank by date of certification under section 57-38.3-05 in the office of the commissioner with the claim earlier certified having priority.

**57-38.3-05. Procedure - Notification of taxpayer.**

1. Within a time specified by the commissioner, a claimant agency seeking to collect a debt through setoff shall supply the information necessary, in a form and in the manner prescribed by the commissioner, to identify each debtor whose refund is sought to be set off and certify the amount of the debt or debts owed by each debtor.
2. If a debtor identified by a claimant agency is determined by the commissioner to be entitled to a refund of at least twenty-five dollars, the commissioner shall approve the transfer of an amount equal to the refund owed, not to exceed the amount of the claimed debt certified, to the claimant agency. When the refund owed exceeds the claimed debt, the commissioner shall send the excess amount to the debtor within a reasonable time after such excess is determined.
3. At the time of the approval of the transfer of funds to a claimant agency pursuant to subsection 2, the commissioner shall notify the claimant agency and the taxpayer or taxpayers whose refund is sought to be set off of the amount approved for setoff.
4. Upon receipt of notice from the commissioner pursuant to subsection 3, the claimant agency shall provide the taxpayer with written notice setting forth:
  - a. The name of the debtor.
  - b. The manner in which the debt arose.
  - c. The amount of the claimed debt.
  - d. The intention to set off the taxpayer's refund against the debt.
  - e. The amount of the refund in excess of the claimed debt.
  - f. The taxpayer's opportunity to give written notice to contest the setoff within thirty days of the date of mailing of the notice.
  - g. The name and mailing address to which the application for a hearing must be sent.
  - h. The fact that failure to apply for such a hearing, in writing within the thirty-day period, will be deemed a waiver of the opportunity to contest the setoff.
5. In the case of a joint return, a notice provided pursuant to subsection 4 must also set forth:
  - a. The name of the taxpayer named in the return, if any, against whom no debt is claimed.
  - b. The fact that a debt is not claimed against such taxpayer.
  - c. The fact that such taxpayer may be entitled to receive a refund if it is due the taxpayer regardless of the debt asserted against the taxpayer's spouse.
  - d. That in order to obtain a refund due to the taxpayer, such taxpayer must apply, in writing, for a hearing with the claimant agency named in the notice within thirty days of the date of the mailing of the notice.
  - e. The fact that failure to apply for such a hearing within thirty days of the mailing of such notice will be deemed a waiver of the opportunity to contest the setoff.
6. Subdivisions f, g, and h of subsection 4 do not apply to debts submitted by the state court administrator for collection through setoff.
7. Except as provided in this subsection, upon receipt of funds transferred pursuant to subsection 2, the claimant agency shall deposit and hold such funds in an escrow account until a final determination of the validity of the debt. The state court administrator shall submit the transferred funds upon receipt to the state treasurer for deposit in the manner provided by law unless an application for a hearing under subsection 5 is received.

**57-38.3-06. Hearing procedure.**

1. If the claimant agency receives written application contesting the setoff or the claim upon which the setoff is based, it shall grant a hearing to the taxpayer to determine

whether the setoff is proper or the claim is valid. A hearing to contest a setoff sought by the state court administrator is governed by supreme court rule. If the sum asserted as due and owing is not correct, an adjustment to the claimed sum may be made.

2. No issues may be reconsidered at the hearing which have been previously litigated in a court or in any administrative proceeding.
3. Appeals from actions taken at the hearing allowed under this section must be in accordance with the provisions of chapter 28-32. An appeal from a hearing requested under subsection 5 of section 57-38.3-05 to contest a setoff sought by the state court administrator is governed by supreme court rule.

**57-38.3-07. Finalization.**

Upon final determination of the amount of the debt due and owing by means of the procedures provided by section 57-38.3-06 or by the taxpayer's default through failure to comply with section 57-38.3-05, mandating timely request for review, the claimant agency shall remove the amount of the debt due and owing from the escrow account and shall credit such amount to the debtor's obligation.

**57-38.3-08. Confidentiality exemption - Nondisclosure.**

1. Notwithstanding the provisions of section 57-38-57 or other confidentiality statutes, the commissioner may provide to a claimant agency the information necessary to accomplish and effectuate the intent of this chapter.
2. The information obtained by a claimant agency from the commissioner, in accordance with the provisions of this chapter, retains its confidentiality and may only be used by a claimant agency in the pursuit of its debt collection duties and practices.
3. The commissioner may require a claimant agency to make assurances, satisfactory to the commissioner, that the agency has the ability to comply with subsection 2.

**57-38.3-09. Effect.**

When the setoff authorized by this chapter is exercised, the refund which is set off must be deemed granted and paid effective the date that funds are transferred to the claimant agency.

**57-38.3-10. Priority of claims.**

1. The commissioner may first apply any refund or credit to payment of the taxpayer's delinquent tax and may delay a transfer of funds to a claimant agency until the taxpayer's delinquent returns have been filed.
2. If more than one claimant agency asserts a debt, or if a claimant agency asserts more than one debt against a debtor, and the total amount of the debts asserted exceeds the total amount of the refund available for setoff, the commissioner shall approve the transfer of funds to claimant agencies in the following order:
  - a. Debts for services or benefits otherwise paid for in whole by the state or a political subdivision thereof.
  - b. Debts for services or benefits otherwise paid for in part by the state or political subdivision thereof.
  - c. All other debts.
3. Debts within each priority classification must be given payment priority based upon the order of receipt from claimant agencies.