

CHAPTER 39

TAXATION

HOUSE BILL 02-1076

BY REPRESENTATIVE(S) Madden, Garcia, Groff, Marshall, and Williams S. ;
also SENATOR(S) Teck, Fitz-Gerald, Hernandez, Phillips, and Tupa.

AN ACT**CONCERNING CERTAIN PREREQUISITES FOR A TAX REFUND OFFSET.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 39-21-108 (3) (a) (I), Colorado Revised Statutes, is amended to read:

39-21-108. Refunds. (3) (a) (I) (A) Whenever it is established that any taxpayer has, for any period open under the statutes, overpaid a tax covered by articles 22 and 26 to 29 of this title, article 60 of title 34, C.R.S., and article 3 of title 42, or part 4 of article 37.5 of title 11, C.R.S., and that there is an unpaid balance of tax and interest accrued, according to the records of the executive director, owing by such taxpayer for any other period or that there is an amount required to be repaid to the unemployment compensation fund pursuant to section 8-81-101 (4), C.R.S., the amount of which has been determined to be owing as a result of a final agency determination or judicial decision or which has been reduced to judgment by the division of employment and training in the department of labor and employment, or that there is any unpaid child support debt as set forth in section 14-14-104, C.R.S., or child support arrearages that are the subject of enforcement services provided pursuant to section 26-13-106, C.R.S., as certified by the department of human services, or that there are any unpaid obligations owing to the state as set forth in section 26-2-133, C.R.S., for overpayment of public assistance or medical assistance benefits, the amount of which has been determined to be owing as a result of final agency determination or judicial decision or which has been reduced to judgment, as certified by the department of human services, or that there is any unpaid loan or other obligation due to a state-supported institution of higher education as set forth in section 23-5-115, C.R.S., the amount of which has been DETERMINED TO BE OWING AS A RESULT OF A FINAL AGENCY DETERMINATION OR JUDICIAL DECISION OR WHICH HAS BEEN reduced to judgment, ~~owing to such institution by such taxpayer,~~ as

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

certified by the appropriate institution, or that there is any unpaid loan due to the student loan division of the department of higher education as set forth in section 23-3.1-104 (1) (p), C.R.S., the amount of which has been DETERMINED TO BE OWING AS A RESULT OF A FINAL AGENCY DETERMINATION OR JUDICIAL DECISION OR WHICH HAS BEEN reduced to judgment, ~~owing to such division by such taxpayer,~~ as certified by the division, or THERE IS ANY UNPAID LOAN DUE TO THE COLORADO STUDENT OBLIGATION BOND AUTHORITY DIVISION OF THE DEPARTMENT OF HIGHER EDUCATION AS SET FORTH IN SECTION 23-3.1-206, C.R.S., THE AMOUNT OF WHICH HAS BEEN DETERMINED TO BE OWING AS A RESULT OF A FINAL AGENCY DETERMINATION OR JUDICIAL DECISION OR WHICH HAS BEEN REDUCED TO JUDGMENT, or that there is any unpaid debt owing to the state or any agency thereof by such taxpayer, and which is found to be owing as a result of a final agency determination or the amount of which has been reduced to judgment and as certified by the controller, or that the taxpayer is a qualified individual identified pursuant to section 39-22-120 (10) or 39-22-2003 (9), so much of the overpayment of tax plus interest allowable thereon as does not exceed the amount of such unpaid balance or unpaid debt shall be credited first to the unpaid balance of tax and interest accrued and then to the unpaid debt, and any excess of the overpayment shall be refunded. If the taxpayer elects to designate his or her refund as a credit against a subsequent year's tax liability, the amount allowed to be so credited shall be reduced first by the unpaid balance of tax and interest accrued and then by the unpaid debt. If the taxpayer filed a joint return, the executive director shall notify the taxpayer's spouse that the portion of the overpayment that is generated by the spouse's income shall be refunded upon receipt of a request detailing said amount. AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES, "AGENCY" INCLUDES STATE-SUPPORTED INSTITUTIONS OF HIGHER EDUCATION.

(B) WITH RESPECT TO DEBTS FOR ANY UNPAID LOAN OR OTHER OBLIGATION DUE TO A STATE-SUPPORTED INSTITUTION OF HIGHER EDUCATION AS SET FORTH IN SECTION 23-5-115, C.R.S., OR ANY UNPAID LOAN DUE TO THE STUDENT LOAN DIVISION OF THE DEPARTMENT OF HIGHER EDUCATION AS SET FORTH IN SECTION 23-3.1-104 (1) (p), C.R.S., OR ANY UNPAID LOAN DUE TO THE COLORADO STUDENT OBLIGATION BOND AUTHORITY DIVISION OF THE DEPARTMENT OF HIGHER EDUCATION AS SET FORTH IN SECTION 23-3.1-206, C.R.S., A DEBTOR MUST BE AFFORDED HIS OR HER DUE PROCESS RIGHTS PRIOR TO A FINAL AGENCY DETERMINATION.

