



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873
Email: fiscal.bureau@legis.wisconsin.gov • Website: <http://legis.wisconsin.gov/lfb>

May 15, 2013

Joint Committee on Finance

Paper #556

Increased Resources for Debt Collection (DOR -- Tax Administration)

[LFB 2013-15 Budget Summary: Page 404, #4]

CURRENT LAW

Under current law, the Department of Revenue (DOR) is authorized to offset against state tax refunds and refundable tax credits: (a) amounts owed for state taxes; (b) debts to state agencies; (c) debts owed to state, county, and municipal courts; (d) delinquent child and spousal support and maintenance payments; and (e) debts owed to counties and municipalities. The Department is allowed to enter into agreements with the Internal Revenue Service (IRS) and/or the federal Department of Treasury to offset state tax refunds and refundable tax credits against federal tax and nontax debts, if the federal agency offsets federal tax refunds against state tax and nontax debts. The state can charge a fee of up to \$25 for each transaction. DOR can enter into agreements with other states to offset state tax refunds and refundable tax credits against the tax debts of those states, if those states agree to offset their tax refunds and refundable tax credits against Wisconsin tax debts. DOR is also authorized to enter into agreements with federally recognized Indian tribes in Wisconsin to offset state tax refunds and refundable tax credits against tribal obligations, and to charge a fee of up to \$25 for each transaction for such setoffs. In general, the costs of debt collection activities are funded by debt collections fees charged to the debtor, and amounts collected are placed in the Department's debt collection appropriation to fund administrative costs. Currently, debtors are charged a per transaction fee that ranges from \$3 to \$35 depending on the type of debt.

GOVERNOR

Make the following changes to the Tax Refund Intercept Program (TRIP):

a. Allow DOR to enter into agreements with other states to offset state tax refunds and refundable credits against the non-tax debts of those states, if those states agree to offset

their tax refunds and refundable tax credits against Wisconsin non-tax debts.

b. Authorize DOR to offset state and municipal tax and nontax debt against motor vehicle tax refunds.

c. Authorize DOR to pass the IRS tax refund offset fee to the debtor.

d. Create a hierarchy for all debts certified for setoff against tax refunds and refundable tax credits.

DISCUSSION POINTS

1. Under the provisions of Chapter 20, Laws of 1981, DOR was authorized to offset debts owed state agencies against state tax refunds and refundable tax credits, after intercepting amounts owed for state taxes. This established the state Tax Refund Interception Program (TRIP) under which DOR intercepts tax refunds and refundable tax credits to pay debts owed to government agencies. In 1995, the refund interception program was expanded to authorize DOR to offset refunds and credits for debts (in excess of \$20) owed Wisconsin counties and municipalities. Municipalities and counties must apply to participate in the program. TRIP was further expanded by 2001 Wisconsin Act 16, to authorize the Department to enter into agreements with other states that provide for offsetting state tax refunds against the tax obligations of other states, and offsetting other state tax refunds against Wisconsin tax obligations. Similarly, in 2002, DOR was allowed to enter into agreements with the IRS to offset federal tax refunds against federal tax obligations, if the IRS offsets federal tax refunds against state tax obligations. DOR is authorized to charge fee of \$25 per transaction. This authority was expanded to apply to federal nontax debt in 2009. The 2007 biennial budget authorized DOR to enter into agreements with federally recognized Indian tribes located in Wisconsin that provide for offsetting state tax refunds against tribal obligations and charge a fee of to \$25 per transaction to the debtor for administrative costs. Under TRIP, amounts owed DOR are first setoff against tax refunds and refundable tax credits. Any remaining refunds are then offset against state agency debts in the order in which the debts are certified for setoff.

