

DEPARTMENT OF FINANCE
DIVISION OF REVENUE

Statutory Authority: 30 Delaware Code, Section 545(c) (30 **Del.C.** §545(c))

FINAL

ORDER

Regulation Governing Tax Refund Offset and Lottery Winnings Intercept Programs

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 30 **Del.C.** § 545(c), the Delaware Department of Finance (the "Department"), through its Division of Revenue ("Revenue"), proposed to adopt regulations on the tax refund offset and lottery winnings intercept programs. The regulations establish procedures for Revenue, Lottery, and State agencies to follow in connection with the programs, including a certification process and a notice and opportunity for an administrative hearing prior to offsetting against a state tax refund and notice of intercepted lottery winnings.

II. FINDINGS OF FACT

The Department finds that the proposed regulation is necessary to implement 30 **Del.C.** §545(c) and facilitate the process for State agencies to refer debts for collection under the tax refund offset and lottery winnings intercept programs. The Department finds that the proposed regulation should be adopted as submitted. Notice of the proposed regulation and a Regulatory Flexibility Analysis and Impact Statement as required under 29 **Del.C.** Ch. 104 were published in the *Register of Regulations* on June 1, 2023. The Department provided the public with an opportunity to submit written comments for thirty (30) days concerning the proposed regulation and did not receive written comments.

III. DECISION AND EFFECTIVE DATE OF ORDER

The Department adopts the regulations as proposed. The effective date of this Order shall be ten (10) days following its publication in the *Delaware Register of Regulations*.

IT IS SO ORDERED this 10th day of July 2023.

Department of Finance
Richard J. Geisenberger
Secretary of Finance

Regulation Governing Tax Refund Offset and Lottery Winnings Intercept Programs

1.0 Authority and purpose

- 1.1 The Director is authorized and required by 30 **Del.C.** §545(c) to promulgate regulations governing the tax refund offset and lottery winnings intercept programs authorized under 30 **Del.C.** §545.
- 1.2 This regulation establishes policies and procedures for the programs.

2.0 Definitions

The following words and terms, when used in this regulation, have the following meaning:

"Claimant agency" has the meaning ascribed to it in 30 **Del.C.** §545(b).

"Debt" has the meaning ascribed to it in 30 **Del.C.** §545(b). For purposes of this regulation, the term debt includes the reimbursement amount.

"Debtor" means a person, organization or entity who owes a debt to a claimant agency.

"Director" means the individual appointed to serve as Director of Revenue pursuant to 29 **Del.C.** §8303(2)b.

"Lottery Director" means the individual appointed to serve as the Director of the State Lottery Office pursuant to 29 **Del.C.** §§4804, 8303(2)c.

"Lottery winner" has the meaning ascribed to it in 30 **Del.C.** §545(b).

"Qualified lottery prize" means entitlement to a payment on account of winning a prize in a lottery conducted pursuant to the provisions of 29 **Del.C.** Ch. 48 if the prize exceeds the threshold established by the Lottery Director.

"Reimbursement amount" is the amount that Revenue is authorized to assess and collect as part of the debt, and which Revenue may withhold from any amounts collected under this regulation, to offset the costs, direct and indirect, incurred by Revenue in effectuating the offset procedures set forth in 30 **Del.C.** §545. For purposes of this regulation, the reimbursement amount shall mean \$25.00 per offset unless Revenue and the claimant agency agree to a different amount in a written agreement.

"Revenue" means the Delaware Division of Revenue, a division of the Delaware Department of Finance.

"Taxpayer" has the meaning ascribed to it in 30 **Del.C.** §545(b).

"Tax refund" means the amount determined by Revenue under applicable law to be an overpayment of State taxes that may be refundable to the debtor.

3.0 General Provisions

- 3.1 This regulation does not apply to any debt owing to Revenue under Title 30 of the Delaware Code.
- 3.2 A claimant agency is not precluded from using other debt collection procedures, such as wage garnishment, to collect debts that have been submitted to Revenue for purposes of offset or intercept under this regulation. Other debt collection procedures may be used separately or in conjunction with offset or intercept programs.
- 3.3 The Director shall ensure that claimant agencies are not provided with or given access to tax returns or information from tax returns, including the amount of income or any particulars set forth or disclosed in any report or return required under Title 30 and any information on a federal return or report which is required to be attached to or included in a State tax return, except to the limited extent necessary to administer the programs. Any access to tax information granted by the Director shall be on a need-to-know basis to perform program-related duties and shall be memorialized in writing. Claimant agencies shall take all necessary steps to protect any such tax information from inadvertent disclosure and unauthorized access.

