

SET-OFF DEBT COLLECTION ACT REGULATIONS

~~23 VAC 10-380-10. Purpose.~~

~~The purpose of the Set-Off Collection Act (§58.1-520 et seq. of the Code of Virginia) is to establish as policy that all claimant agencies and the Department of Taxation shall cooperate in identifying debtors who owe money to the Commonwealth or its counties, cities and towns through its various claimant agencies and who qualify for refunds from the Department. It is also the intent of this Act that procedures be established for setting off against any such refund the sum of any delinquent debt owed to the Commonwealth. Furthermore, it is the legislative intent that this Act be liberally construed so as to effectuate these purposes as far as legally and practically possible. The set-off procedure augments rather than replaces existing collection procedures.~~

~~23 VAC 10-380-20. Definitions.~~

~~The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:~~

~~"Claimant agency" means any administrative unit of state, county, city or town government, including "department," "institution," "commission," "authority," and the state court system. The office of Executive Secretary of the Supreme Court may elect to participate. As used hereinafter in these regulations, the term "claimant" shall mean "claimant agency" as defined in this section.~~

~~"Debtor" means any individual having a delinquent debt or account with any claimant agency which obligation has not been adjudicated, satisfied by court order, set aside by court order, or discharged in bankruptcy.~~

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~~"Delinquent debt" means any liquidated sum due and owing any claimant agency including any amount of court costs or fines which have accrued through contract, subrogation, tort, operation of law, or any other legal theory regardless of whether there is an outstanding judgment for that sum which is legally collectible and for which a collection effort has been or is being made.~~

~~However, the term "delinquent debt" does not include any amount subject to a partial payment agreement with any claimant agency (except the Department of Taxation).~~

~~Amounts being collected pursuant to such agreements may not be satisfied via the set-off debt program, except that the Department of Taxation may utilize the set-off procedure for the collection of such sums.~~

~~"Department" means the Virginia Department of Taxation.~~

~~"Economically infeasible" means an evaluation at the option of a claimant to determine the revenue benefits relative to "administrative cost."~~

~~"Finalization" means the disposition of a debtor's refund based on instructions from the claimant agency, or upon the agency's default by failure to furnish instructions within the time constraints established by the Act.~~

~~"I.A.T." means Interagency Transfer.~~

~~"Order to Withhold and Deliver" means a written order from the Department of Social Services, Division of Child Support Enforcement, directing the Department to withhold tax refunds from specified debtors for which a support debt exists.~~

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~~"Proceeds collected" means gross proceeds collected through final set-off against a debtor's refund, except that with respect to amounts collected for cities, counties and towns the term shall mean gross proceeds collected less the Department's administrative expenses.~~

~~"Refund" means any individual's Virginia income tax refund payable pursuant to §58.1-309 of the Code of Virginia. This term includes any refund belonging to a debtor resulting from the filing of a joint income tax return or a refund belonging to a debtor resulting from the filing of a return where husband and wife have elected to file a combined return and separately state their Virginia taxable incomes under the provision of §58.1-324 (B)(2).~~

~~"Refund match" means a refund that has been matched to an outstanding claim.~~

~~"S.O.C." means Set-Off Control unit of the Department.~~

~~"S.O.D.C." means Set-Off Debt Coordinator of the claimant agency.~~

~~"Voucher" means a form/document from the Department to the Comptroller authorizing the transfer of funds to a locality and/or court.~~

~~23 VAC 10-380-30. Confirmation of participation.~~

~~Participation in this program by state claimant agencies (with the exception of the Executive Secretary of the Supreme Court) is mandatory. Participation by local governments is optional.~~

~~On or before October 15th of each year, state claimant agencies must furnish to the Department of Taxation the information listed below with respect to their participation in~~

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~~the program for the following calendar year. Local claimant agencies must submit this information and verify their participation in the program for the following year by October 15th.~~

