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STATE OF ALABAMA
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Municipal Courts – Collections –
Setoff Debt Collections – Income
Tax – Marshall County

The income tax setoff provisions
may be used to collect fines and
court costs, but not restitution,
assessed by the municipal courts.

Dear Mr. Smith:

This opinion of the Attorney General is issued in response to your
request on behalf of the Boaz City Council.

QUESTION

Does the definition of “debt” in section 40-18-100(3) of the Code of Alabama include fines, court costs, and restitution assessed in municipal court, allowing such to be collected under the setoff debt collection statutes?

FACTS AND ANALYSIS

Section 40-18-100, *et seq.*, of the Code of Alabama authorizes the Alabama Department of Revenue to use income tax refunds owed to individuals to offset debts owed to claimant agencies. ALA. CODE §§ 40-18-100 to 40-18-110 (2011 & Supp. 2016). Section 40-18-100(1) enumerates the governmental entities that qualify as “claimant agencies,”

including “[c]ounties and *municipalities*.” ALA. CODE § 40-18-100(1)f. (Supp. 2016) (emphasis added).

“Debt” is defined as follows:

Any liquidated sum due and *owing any claimant agency* which has accrued through contract, subrogation, tort, or *operation of law* regardless of whether there is an outstanding judgment for that sum, or any liquidated sum of child or spousal support, or both child and spousal support, due and owing any individual eligible for and receiving child support enforcement services through the Alabama Department of Human Resources.

ALA. CODE § 40-18-100(3) (Supp. 2016) (emphasis added).

Words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used, a court is bound to interpret that language to mean exactly what it says. *Ex parte Cove Properties, Inc.*, 796 So. 2d 331, 333-34 (Ala. 2000); *Ex parte T.B.*, 698 So. 2d 127, 130 (Ala. 1997); *State Dep’t of Transp. v. McLelland*, 639 So. 2d 1370, 1371 (Ala. 1994). Black’s Law Dictionary defines “operation of law” as “[t]he means by which a . . . liability is created for a party *regardless of the party’s actual intent* <because the court didn’t rule on the motion for rehearing within 30 days, it was overruled by operation of law>.” BLACK’S LAW DICTIONARY 1265 (10th ed. 2014) (emphasis added). Because the fines and court costs for municipal ordinance violations are set by ordinance or state law, they constitute debt under section 40-18-100(3).

Regarding restitution, the statute limits debts that may be collected to amounts “*due and owing any claimant agency*.” Although section 15-80-70 of the Code of Alabama permits the court to order the payment of restitution to the court clerk, the clerk merely acts as a conduit for payment to the victim. ALA. CODE § 15-18-70 (2011). The restitution statutes provide for “restitution *due the victim*.” ALA. CODE § 15-18-67 (2011) (emphasis added). This Office has explained that, under section 15-18-67, “[t]he courts of this state are required to order that criminal defendants make *restitution to their victims*.” Opinion to Honorable Lyn Head, Tuscaloosa County District Attorney, dated June 26, 2014, A.G. No. 2014-067 at 2 (emphasis added). Because restitution is owed to a

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crime victim, not a governmental agency, it is not debt under section 40-18-100(3).

CONCLUSION

The income tax setoff provisions may be used to collect fines and court costs, but not restitution, assessed by the municipal courts.

I hope this opinion answers your question. If this Office can be of further assistance, please contact me.

Sincerely,

LUTHER STRANGE
Attorney General
By:


G. WARD BEESON, III
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