

REFERENCE TITLE: earned income tax credit

State of Arizona  
House of Representatives  
Forty-eighth Legislature  
Second Regular Session  
2008

## **HB 2550**

Introduced by  
Representatives Gallardo, Ableser, Sinema: Campbell CL, Lujan, Prezelski,  
Tom

AN ACT

AMENDING SECTIONS 42-1122 AND 43-222, ARIZONA REVISED STATUTES; AMENDING  
TITLE 43, CHAPTER 10, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTION  
43-1073.01; RELATING TO INDIVIDUAL INCOME TAX CREDITS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 42-1122, Arizona Revised Statutes, is amended to  
3 read:

4 42-1122. Setoff for debts to state agencies and courts:  
5 revolving fund; definitions

6 A. The department shall establish a liability setoff program by which  
7 refunds under ~~sections~~ SECTION 42-1118 and ~~43-1072~~ TITLE 43, CHAPTERS 10 AND  
8 11 may be used to satisfy debts that the taxpayer owes to this state or a  
9 court. The program shall comply with the standards and requirements  
10 prescribed by this section.

11 B. If a taxpayer owes an agency or court a debt, the agency or court,  
12 by November 1 of each year, may notify the department, furnishing at least  
13 the state agency, court or program identifier, the first name, last name,  
14 middle initial or middle name and suffix, social security number and any  
15 other available identification that the agency or court deems appropriate of  
16 the debtor as shown on the records of the agency or court, and the amount of  
17 the debt.

18 C. The department shall match the information submitted by the agency  
19 or court by at least two items of identification of the taxpayer with  
20 taxpayers who qualify for refunds under section 42-1118 AND TITLE 43,  
21 CHAPTERS 10 AND 11 and:

22 1. Notify the agency or court of a potential match, the taxpayer's  
23 home address and any additional taxpayer identification numbers used by the  
24 taxpayer. Even if the taxpayer is not entitled to a refund, the department  
25 of revenue shall provide to:

26 (a) The court, the clerk of the court and the department of economic  
27 security, for child support and spousal maintenance purposes only, the home  
28 address of a taxpayer whose debt for overdue support is referred for setoff  
29 and any additional taxpayer identification numbers used by the taxpayer.

30 (b) The court, the home address and any additional taxpayer  
31 identification numbers used by the taxpayer whose debt for a court obligation  
32 is referred for setoff and who is identified by the court as a probationer on  
33 absconder status.

34 2. Request final agency or court confirmation in writing or  
35 electronically as determined by the department within ten days of the match  
36 and of the continuation of the debt. If the agency or court fails to provide  
37 confirmation within forty-five days after the request, the department shall  
38 release the refund to the taxpayer.

39 D. An agency or court may submit updated information, additions,  
40 deletions and other changes on a quarterly or more frequent basis, at the  
41 convenience of the agency or court.

42 E. On confirmation pursuant to subsection C, paragraph 2 of this  
43 section, the agency shall notify the taxpayer, by mail to the most recent  
44 address provided by the taxpayer to the department:

45 1. Of the intention to set off the debt against the refund due.

1           2. Of the taxpayer's right to appeal to the appropriate court, or to  
2 request a review by the agency pursuant to agency rule, within thirty days of  
3 the mailing of the notice.

4           F. In addition the taxpayer shall receive notice that if the refund is  
5 intercepted in error through no fault of the taxpayer, the taxpayer is  
6 entitled to the full refund plus interest and penalties from the agency or  
7 court as provided by subsection 0 of this section.

8           G. The basis for a request for review as provided by subsection E of  
9 this section shall not include the validity of the claim if its validity has  
10 been established at an agency hearing, by judicial review in a court of  
11 competent jurisdiction in this or any other state or by final administrative  
12 decision and shall state with specificity why the taxpayer claims the  
13 obligation does not exist or why the amount of the obligation is incorrect.

14           H. If, within thirty days of the mailing of the notice, the taxpayer  
15 requests a review by the agency or provides the agency with proof that an  
16 appeal has been taken to the appropriate court, the agency shall immediately  
17 notify the department and the setoff procedure shall be stayed pending  
18 resolution of the review or appeal.

19           I. If the department does not receive notice of a timely appeal, it  
20 shall draw and deliver a warrant in the amount of the available refund up to  
21 the amount of the debt in favor of the agency and notify the taxpayer of the  
22 action by mail.

23           J. Subsections E, G, H and I of this section do not apply to a debt  
24 imposed by a court except that the taxpayer shall receive notice of the  
25 intent to set off the debt against the refund due and the right to appeal to  
26 the court that imposed the debt within thirty days of the mailing of the  
27 notice. The basis for the request for review shall not include the validity  
28 of the claim and shall state with specificity why the taxpayer claims the  
29 obligation does not exist or why the obligation is incorrect.

