

HOUSE BILL NO. 58

INTRODUCED BY M. YAKAWICH

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE DEBT COLLECTION SERVICES OF THE DEPARTMENT OF REVENUE BY PROVIDING FOR AN AGREEMENT WITH AN AGENCY TO ASSIST IN COLLECTION OF A DELINQUENT ACCOUNT; AMENDING SECTIONS 17-4-103 AND 17-4-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 17-4-103, MCA, is amended to read:

**"17-4-103. Collection of claims by department.** (1) (a) The department may examine the collection of money due an agency and institute suits:

(i) in its name for official delinquencies in relation to the assessment, collection, and payment of the revenue;

(ii) against persons who possess public money or property and fail to pay over or deliver the money or property; and

(iii) against debtors of the agencies.

(b) The courts of the county where the seat of government is located have jurisdiction, without regard to the residence of the defendants, over the collection suits authorized by this section.

(2) Whenever a person has money or other personal property that belongs to the state by escheat or otherwise or has been entrusted with the collection, management, or disbursement of money, bonds, or interest accruing from the money or bonds, belonging to or held in trust by the state, and fails to render an account of the money or personal property to and make settlement with the department within the time prescribed by law or, when a particular time is not specified, fails to render an account and make settlement or fails to pay into the state treasury the money belonging to the state, upon being required to do so by the department, within 20 days after the requisition, the department shall state an account with that person,

1 charging 25% damages and interest at the rate of 10% a year from the time of the failure. A copy of the account  
2 in a suit is prima facie evidence of the things stated in the account, but when the department cannot for want of  
3 information state an account, the department may in an action aver that fact and allege generally the amount of  
4 money or other property due or belonging to the state.

5 (3) (a) The department may assist in the collection of a delinquent account owing to an agency  
6 and may separately charge the agency ~~that transferred the debt~~ for the cost of assistance. The department may  
7 enter into an agreement with an agency to assist in the collection of a delinquent account. The department may  
8 designate the percentage of collected proceeds to be retained for the cost of assistance. The cost of assistance  
9 for collecting personal property taxes that would otherwise be collected by the county treasurer must be  
10 allocated in the same manner in which the taxes are distributed.

11 (b) A delinquent personal property tax usually collected by the county treasurer may be collected  
12 by the department only on request of the board of county commissioners. The request must be accompanied by  
13 proof of the amount of tax due and proof of the delinquency. The board shall also provide proof that, at least 30  
14 days before making the request, the county has notified the delinquent taxpayer by mail of the board's intention  
15 to request assistance from the department.

16 (4) The department may provide a collection service for the general purpose of centralizing the  
17 collection of all debts owed to agencies."  
18

19 **Section 2.** Section 17-4-105, MCA, is amended to read:

20 **"17-4-105. Authority to collect debt -- offsets.** (1) ~~Once~~ When the department enters into an  
21 agreement to collect a delinquent account pursuant to 17-4-103(3) or a debt of an agency has been transferred  
22 to the department pursuant to 17-4-104, the department may collect it. The department may contract with  
23 commercial collection agents for recovery of debts owed to agencies.

24 (2) The department shall, when appropriate, offset any amount due an agency from a person or  
25 entity against any amount, including refunds of taxes, owing the person or entity by an agency. The department  
26 may not exercise this right of offset until the debtor has first been notified by the department and been given an  
27 opportunity for a hearing pursuant to 15-1-211. An offset may not be made against any amount paid out as  
28 child support collected by the department of public health and human services. The department shall deduct

1 from the claim and draw warrants for the amounts offset in favor of the respective agencies to which the debt is  
2 due and for any balance in favor of the claimant. Whenever insufficient to offset all amounts due the agencies,  
3 the amount available must be applied first to debts owed by reason of the nonpayment of child support and  
4 then in the manner determined appropriate by the department.

