

1 HB82
2 156093-2
3 By Representative Clouse
4 RFD: County and Municipal Government
5 First Read: 14-JAN-14
6 PFD: 01/06/2014

2
3
4
5
6
7
8 SYNOPSIS: Under existing law, certain state agencies
9 are entitled to submit debts owed to them to the
10 Department of Revenue for collection through
11 setoff.

12 This bill would amend existing law to allow
13 counties and municipalities within this state to
14 set off from income tax returns with respect to the
15 collection of debts and money owed to them as a
16 result of any administrative or judicial
17 proceeding.

18
19 A BILL
20 TO BE ENTITLED
21 AN ACT
22

23 To amend Sections 40-18-100 and 40-18-103, Code of
24 Alabama 1975, relating to setoff debt collection; to allow
25 counties and municipalities within this state to set off from
26 income tax returns with respect to the collection of debts and

1 money owed to them as a result of any administrative or
2 judicial proceeding.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Sections 40-18-100 and 40-18-103, Code of
5 Alabama 1975, are amended to read as follows:

6 "§40-18-100.

7 "For the purposes of this article, the following
8 terms shall have the respective meanings ascribed by this
9 section:

10 "(1) CLAIMANT AGENCY. Only:

11 "a. The Alabama Commission on Higher Education with
12 respect to the collection of debts under:

13 "1. The Alabama Student Grant Program provided for
14 by Chapter 33A of Title 16; and

15 "2. The Alabama Guaranteed Student Loan Program
16 provided for by Chapter 33B of Title 16.

17 "b. The Alabama Department of Human Resources with
18 respect to the collection of debts and money owed under any
19 and all of its public assistance programs and other programs
20 administered by that department, including support programs
21 administered pursuant to the requirements of Title IV-D of the
22 Social Security Act.

23 "c. The Alabama Medicaid Agency with respect to the
24 collection of debts and money owed under any and all of the
25 programs it administers.

26 "d. The Alabama Department of Industrial Relations
27 with respect to the collection or recovery, or both, of debts

1 owed as a result of overpayments of state unemployment
2 compensation benefits.

3 "e. The Unified Judicial System with respect to the
4 collection of fines and court costs owed as a result of any
5 court or judicial proceeding.

6 "f. Counties and municipalities acting through a
7 third-party provider or organization as provided in Section
8 40-18-103, with respect to the collection of any debt owed and
9 finalized by law, ordinance, or resolution. For purposes of
10 this act, counties and municipalities shall include, without
11 limitation, all corporations and other instrumentalities whose
12 governing boards are comprised of a majority of members who
13 are appointed or elected by counties or municipalities.

14 "(2) DEBTOR. Any individual owing money or having a
15 delinquent account with any claimant agency, which obligation
16 has not been adjudicated, satisfied by court order, set aside
17 by court order, or discharged in bankruptcy.

18 "(3) DEBT. Any liquidated sum due and owing any
19 claimant agency which has accrued through contract,
20 subrogation, tort, or operation of law regardless of whether
21 there is an outstanding judgment for that sum, or any
22 liquidated sum of child or spousal support, or both child and
23 spousal support, due and owing any individual eligible for and
24 receiving child support enforcement services through the
25 Alabama Department of Human Resources.

26 "(4) DEPARTMENT. The Department of Revenue of the
27 State of Alabama.

1 "(5) REFUND. The Alabama income tax refund which the
2 department determines to be due any individual taxpayer.

3 "\$40-18-103.

4 "(a) A county or municipality may submit a debt of
5 at least \$25 owed to it for collection under this chapter.
6 Provided, however, that a county or municipality must submit
7 the debt to the department through one of the following:

8 "(1) A third party provider representing more than
9 20 counties or 50 municipalities in Alabama who has agreed to
10 submit debts on behalf of a requesting county or municipality
11 pursuant to a common service contract as provided in Chapter
12 102 of Title 11 and who has been approved by the department to
13 submit debts on behalf of counties and municipalities.

14 "(2) The Association of County Commissions of
15 Alabama or an entity established through the Association of
16 County Commissions of Alabama.

17 "(3) The Alabama League of Municipalities or an
18 entity established through the Alabama League of
19 Municipalities.

20 "The third party provider or organization which
21 submits a debt on behalf of any county or municipality may
22 assess a reasonable fee for submitting the debt. This fee may
23 be assessed against the debtor and collected as the first
24 amount set off against any tax refund. In no event shall any
25 third party provider or organization which submits a debt
26 pursuant to this chapter be liable in any claim, lawsuit, or
27 action for more than the fee assessed for submitting the debt.