~~Information to be submitted must include:~~

- ~~1. The name, address and telephone number of the individual (S.O.D.C.) or section to whom the Department of Taxation should direct inquiries if further information is required.~~
- ~~2. An estimate of the number of accounts to be forwarded for possible set-off.~~
- ~~3. An indication of whether the data records will be sent on magnetic tape or hard copy.~~
- ~~4. A letter of authorization from the claimant agency head which includes the name, title and sample signature of the person(s) authorized to make requests for service.~~
- ~~5. The revenue fund name(s) and the entire group coding numbers for the account(s) to be credited (applicable to state claimants only). To the extent applicable, local claimants will furnish bank identification and address for electronic transfer deposit.~~

~~23 VAC 10-380-40. Pertinent law sections.~~

~~Staff of participating departments, agencies or institutions should be familiar with §§58.1-520 through 58.1-535 of the Code of Virginia and state claimants should be familiar with the State Compliance Assurance Manual, Section 20150.~~

~~23 VAC 10-380-50. Administrative costs.~~

~~For purposes of §58.1-522 of the Code of Virginia, "administrative cost" means the cost, direct and indirect, to the claimant agency for participating in the set-off debt collection~~

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~~program. However, the term does not include the initial (one-time) cost of implementing these in-house functions necessary to participate in the program.~~

~~For purposes of calculating "administrative cost," the claimant may utilize any methodology previously approved by the Department of Planning and Budget for budgetary and planning purposes. All such calculations of "administrative cost" shall be filed with, reviewed, and approved by the Tax Commissioner upon request.~~

~~The Department, as authorized by §58.1-531, will deduct its actual administrative expenses from the amount collected on behalf of cities, counties, and towns, not to exceed 25% of the amount collected. Courts which are a part of the state court system are not subject to deduction for administrative expenses.~~

~~23 VAC 10-380-60. Transmission of debt file and priority of claims.~~

~~A. All claimants should submit, for collection under the procedure established by the Act, all delinquent debts which they are owed. Local claimants may elect to submit all or any portion of their delinquent debts. No claimant may submit any debt for collection through the set-off program when the administrative cost for utilizing this program for the collection of the debt exceeds the amount of the delinquent debt. According to §58.1-530 of the Code of Virginia, the Department will have first payment priority against the individual's authorized State tax refund, and according to §63.1-254, the Department of Social Services' support claims will take priority after taxes, using Social Services "order to withhold." All other state agencies' claims, including Social Services claims (other than support claims) and state court system claims will be honored in third~~

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~~place by the order in which received. Claims received from counties, cities and towns will be honored in fourth place based upon the order in which they are received.~~

~~B. Between November 1st and December 1st, each year, claimants must forward a tape copy or paper listing of their debt files intended for collection. Claims can only be sent to the Department during the period from November 1st through December 1st. The department may reject claims postmarked prior to November 1st or after December 1st. Priority of claims will be assigned by the date they are received at the Department. Social Services' support claims, including corrections and deletions, should be submitted in accordance with existing policy.~~

~~C. A magnetic tape is the preferred transmitting medium. Exceptions will be made for those claimant agencies with no programming capability for this purpose. (Format will be provided by the Department.)~~

~~[Explanation: Number of claims should not be the controlling factor. Claimant agency must use the method best suited to its situation.]~~

~~D. Claimant agencies must submit to the Department a list of claims which includes:~~

- ~~1. Debtor's name~~
- ~~2. Social security number~~
- ~~3. Agency number (code)~~
- ~~4. Agency I.D. number (fund)~~
- ~~5. Debt amount~~

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~~E. It is extremely important that the above information is transmitted accurately. It shall be the responsibility of the S.O.D.C. to ensure the accuracy of claims submitted. No claims will be processed unless submitted in required form.~~

~~23 VAC 10-380-70. Error list.~~

~~A. List verification. The Department will provide to each claimant an error list, when applicable, of claims submitted by that claimant for verification, correction, and resubmission.~~

~~B. Resubmission of data changes. The corrected error list must be returned to the Department by January 5th of each calendar year. Changes such as deletions, reductions, and corrections to name and social security number may be made on the error list. The amount of set-off requested cannot be increased and new accounts cannot be added.~~

~~If a claimant has not received an error list by December 15th, deletions and reductions may be made by submitting this information to the Department in the provided format by January 5th.~~