SECTION 2. 23-3.1-104 (1) (p) (I), Colorado Revised Statutes, is amended to read:

23-3.1-104. Duties and powers of division. (1) The division shall:

(p) (I) At times prescribed by the department of revenue, but not less frequently than annually, certify to the department of revenue information regarding persons who owe a loan repayment to the division, the amount of which has been DETERMINED TO BE OWING AS A RESULT OF A FINAL AGENCY DETERMINATION OR JUDICIAL DECISION PURSUANT TO SECTION 39-21-108 (3), C.R.S., OR WHICH HAS BEEN reduced to judgment.

SECTION 3. 23-5-115 (1) (a), Colorado Revised Statutes, is amended to read:

23-5-115. Loans or outstanding obligations offset. (1) (a) At times prescribed by the department of revenue, but not less frequently than annually, a state

educational institution shall certify to the department of revenue information regarding persons who owe a loan repayment or other outstanding obligation to the institution, the amount of which has been DETERMINED TO BE OWING AS A RESULT OF A FINAL AGENCY DETERMINATION OR JUDICIAL DECISION PURSUANT TO SECTION 39-21-108 (3), C.R.S., OR WHICH HAS BEEN reduced to judgment.

SECTION 4. 24-30-202.4 (3) (a) (II), Colorado Revised Statutes, is amended to read:

24-30-202.4. Collection of debts due state - controller's duties - creation of debt collection fund. (3) (a) (II) Upon verification by the appropriate state agency of the amount of the debt due the state, the controller may certify to the department of revenue any unpaid debt due the state to be offset against a tax refund due the debtor, pursuant to section 39-21-108 (3), C.R.S. Before any unpaid debt is certified to the department of revenue, the controller shall give written notice to the debtor that the debt shall be offset against a tax refund due the debtor and shall notify the debtor that the debtor may, within thirty days of the postmark of the written notice from the controller, request a hearing to dispute the tax refund offset. Such hearing shall be held within thirty calendar days from receipt of the request from the debtor. IF THE AGENCY THAT REFERRED THE DEBT TO THE CONTROLLER CERTIFIES THAT THE DEBT WAS THE SUBJECT OF A FINAL AGENCY DETERMINATION OR JUDICIAL DECISION OR THAT THE DEBT HAS BEEN REDUCED TO JUDGMENT, THE DEBTOR MAY NOT DISPUTE THE VALIDITY OF THE DEBT AT THE HEARING. No money shall be refunded or offset against a tax refund due the debtor if such a hearing is requested until such time as the hearing is completed and a decision is rendered. If at the hearing the dispute is resolved in favor of the debtor, the debtor shall be entitled to a refund of any moneys due plus interest, pursuant to section 39-21-110.5, C.R.S. Provisions for adequate notice and opportunity for hearing shall be made by rules and regulations promulgated by the executive director of the department of personnel. Any debts may be written off, released, or compromised pursuant to paragraph (c) of this subsection (3). AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES, "AGENCY" INCLUDES STATE-SUPPORTED INSTITUTIONS OF HIGHER EDUCATION.

SECTION 5. 23-3.1-206 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

23-3.1-206. General powers and duties of the authority. (1) In addition to any other powers and duties specifically granted to the authority in this part 2, the authority has the following powers:

(u) (I) AT TIMES PRESCRIBED BY THE DEPARTMENT OF REVENUE, BUT NOT LESS FREQUENTLY THAN ANNUALLY, TO CERTIFY TO THE DEPARTMENT OF REVENUE INFORMATION REGARDING PERSONS WHO OWE A LOAN REPAYMENT TO THE DIVISION, THE AMOUNT OF WHICH HAS BEEN DETERMINED TO BE OWING AS A RESULT OF A FINAL AGENCY DETERMINATION OR JUDICIAL DECISION PURSUANT TO 39-21-108 (3), C.R.S., OR WHICH HAS BEEN REDUCED TO JUDGMENT.

(II) SUCH INFORMATION SHALL INCLUDE THE NAME AND SOCIAL SECURITY NUMBER OF THE PERSON OWING THE DEBT, THE AMOUNT OF THE DEBT, AND ANY OTHER IDENTIFYING INFORMATION REQUIRED BY THE DEPARTMENT OF REVENUE.

(III) UPON NOTIFICATION BY THE DEPARTMENT OF REVENUE OF AMOUNTS DEPOSITED WITH THE STATE TREASURER PURSUANT TO SECTION 39-21-108 (3), C.R.S., THE STATE TREASURER SHALL DISBURSE SUCH AMOUNTS TO THE DIVISION.

SECTION 6. Effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Approved: March 26, 2002