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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2009

A N A C T

RELATING TO TAXATION - SETOFF OF REFUND OF PERSONAL INCOME TAX

Introduced By: Representatives San Bento, Malik, E Coderre, and Jacquard

Date Introduced: May 21, 2009

Referred To: House Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 44-30.1-1, 44-30.1-3 and 44-30.1-5 of the General Laws in  
2 Chapter 44-30.1 entitled "Setoff of Refund of Personal Income Tax" are hereby amended to read  
3 as follows:

4 **44-30.1-1. Definitions.** -- (a) "Benefit overpayments and interest owed" means any  
5 amount in excess of five hundred dollars (\$500) determined to be recoverable under the  
6 provisions of chapters 39 -- 44 of title 28.

7 (b) "Cash assistance benefit overpayments" means any amount of cash assistance  
8 benefits which constitutes an overpayment of benefits under the provisions of the Family  
9 Independence Act, chapter 5.1 of title 40, and/or the predecessor family assistance program,  
10 formerly known as the Aid to Families With Dependent Children program, as previously  
11 established by section 40-6-4, which overpayment amount has been established by court order, by  
12 administrative hearing conducted by the department of human services, or by written agreement  
13 between the department of human services and the individual.

14 (c) "Claimant agency" means either:

15 (1) The department of human services, with respect (1) to past-due support which has  
16 been assigned to the department of human services by public assistance and medical assistance  
17 recipients or by the department for children, youth and families, (2) past-due support which it is  
18 attempting to collect on behalf of any individual not eligible as a public assistance recipient, and  
19 (3) cash assistance benefit overpayments, as defined herein; or

1 (2) (i) The Rhode Island higher education assistance authority (RIHEAA), with respect  
2 to obligations owed to that agency or to the state of Rhode Island by reason of default or failure to  
3 pay student loans, health professions contract advances or scholarships or grant over-awards, or

4 (ii) The Rhode Island higher education assistance authority (RIHEAA), acting as agent  
5 for the United States Department of Education or other student loan guarantee agencies in other  
6 states which have negotiated a reciprocal arrangement with the RIHEAA for the setoff of refunds  
7 of personal income taxes against defaulted loan obligations.

8 (3) The Rhode Island court administrative office, with respect to court costs, fines, and  
9 restitution owed; or

10 (4) The department of labor and training with respect to benefit overpayments and  
11 interest owed in excess of five hundred dollars (\$500).

12 (d) "Court costs owed" means any fines, fees, and/or court costs which have been  
13 assessed pursuant to a criminal disposition by a judge of the district, family and superior courts,  
14 including, but not limited to, those amounts assessed pursuant to chapters 20 and 25 of title 12  
15 and those amounts assessed pursuant to title 31, including also those fines, fees, and/or court costs  
16 assessed by the traffic tribunal or municipal court associated with motor vehicle violations which  
17 have not been paid and which have been declared delinquent by the administrative judge of the  
18 court making the assessment.

19 (e) "Debtor" means:

20 (1) Any individual who owes past-due support which has been assigned to the  
21 department of human services by public assistance and medical assistance recipients or by the  
22 department of children, youth and families, or owes past due support to any individual not  
23 eligible as a public assistance recipient;

24 (2) Any individual who has obligations owed to RIHEAA or the state of Rhode Island,  
25 the United States Department of Education or other states and agencies that have negotiated  
26 reciprocal agreements with RIHEAA;

27 (3) Any individual who owes fines, fees, and/or court costs to the superior, family,  
28 district courts and the traffic tribunal and municipal court associated with motor vehicle  
29 violations;

30 (4) Any individual who owes restitution to any victim of any offense which has been  
31 ordered by a judge of the district, family and superior courts pursuant to a disposition in a  
32 criminal case and which has been made payable through the administrative office of state courts  
33 pursuant to section 12-19-34 except that obligations discharged in bankruptcy shall not be  
34 included;

1 (5) Any individual who owes any sum in excess of five hundred dollars (\$500) for  
2 benefit overpayments and interest to the department of labor and training determined to be  
3 recoverable under the provisions of chapters 39-44 of title 28.

4 (6) Any individual who owes any sum of cash assistance benefit overpayments to the  
5 department of human services.

6 (7) Any individual who has obligations owed to the Rhode Island Student Loan Authority  
7 (RISLA), or other states and agencies that have negotiated reciprocal agreements with RISLA.

8 (f) "Division" means the department of revenue, division of taxation.

9 (g) "Fines owed" means any fines, fees, and/or court costs which have been ordered paid  
10 as a penalty in a criminal case by a judge of the district, family and superior courts and those  
11 fines, fees, and/or court costs ordered paid by the traffic tribunal or municipal court for motor  
12 vehicle violations as described in section 31-41.1-4 which have not been paid and which have  
13 been declared delinquent by the administrative judge of the court making the assessment.

14 (h) "Obligation owed" means the total amount owed by any individual on:

15 (1) Any guaranteed student loan or parent loan for undergraduate students for which  
16 RIHEAA has had to pay the guarantee, or for which RIHEAA is acting as agent on behalf of the  
17 United States Department of Education or other state cooperating agencies which have had to pay  
18 a guarantee,

19 (2) Any contract fee advanced by either RIHEAA or the state of Rhode Island on behalf  
20 of any individual participating in a health professions educational program for which payment has  
21 not been made according to the terms of the contract, and

22 (3) Any amount of scholarship or grant funds which constitutes an over-award, whether  
23 due to error or to the submission of false information, and for which repayment has been  
24 demanded by the agency, but which has not been paid.