~~After January 5th, no additional changes can be made until finalization. After this date, deletions and reductions can be made only by returning the GREEN COPY of the notification form with the word DELETE, or the reduced amount of the claim in the space provided for the amount of debt.~~

~~23 VAC 10-380-80. Refund match to claimant's claim.~~

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~~The Department will provide each claimant with a three-part computer printed notification form for each set-off match.~~

- ~~1. White copy - Claimant's permanent record.~~
- ~~2. Green copy - To be returned to the Department upon finalization of set-off or deletion of set-off request.~~
- ~~3. Red copy - To be returned to the Department only if the set-off is contested.~~

~~Note: Immediately upon receiving the match notifications, the claimant should examine them to be sure the debt is accurate and owing. If, for any reason, the claim is no longer valid, the green copy should be returned at once to the Department with this information noted, so the refund can be released as soon as possible.~~

~~23 VAC 10-380-90. Requirements for claimants.~~

~~A. If set-off match occurs, the requesting claimant must be prepared to handle calls from the affected debtor. Debtors should be told to call the Department only if they have a tax problem other than the set-off.~~

~~B. The claimant, upon receipt of notification from the Department that a debtor is entitled to a refund, shall, within 10 days, send a written notice by first class mail to the debtor, of its assertion of rights to the refund or any part thereof.~~

~~A copy of the letter to the debtor must be received by the Department within 15 days of the Department's date of notification to the agency, OTHERWISE THE AGENCY WILL FORFEIT ENTITLEMENT TO ANY PART OF THE REFUND AND THE REFUND WILL BE RELEASED (§58.1-525).~~

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~~C. The claimant's letter to the debtor must clearly set forth the basis for the claim to the refund and that the debtor has a right to contest the validity of the claim before the claimant. The debtor must give written notice of protest to the claimant within 30 days of the date of the mailing of the claimant's letter. Such letter shall be considered a written application for a hearing, and such hearing must be held promptly.~~

~~Note: The written application by the debtor for a hearing shall be effective upon mailing (within 30-day period, based upon the official U.S. postmark) the application postage prepaid and properly addressed to the claimant agency. Waiver of rights to hearing.~~

~~D. Failure to submit a written application for a hearing by the debtor within the 30-day period will be deemed a waiver of the opportunity to contest the claim resulting in final set-off by default.~~

~~23 VAC 10-380-100. Hearing procedures.~~

~~A. If the claimant receives written application of the debtor's intention to contest at hearing the claim upon which the intended set-off is based, it shall grant a hearing according to procedures established by that claimant under its operating statutes to determine whether the claim is valid. The Tax Commissioner may designate such sites as may be necessary at which such hearings will be held. Such hearings shall be chosen with due regard to the various geographic regions of the Commonwealth where debtors may reside. Additionally, it shall be determined at the hearing whether the claimed sum asserted as due and owing is correct, and if not, an adjustment to the claim shall be made.~~

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~~B. Pending final determination at the hearing of the validity of the debt asserted by the claimant, no action shall be taken in furtherance of collection through the set-off procedure allowed under this article.~~

~~C. No person hearing the debtor's application contesting the claimant's claim shall have been involved in the prior circumstances which have culminated in such dispute. (§58.1-526 (C))~~

~~D. No issue involving the debtor may be considered at the hearing which has been previously litigated.~~

~~E. If the Tax Commissioner determines that sufficient volume of hearing activity exists, on a Statewide basis, procedures (A-D) may be modified so that a coordinated hearing procedure is established.~~

~~23 VAC 10-380-110. Appeals from hearings (§58.1-527).~~

~~A. "Within ten days after the decision of the claimant agency upon a hearing pursuant to §58.1-526 has become final, the debtor aggrieved thereby may secure judicial review thereof by commencing an action in the circuit court of the county or of the city, or if the city has no circuit court, then in the circuit court of the county in which such city is geographically located, in which the debtor resides or in which the principal office of the claimant agency is geographically located. In such action against the claimant agency for review of its decision, the claimant agency shall be named a defendant in a petition for judicial review."~~

