

5703-7-13

**State income tax refund offsets; portion of joint refund not belonging to obligor or recipient.**

- (A) Refunds of income taxes under Chapter 5747. of the Revised Code are subject to offset under sections 5747.12, 5747.121, 5747.122 and 5747.123 of the Revised Code. The tax commissioner will identify those taxpayers due a refund who are subject to such offset based upon information provided by any state or federal agency.

The commissioner will immediately disburse the refunds of those taxpayers to the appropriate fund or agency, to the extent they do not exceed the outstanding balance to be collected by such offset, and except as provided in paragraph (B) of this rule. Any remaining portion of the tax refunds will be paid to the taxpayer.

(B)

- (1) A "liable spouse" is a taxpayer, included on a jointly filed individual income tax return, who is liable for a debt under sections 5747.12, 5747.121, 5747.122 and 5747.123 of the Revised Code. A "non-liable spouse" is a taxpayer, included on a jointly filed individual income tax return, who is not liable for a debt under sections 5747.12, 5747.121, 5747.122, and 5747.123 of the Revised Code.

- (2) In the case of taxpayers who file joint returns, where one taxpayer is a liable spouse and one taxpayer is a non-liable spouse, only the portion of the refund belonging to the liable spouse is subject to the offset under paragraph (A) of this rule. The burden is on the taxpayers to prove that a portion of the refund is not subject to offset based on the information shown on the taxpayers' joint income tax return and the attachments thereto.

- (3) The commissioner will notify the taxpayers that they have twenty-one days from receipt of the notice to prove the portion of the taxpayers' refund not subject to offset by utilizing the following calculation:

(a) Step 1: The taxpayer shall compute the ratio of the non-liable spouse's portion of the taxpayers' Ohio adjusted gross income to the total Ohio adjusted gross income as reporting for the tax year at issue. In computing this amount, the taxpayer shall utilize only those adjustments contained in division (A) of section 5747.01 of the Revised Code related to the income included in the non-liable spouse's portion of federal adjusted gross income.

(b) Step 2: The taxpayer shall multiply the taxpayers' total tax liability prior to applying any payments or withholding, by the ratio obtained in step

1.

(c) Step 3: The taxpayer shall subtract the product obtained in step 2 from the portion of all payments, including withholdings and estimated payments, belonging to the non-liable spouse.

(4) If the taxpayers have provided a calculation under paragraph (B)(3) of this rule, the commissioner shall review the calculation.

(a) If the commissioner concurs, the offset under paragraph (A) of this rule will not include any amounts due to the non-liable spouse. The commissioner will immediately disburse such portion of the refund belonging to the liable spouse to the appropriate fund or agency.

(b) If the commissioner does not concur, the commissioner will notify the taxpayers and provide a revised calculation. The notice will advise them that they have twenty-one days from receipt of the notice to:

(i) For amounts subject to offset under section 5747.12 of the Revised Code, submit any additional documentation to refute the revised calculation;

(ii) For amounts subject to offset under sections 5747.121, 5747.122, and 5747.123 of the Revised Code, file a complaint with the commissioner concerning the revision, along with an optional request for a hearing.

(5) If the taxpayers submit additional documentation pursuant to paragraph (B)(4)(b)(i) of this rule, the commissioner shall review the documentation and make any necessary adjustments. If the taxpayers file a complaint pursuant to paragraph (B)(4)(b)(ii) of this rule, the commissioner shall proceed according to the relevant statutory provisions. Otherwise, the commissioner's revised calculation will be substituted for that of the taxpayers. The commissioner will then make any disbursements in the same manner as under paragraph (A) of this rule.

(6) Notwithstanding paragraph (B)(3) of this rule, if the taxpayer requests and the commissioner agrees, the commissioner may calculate the portion of the refund subject to offset based on any information in the commissioner's possession.

~~(6)~~(7) If no such proof or review request is submitted within the time specified, the

full refund will be subject to offset under a paragraph (A) of this rule.

- (C) For purposes of this rule, notices sent by the commissioner by ordinary mail are rebuttably presumed to be received by the taxpayers seven days after the mailing thereof.
- (D) Nothing in this rule shall be construed to limit any subsequent corrections, assessments, or refunds within the applicable statutes of limitation.