

FIRST REGULAR SESSION

HOUSE BILL NO. 1154

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES ROBB (Sponsor), SMITH (150), MOORE,
SATER AND VIEBROCK (Co-sponsors).

Read 1st time March 16, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

2668L.01I

AN ACT

To repeal sections 143.783, 143.784, 488.020, and 488.5028, RSMo, and to enact in lieu thereof four new sections relating to debt offset amounts.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 143.783, 143.784, 488.020, and 488.5028, RSMo, are repealed and
2 four new sections enacted in lieu thereof, to be known as sections 143.783, 143.784, 488.020,
3 and 488.5028, to read as follows:

143.783. 1. Any state agency may submit to the department any debt in excess of
2 [twenty-five] **ten** dollars for collection through setoff, under the procedure established by
3 sections 143.782 to 143.788, except in cases where such collection would result in a loss of
4 federal funds or federal assistance.

5 2. Upon request of any state agency, the department shall set off any refund, as defined
6 in section 143.782, against the sum certified by that state agency as provided in sections 143.782
7 to 143.788 provided that the department shall not be required to set off any refund if the cost of
8 the determination of the refund exceeds the amount of the refund.

9 3. The department has priority, pursuant to section 143.781, over every other state
10 agency for collection by setoff under sections 143.782 to 143.788.

11 4. The collection remedy authorized by sections 143.782 to 143.788 is in addition to and
12 not in substitution for any other remedy available by law.

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

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

5 2. If a debtor identified by a state agency is determined by the department to be entitled
6 to a refund of at least [twenty-five] **ten** dollars, the department shall notify the state agency that
7 a refund has been set off on behalf of the agency and shall certify the amount of such setoff,
8 which shall not exceed the amount of the claimed debt certified. When the refund owed exceeds
9 the claimed debt, the department shall send the excess amount to the debtor within a reasonable
10 time after such excess is determined.

11 3. The department shall notify by certified mail the taxpayer whose refund is sought to
12 be set off that such setoff will be made. Such notice shall clearly set forth the name of the
13 debtor, the manner in which the debt arose, the amount of the claimed debt and the intention to
14 set off the refund against the debt, the amount of the refund in excess of the claimed debt, the
15 taxpayer's opportunity to give written application for a hearing to contest the setoff within thirty
16 days of the date of receipt of the notice, the name and mailing address of the state agency to
17 which the application for a hearing must be sent, the fact that the application for hearing must
18 state any defense which the debtor claims to the setoff, and the fact that failure to apply for such
19 a hearing, in writing, within the thirty-day period will be deemed a waiver of the opportunity to
20 contest the setoff and will cause the setoff to be applied toward the debt. If the application for
21 hearing alleges a defense to the nature or amount of the claim upon which the setoff is based
22 which requires an evidentiary hearing, the state agency shall promptly conduct such hearing in
23 accordance with the provisions of chapter 536, RSMo. Failure of the debtor to make application
24 for a hearing shall cause the setoff to be applied toward the debt. If the debt is based on a court
25 or administrative order, the debtor shall be entitled to assert only those defenses which arose
26 subsequent to such court or administrative order, and no issue may be raised at the hearing which
27 has previously been litigated. In the case of a joint or combined return, the notice shall also state
28 the name of the nonobligated taxpayer named in the return, if any, against whom no debt is
29 claimed, the fact that a debt is not claimed against such taxpayer, the fact that such taxpayer is
30 entitled to receive a refund if it is due him regardless of the debt asserted against his spouse. In
31 order to obtain a refund due him such taxpayer must apply, in writing, for an apportionment of
32 the refund with the state agency named in the notice within thirty days of the date of receipt of
33 the notice, unless, in anticipation of the setoff of his spouse's refund, such nonobligated taxpayer
34 provided the department of revenue with a request for apportionment of the anticipated refund
35 which was filed at the same time the original tax return was filed, in which case the department
36 of revenue shall determine the apportionment of the refund and forward the determination of

37 apportionment and the nonobligated taxpayer's portion of the refund to the nonobligated taxpayer
38 within fifteen working days of the transfer of the obligated taxpayer's portion of the refund to the
39 agency requesting such setoff. Unless a request for apportionment of the anticipated refund was
40 provided to the department of revenue as provided in this section, within ninety days after the
41 filing of such taxpayer's application for apportionment of the refund with the state agency named
42 in the notice a determination of apportionment shall be mailed to the nonobligated taxpayer by
43 the appropriate state agency. The apportionment of the refund shall be final upon the expiration
44 of thirty days from the date on which the determination of apportionment is mailed to the
45 nonobligated taxpayer unless, within such thirty-day period, the nonobligated taxpayer applies
46 in writing for a hearing with the state agency named in the determination of apportionment.

47 4. Upon receipt of funds transferred from the department pursuant to subsection 2 of this
48 section, the state agency shall deposit such funds in the state treasury, to be held in an escrow
49 account, which is hereby established, until a final determination of the validity of the debt.
50 Interest earned on those funds shall be credited to the escrow account.

51 5. The provisions of sections 143.781 to 143.841 and any other provisions of law to the
52 contrary notwithstanding, the director of revenue shall have the authority to promulgate rules to
53 enter into reciprocal agreements with any other state which extends a like comity to this state,
54 to set off any refund, as defined in section 143.782, due to any individual taxpayer by this state
55 or any other state which extends a like comity to this state, and who upon final determination is
56 identified as a debtor, as defined in section 143.782, by a state agency of this state or any other
57 state extending a like comity.

