

## LEGISLATIVE BILL 46

Approved by the Governor March 11, 1993

Introduced by Schimek, 27

AN ACT relating to income tax refunds; to amend sections 48-655, 48-665, and 48-665.01, Reissue Revised Statutes of Nebraska, 1943, and section 77-27,119, Revised Statutes Supplement, 1992; to authorize a refund setoff system for amounts due the Department of Labor; to state intent; to define terms; to establish procedures; to provide for hearings and appeals; to require rules and regulations; to authorize disclosures by the Department of Revenue; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. It is the intent of the Legislature to establish and maintain a procedure to set off against a debtor's income tax refund any debt owed to the Department of Labor which has accrued as a result of an individual's liability for the repayment of unemployment insurance benefits determined to be in overpayment pursuant to sections 48-665 and 48-665.01 or an employer's liability for contributions determined to be due and owing pursuant to sections 48-655 and 48-656.

Sec. 2. The Department of Revenue, the Department of Administrative Services, and the Department of Labor shall develop and implement a collection system to carry out the intent of section 1 of this act.

Sec. 3. For purposes of sections 1 to 13 of this act:

(1) Debt shall mean contributions due and payable to the Department of Labor pursuant to sections 48-655 and 48-656 or erroneous benefit payments due and payable to the department pursuant to sections 48-665 and 48-665.01; and

(2) Refund shall mean any Nebraska state income tax refund which the Department of Revenue determines to be due an individual, corporate, or business taxpayer. In the case of a joint income tax return, it shall be presumed that each partner to the marriage submitting such return contributed one-half of the earnings upon which the refund is based. The presumption may be contested by the state, the debtor, and the innocent spouse by virtue of the hearing process prescribed in section 7 of this act.

Sec. 4. The collection remedy authorized by sections 1 to 13 of this act shall be in addition to and not in substitution for any other remedy available by law.

Sec. 5. The Department of Labor may submit any debt of twenty-five dollars or more to the Department of Revenue for collection pursuant to sections 1 to 13 of this act except when the validity of the debt

has not been finally determined by the debtor's exercise or failure to exercise all applicable appeal rights.

Sec. 6. (1) If a debtor identified by the Department of Labor pursuant to section 5 of this act is determined by the Department of Revenue to be entitled to a refund of twenty-five dollars or more, the Department of Revenue shall notify the Department of Labor that a refund is pending.

(2) Upon receipt of the notification, the Department of Labor shall, within twenty days, send written notification to the debtor of an assertion of its rights to all or a portion of the debtor's refund.

(3) The notification to the debtor shall clearly set forth the basis for the claim to the refund, the intention to apply the refund against the debt, the debtor's opportunity to give written notice of intent to contest the validity of the claim before the Department of Labor within twenty days of the date of the mailing of the notice, the mailing address to which the application for a hearing must be sent, and notice that failure to apply for a hearing in writing within the twenty-day period will be deemed a waiver of the opportunity to contest the claim, causing a setoff by default. In the case of a joint income tax return, the notice shall also state the name of the taxpayer named in the return against whom no debt is claimed. There shall be no affirmative duty placed upon the non-owing spouse to initiate an action to receive payment of the noninterceptable amount.

Sec. 7. A written application pursuant to section 6 of this act by a debtor for a hearing shall be effective upon receipt of the application by the Department of Labor. If the department receives a timely written application contesting its claim to a refund, it shall grant a hearing to the taxpayer to determine whether the claim is valid. If the amount asserted as due and owing is not correct, an adjustment to the claimed amount shall be made. No hearing shall be granted upon issues which have been finally determined.

Sec. 8. Any appeal of an action taken or as a result of a hearing held pursuant to section 7 of this act shall be in accordance with the Administrative Procedure Act.

Sec. 9. Upon the final determination of the amount and validity of the debt due and owing, by means of the hearing provided for in section 7 of this act or by the taxpayer's default through failure to request a hearing, the Department of Labor shall certify the debt to the Department of Administrative Services within twenty days from the date of the final determination. Upon receipt of the certified debt amount from the Department of Labor, the Department of Administrative Services shall deduct an amount equal to the certified debt from the refund due the debtor, up to the amount of the refund, and shall transfer such amount to the Department of Labor. The Department of Administrative Services shall refund any remaining balance to the debtor as if the setoff had not occurred.

Sec. 10. When the Department of Labor receives all or a portion of a certified debt pursuant to section 9 of this act, the department

shall notify the debtor of the completion of the setoff and amount received. Such notice shall include the final amount of the refund to which the debtor was entitled prior to the setoff, the amount of the certified debt, and the amount of the refund in excess of the debt, if any.