2. The state debt collection (SDC) program, which authorizes DOR to collect nontax debt for state agencies, courts, authorities, and the Legislature was created under provisions included in the 2009-11 biennial budget act (2009 Wisconsin Act 28). DOR is authorized to enter into a written agreement to have DOR collect amounts owed that are more than 90 days past due, unless negotiations between the state agency and debtor are actively ongoing, the debt is the subject of legal action or administrative proceedings, or if the debtor is adhering to an acceptable payment arrangement. The agreements had to be completed by June 30, 2010. At least 30 days before the debt is referred to DOR for collection, DOR or the agency is required to provide written notice to the debtor that the debt will be referred to DOR for collection. DOR is authorized to collect amounts owed the agency in addition to offsetting the amounts against tax refunds. For SDC, "debt" means any amount owed a state agency and collected by DOR pursuant a written agreement under the program, if the debt has been reduced to judgment, or if the state agency or DOR provides the debtor with reasonable notice, and an opportunity to be heard with regard to the amount owed. DOR can collect debts and assess interest on delinquent amounts in the same manner and using the same

powers it uses to collect taxes and assess interest under state income and franchise tax administrative provisions. Payments received by DOR are first applied to DOR debts, then to state agencies, courts, authorities, and the Legislature in the order in which the debts were referred to DOR, and then to local units of government in the order in which the debts were referred to DOR. The following state agencies and entities have signed written agreements with DOR: Health Services, Children and Families, Transportation, Justice, Military Affairs, Veterans Affairs, Workforce Development, Natural Resources, Insurance, Corrections, Public Service Commission, Agriculture, Trade and Consumer Protection, Public Instruction, Financial Institutions, Safety and Professional Services, Tourism, Administration, Secretary of State, State Treasurer, Employee Trust Funds, State Public Defender, Government Accountability Board, Arts Board, Higher Education Corporation, State Historical Society, Educational Communications Board, Board on Aging and Long-Term Care, University of Wisconsin System, University of Wisconsin-Madison, University of Wisconsin Extension, Wisconsin Technical College System, and certain municipalities and counties.

3. The TRIP and SDC programs are funded from the debt collection, program revenue appropriation. The statutory sources of revenue in the appropriation are: (a) moneys received from the collection of debts owed state agencies; (b) amounts from the collection of unpaid fines, fees, and forfeitures, costs, fees, surcharges, and restitution payments from lottery prizes; (c) fees collected from debtors; and (d) amounts collected from debts owed municipalities and counties. Debtors are charged a per transaction fee of a \$5 to \$35 depending on the type of debt. TRIP fees are: (a) \$5 for setoff for state agency, local government, and tribal government debt; (b) \$15 for setoff of Minnesota debt; and (c) \$25 for setoff of IRS tax debt. (An agreement for reciprocal offset between Minnesota and Wisconsin was implemented in 2009.) The fee under SDC is the greater of \$35 or 15% of the amount certified for collection. The year-end unencumbered balance in the debt collection appropriation is lapsed to the general fund. For the 2013-15 biennium, annual expenditure authority of \$1,273,300 PR and 12.50 PR positions are provided for the Department's debt collection activities. Under the bill, the estimated year-end lapse to the general fund is \$1,813,900 in 2013-14, and \$1,800,700 in 2014-15. In addition, an annual lapse of \$378,000 is required under the bill.

4. Table 1 shows state refunds offset against state tax liability by type of liability offset, and refunds setoff against state agency, IRS, and municipal and county debts. In 2011-12 \$31.8 million in refunds were offset against state tax liabilities, primarily individual income tax liability. The table also shows that 18.8% of refund setoffs are for debts owed the Department of Children and Families, which include delinquent child and spousal support payments. Debts to municipalities and counties (15.3%), the state courts (26.2%), DWD (9.4%), and the IRS (7.5%) all are significant setoff amounts. Table 2 shows total fiscal year collections under the SDC program through February, 2013. More has been collected in fiscal year 2012-13, (\$6.2 million) than the total amount collected through the program in all previous years (\$4.4 million). As of February, 2013, the balance of debt referred to DOR under SDC was \$38,185,000.