30           K. If the setoff accounts for only a portion of the refund due, the  
31 remainder of the refund shall be sent to the taxpayer. A court shall not use  
32 this section to satisfy a judgment or payment of a fine or civil penalty  
33 until the judgment has become final or until the time to appeal the  
34 imposition of a fine or civil penalty has expired.

35           L. A revolving fund is established to recover and pay the cost of  
36 operating the setoff program under this section. The department may  
37 prescribe a fee to be collected from each agency or court utilizing the  
38 setoff procedure or from the taxpayer, and the amount shall be deposited in  
39 the fund. The amount of the fee shall reasonably reflect the actual cost of  
40 the service provided. Monies in the revolving fund are subject to  
41 legislative appropriation.

42           M. If agencies or courts have two or more delinquent accounts for the  
43 same taxpayer, the refund may be apportioned among them pursuant to rules  
44 prescribed by the department of revenue, except that a setoff to the

1 department of economic security for overdue support has priority over all  
2 other setoffs.

3 N. If the refund is insufficient to satisfy the entire debt, the  
4 remainder of the debt may be collected by the agency or court as provided by  
5 law or resubmitted for setoff against subsequent refunds.

6 O. In the case of a refund that is intercepted in error through no  
7 fault of the taxpayer under this section, the taxpayer shall be reimbursed by  
8 the agency or court with interest pursuant to section 42-1123. In addition,  
9 if all or part of a refund is intercepted in error due to an agency or court  
10 incorrectly identifying a taxpayer as a debtor through no fault of the  
11 taxpayer, the agency or court shall also pay the taxpayer a penalty as  
12 follows:

13 1. If the agency or court reimburses the taxpayer sixteen through one  
14 hundred eighty days after the agency or court receives notification that the  
15 refund was erroneously intercepted and the refund was received by the agency  
16 or court, the penalty is equal to ten per cent of the amount of the refund  
17 that was intercepted.

18 2. If the agency or court reimburses the taxpayer one hundred  
19 eighty-one through three hundred sixty-five days after the agency or court  
20 receives notification that the refund was erroneously intercepted and the  
21 refund was received by the agency or court, the penalty is equal to fifteen  
22 per cent of the amount of the refund that was intercepted.

23 3. If the agency or court fails to reimburse the taxpayer within three  
24 hundred sixty-five days after the agency or court receives notification that  
25 the refund was erroneously intercepted and the refund was received by the  
26 agency or court, the penalty is equal to twenty per cent of the amount of the  
27 refund that was intercepted.

28 P. The time periods set forth in subsection O of this section shall be  
29 stayed during a review of an agency decision pursuant to section 25-522.

30 Q. Except as is reasonably necessary to accomplish the purposes of  
31 this section, the department shall not disclose under this section any  
32 information in violation of chapter 2, article 1 of this title.

33 R. An agency or court shall not enter into an agreement with a debtor  
34 for:

35 1. The assignment of any prospective refund to the agency or court in  
36 satisfaction of the debt.

37 2. Payment of the debt if the debt has been confirmed to the  
38 department for setoff under subsection C, paragraph 2 of this section.

39 S. If a tax refund is based on a joint income tax return and the  
40 department of economic security receives a written claim from the  
41 nonobligated spouse within forty-five days after the notice of a setoff for  
42 overdue child support, the setoff only applies to that portion of the refund  
43 due to the obligor. The nonobligated spouse shall provide to the department  
44 of economic security copies of both the obligated and nonobligated spouse's  
45 federal W-2 forms and evidence of estimated tax payments supporting the

1 proportionate share of each spouse's payment of tax. The department of  
2 economic security shall retain the amount of the set off refund due to the  
3 obligated spouse determined by a proration based on the tax payments of each  
4 spouse by estimated tax payment or tax withheld from wages.

5 T. For the purposes of this section:

6 1. "Agency" means a department, agency, board, commission or  
7 institution of this state. Agency also means a corporation that is under  
8 contract with this state and that provides a service that would otherwise be  
9 provided by a department, agency, board, commission or institution of this  
10 state, if the contract specifically authorizes participation in the liability  
11 setoff program and the attorney general's office has reviewed the contract  
12 and approves such authorization. The participation in the liability setoff  
13 program shall be limited to debt related to the services the corporation  
14 provides for or on behalf of this state.

15 2. "Court" means all courts of record, justice courts, municipal  
16 courts and police courts.