1 "~~(a)~~(b) Within a time frame specified by the
2 department, a claimant agency seeking to collect a debt
3 through setoff shall supply the information necessary to
4 identify each debtor whose refund is sought to be set off and
5 certify the amount of debt or debts owed by each such debtor.

6 "~~(b)~~(c) If a debtor identified by a claimant agency
7 is determined by the department to be entitled to a refund of
8 at least \$25 the department shall transfer an amount equal to
9 the refund owed, not to exceed the amount of the claimed debt
10 certified, to the claimant agency. When the income tax refund
11 owed exceeds the claimed debt, the department shall send the
12 excess amount to the debtor within a reasonable time after
13 such excess is determined.

14 "~~(c)~~(d) At the time of the transfer of funds to a
15 claimant agency pursuant to subsection ~~(b)~~(c) of this section,
16 the department shall notify the taxpayer or taxpayers whose
17 refund is sought to be set off that the transfer has been
18 made. Such notice shall clearly set forth the name of the
19 debtor, the manner in which the debt arose, the amount of the
20 claimed debt, the transfer of funds to the claimant agency
21 pursuant to subsection ~~(b)~~(c) of this section and the
22 intention to set off the refund against the debt, the amount
23 of the refund in excess of the claimed debt, the taxpayer's
24 opportunity to give written notice to contest the setoff
25 within 30 days of the date of mailing of the notice, the name
26 and mailing address of the claimant agency to which the
27 application for a hearing must be sent, and the fact that the

1 failure to apply for such a hearing, in writing, within the
2 30-day period will be deemed a waiver of the opportunity to
3 contest the setoff. In the case of a joint return or a joint
4 refund, the notice shall also state the name of the taxpayer
5 named in the return, if any, against whom no debt is claimed,
6 the fact that a debt is not claimed against such taxpayer, the
7 fact that such taxpayer is entitled to receive a refund if it
8 is due him regardless of the debt asserted against his spouse,
9 and that in order to obtain a refund due him such taxpayer
10 must apply, in writing, for a hearing with the claimant agency
11 named in the notice within 30 days of the date of the mailing
12 of the notice. If a taxpayer fails to apply in writing for
13 such a hearing within 30 days of the mailing of such notice,
14 he will have waived his opportunity to contest the setoff.

15 "(e) Notwithstanding subsection (d), a claimant
16 county or municipality as provided for in subsection (a)
17 shall, at the time of the transfer of funds to the claimant
18 county or municipality, notify the taxpayer or taxpayers whose
19 refund is sought to be set off that the transfer has been
20 made. Such notice shall clearly set forth the name of the
21 debtor, the manner in which the debt arose, the amount of the
22 claimed debt, the transfer of funds to the claimant county or
23 municipality pursuant to subsection (c) and the intention to
24 set off the refund against the debt, notice that any refund in
25 excess of the claimed debt will be sent to the taxpayer, the
26 taxpayer's opportunity to give written notice to contest the
27 setoff within 30 days of the date of mailing of the notice,

1 the name and mailing address of the claimant county or
2 municipality to which the application for a hearing must be
3 sent, and the fact that the failure to apply for such a
4 hearing, in writing, within the 30-day period will be deemed a
5 waiver of the opportunity to contest the setoff. In the case
6 of a joint return or a joint refund, the notice shall also
7 state the name of the taxpayer named in the return, if any,
8 against whom no debt is claimed, the fact that a debt is not
9 claimed against such taxpayer, the fact that such taxpayer is
10 entitled to receive a refund if it is due him regardless of
11 the debt asserted against his spouse, and that in order to
12 obtain a refund due him such taxpayer must apply, in writing,
13 for a hearing with the claimant court or municipality named in
14 the notice within 30 days of the date of the mailing of the
15 notice. If a taxpayer fails to apply in writing for such a
16 hearing within 30 days of the mailing of such notice, he will
17 have waived his opportunity to contest the setoff.

18 "~~(d)~~~~(f)~~ Upon receipt of funds transferred from the
19 department pursuant to subsection ~~(b)~~~~(c)~~ of this section, the
20 claimant agency shall deposit and hold such funds in an escrow
21 account until a final determination of the validity of the
22 debt."

23 Section 2. This act shall become effective on the
24 first day of the third month following its passage and
25 approval by the Governor, or its otherwise becoming law.