Sec. 11. The Department of Labor shall reimburse the Department of Revenue and the Department of Administrative Services for all reasonable and necessary costs incurred in setting off debts pursuant to sections 1 to 13 of this act.

Sec. 12. Setoffs against state income tax refunds shall have the following priorities:

- (1) Setoffs by the Department of Social Services;
- (2) Setoffs by the Internal Revenue Service; and
- (3) Setoffs by the Department of Labor.

Sec. 13. The Department of Labor shall adopt and promulgate rules and regulations necessary to carry out sections 1 to 13 of this act.

Sec. 14. That section 48-655, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-655. Contributions or payments in lieu of contributions unpaid on the date on which they are due and payable, as prescribed by the commissioner, shall bear interest at the rate of one and one-half percent per month from such date until payment, plus accrued interest, is received by the commissioner, except that no interest shall be charged subsequent to the date of the erroneous payment of an amount equal to the amount of the delayed payment; into the Unemployment Trust Fund of another state or to the federal government. Interest collected pursuant to this section shall be paid in accordance with subdivision (b) of section 48-621, (b). If, after due notice, any employer defaults in any payment of contributions or payments in lieu of contributions or interest thereon, the amount due may be collected (1) by civil action in the name of the commissioner and the employer adjudged in default shall pay the costs of such action or (2) by setoff against any state income tax refund due the employer pursuant to sections 1 to 13 of this act. Civil actions brought under this section to collect contributions or interest thereon or payments in lieu of contributions or interest thereon from an employer shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under section 48-638.

Sec. 15. That section 48-665, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-665. Any person who has received any sum as benefits under the Employment Security Law to which he or she was not entitled shall be liable to repay such sum to the commissioner for the fund. Any such erroneous benefit payments shall be collectible (1) without interest by civil action in the name of the commissioner, or (2) by offset against any future benefits payable to the claimant with respect to the benefit year current at the time of such receipt; or any benefit year which may commence within three years after the end of such current benefit year,

except that no such recoupment by the withholding of future benefits shall be had if such sum was received by such person without fault on his or her part and such recoupment would defeat the purpose of the Employment Security Law or would be against equity and good conscience, or (3) by setoff against any state income tax refund due the claimant pursuant to sections 1 to 13 of this act.

Sec. 16. That section 48-665.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-665.01. Any person who has received any sum as benefits to which he or she was not entitled from any agency which administers an employment security law of another state or foreign government; and who has been found liable to repay benefits received under such law; may be required to repay to the commissioner for such state or foreign government the amount found due. Such amount, without interest, may be collected (1) by civil action in the name of the commissioner acting as agent for such agency, ~~or~~ (2) by offset against any future benefits payable to the claimant under the Employment Security Law for any benefit year which may commence within three years after the claimant was notified such amount was due, except that no such recoupment by the withholding of future benefits shall be had if such sum was received by such person without fault on his or her part and such recoupment would defeat the purpose of the Employment Security Law or would be against equity and good conscience, or (3) by setoff against any state income tax refund due the claimant pursuant to sections 1 to 13 of this act.

Sec. 17. That section 77-27,119, Revised Statutes Supplement, 1992, be amended to read as follows:

77-27,119. (1) The Tax Commissioner shall administer and enforce the income tax imposed by sections 77-2714 to 77-27,135, and he or she is authorized to conduct hearings, to adopt and promulgate such rules and regulations, and to require such facts and information to be reported as he or she may deem necessary to enforce the income tax provisions of such sections, except that such rules, regulations, and reports shall not be inconsistent with the laws of this state or the laws of the United States. The Tax Commissioner may for enforcement and administrative purposes divide the state into a reasonable number of districts in which branch offices may be maintained.

(2)(a) The Tax Commissioner may prescribe the form and contents of any return or other document required to be filed under the income tax provisions. Such return or other document shall be compatible as to form and content with the return or document required by the laws of the United States. The form shall have a place where the taxpayer shall designate the school district in which he or she lives and the county in which the school district is located. The Tax Commissioner shall adopt and promulgate such rules and regulations as may be necessary to insure compliance with this requirement.

(b) The State Department of Education, with the assistance and cooperation of the Department of Revenue, shall develop a uniform

system for numbering all school districts in the state. Such system shall be consistent with the data processing needs of the Department of Revenue and shall be used for the school district identification required by subdivision (a) of this subsection.

(c) The proper filing of an income tax return shall consist of the submission of such form as prescribed by the Tax Commissioner or an exact facsimile thereof with sufficient information provided by the taxpayer on the face of the form from which to compute the actual tax liability. Each taxpayer shall include such taxpayer's correct social security number or state identification number and the school district identification number of the school district in which the taxpayer resides on the face of the form. A filing is deemed to occur when the required information is provided.