17 3. "Debt" means an amount over fifty dollars owed to an agency or  
18 court by a taxpayer and may include a judgment in favor of this state or a  
19 political subdivision of this state, interest, penalties, charges, costs,  
20 fees, fines, civil penalties, surcharges, assessments, administrative charges  
21 or any other amount. Debt also includes monies owed by a taxpayer for  
22 overdue support and referred to the department of economic security or the  
23 clerk of the court for collection.

24 4. "Overdue support" means a delinquency in court ordered payments for  
25 spousal maintenance or support of a child or for spousal maintenance to the  
26 parent with whom the child is living if child support is also being enforced  
27 pursuant to an assignment or application filed under 42 United States Code  
28 section 654(6) or other applicable law.

29 Sec. 2. Section 43-222, Arizona Revised Statutes, is amended to read:

30 43-222. Income tax credit review schedule

31 Each year the joint legislative income tax credit review committee  
32 shall review the following income tax credits:

33 1. In 2007, sections 43-1077, 43-1078, 43-1079, 43-1080, 43-1165,  
34 43-1166, 43-1167 and 43-1169.

35 2. In 2008, sections 43-1074.01, 43-1081, 43-1168, 43-1170 and  
36 43-1178.

37 3. In 2009, sections 43-1076, 43-1081.01, 43-1084, 43-1162 and  
38 43-1170.01.

39 4. In 2010, sections 43-1075, 43-1075.01, 43-1079.01, 43-1087,  
40 43-1088, 43-1090.01, 43-1163, 43-1163.01, 43-1167.01, 43-1175 and 43-1182.

41 5. In 2011, sections 43-1074.02, 43-1083, 43-1085, 43-1164 and  
42 43-1183.

43 6. In 2012, sections 43-1073, 43-1086, 43-1089, 43-1089.01,  
44 43-1089.02, 43-1090, 43-1176 and 43-1181.

45 7. IN 2013, SECTION 43-1073.01.

1           Sec. 3. Title 43, chapter 10, article 5, Arizona Revised Statutes, is  
2 amended by adding section 43-1073.01, to read:

3           43-1073.01. Earned income tax credit

4           A. A CREDIT IS ALLOWED AGAINST THE TAXES DUE UNDER THIS TITLE FOR A  
5 TAXABLE YEAR FOR AN INDIVIDUAL WHO QUALIFIES FOR AN EARNED INCOME TAX CREDIT  
6 UNDER SECTION 32 OF THE INTERNAL REVENUE CODE. THE AMOUNT OF THE CREDIT  
7 UNDER THIS SECTION IS TWENTY PER CENT OF THE AMOUNT OF THE FEDERAL EARNED  
8 INCOME TAX CREDIT ALLOWED TO THE TAXPAYER FOR THE TAXABLE YEAR.

9           B. THE DEPARTMENT SHALL MAKE SUITABLE CLAIM FORMS AVAILABLE WITH THE  
10 INDIVIDUAL INCOME TAX RETURNS. NO CLAIM FOR CREDIT UNDER THIS SECTION IS  
11 ALLOWED UNLESS THE CLAIM IS ACTUALLY FILED WITH THE CLAIMANT'S INCOME TAX  
12 RETURN, EXCEPT THAT CLAIMANTS WHO CERTIFY ON THE CLAIM FORM THAT THEY HAVE NO  
13 INCOME TAX LIABILITY FOR THE TAXABLE YEAR AND WHO DO NOT MEET THE FILING  
14 REQUIREMENTS OF SECTION 43-301 ARE NOT REQUIRED TO FILE THE INCOME TAX  
15 RETURN.

16           C. ONLY ONE CLAIMANT PER HOUSEHOLD PER YEAR IS ENTITLED TO A CREDIT  
17 UNDER THIS SECTION.

18           D. IF THE ALLOWABLE AMOUNT UNDER SUBSECTION A OF THIS SECTION EXCEEDS  
19 THE AMOUNT OF TAX DUE UNDER THIS TITLE, AFTER APPLYING ALL OTHER CREDITS TO  
20 WHICH THE CLAIMANT MAY BE ENTITLED AND AFTER ANY SETOFF UNDER SECTION  
21 42-1122, THE EXCESS SHALL BE PAID IN THE SAME MANNER AS A REFUND UNDER  
22 SECTION 42-1118.

23           Sec. 4. Purpose

24           Pursuant to section 43-223, Arizona Revised Statutes, the legislature  
25 enacts section 43-1073.01, Arizona Revised Statutes, as added by this act, to  
26 provide an economic benefit to persons and families of low income in this  
27 state.

28           Sec. 5. Retroactivity

29           Section 43-1073.01, Arizona Revised Statutes, as added by this act,  
30 applies retroactively to taxable years beginning from and after December 31,  
31 2007.