4.0 Referral of Debts

- 4.1 Referral threshold. No single debt may be referred for offset or intercept if the amount is less than \$100.00. Revenue and the claimant agency may agree in writing to a different threshold amount.
- 4.2 Pre-offset notice and hearing requirements
 - 4.2.1 Prior to referring a debt for collection by offset or intercept, the claimant agency must:
 - 4.2.1.1 Make a reasonable attempt to notify the debtor that a debt is past-due and may be referred to Revenue for tax refund offset or lottery winnings intercept and of the opportunity to request an administrative hearing and present evidence that all or part of the debt is not past-due or legally enforceable. For purposes of this provision, the claimant agency has made a reasonable attempt to notify the debtor if the agency uses the current address information contained in the agency's records related to the debt.
 - 4.2.1.2 Consider any evidence presented by the debtor.
 - 4.2.1.3 Determine that the debt is past-due and legally enforceable in the amount referred.
 - 4.2.2 The claimant agency may refer a debt without first complying with the requirements of subsections 4.2.1.1 through 4.2.1.3 if Revenue has established a screening procedure pursuant to which Revenue, after an initial referral, issues the required pre-offset notice, notifies the agency of a match between the debtor and the identity of an individual owed a tax refund, and refers the debt back to the claimant agency for purposes of compliance with the pre-offset hearing requirements of this regulation. The claimant agency, after complying with the requirements of subsections 4.2.1.1 through 4.2.1.3, may then refer the debt or a portion thereof back to Revenue in accordance with this regulation.
- 4.3 Certification. When a claimant agency refers a debt to Revenue for tax refund offset or lottery prize intercept, the claimant agency will be deemed to have certified to Revenue that:
 - 4.3.1 The debt is past-due and legally enforceable in the amount submitted to Revenue as of the date of the referral.
 - 4.3.2 The claimant agency will ensure that subsequent collections, if any, are properly and timely credited to the debt.
 - 4.3.3 The debt is more than the referral threshold specified in this regulation or such different amount as may be agreed to in writing by Revenue and the claimant agency.
- 4.4 Noncompliance. Revenue may reject a referral that does not comply with the requirements of this regulation.
- 4.5 Post-referral obligations. If, after referring a debt to Revenue, a claimant agency determines that an error has been made with respect to the information transmitted to Revenue, or if an agency receives a payment on account of a debt referred for offset or intercept, or if the debt amount is otherwise incorrect, the agency shall

promptly notify Revenue and make the appropriate correction of the agency's records. Claimant agencies must satisfy the pre-offset notice and hearing requirements for any correction that increases the amount of the debt.

5.0 Offset Procedures

- 5.1 Upon referral of a debt under this regulation, Revenue will compare tax refund records with records of debts submitted to Revenue.
- 5.2 For purposes of this regulation, a match for a tax refund owed to a debtor will occur when the taxpayer identifying number and name are the same as the taxpayer identifying number and name of a debtor submitted by the claimant agency.
- 5.3 Except with respect to a match that relates to a joint or combined income tax return, after a match, Revenue will promptly:
 - 5.3.1 Reduce the amount of any tax refund otherwise payable to a debtor by the amount of the debt or unpaid portion thereof.
 - 5.3.2 Take reasonable steps to notify the taxpayer that the refund has been reduced and the amount of the reduction.
 - 5.3.3 Remit or credit the amount of the offset to the claimant agency. If more than one claimant agency has a debt against the taxpayer, Revenue will remit or credit payments in order of priority as determined by the Director.
 - 5.3.4 Pay to the taxpayer the remainder of any tax refund, if any.
- 5.4 If a match relates to a joint income tax return, the offset shall be placed on hold pending compliance with the procedures set forth in subsections 5.4.1 through 5.4.3. In such event, Revenue shall:
 - 5.4.1 Take reasonable steps to notify each taxpayer filing such return that a reduction may be made from a tax refund based upon the return. The notice shall include a description of the right of the non-debtor taxpayer to file a written protest with the Director within 30 days of the date of mailing of such notification for the purpose of showing the non-debtor taxpayer's proper share of the refund.
 - 5.4.2 The non-debtor taxpayer may attempt to make the required showing by providing documentation establishing to the Director's satisfaction a right to a portion of the refund based on income reported by the non-debtor taxpayer on the joint return.
 - 5.4.3 If the non-debtor taxpayer timely files a petition and makes the required showing, Revenue shall remit to the non-debtor taxpayer his or her proper share of the tax refund and apply the balance of such refund, if any, in the manner prescribed in subsection 5.3.
- 5.5 In the event the debtor shall be due a refund in combination with a non-debtor by virtue of having filed separately but combined on one return, the Director shall regard each taxpayer as entitled to separate refunds based upon the taxes due and prior payments of each taxpayer individually. The offset contemplated in this regulation shall not be applicable to a separate refund due to the non-debtor taxpayer. The offset provisions shall apply to a separate refund due to the debtor taxpayer.
- 5.6 Revenue has made reasonable attempts to notify a taxpayer if Revenue uses the current address information contained in Revenue's records related to a tax return.
- 5.7 Revenue will advise each claimant agency of the names and addresses of the debtors from whom debts were collected and of the amounts collected from each debtor for that agency. Revenue will not advise as to the source of payment from which such amounts were collected.
- 5.8 For each debt collected in whole or in part through offset, Revenue may withhold from the amount collected and credit to its own account an amount equal to the reimbursement amount.

6.0 Intercept Procedures

- 6.1 After referral of a debt under this regulation, Revenue will notify the Lottery Director to intercept any qualified lottery prize payable to a taxpayer who is also a lottery winner until such time as the Director notifies the Lottery Director that the debt of said taxpayer has been discharged.
- 6.2 Upon receipt of such notice, the Lottery Director shall:
 - 6.2.1 Reduce any qualified lottery prize payable to the lottery winner by the amount of the debt or unpaid portion thereof.
 - 6.2.2 Take reasonable steps to notify the lottery winner of the intercept and the amount of the reduction. Reasonable attempts to notify the lottery winner shall include verbal notification provided to winners presenting in person at Revenue or the State Lottery Office.
 - 6.2.3 Remit all intercepted amounts to the appropriate claimant agencies or to Revenue for subsequent transfer to the appropriate claimant agencies.

6.2.4 Pay to the winner the remainder of such qualified lottery prize, if any.

6.3 No reimbursement amount shall accrue or be collected with respect to intercept of qualified lottery prizes.

27 DE Reg. 105 (08/01/23) (Final)