25 (4) Any education loan held by the Rhode Island Student Loan Authority (RISLA) not  
26 guaranteed by RIHEAA or other guarantor.

27 (i) "Past-due support" means the amount of court-ordered child support or maintenance,  
28 child medical support or a spousal support order for a custodial parent having custody of a minor  
29 child, which is overdue or otherwise in arrears, regardless of whether there is an outstanding  
30 judgment for that amount, and whether the order for the support or maintenance has been  
31 established by a court or by an administrative process authorized under the laws of any state.

32 (j) "Refund" means the Rhode Island income tax refund which the division of taxation  
33 determines to be due to a taxpayer.

34 (k) "Restitution owed" means any amount which has been ordered paid pursuant to a

1 criminal case disposition by a judge of the district, family and superior courts pursuant to chapter  
2 19 of title 12, which has not been paid and which has been declared delinquent by the  
3 administrative judge of the court making the assessment.

4 **44-30.1-3. Collection of debts by setoff.** -- Within a time frame established by the  
5 division of taxation, the claimant agency shall supply the information necessary relative to each  
6 debtor owing the state money, and further, shall certify the amount of debt or debts owed to the  
7 state by each debtor. Upon receiving notice from the claimant agency that a named debtor owes  
8 past-due support, delinquent court costs, fines, or restitution or benefit overpayments and interest  
9 owed, has obligations owed as described in section 44-30.1-1(g), or cash assistance benefit  
10 overpayments, the division of taxation shall determine whether any amount, as a refund of taxes  
11 paid, is payable to the debtor, regardless of whether the debtor filed an income tax return as a  
12 married or unmarried individual. If the division of taxation determines that any refund is payable,  
13 the division of taxation shall set off the past-due support, delinquent court costs, fines or  
14 restitution or benefit overpayments and interest owed, the obligation owed, or cash assistance  
15 benefit overpayments against the debtor's refund and shall reduce the debtor's refund by the  
16 amount so determined. The division of taxation shall transfer the amount of past-due support,  
17 delinquent court costs, fines or restitution, or benefit overpayments and interest owed, obligation  
18 owed, or cash assistance benefit overpayments set off against the debtor's refund to the claimant  
19 agency or in the case of the United States Department of Education or other out-of-state agencies,  
20 to Rhode Island higher education assistance authority (RIHEAA) as its agent, and in the case of  
21 education loans held by the Rhode Island Student Loan Authority (RISLA) for itself or as agent  
22 for another out-of-state education loan agency and which education loans are not guaranteed by  
23 RIHEAA or another guarantor, to RISLA. The pendency of judicial proceedings to contest the  
24 setoff shall not stay nor delay the setoff and transfer of refunds to the claimant agency. If the  
25 amount of the debtor's refund exceeds the amount of the past-due support, delinquent court costs,  
26 fines, or restitution or benefit overpayments and interest owed, obligation owed, or cash  
27 assistance benefit overpayments, the division of taxation shall refund the excess amount to the  
28 debtor. If in any instance with regard to the debtor the division of taxation has received notice  
29 from more than one claimant agency, the claim by the bureau of child support shall receive first  
30 priority, the obligations owed shall have second priority, and the delinquent court costs, fines or  
31 restitution shall have third priority, the benefit overpayments and interest owed the fourth priority  
32 and the cash assistance benefit overpayments the fifth priority.

33 **44-30.1-5. Hearing procedures.** -- (a) If the claimant agency receives written application  
34 pursuant to section 44-30.1-4(b) contesting the setoff or the delinquent court costs, fines or

1 restitution or the past-due support or benefit overpayments and interest owed or the obligation  
2 owed upon which the setoff is based, it shall grant a hearing to the applicant in accordance with  
3 chapter 35 of title 42, "Administrative Procedure".

4 (b) Appeals from the administrative decisions made by the claimant agency shall be in  
5 accordance with chapter 35 of title 42, "Administrative Procedures". Appeals contesting the setoff  
6 of past due support shall be to the family court of Providence County.

7 (c) In those cases where Rhode Island higher education assistance authority (RIHEAA)  
8 acts as agent for the United States Department of Education or other out-of-state agencies,  
9 RIHEAA must obtain appropriate documentation of the obligation owed such as promissory  
10 notes, evidence of guarantees paid and any other items that may be necessary to conduct a fair  
11 hearing. RIHEAA as agent for other states shall negotiate appropriate reciprocal agreements with  
12 those states for purposes of transferring funds and setting charges for cost of services.

13 (d) In those cases where the Rhode Island Student Loan Authority (RISLA) is the  
14 claimant either for itself or as agent for another out-of-state education loan agency, RISLA must  
15 obtain appropriate documentation of the obligation owed such as promissory notes, and any other  
16 items that may be necessary to conduct a fair hearing. RISLA as agent for other states or agencies  
17 shall negotiate appropriate reciprocal agreements with those states and agencies for purposes of  
18 transferring funds and setting charges for cost of services.

19 SECTION 2. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO TAXATION - SETOFF OF REFUND OF PERSONAL INCOME TAX

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1           This act would amend certain provisions relative to the setoff procedure for refunds of  
2 personal income tax and what constitutes a "debtor" and "obligations owed" for purposes of this  
3 chapter.

4           This act would take effect upon passage.

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