WEST VIRGINIA CODE: §14-1-37

§14-1-37. United States Treasury offset program authorized; setoff of federal debts.

(a) The auditor is authorized to enter into an agreement with the Secretary of the Treasury to participate in the Treasury Offset Program pursuant to 31 U.S.C. §3716 for the collection of any debts owed to the state or to state agencies from federal payments to vendors, contractors and taxpayers. The agreement may provide for the United States to submit nontax debts owed to federal agencies for offset against state payments otherwise due and owing to taxpayers, vendors and contractors providing goods or services to the state, its departments, agencies or institutions.

(b) For purposes of this section the following words have the meanings indicated.

(1) "Federal official" means a unit or official of the federal government charged with the collection of nontax liabilities payable to the federal government and with the authority to enter into the offset agreement.

(2) "Offset agreement" is the agreement authorized by this section.

(3) "Person" means an individual, vendor, contractor, partnership, society, association, joint stock company, limited liability company, corporation, estate, receiver, trustee, assignee, and any other person acting in a fiduciary or representative capacity whether appointed by a court or otherwise, or any combination of the foregoing.

(4) "State payments" shall include tax refunds pursuant to the Tax Procedure and Administration Act, article ten, chapter eleven of this code, and vendor or contractor payments made by the state to any person including expense reimbursements to an employee of the state: Provided, That "state payments" do not include salary, wages, pension and any other type, class or amount of payment as the auditor determines to impact the health or welfare of the citizens of the state.

(c) Pursuant to the agreement authorized herein, a federal official may:

(1) Certify to the auditor the existence of a person's delinquent, nontax debt owed by the person to the federal government by providing:

(A) The name of the person;

(B) The social security number or federal tax identification number;

(C) The amount of the nontax debt; and

(D) Any other information pursuant to the agreement authorized herein;

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(2) Request the auditor to withhold any state payment to which the person is entitled; and

(3) Retain a portion of the proceeds of any federal administrative setoff pursuant to 31 CSR 285.6.

(d) As required or permitted by state law, federal law or the offset agreement, the State Auditor:

(1) Shall determine if a person for whom a certification is received is due a state payment;

(2) Shall withhold a state payment that is due a person whose name has been certified by a federal official;

(3) Shall notify the person of the amount withheld in accordance with the offset agreement;

(4) Shall pay to the federal official the lesser of:

(A) The entire state payment; or

(B) The amount certified; and

(C) Pay any refund or state payment in excess of the certified amount to the person less any fee pursuant to subsection (e);

(5) May certify to a federal official a person's delinquent debt owed to the state by providing the federal official:

(A) The name of the person;

(B) The social security number or tax identification number;

(C) The amount of the debt due the state; and

(D) Any other information required by the offset agreement; and

(6) May request that the federal official withhold any federal vendor or other federal payment pursuant to the offset agreement to which the person is entitled.

(e) The auditor may, by rule, establish a reasonable administrative fee to be charged to the person for the provision of state offset of federal debt. The fee is a separate debt and may be withheld from any refund, reimbursement or other moneys held for the person. The auditor may charge the person who is the subject of federal offset of a state debt, a fee equal to the fee authorized in subsection (c).

(f) Each state agency and institution shall take all appropriate and cost-effective actions to aggressively collect its accounts receivable. Each agency and institution may participate in the Treasury Offset program of the United States under 31 U.S.C. §3716.

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(g) The auditor may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to administer and implement this section and the offset agreement.

(h) The auditor and the chief administrators of the various state agencies are authorized by this section to enter into interagency agreements for the purpose of protecting a person's return information as defined in section ten, article five-d, chapter eleven of this code and collecting debts, fees and penalties due the state, its departments, agencies or institutions.

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