



SPONSOR: Rep. Q. Johnson & Sen. Poore
Reps. Dukes, Gray, Hensley, Paradee, Ramone,
Spiegelman, Wilson; Sen. Ennis

HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE BILL NO. 29

AN ACT TO AMEND TITLE 10 AND TITLE 30 OF THE DELAWARE CODE RELATING TO JUDGMENTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Add new section to Title 10 of the Delaware Code by making deletions as shown by strikethrough and
2 insertions as shown by underline as follows:

3 § 5033. Writ of attachment of tax refunds and lottery winnings.

4 A judgment creditor may apply to the court for a writ of attachment pursuant to which the judgment creditor may
5 attach tax refunds, or lottery winnings that may be due to the judgment debtor, for any judgment resulting from the breach
6 of a residential or commercial rental agreement, if such judgment creditor has in good faith attempted either a wage
7 attachment, personal property seizure or a vehicle seizure which did not result in collection of the debt. Additionally, before
8 a writ of attachment of tax refunds or lottery winnings is filed, the judgment creditor must send a certified letter to a
9 judgment debtor advising that a writ of attachment of tax refunds and lottery winnings is going to be filed. Any portion of a
10 tax refund that is comprised of an income tax credit is not eligible for seizure. Notice shall be provided to the Department
11 of Finance that a writ of attachment of tax refunds and lottery winnings has issued. Upon seizure of tax refunds or lottery
12 winnings by the Department of Finance pursuant to this writ, a judgment debtor shall have the opportunity to contest the
13 amount owed. In order to contest the amount owed, the judgment debtor must file an objection with the court and serve
14 such objection on the Department of Finance within 30 days of notice being sent to the judgment debtor by the Department
15 of Finance that a seizure has occurred. If a judgment debtor contests the amount owed, the court shall provide a hearing.

16 Section 2. Amend Title 30 of the Delaware Code by making deletions as shown by strike through and insertions
17 as shown by underline as follows:

18 § 545A. Collection of judgments entered in courts within the State.

19 (a) General. Upon receiving notice that a writ of attachment of tax refunds and lottery winnings has been issued,
20 the Director shall:

21 (1) Reduce the amount of any overpayment of tax payable to the judgment debtor and seize that amount;

22 (2) Notify the judgment debtor that such overpayment has been reduced by the amount in the writ of
23 attachment and provide notice to the judgment debtor that such amount has been seized and he or she has 30 days to
24 contest the amount owed in the court that the writ of attachment was issued;

25 (3) Pay the amount by which such overpayment is reduced under paragraph (a)(1) of this section to the
26 judgment creditor after satisfying all notice requirements and completion of any court proceedings as required by this
27 title and title 10;

28 (4) Pay to the judgment debtor the remainder of such overpayment, if any; and

29 (5) Notify the Director of the State Lottery Office that the Department of Finance has received a writ of
30 attachment whereupon the Director of the State Lottery Office shall, for those prizes that exceed a threshold established
31 by the Director of the State Lottery Office:

32 a. Reduce the prize payable to the judgment debtor by the amount provided in the writ of attachment and
33 seize this amount;

34 b. Notify the judgment debtor that such prize has been reduced by the amount in the writ of attachment
35 and provide notice to the judgment debtor that such amount has been seized and he or she has 30 days to contest
36 the amount owed in the court that issued the writ of attachment;

37 c. Pay the amount by which such prize is reduced under paragraph (a)(5)a. of this section to the judgment
38 creditor after satisfying all notice requirements and completion of any court proceedings as required by this title
39 and title 10; and

40 d. Pay to the judgment debtor the remainder of such prize, if any.

41 (b) Regulations.