5 (3) (a) The department may enter into an agreement with the federal government to offset against  
6 tax refunds payable by the federal government and pay to the state any taxes or other debts owed to an agency  
7 of the state. Except as provided in subsection (3)(c), the state may also enter into a reciprocal agreement with  
8 the federal government for the state to offset against tax refunds payable by the state and pay to the federal  
9 government any taxes or other debts owed to the federal government.

10 (b) For purposes of offsetting of debts referred to in subsection (3)(a), offsets or payments will be  
11 made in the following priority:

12 (i) child support payments;

13 (ii) any debts that are owed to this state, an agency of this state as defined in 17-4-101, or a local  
14 government unit, including a county, city, town, consolidated city-county, school district, or local public entity  
15 with the authority to spend or receive public funds; and

16 (iii) any debts owed to the federal government.

17 (c) Taxes or debts that cannot be liened or levied upon pursuant to 26 U.S.C. 5000A(g) must be  
18 excluded from the offset.

19 (d) (i) The department may enter into an agreement with another state or an agency of another  
20 state to offset against tax refunds payable by the other state or agency of the other state and pay to this state  
21 any taxes or other debts owed to this state or an agency of this state.

22 (ii) To facilitate an agreement of the kind authorized by subsection (3)(d)(i), the department may  
23 enter into an agreement that allows the other state or agency of the other state to offset against tax refunds  
24 payable by this state the whole or part of an amount owed for taxes to the other state or agency of the other  
25 state. However, the department may enter into an agreement of the type authorized by subsection (3)(a) or  
26 (3)(d)(i) only if the other state or agency of the other state or the federal government allows the offset against  
27 tax refunds owed by the other state or agency of the other state or the federal government any taxes or other  
28 debts owed to this state or an agency of this state.

1           (e)     A state or agency of another state or the federal government entering into an agreement with  
2 the department pursuant to subsection (3)(a) or (3)(d)(i) may not exercise the offset against tax refunds unless  
3 the other state or agency of the other state or the federal government has notified the taxpayer of the taxes due  
4 and has given the taxpayer an opportunity for review or appeal of the tax debt. Another state or agency of  
5 another state intending to offset taxes shall provide the department with proof of notification and opportunity for  
6 review or appeal before the offset is exercised.

7           (4)     (a) A debt owed to the department of public health and human services or being collected by  
8 the department of public health and human services on behalf of any person or agency may be offset by the  
9 department if the debt is being enforced or collected by the department of public health and human services  
10 under Title IV-D of the Social Security Act.

11           (b)     The debt does not need to be determined to be uncollectible as provided for in 17-4-104 before  
12 being transferred to the department for offset. The debt must have accrued through written contract, court  
13 judgment, administrative order, or a distribution the recipient was not entitled to retain as described in 40-5-910.

14           (c)     Within 30 days following the notification provided for in subsection (2), the person owing a debt  
15 described in subsection (4)(a) may request a hearing. The request must be in writing and be mailed to the  
16 department. The person owing a debt is not entitled to a hearing if the amount of the debt has been the subject  
17 matter of any proceeding conducted for the purpose of determining the validity of the debt and a decision made  
18 as a result of that proceeding has become final. The hearing must initially be conducted by teleconferencing  
19 methods and is subject to the provisions of the Montana Administrative Procedure Act. The department of  
20 public health and human services shall adopt rules governing the hearing procedures.

21           (5)     If the department determines that a person or entity has refused or neglected to file a claim  
22 within a reasonable time, the head of the state agency owing the amount shall file the claim on behalf of the  
23 person or entity. If the claim is approved by the department, the claim has the same force and effect as if it  
24 were filed by the person or entity. The amount due any person or entity from the state or any agency of the  
25 state is the net amount otherwise owing the person or entity after any offset, as provided in this section.

26           (6)     A debt owed to a state agency by a local government may not be offset against a payment due  
27 to a local government pursuant to 15-1-121."

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