

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

(New title)
New Draft of H. P. 1238, L. D. 1463
FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 1650

H. P. 1538

House of Representatives, May 26, 1981

Reported by Representative Masterman from the Committee on Taxation.
Printed under Joint Rules No. 2.

EDWIN H. PERT, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT to Provide for the Setoff against Income Tax Refunds of Debts Owed to the State or Collectible by the State.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 36 MRSA § 191, sub-§ 2, ¶¶ H and I, as enacted by PL 1977, c. 668, § 2, are amended to read:

H. The disclosure by the State Tax Assessor of the fact that a business or individual is or is not registered as a seller under section 1754 or section 1756 or disclosure of both the fact that a registration under either section has been revoked in accordance with section 1757 or section 1923 and the reasons for revocation; **and**

I. The disclosure of information acquired pursuant to Part 2; **and**

Sec. 2. 36 MRSA § 191, sub-§ 2, ¶ J is enacted to read:

J. The disclosure to a state agency seeking setoff of a liquidated debt against a tax refund pursuant to section 5276-A of information necessary to effectuate the intent of that section.

Sec. 3. 36 MRSA § 5276, sub-§ 1, as enacted by P&SL 1969, c. 154, § F, is amended to read:

1. **General rule.** The ~~assessor~~ State Tax Assessor, within the applicable period of limitations, may credit an overpayment of income tax and interest on such overpayment against any liability in respect of any tax imposed under this Title on the taxpayer who made the overpayment, and the balance, **after any setoff pursuant to section 5276-A**, shall be refunded by the ~~treasurer out of the proceeds of the tax retained by him for such general purposes~~ Treasurer of State.

Sec. 4. 36 MRSA § 5276-A is enacted to read:

§ 5276-A. Setoff of debts against refunds

1. **Generally.** Any agency of the State, including the University of Maine, which is authorized to collect from any individual or corporation a liquidated debt greater than \$25 shall notify in writing the State Tax Assessor and supply information necessary to identify the debtor whose refund is sought to be set off. The State Tax Assessor, upon any such notification, shall assist the requesting agency by setting off that debt, pursuant to rules promulgated by the State Tax Assessor, against any refund to which that individual or corporation is entitled under this Part.

2. **Notice and hearing.** Before a setoff is made, the State Tax Assessor shall provide notice to the individual or corporate taxpayer of the intended setoff and of the taxpayer's right to request, within 15 days of the taxpayer's receipt of that notice, a hearing before the creditor agency. The hearing shall be pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375, but shall be limited to the issues of whether the debt became liquidated and whether any postliquidation events have affected the liability.

3. **Finalization of setoff.** If, within 90 days of the notice to the taxpayer of the intended setoff, the agency requesting setoff certifies to the State Tax Assessor either that the taxpayer did not make a timely request for hearing or that a hearing was held and a liquidated debt was determined after hearing to be due to that agency, the State Tax Assessor shall set off the liquidated debt against the refund due to the taxpayer. Otherwise, the State Tax Assessor shall release the entire refund to the taxpayer.

4. **Appeal.** The decision of the agency seeking setoff as to the existence of a liquidated debt constitutes final agency action appealable under the Maine Administrative Procedure Act, Title 5, chapter 375.

5. **Disposition of proceeds.** Refund amounts which are set off under this section shall be transferred periodically by the State Tax Assessor to the creditor agency, except that a collection fee equal to the actual costs incurred by the State Tax Assessor in assisting in the collection shall be deducted and deposited in the General Fund. If the creditor agency is either entitled to federal matching funds against all debts collected or required by federal regulations to specially handle debts collected, the State Tax Assessor shall transfer to that agency the gross proceeds from setoffs made in its behalf, and that agency shall promptly reimburse the State Tax Assessor for the collection fee.

6. **Accounting.** The creditor agency shall credit the account of the individual whose refund has been set off with the full amount of the setoff, including the collection fee retained by, or reimbursed to, the State Tax Assessor.

7. **Priority.** In the event that claims from more than one agency are received by the State Tax Assessor with respect to one taxpayer, the claims shall be set off in the order of their receipt by the State Tax Assessor.

Sec. 5. 36 MRSA § 5279, sub-§ 4, as enacted by P&SL 1969, c. 154, § F, is amended to read:

4. **Exceptions.** If any overpayment of tax imposed by this part Part is refunded within 3 months after the last date prescribed, or permitted by extension of time, for filing the return of such that tax or within 3 months after the return was filed, whichever is later, no interest shall be allowed under this section on overpayment. In addition, no interest may be allowed with respect to the period during which a refund is delayed pending resolution of a proposed setoff under section 5276-A.

Sec. 6. **Appropriation.** The following funds are appropriated from the General Fund to carry out the purposes of this Act.

	1981-82	1982-83
FINANCE AND ADMINISTRATION,		
DEPARTMENT OF		
Bureau of Taxation		
All Other	\$40,000	\$15,000

FISCAL NOTE

It is estimated that this new draft may produce \$300,000 in collections each year. Of this amount, approximately \$15,000 will be used to reimburse the General Fund annually. In the first year, approximately \$25,000 will be used for reimbursement to the General Fund for computer development costs. The remaining collections will be credited to the creditor agency. It should be noted that the system to be utilized will be highly automated with little manual contribution by the Bureau of Taxation. Accordingly, the requirements that the bureau will make of participating agencies will minimize the manual involvement of the bureau. This is necessary to avoid additional personal services costs.

STATEMENT OF FACT

This new draft extends the coverage of the bill to all state agencies, reduces the minimum amount for setoff to \$25, provides for notice of the proposed setoff to be given by the State Tax Assessor rather than the agency seeking setoff, modifies time requirements, provides for reimbursement to the State Tax Assessor of actual costs of collection assistance, allows for initial transfer of gross collection

proceeds to the agency seeking collection when required for federal matching funds or compliance with federal regulations, provides that no interest accrue on refunds during resolution of a set-off claim and simplifies the set-off bill by incorporating it into existing provisions of Title 36.