TABLE 1

Refund Offsets and Setoffs

	<u>2008-09</u>	<u>Percent of Total</u>	<u>2009-10</u>	<u>Percent of Total</u>	<u>2010-11</u>	<u>Percent of Total</u>	<u>2011-12</u>	<u>Percent of Total</u>
Delinquent Tax Offsets								
Individual Income Tax	\$18,145,800	59.69%	\$20,013,700	64.75%	\$19,479,700	64.79%	\$22,692,000	71.26%
Withholding Tax	3,171,100	10.43	3,231,100	10.45	3,232,600	10.75	2,365,500	7.43
Corporate Franchise Tax	830,200	2.73	307,200	0.99	893,500	2.97	935,300	2.94
Sales and Use Tax	7,919,600	26.05	7,168,500	23.19	5,917,700	19.68	4,713,300	14.80
Miscellaneous Taxes ^a	333,700	1.10	190,700	0.62	464,500	1.54	302,100	0.95
Other State Debts (SDC) ^b	<u>0</u>	<u>0.00</u>	<u>0</u>	<u>0.00</u>	<u>79,800</u>	<u>0.27</u>	<u>835,500</u>	<u>2.62</u>
Total Delinquent Tax Offsets	\$30,400,400	100.00%	\$30,911,200	100.00%	\$30,067,800	100.00%	\$31,843,700	100.00%
Agency Setoffs								
Health Services	\$25,000	0.04%	\$18,400	0.03%	\$29,600	0.05%	\$32,600	0.04%
Transportation	79,800	0.13	77,900	0.13	50,000	0.08	26,200	0.03
Justice	5,400	0.01	10,700	0.02	12,400	0.02	7,200	0.01
Military Affairs	12,600	0.02	9,500	0.02	4,200	0.01	2,000	0.00
Veterans Affairs	42,300	0.07	49,500	0.08	36,800	0.06	44,100	0.06
Workforce Development	3,611,800	5.94	3,640,900	6.13	4,818,200	7.54	7,444,900	9.38
Children and Families	18,670,100	30.71	16,150,300	27.21	16,470,200	25.79	14,936,400	18.83
Supreme Court	7,700	0.01	7,200	0.01	7,600	0.01	15,300	0.02
Natural Resources	8,900	0.01	16,000	0.03	14,900	0.02	11,000	0.01
Insurance	8,300	0.01	6,600	0.01	15,300	0.02	11,300	0.01
Corrections	4,890,000	8.04	3,237,700	5.45	3,356,600	5.26	4,624,200	5.83
University of Wisconsin System	2,447,900	4.03	2,603,400	4.39	2,049,900	3.21	1,390,100	1.75
Technical College System	1,786,000	2.94	2,295,100	3.87	2,816,400	4.41	3,905,800	4.92
County & Municipal Governments	21,397,600	35.20	11,770,500	19.83	11,783,400	18.45	12,134,600	15.30
Internal Revenue Service (IRS)	2,044,300	3.36	2,546,700	4.29	4,790,600	7.50	5,982,700	7.54
Minnesota Refund Recapture ^c	4,000	0.01	157,300	0.26	248,300	0.39	309,700	0.39
Commerce ^d	800	0.00	700	0.00	2,400	0.00	600	0.00
Public Service Commission	500	0.00	1,000	0.00	0	0.00	0	0.00
State Courts	5,753,300	9.46	16,761,400	28.24	17,363,500	27.18	20,781,200	26.19
Federal Government ^e	0	0.00	0	0.00	0	0.00	7,646,700	9.64
Tribal Governments	<u>0</u>	<u>0.00</u>	<u>2,300</u>	<u>0.00</u>	<u>3,400</u>	<u>0.01</u>	<u>28,100</u>	<u>0.04</u>
Total Agency Setoffs	\$60,796,300	100.00%	\$59,363,100	100.00%	\$63,873,700	100.00%	\$79,334,700	100.00%

^a Miscellaneous taxes include aviation tax, business tax registration fee, local exposition center tax, premier resort area tax, rental vehicle tax, estate taxes, liquor tax, manufacturing penalty, motor fuel taxes, real estate transfer fee, tobacco taxes, pass-through withholding tax, utility tax, composite partners and shareholders, fermented malt beverage, partnership, and police and fire protection fee.