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~~B. "Such petition shall also state the grounds upon which review is sought, shall be served upon the head of the claimant agency or upon such person as the claimant agency may designate. With its answer, the claimant agency shall certify and file with the court all documents and papers and a transcript of all testimony taken in the matter, together with its findings of fact and decision therein. In any judicial proceedings under this article, the findings of the claimant agency as to the facts shall be sustained if supported by the evidence. Such actions and the questions so certified shall be heard in a summary manner at the earliest possible date. An appeal may be taken from the decision of such court to the Supreme Court in conformity with the general law governing appeals in equity cases."~~

~~C. "It shall not be necessary in any proceedings under this section to enter exceptions to the rulings of the claimant agency, and no bond shall be required upon an appeal to any court."~~

~~23 VAC 10-380-120. Final determination; set-off.~~

~~A. If the debtor does not contest the set-off within the 30-day time limit, default will occur. Thereafter, the claimant shall, within 20 days, send the green copy of the notification form to the Department with the amount of certified debt inserted. The certified debt cannot be for an amount in excess of the original claim.~~

~~B. If the debtor does contest the set-off, the claimant must send the red copy of the notification form to the Department within 10 days of receipt of the debtor's letter contesting set-off. If a contested claim has not been finalized after 60 days from the~~

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~~submission of the red form, the claimant must submit a report to the Department on the status of the claim at that time and every 30 days thereafter until finalization occurs.~~

~~C. When the appeals process has been completed and a final determination reached, the green copy of the notification form must be forwarded to the Department within 20 days of the liability determination for set-off finalization.~~

~~The submission of the green copy of the notification form is the only way a set-off claim can be processed. If the amount of the debt has been reduced or satisfied at this point, this information should be noted upon the form so the Department can act accordingly.~~

~~D. It will be the responsibility of the S.O.D.C. to see that the finalization notice (green copy) is received at the Department within 20 days of the liability determination as provided in §58.1-528 of the Code.~~

~~E. If action of the claimant causes an erroneous set-off to occur, it shall be the responsibility of the claimant agency to issue a refund TO THE AGGRIEVED DEBTOR on all or that part of the transferred credit which is erroneous, as the case may be.~~

~~The Department will not make refunds after a transfer of funds has been completed via the I.A.T. (Inter-Agency Transfer) or voucher document.~~

~~F. If the claimant's staff receives questions about set-off which they cannot answer, they (not the taxpayer) should contact S.O.C. to resolve the problem.~~

~~23 VAC 10-380-130. Critical dates to remember.~~

~~A. Confirmation of participation must be sent to the Department of Taxation by October 15th (23 VAC 10-380-30).~~

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~~B. The debt file (magnetic tape preferred) or paper listing must be sent to the Department between November 1st and December 1st (23 VAC 10-380-60 B).~~

~~C. January 5th - Claimant's final date for the Department's acceptance of claim corrections to the error list (23VAC10-380-70).~~

~~D. 10-DAYS - Upon receipt of the Department's notification, the claimant has ten days in which to send a first class letter to the debtor (§58.1-525 (A)).~~

~~E. 15-DAYS - After the date of mailing of the Department's notice to the claimant, a copy of the claimant's letter to the debtor must be received by the Department (§58.1-525 (A)).~~

~~F. 30-DAYS - Within 30 days of the date of mailing the claimant's letter to the debtor, the debtor must respond in writing to the claimant that he/she wishes to contest the claim (§58.1-525 (B)).~~

~~G. 65-DAYS - After the mailing date of the letter to the debtor, the claimant must notify the Department by:~~

~~1. Submission of the Green Form to the Department which gives notice that the debtor agrees with the claim, or that debtor failed to contact the claimant which resulted in default (§58.1-528).~~

~~OR~~

~~2. Submission of the Red Form to the Department which gives notice that the debtor wishes to contest the claim (§§58.1-525 and 58.1-528).~~

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~~NOTE: In the event these forms are not received by the Department within the time constraints, the Department will release the refund to taxpayer (§58.1-528).~~

