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AN ACT
RELATING TO WORKERS' COMPENSATION; AMENDING THE TAX REFUND
INTERCEPT PROGRAM ACT TO INCLUDE CERTAIN DEBTS BY EMPLOYERS
INCURRED UNDER THE WORKERS' COMPENSATION ACT OR THE WORKERS'
COMPENSATION ADMINISTRATION ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-2C-2 NMSA 1978 (being Laws 1985,
Chapter 106, Section 2, as amended) is amended to read:

"7-2C-2. PURPOSE.--

A. The purpose of the Tax Refund Intercept Program
Act is to comply with state and federal law:

(1) by enhancing the enforcement of child
support and medical support obligations;

(2) to aid collection of outstanding debts
owed for:

(a) overpayment of public assistance
and overissuance of food stamps;

(b) overpayment of unemployment
compensation benefits and nonpayment of contributions or
payments in lieu of contributions or other amounts due under
the Unemployment Compensation Law;

(c) nonpayment of reimbursements owed
to the uninsured employers' fund under the Workers'
Compensation Act; and

1 (d) nonpayment of the workers'
2 compensation fee due under the Workers' Compensation
3 Administration Act;

4 (3) to promote repayment of educational
5 loans;

6 (4) to aid collection of fines, fees and
7 costs owed to the district, magistrate and municipal courts;

8 (5) to aid collection of fines, fees and
9 costs owed to the Bernalillo county metropolitan court; and

10 (6) to aid in the payment to the state
11 investment officer of film production tax credit amounts owed
12 to the state investment officer due to loans made against the
13 credit pursuant to Subsection D of Section 7-27-5.26 NMSA
14 1978.

15 B. Efforts to accomplish the purpose of the Tax
16 Refund Intercept Program Act may be enhanced by establishing
17 a system to collect debts, in particular, outstanding child
18 support obligations, educational loans, amounts due under the
19 Unemployment Compensation Law, the Workers' Compensation Act
20 and the Workers' Compensation Administration Act, fines, fees
21 and costs owed to the district, magistrate and municipal
22 courts, film production tax credit amounts owed to the state
23 investment officer and fines, fees and costs owed to the
24 Bernalillo county metropolitan court, by setting off the
25 amount of such debts against the state income tax refunds or

1 film production tax credit amounts due the debtors."

2 Section 2. Section 7-2C-3 NMSA 1978 (being Laws 1985,
3 Chapter 106, Section 3, as amended) is amended to read:

4 "7-2C-3. DEFINITIONS.--As used in the Tax Refund
5 Intercept Program Act:

6 A. "claimant agency" means the taxation and
7 revenue department or any of its divisions, the human
8 services department, the employment security division of the
9 labor department, the workers' compensation administration,
10 any corporation authorized to be formed under the Educational
11 Assistance Act, a district, magistrate or municipal court or
12 the Bernalillo county metropolitan court;

13 B. "debt" means a legally enforceable obligation
14 of an employer subject to the Unemployment Compensation Law,
15 the Workers' Compensation Act and the Workers' Compensation
16 Administration Act, or an individual to pay a liquidated
17 amount of money that:

18 (1) is equal to or more than one hundred
19 dollars (\$100);

20 (2) is due and owing a claimant agency,
21 which a claimant agency is obligated by law to collect or
22 which, in the case of an educational loan, a claimant agency
23 has lawfully contracted to collect;

24 (3) has accrued through contract, tort,
25 subrogation or operation of law; and

1 (4) either:

2 (a) has been secured by a warrant of
3 levy and lien for amounts due under the Unemployment
4 Compensation Law or workers' compensation fees due under the
5 Workers' Compensation Administration Act; or

6 (b) has been reduced to judgment for
7 all other cases;

8 C. "debtor" means any employer subject to the
9 Unemployment Compensation Law, the Workers' Compensation Act
10 and the Workers' Compensation Administration Act, or any
11 individual owing a debt;

12 D. "department" or "division" means, unless the
13 context indicates otherwise, the taxation and revenue
14 department, the secretary of taxation and revenue or any
15 employee of the department exercising authority lawfully
16 delegated to that employee by the secretary;