(3) The Tax Commissioner, for the purpose of ascertaining the correctness of any return or other document required to be filed under the income tax provisions, for the purpose of determining corporate income, individual income, and withholding tax due, or for the purpose of making an estimate of taxable income of any person, shall have the power to examine or to cause to have examined, by any agent or representative designated by him or her for that purpose, any books, papers, records, or memoranda bearing upon such matters and may by summons require the attendance of the person responsible for rendering such return or other document or remitting any tax, or any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take testimony and require proof material for his or her information, with power to administer oaths or affirmations to such person or persons.

(4) The time and place of examination pursuant to this section shall be such time and place as may be fixed by the Tax Commissioner and as are reasonable under the circumstances. In the case of a summons, the date fixed for appearance before the Tax Commissioner shall not be less than twenty days from the time of service of the summons.

(5) No taxpayer shall be subjected to unreasonable or unnecessary examinations or investigations.

(6) Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the Tax Commissioner, any officer or employee of the Tax Commissioner, any person engaged or retained by the Tax Commissioner on an independent contract basis, any person who pursuant to this section is permitted to inspect any report or return or to whom a copy, an abstract, or a portion of any report or return is furnished, or any other person to divulge, make known, or use in any manner the amount of income or any particulars set forth or disclosed in any report or return required except for the purpose of enforcing sections 77-2714 to 77-27,135. The officers charged with the custody of such reports and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the Tax Commissioner in an action or

proceeding under the provisions of the tax law to which he or she is a party or on behalf of any party to any action or proceeding under such sections when the reports or facts shown thereby are directly involved in such action or proceeding, in either of which events the court may require the production of, and may admit in evidence, so much of such reports or of the facts shown thereby as are pertinent to the action or proceeding and no more. Nothing in this section shall be construed (a) to prohibit the delivery to a taxpayer, his or her duly authorized representative, or his or her successors, receivers, trustees, personal representatives, administrators, assignees, or guarantors, if directly interested, of a certified copy of any return or report in connection with his or her tax, (b) to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, (c) to prohibit the inspection by the Attorney General or other legal representatives of the state of the report or return of any taxpayer who brings an action to review the tax based thereon or against whom an action or proceeding for collection of tax has been instituted, (d) to prohibit furnishing to the Nebraska Workers' Compensation Court the names, addresses, and identification numbers of employers, and such information shall be furnished on request of the court, (e) to prohibit the disclosure of information and records to a collection agency contracting with the Tax Commissioner pursuant to sections 77-377.01 to 77-377.04, (f) to prohibit the disclosure of information pursuant to section 77-4110, ~~or~~ (g) to prohibit the disclosure to the Public Employees Retirement Board of the addresses of individuals who are members of the retirement systems administered by the board, and such information shall be furnished to the board solely for purposes of its administration of the retirement systems upon written request, which request shall include the name and social security number of each individual for whom an address is requested, or (h) to prohibit the disclosure to the Department of Labor of tax return information pertaining to individuals, corporations, and businesses determined by the Department of Labor to be delinquent in the payment of contributions or in the repayment of benefit overpayments, and such disclosure shall be strictly limited to information necessary for the administration of the Employment Security Law. Any person who violates this subsection shall be guilty of a felony and shall upon conviction thereof be fined not less than one hundred dollars nor more than five hundred dollars, or be imprisoned not more than five years, or be both so fined and imprisoned, in the discretion of the court and shall be assessed the costs of prosecution. If the offender is an officer or employee of the state, he or she shall be dismissed from office and be ineligible to hold any public office in this state for a period of two years thereafter.

(7) Reports and returns required to be filed under income tax provisions of sections 77-2714 to 77-27,135 shall be preserved until the Tax Commissioner orders them to be destroyed.

(8) Notwithstanding the provisions of subsection (6) of this section, the Tax Commissioner may permit the Secretary of the Treasury

of the United States or his or her delegates or the proper officer of any state imposing an income tax, or the authorized representative of either such officer, to inspect the income tax returns of any taxpayer or may furnish to such officer or his or her authorized representative an abstract of the return of income of any taxpayer or supply him or her with information concerning an item of income contained in any return or disclosed by the report of any investigation of the income or return of income of any taxpayer, but such permission shall be granted only if the statutes of the United States or of such other state, as the case may be, grant substantially similar privileges to the Tax Commissioner of this state as the officer charged with the administration of the income tax imposed by sections 77-2714 to 77-27,135.

(9) Notwithstanding the provisions of subsection (6) of this section, the Tax Commissioner may permit the Postal Inspector of the United States Postal Service or his or her delegates to inspect the reports or returns of any person filed pursuant to the Nebraska Revenue Act of 1967 when information on the reports or returns is relevant to any action or proceeding instituted or being considered by the United States Postal Service against such person for the fraudulent use of the mails to carry and deliver false and fraudulent tax returns to the Tax Commissioner with the intent to defraud the State of Nebraska or to evade the payment of Nebraska state taxes.