488.020. Except as otherwise provided by law, all court costs are payable prior to the
2 time the service is rendered; provided that if the amount of such court cost cannot be readily
3 determined, then the clerk shall collect a deposit based upon the likely amount of such court cost,
4 and the balance of such court cost shall be payable immediately upon ascertainment of the proper
5 amount of said court cost. An official may refuse to perform any service in any action or
6 proceeding, other than a criminal proceeding or when costs are waived as provided by law, until
7 the court costs are paid. Failure to collect the court cost shall not affect the validity of the court
8 cost or service. The supreme court may provide by rule for imposition of interest on any court
9 costs not paid within thirty days of when due. If any court cost is not paid when due, the
10 following actions may be taken:

11 (1) Upon notification by the court or clerk to the party from whom the court cost is due
12 or such party's attorney, and upon the failure to pay the court cost after such notice, the court may
13 dismiss the action or any claim by the defaulting party which is part of the action, without
14 prejudice to the party;

15 (2) The court may refuse to enter any order or judgment in favor of the defaulting party,
16 or if within the time period allowed by law before the order or judgment is final, may withdraw
17 such order or judgment;

18 (3) Upon notification to the party from whom the court cost is due, and upon failure to
19 pay the fee after such notice, the court may inform the office of administration of any
20 delinquencies in excess of [twenty-five] **ten** dollars. Upon receiving such notice, and without
21 further notice by the office of administration to the defaulting party, the office of administration
22 shall deduct the amount of unpaid court costs from any payment by the state to the defaulting
23 party under any provision of law. The office of administration shall transmit the amount set off
24 to the court, and shall send the excess amount to the payee, with a notice that the remainder of
25 the refund was transmitted to the court in satisfaction of all or part of the unpaid court costs. The
26 office of administration and its officials and employees shall not be liable to any person for any
27 action taken in accordance with the requirements of this subdivision. Any proceeding contesting
28 any action taken by a court or the office of administration pursuant to this subdivision shall be
29 brought in the court which certified such unpaid fees to the office of administration, and shall
30 be deemed ancillary to the proceeding for which such unpaid fees were assessed. No appearance,
31 responsive pleading or discovery shall be due from the office of administration in such
32 proceeding except upon order of the court;

33 (4) Upon notification to the party from whom the fee is due, a failure to pay the fee after
34 such notice, and a showing of the party's ability to pay the fee, the court may hold the party in
35 contempt.

488.5028. 1. If a person fails to pay court costs, fines, fees, or other sums ordered by a
2 court, to be paid to the state or political subdivision, a court may report any such delinquencies
3 in excess of [twenty-five] **ten** dollars to the office of state courts administrator and request that
4 the state courts administrator seek a setoff of an income tax refund. The state courts
5 administrator shall set guidelines necessary to effectuate the purpose of the offset program.

6 2. The office of state courts administrator shall provide the department of revenue with
7 the information necessary to identify each debtor whose refund is sought to be setoff and the
8 amount of the debt or debts owed by each such debtor who is entitled to a tax refund in excess
9 of [twenty-five] **ten** dollars.

10 3. The department of revenue shall notify the office of state courts administrator that a
11 refund has been setoff on behalf of a court and shall certify the amount of such setoff, which
12 shall not exceed the amount of the claimed debt certified. When the refund owed exceeds the
13 claimed debt, the department of revenue shall send the excess amount to the debtor within a
14 reasonable time after such excess is determined.

15 4. The office of state courts administrator shall notify the debtor by mail that a setoff has
16 been sought. The notice shall contain the following:

17 (1) The name of the debtor;

18 (2) The manner in which the debt arose;

19 (3) The amount of the claimed debt and the department's intention to setoff the refund
20 against the debt;

21 (4) The amount, if any, of the refund due after setoff of the refund against the debt; and

22 (5) The right of the debtor to apply in writing to the court originally requesting setoff for
23 review of the setoff because the debt was previously satisfied.

24

25 Any debtor applying to the court for review of the setoff shall file a written application within
26 thirty days of the date of mailing of the notice and send a copy of the application to the office of
27 state courts administrator. The application for review of the setoff shall contain the name of the
28 debtor, the case name and number from which the debt arose, and the grounds for review. The
29 court may upon application, or on its own motion, hold a hearing on the application. The hearing
30 shall be ancillary to the original action with the only matters for determination whether the
31 refund setoff was appropriate because the debt was unsatisfied at the time the court reported the
32 delinquency to the office of state courts administrator and that the debt remains unsatisfied. In
33 the case of a joint or combined return, the notice sent by the department shall contain the name
34 of the nonobligated taxpayer named in the return, if any, against whom no debt is claimed. The
35 notice shall state that as to the nonobligated taxpayer that no debt is owed and that the taxpayer
36 is entitled to a refund regardless of the debt owed by such other person or persons named on the
37 joint or combined return. The nonobligated taxpayer may seek a refund as provided in section
38 143.784, RSMo.

39 5. Upon receipt of funds transferred from the department of revenue to the office of state
40 courts administrator pursuant to a refund setoff, the state courts administrator shall deposit such
41 funds in the state treasury to be held in an escrow account, which is hereby established. Interest
42 earned on those funds shall be credited to the escrow account and used to offset administrative
43 expenses. If a debtor files with a court an application for review, the state courts administrator
44 shall hold such sums in question until directed by such court to release the funds. If no
45 application for review is filed, the state courts administrator shall, within forty-five days of
46 receipt of funds from the department, send to the clerk of the court in which the debt arose such
47 sums as are collected by the department of revenue for credit to the debtor's account.

✓