17 E. "educational loan" means any loan for
18 educational purposes owned by a public post-secondary
19 educational institution or owned or guaranteed by any
20 corporation authorized to be formed under the Educational
21 Assistance Act;

22 F. "medical support" means amounts owed to the
23 human services department pursuant to the provisions of
24 Subsection B of Section 40-4C-12 NMSA 1978;

25 G. "public post-secondary educational institution" SB 226
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1 means a publicly owned or operated institution of higher
2 education or other publicly owned or operated post-secondary
3 educational facility located within New Mexico;

4 H. "spouse" means an individual who is or was a
5 spouse of the debtor and who has joined with the debtor in
6 filing a joint return of income tax pursuant to the
7 provisions of the Income Tax Act, which joint return has
8 given rise to a refund that may be subject to the provisions
9 of the Tax Refund Intercept Program Act; and

10 I. "refund" means a refund, including any amount
11 of tax rebates or credits, under the Income Tax Act or the
12 Corporate Income and Franchise Tax Act that the department
13 has determined to be due to an individual or corporation."

14 Section 3. Section 7-2C-6 NMSA 1978 (being Laws 1985,
15 Chapter 106, Section 6, as amended) is amended to read:

16 "7-2C-6. PROCEDURES FOR SETOFF--NOTIFICATIONS TO
17 DEBTOR.--

18 A. Each year a claimant agency seeking to collect
19 a debt through setoff shall notify the department in the
20 manner and by the date required by the department, which date
21 shall be in the period from November 1 through December 15.

22 The notice to the department shall include the amount of the
23 debt, the name and identification number of the debtor and
24 such other information as the department may require. The
25 notice shall also include certification that the debt is due

1 and owing the claimant agency or that the claimant agency is
2 obligated by law to collect the debt. This notice shall be
3 effective only to initiate setoff against refunds that would
4 be made in the calendar year subsequent to the year in which
5 notification is made to the department.

6 B. The claimant agency shall inform the department
7 within one week of any changes in the status of any debt
8 submitted by the claimant agency for setoff.

9 C. Upon proper and timely notification from the
10 claimant agency, the department shall determine whether the
11 debtor is entitled to a refund of at least fifty dollars
12 (\$50.00). The department shall notify the claimant agency in
13 writing, or in such other manner as the department and the
14 claimant agency may agree, with respect to each debt accepted
15 for setoff whether the debtor is due a refund of fifty
16 dollars (\$50.00) or more and, if so, the amount of refund,
17 the address of the debtor entered upon the return and, if the
18 refund arises from a joint return, the name and address of
19 the spouse as entered upon the return.

20 D. Within ten days after receiving the
21 notification from the department pursuant to Subsection C of
22 this section, the claimant agency shall send a notice by
23 first class mail to the debtor at the debtor's last known
24 address. The notice required by this subsection shall
25 include:

1 (1) a statement that a transfer of the
2 refund will be made and that the claimant agency intends to
3 set off the amount of the transfer against a claimed debt;

4 (2) the amount of the debt asserted and a
5 description of how the debt asserted arose;

6 (3) the name, address and telephone number
7 of the claimant agency;

8 (4) the amount of refund to be set off
9 against the debt asserted;

10 (5) a statement that the debtor has thirty
11 days from the date indicated on the notice to contest the
12 setoff by applying to the claimant agency for a hearing with
13 respect to the validity of the debt asserted by that agency;
14 and

15 (6) a statement that failure of the debtor
16 to apply for a hearing within thirty days will be deemed a
17 waiver of the opportunity to contest the setoff and to a
18 hearing.

19 E. If the refund against which a debt is intended
20 to be set off results from a joint tax return, the claimant
21 agency shall send a notice by first class mail to the spouse
22 named on the return within ten days after receiving the
23 notification from the department pursuant to Subsection C of
24 this section. The notice to the spouse shall contain the
25 following information:

1 (1) a statement that a transfer of the
2 refund will be made and that the claimant agency intends to
3 set off the amount of the transfer against a claimed debt;

4 (2) the total amount of the refund and the
5 amount of each claimed debt;

6 (3) the name, address and telephone number
7 of the claimant agency;

8 (4) a statement that no debt is claimed
9 against the spouse and that the spouse may be entitled to
10 receive all or part of the refund regardless of the claimed
11 debt against the debtor spouse;

12 (5) a statement that to assert a claim to
13 all or part of the refund, the spouse shall apply to the
14 claimant agency for a hearing within thirty days from the
15 date indicated on the notice with respect to the entitlement
16 of the spouse to all or part of the refund from which a
17 transfer will be made at the request of the claimant agency;
18 and

19 (6) a statement that failure of the spouse
20 to apply for a hearing within thirty days may be deemed a
21 waiver of any claim of the spouse with respect to the refund.