(10)(a) Notwithstanding the provisions of subsection (6) of this section, the Tax Commissioner shall, upon written request by the Auditor of Public Accounts, make tax returns and tax return information open to inspection by or disclosure to officers and employees of the Auditor of Public Accounts for the purpose of and to the extent necessary in making an audit of the Department of Revenue pursuant to section 84-304. The Auditor of Public Accounts shall statistically and randomly select the tax returns and tax return information to be audited based upon a computer tape provided by the Department of Revenue which contains only total population documents without specific identification of taxpayers. The Tax Commissioner shall have the authority to approve the statistical sampling method used by the Auditor of Public Accounts. Confidential tax returns and tax return information shall be audited only upon the premises of the Department of Revenue. All audit workpapers pertaining to the audit of the Department of Revenue shall be stored in a secure place in the Department of Revenue.

(b) No officer or employee of the Auditor of Public Accounts shall disclose to any person, other than another officer or employee of the Auditor of Public Accounts whose official duties require such disclosure, any return or return information described in the Nebraska Revenue Act of 1967 in a form which can be associated with or otherwise identify, directly or indirectly, a particular taxpayer.

(c) Any person who violates the provisions of this subsection shall be guilty of a Class IV felony and, in the discretion of the court, may be assessed the costs of prosecution. The guilty officer or employee shall be dismissed from employment and be ineligible to hold

any position of employment with the State of Nebraska for a period of two years thereafter. For purposes of this subsection, officer or employee shall include a former officer or employee of the Auditor of Public Accounts.

(11) For purposes of subsections (10) through (13) of this section:

(a) Tax returns shall mean any tax or information return or claim for refund required by, provided for, or permitted under sections 77-2714 to 77-27,135 which is filed with the Tax Commissioner by, on behalf of, or with respect to any person and any amendment or supplement thereto, including supporting schedules, attachments, or lists which are supplemental to or part of the filed return;

(b) Return information shall mean:

(i) A taxpayer's identification number and (A) the nature, source, or amount of his or her income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing or (B) any other data received by, recorded by, prepared by, furnished to, or collected by the Tax Commissioner with respect to a return or the determination of the existence or possible existence of liability or the amount of liability of any person for any tax, penalty, interest, fine, forfeiture, or other imposition or offense; and

(ii) Any part of any written determination or any background file document relating to such written determination; and

(c) Disclosures shall mean the making known to any person in any manner a return or return information.

(12) The Auditor of Public Accounts shall (a) notify the Tax Commissioner in writing thirty days prior to the beginning of an audit of his or her intent to conduct an audit, (b) provide an audit plan, and (c) provide a list of the tax returns and tax return information identified for inspection during the audit.

(13) The Auditor of Public Accounts shall, as a condition for receiving tax returns and tax return information: (a) Subject his or her employees to the same confidential information safeguards and disclosure procedures as required of Department of Revenue employees; (b) establish and maintain a permanent system of standardized records with respect to any request for tax returns or tax return information, the reason for such request, and the date of such request and any disclosure of the tax return or tax return information; (c) establish and maintain a secure area or place in the Department of Revenue in which the tax returns, tax return information, or audit workpapers shall be stored; (d) restrict access to the tax returns or tax return information only to persons whose duties or responsibilities require access; (e) provide such other safeguards as the Tax Commissioner determines to be necessary or appropriate to protect the confidentiality of the tax returns or tax return information; (f) provide a report to the Tax Commissioner which describes the procedures established and utilized by the Auditor of Public Accounts for insuring the



confidentiality of tax returns, tax return information, and audit workpapers; and (g) upon completion of use of such returns or tax return information, return to the Tax Commissioner such returns or tax return information, along with any copies.

(14) The Tax Commissioner may permit other tax officials of this state to inspect the tax returns and reports filed under sections 77-2714 to 77-27,135, but such inspection shall be permitted only for purposes of enforcing a tax law and only to the extent and under the conditions prescribed by the rules and regulations of the Tax Commissioner.

(15) The Tax Commissioner shall compile the school district information required by subsection (2) of this section. Insofar as it is possible, such compilation shall include, but not be limited to, the total adjusted gross income of each school district in the state. The Tax Commissioner shall adopt and promulgate such rules and regulations as may be necessary to insure that such compilation does not violate the confidentiality of any individual income tax return nor conflict with any other provisions of state or federal law.

Sec. 18. That original sections 48-655, 48-665, and 48-665.01, Reissue Revised Statutes of Nebraska, 1943, and section 77-27,119, Revised Statutes Supplement, 1992, are repealed.