42 (1) The Director shall promulgate regulations applicable to the Department of Finance providing for:

43 a. Procedures and methods for the operation and administration of this section;

44 b. Due notice to the taxpayer for the seizure and reduction of overpayment of taxes payable;

45 c. Safeguards against the disclosure or inappropriate use of any personally identifiable information
46 regarding the taxpayer obtained or maintained pursuant to this chapter; and

47 d. A minimum debt, amounts below which, in light of administrative expenses and efficiency, shall, in the
48 Director's discretion, not be subject to the collection procedures set forth in this section;

49 (2) Regulations promulgated under the authority of this subsection and pursuant to the Administrative
50 Procedures Act shall have the force and effect of law.

51 (c) Joint and combined income tax returns.

(1) If a refund from which the reduction described in paragraph (a)(1) of this section would be made is based upon a joint return of the tax imposed by Chapter 11 of this title, the Director shall:

a. Notify each taxpayer filing such return that the reduction is being made from a refund based upon such return;

b. Include in such notification a description of the right of the taxpayer, who does not have the writ of attachment against them, to file a written protest with the Director, within 30 days of the date of mailing such notification, for the purpose of showing that taxpayer's proper share of such refund; and

c. If such a showing is made, promptly remit to the taxpayer the taxpayer's proper share of such refund, and apply the balance of such refund in the manner prescribed in subsection (a) of this section.

(2) In the event the person with writ of attachment against them shall be due a refund in combination with the person who does not have a judgment against them by virtue of having filed separately but combined on 1 return of the tax imposed by Chapter 11 of this title, the Director shall regard each spouse as entitled to separate refunds based upon the taxes due and prior payments of each spouse individually. In such a case, the reduction described in paragraph (a)(1) of this section shall not be applicable to such separate refund due to the spouse that does not have the writ of attachment against them, but such reduction shall be applicable to such separate refund due to the spouse with the judgment against them.

Section 3. The Courts and the Department of Finance shall work together to research the necessary electronic system to provide notice between Courts and the Department of Finance relating to a writ of attachment for tax refunds and lottery winnings. The Courts and the Department of Finance shall determine the costs of implementing such an electronic system.

Section 4. An additional special fee, to be set by the General Assembly through legislation, shall be imposed upon a person filing for a writ of attachment of tax refunds and lottery winnings which shall be set at a rate to offset the cost of the development, implementation, and administration of the provisions in §545A of Title 30 and in § 5033 of Title 10. This special fee shall be placed in a specially allocated account and provided to the Department of Finance and the Courts for the administration of the requirements of this Act. The Department of Finance and the Courts shall work together and shall provide a report to the Delaware General Assembly no later than January 10, 2018 providing a recommendation as to the amount at which the special fee should be set.

Section 5. Sections 3 and 4 of this bill shall take effect immediately. Sections 1 and 2 shall take effect upon the enactment of legislation that provides an amount for the special fee in Section 4 of this bill and the receipt of sufficient funds to develop, implement, and administer any electronic system developed or employed between the Department of Finance and the Courts related to a writ of attachment for tax refunds and lottery winnings.

SYNOPSIS

This bill establishes a writ of attachment of tax refunds and lottery winnings. This bill provides a procedure for interception of tax refunds and lottery winnings by the Department of Finance for judgments resulting from a breach of a residential or commercial rental agreement. This bill provides for the opportunity to contest the amount owed in regards to funds seized pursuant to a writ of attachment of tax refunds or lottery winnings. The bill directs the Department of Finance to work with the Courts to develop an electronic system relating to the collection of judgments through tax refunds and lottery winnings. The bill also directs the Courts and Department of Finance to work together and make a recommendation as to the amount of a special fee that is meant to offset the development, implementation and administration of the collection of judgments through tax refunds and lottery winnings. The Department and Finance are directed to provide a report to the General Assembly by January 10, 2018 regarding the costs of administrating this provision and an appropriate off-setting fee to be charged for issuance of the writ described herein. Sections 1 and 2 of the bill will not take effect until ongoing funds are provided to develop, implement and administer Sections 1 and 2, and until legislation is passed implementing the new fee.