22 F. A debtor may contest the setoff of a debt by
23 applying to the claimant agency for a hearing within thirty
24 days of the date the notice required by Subsection D of this
25 section is sent to the debtor. Failure of the debtor to

1 apply for a hearing within the time required shall constitute
2 a waiver of the right to contest the debt or the setoff of
3 the debt.

4 G. A spouse may contest the setoff of a debt
5 against a refund to which the spouse claims entitlement in
6 whole or in part by applying to the claimant agency for a
7 hearing within thirty days of the date the notice required by
8 Subsection E of this section was sent to the spouse. Failure
9 of the spouse to apply for a hearing within the time required
10 shall constitute a waiver of the right to contest the setoff
11 of the debt against a refund to which the spouse may claim
12 entitlement.

13 H. The department shall apply against the refund
14 the amount of the claimed debt, not to exceed the amount of
15 the refund, and shall transfer that amount to the claimant
16 agency with an accounting of the amount transferred. When
17 the amount of refund due exceeds the amount of all applied
18 debts, the department shall treat the excess as it does other
19 refunds relating to income taxes.

20 I. Whether or not the refund due the debtor
21 exceeds the amount of the applied debt, the department shall
22 notify the debtor at the time of the transfer to the claimant
23 agency of:

24 (1) the fact of the transfer and that the
25 claimant agency intends to set off the amount of the transfer

1 against the asserted debt;

2 (2) the total amount of the refund;

3 (3) the amount of debt asserted by the
4 claimant agency; and

5 (4) the name, address and telephone number
6 of the claimant agency.

7 J. Once the department has sent to the debtor the
8 notice required by Subsection I of this section, together
9 with any excess of the amount of refund over the amount of
10 asserted debts, the department shall be deemed to have made
11 the refund required by the Income Tax Act or the Corporate
12 Income and Franchise Tax Act."

13 Section 4. Section 7-2C-11 NMSA 1978 (being Laws 1985,
14 Chapter 106, Section 11, as amended) is amended to read:

15 "7-2C-11. PRIORITY OF CLAIMS.--

16 A. Claims of the department take precedence over
17 the claim of any competing claimant agency, whether the
18 department asserts a claim or sets off an asserted debt under
19 the provisions of the Tax Refund Intercept Program Act or
20 under the provisions of any other law that authorizes the
21 department to apply amounts of tax owed against any refund
22 due an individual pursuant to the Income Tax Act.

23 B. After claims of the department, claims shall
24 take priority in the following order before claims of any
25 competing claimant agency:

1 (1) claims of the human services department
2 resulting from child support enforcement liabilities;

3 (2) claims of the human services department
4 resulting from medical support liabilities;

5 (3) claims resulting from educational loans
6 made under the Educational Assistance Act;

7 (4) claims of the human services department
8 resulting from AFDC liabilities;

9 (5) claims of the human services department
10 resulting from food stamp liabilities;

11 (6) claims of the employment security
12 division of the labor department arising under the
13 Unemployment Compensation Law;

14 (7) claims of a district court for fines,
15 fees or costs owed to that court;

16 (8) claims of a magistrate court for fines,
17 fees or costs owed to that court;

18 (9) claims of the Bernalillo county
19 metropolitan court for fines, fees or costs owed to that
20 court;

21 (10) claims of a municipal court for fines,
22 fees or costs owed to that court; and

23 (11) claims of the workers' compensation
24 administration arising under the Workers' Compensation Act or
25 the Workers' Compensation Administration Act."

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Section 5. APPLICABILITY.--The provisions of this act
apply to tax refunds issued on or after January 1, 2007.=====