~~H. 60 DAYS - After the claimant's certification (red form) to the Department of the debtor's intent to contest the claim, the claimant shall submit a status report to the Department on each pending contested case. Additional status reports shall be submitted every 30 days thereafter until resolved.~~

~~23 VAC 10-380-140. Summary of forms and printouts.~~

~~A. Claimant sends to Department:~~

- ~~1. List of claims to be set-off (each year between November 1st and December 1st).~~
- ~~2. Corrected error listing of claims.~~
- ~~3. Letter (first class mail) to taxpayer (within 10 days of receiving the Department's notification) with a copy to the Department (within 15 days of the mailing date of Department's notification).~~
- ~~4. Red form if set-off is contested.~~
- ~~5. Green form for finalization.~~
- ~~6. Notification of status of claim.~~

~~B. Claimant receives from the Department:~~

- ~~1. Error listing of claims submitted.~~
- ~~2. Three-part notification form for each debtor matched.~~
- ~~3. List showing accounting of set-off.~~
- ~~4. Copies of I.A.T.'s or vouchers showing transfer of refunds.~~

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~~5. Letter advising of claimant's default.~~

~~23 VAC 10-380-150. Department of Taxation procedures.~~

~~Note: The Department will build a master set-off file from all claims submitted.~~

~~A. All refund matches made during a run of the refund cycle will be sorted by claimant.~~

~~In such cases where the Department cannot make a clear determination of the refund asset of the liable spouse, a letter of inquiry will be mailed to the debtor(s). The Set-Off Control Unit at the Department will receive the copies of printouts, notification forms, set-off worksheets, and individual returns.~~

~~B. Copies of claimant print-outs and notification forms will be sent to the appropriate claimants.~~

~~C. Worksheets and returns will be filed in the Set-Off Control Unit awaiting the finalization notice (green form) to arrive from the claimant.~~

~~D. Various correspondence, i.e., copies of claimant letters, green forms, and red forms will be retained in a retrievable manner to aid in a justification of the department's actions upon a set-off claim. These will be carefully examined to assure that the correct time frame for compliance has been strictly followed.~~

~~E. Finalization of claim.~~

~~1. If a copy of the letter to a debtor is not received within the 15 day time limit, the claimant forfeits its claim to the refund and the same is released. Either a refund check will be generated to the debtor or the next claim in order of priority could be set-off.~~

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~~2. When a green finalization form is received, the worksheet is marked accordingly, taking the indicated portion of the refund and releasing the balance, if any.~~

~~3. A final accounting letter is sent to the debtor indicating exactly what happened to the refund.~~

~~F. Accounting printout. When the worksheets have been re-entered indicating how the available refund is to be apportioned, a printout will be generated indicating all set-offs made for each claimant. This printout will show:~~

~~1. Claimant Agency Code or I.D. Number~~

~~2. Name of debtor and social security number~~

~~3. Department's administrative cost (when applicable)~~

~~4. Gross Amount of set-off collections~~

~~5. Net proceeds to be transferred to claimant~~

~~6. Year-to-date totals~~

~~a. A copy of the printout will be sent to each claimant so they can credit the debtor's account with the amount of set-off.~~

~~b. A copy of the printout will be sent to the Department's Accounting Unit with a request for an I.A.T. (Interagency Transfer), or a voucher to the Comptroller.~~

~~c. The I.A.T. or voucher will post credit to the claimant by transferring the amount of set-offs to the appropriate claimant.~~

FORMS

~~Set-Off Debt Collection Notice to Claimant Agency, Form SOC-1 (eff. 5/90).~~

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~~Set-Off Debt Distribution Worksheet, Form SOC-2 (eff. 2/91).~~

~~EXHIBITS.~~~~SUBJECT: SET-OFF-DEBT FILE FORMAT~~

~~The following are the tape and source document formats for delinquent debt data. Data is to be submitted on computer magnetic tape if possible. If not possible, typewritten data will be accepted. All data should be in social security sequence.~~