^b State Debt Collection Program (SDC). State agencies may submit debts to DOR for collection.

^c An agreement between Minnesota and Wisconsin for reciprocal setoff was implemented in 2009.

^d The Department of Commerce was eliminated in fiscal year 2010-11, and replaced by the Wisconsin Economic Development Corporation (WEDC).

^e In FY 2012 the Treasury Offset Program was expanded to include federal vendor payments.

TABLE 2

State Debt Collection (SDC) Collections

	<u>Collections</u>
2009-10	\$1,200
2010-11	374,200
2011-12	4,090,000
2012-13*	6,208,400

* Through February, 2013.

5. The bill would create a hierarchy for all debts certified for setoff against tax refunds and refundable tax credits as follows: (a) DOR debt; (b) child support debt certified by the Department of Children and Families; (c) state agency debt under the Statewide Debt Collection program; (d) local government debt certified for collection under SDC; (e) state agency debt certified for refund intercept that is not part of the SDC program; (f) debt certified by a Wisconsin municipality or county that is not part of the SDC program; (g) child and spousal support debt certified by other states; (h) federal tax debt certified for refund intercept; (i) tribal debt certified for refund intercept; and (j) other states' tax debt certified for refund intercept. This provision would take effect on the first day of the sixth month beginning after publication of the bill.

6. The proposed hierarchy would move payment of child support debt ahead of payment of other state agency debt, which would align state setoff provisions with federal provisions. However, this would decrease setoffs for state agency debts. In addition, the hierarchy would move payment of local debt under SDC ahead of the setoff of refunds against state agency debt under TRIP. This could cause state agencies to certify more debts to DOR under the SDC program.

7. Under current law, DCF does not have authority to separate child support debt from other debts before the debt is certified for setoff. The Committee may wish to modify the debt offset provisions to allow DCF to specify that child support debt can be separately certified for setoff.

8. In addition to establishing a hierarchy for offsets and setoffs, the bill would make the following changes:

a. Allow DOR to enter into agreements with other states to offset state tax refunds and refundable credits against the non-tax debts of those states, if those states agree to offset their tax refunds and refundable tax credits against Wisconsin non-tax debts. Currently, DOR can offset only the tax debts owed other states. DOR indicates that, similar to Wisconsin, some other state revenue agencies also collect local government debt. The Committee may wish to modify this provision to include the tax and nontax debt of other states and their local governments. In addition, the hierarchy establishes a priority for the tax debt of other states, but does not include nontax debt. The bill could be modified to include other states and municipalities nontax debt in the hierarchy.

b. Authorize DOR to offset state and municipal tax and nontax debt against motor vehicle tax refunds. Currently, DOR can offset debt against refunds of other state taxes, but not motor fuel tax refunds. This provision would generate an estimated \$280,000 annually in additional general fund taxes.

c. Authorize DOR to pass the Internal Revenue Service refund offset fee under the Treasury Offset Program (TOP) to the debtor. TOP allows state governments and the federal government to exchange debtor information in order to offset individual income tax refunds for debts owed to the federal government. The state reciprocal program (SRP) expanded the reciprocal matching and offset program to allow offsets of any debts owed to the state or federal government against payments received from the state or federal government. Under SRP, the federal fee is passed on to the debtor. The IRS charges \$21 per offset for participation in the federal TOP program. Currently, DOR does not pass the cost of the offset on to the debtor, so the Department pays this fee. This provision would increase annual general fund tax revenues by an estimated \$156,000. This provision would take effect on the first day of the sixth month beginning after publication of the bill.

ALTERNATIVES

1. Adopt the Governor's recommendation.
2. Modify the Governor's recommendation to:
 - a. Authorize DCF to separately certify child support debt for setoff;
 - b. Authorize DOR to enter into agreements with other states to offset tax and nontax debt of the states and their local governments; and
 - c. Include the nontax debt of other states and their local governments in the hierarchy along with tax debt.
3. Delete the Governor's recommendation.

ALT 3	Change to Bill Funding
GPR-Tax	- \$872,000

Prepared by: Ron Shanovich