~~TAPE SPECIFICATIONS~~

~~This tape is to be computer edited by the submitting agency. The agency will have to write their own edit program. The tape should be IBM compatible, 9 track, EBCDIC or ASCII, odd parity, 800, 1600, or 6250 bpi, with standard OS headers and trailers. It should be blocked 35 records per block.~~

~~The tape format is shown in Appendix A. The name field can be last name first or last. Appendix B gives edit criteria for the records.~~

~~The Department of Taxation will also edit the tape. Edit errors will be returned to the submitting agency. Corrections, along with changes and deletions are to be made by updating the original tape and resubmitting the updated tape file.~~

~~TYPEWRITTEN LIST~~

~~A sample of the list is shown in Appendix C. The list should also conform to the edit criteria shown in Appendix B.~~

~~The list will be keyed onto computer readable tape at the Department of Taxation and edited for errors. The error list will be returned to the submitting agency. The errors~~

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~~should be corrected and returned along with changes and deletions to the Department of Taxation. For typewritten lists, do not resubmit debts which were not in error.~~

~~APPENDIX A~~

~~TAPE FORMAT AGENCY DEBT FILE~~

~~V0180002.JPG, SIZE 44 PICAS, TYPE DPI~~

~~For textbl>EXHIBITS, see Virginia Administrative Code print product.~~

~~APPENDIX B~~

~~EDIT CRITERIA FOR AGENCY DEBT FILE~~

~~A Multiple Claims For The Same Social Security Number~~

~~B Social Security Number Not Numeric~~

~~C Social Security Number Is Zero~~

~~D Name Field Is Blank~~

~~E Agency Code Is Not Numeric~~

~~F Agency Code Is Not Valid~~

~~G Amount Field Is Not Numeric~~

~~H Amount Field Is Zero~~

~~I Agency Code Inconsistent With Others On File~~

~~APPENDIX C~~

~~SAMPLE OF AGENCY TYPEWRITTEN DEBT LIST~~

~~————— John Tyler Community College —————~~

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~~Delinquent Debt List~~

~~SOCIAL NAME AGENCY AMOUNT~~

~~SECURITY CODE~~

~~NUMBER~~

~~Max. No. 9 34 3 9~~

~~of Characters~~

~~101 54 8311 Joe & Mary Smith 031 50.00~~

~~108 91 9134 Bob A Adams 031 103.05~~

~~203 11 9146 Sarah M. Young 031 33.09~~

~~309 91 3147 A. H. Boyd 031 1,041.13~~

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~~For textbl>EXHIBITS, see Virginia Administrative Code print product.~~

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~~SAMPLE LETTER FOR POSSIBLE USE BY CLAIMANT AGENCY~~

~~Re: Set-Off Debt Collection Act~~

~~Dear _____:~~

~~According to our records, you have defaulted on a (Type of loan) which you originally secured with this agency. The outstanding balance of \$____ (including legal or collection charges which may have been incurred) remains due and unpaid. Under provision of Sections 58.1-520 thru 58.1-535 of the Code of Virginia, enacted by the 1981 General Assembly, a Virginia income tax refund due a taxpayer may be applied against any delinquent indebtedness owed the State.~~

~~This is to advise you that the (Agency Name or Division) has informed the Virginia Department of Taxation of the intent to seek the sum of \$____ from a refund due you. This amount will be applied against the debt which you presently owe.~~

~~Unless we receive written notification in this office addressed to _____ within thirty (30) days from the postmark date of this letter, informing us that you intend to contest the validity of this claim, we will direct the Virginia Department of Taxation to transfer the amount of \$____ to us.~~

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~~Failure to apply in writing within thirty (30) days from the postmark date of this letter for a hearing before the agency review board, constitutes a waiver of your opportunity to contest the claim, and will result in the set-off of your tax refund against your debt.~~

~~THE VIRGINIA DEPARTMENT OF TAXATION IS NOT RESPONSIBLE FOR HANDLING INQUIRIES CONCERNING THIS DEBT. ALL QUESTIONS SHOULD BE DIRECTED TO THE ADDRESS NOTED ABOVE.~~

Sincerely,

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~~For textbl>EXHIBITS, see Virginia Administrative Code print product.~~
