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Title 31: Money and Finance: Treasury

PART 285—DEBT COLLECTION AUTHORITIES UNDER THE DEBT COLLECTION IMPROVEMENT ACT OF 1996

Subpart A—Disbursing Official Offset

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§ 285.8 Offset of tax refund payments to collect certain debts owed to States.

(a) *Definitions.* For purposes of this section:

Debt means past-due, legally enforceable State income tax obligation or unemployment compensation debt unless otherwise indicated.

Debtor means a person who owes a debt.

FMS means the Financial Management Service, a bureau of the Department of the Treasury.

IRS means the Internal Revenue Service, a bureau of the Department of the Treasury.

Past-due, legally enforceable State income tax obligation means a debt which resulted from:

- (1) A judgment rendered by a court of competent jurisdiction which has determined an amount of State income tax to be due,
- (2) A determination after an administrative hearing which has determined an amount of state income tax to be due and which is no longer subject to judicial review, or
- (3) A State income tax assessment (including self-assessments) which has become final in accordance with State law but not collected and which has not been delinquent for more than 10 years.

State means the several States of the United States. The term "State" also includes the District of Columbia, American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Commonwealth of Puerto Rico.

State income tax obligation means State income tax obligations as determined under State law. For purposes of this section, State income tax obligation includes any local income tax administered by the chief tax administration agency of the State.

Tax refund offset means withholding or reducing a tax refund overpayment by an amount necessary to satisfy a debt owed by the payee(s).

Tax refund payment means any overpayment of Federal taxes to be refunded to the person making the overpayment after the IRS makes the appropriate credits as provided in 26 U.S.C. 6402(a) and 26 CFR 6402-3(a)(6)(i) for any liabilities for any Federal tax on the part of the person who made the overpayment.

Unemployment compensation debt has the same meaning as the term “covered unemployment debt” as defined in 26 U.S.C. 6402(f)(4), and means—

(1) A past-due debt for erroneous payment of unemployment compensation due to fraud or the person's failure to report earnings which has become final under the law of a State certified by the Secretary of Labor pursuant to 26 U.S.C. 3304 and which remains uncollected;

(2) Contributions due to the unemployment fund of a State for which the State has determined the person to be liable and which remain uncollected; and

(3) Any penalties and interest assessed on such debt.

(b) *General rule.* (1) FMS will offset tax refunds to collect debt under this section in accordance with 26 U.S.C. 6402(e) and (f) and this section.

(2) FMS will compare tax refund payment records, as certified by the IRS, with records of debts submitted to FMS. A match will occur when the taxpayer identifying number (as that term is used in 26 U.S.C. 6109) and name on a payment certification record are the same as the taxpayer identifying number and name (or derivative of the name) on a delinquent debt record. When a match occurs and all other requirements for tax refund offset have been met, FMS will reduce the amount of any tax refund payment payable to a debtor by the amount of any past-due, legally enforceable State income tax obligation or unemployment compensation debt owed by the debtor. Any amounts not offset will be paid to the payee(s) listed in the payment certification record.

(3) FMS will only offset a tax refund payment for a State income tax obligation if the address shown on the Federal tax return for the taxable year of the overpayment is an address within the State seeking the offset.

(c) *Notification of past-due, legally enforceable State income tax obligations or unemployment compensation debts*—(1) *Notification.* States shall notify FMS of debts in the manner and format prescribed by FMS. The notification of liability must be accompanied by a certification that the debt is past due and legally enforceable and that the State has complied with the requirements contained in paragraph (c)(3) of this section and with all Federal or State requirements applicable to the collection of debts under this section. With respect to State income tax obligations only, the certification must specifically state that none of the debts submitted for collection by offset are debts owed by an individual who has claimed immunity from State taxation by reason of being an enrolled member of an Indian tribe who lives on a reservation and derives all of his or her income from that reservation unless such claim has been adjudicated de novo on its merits in accordance with paragraph (c)(3). FMS may reject a notification that does not comply with the requirements of this section. Upon notification of the rejection and the reason for rejection, the State may resubmit a corrected notification.

(2) Minimum amount of past-due, legally enforceable State income tax obligations that may be submitted. FMS only will accept notification of past-due, legally enforceable State income tax obligations of \$25 or more or such higher amounts as determined by FMS. States will be notified annually of any changes in the minimum debt amount.

(3)(i) *Advance notification to the debtor of the State's intent to collect by Federal tax refund offset.* The State is required to provide a written notification to the debtor informing the debtor that the State intends to refer the debt for collection by tax refund offset. The notice must give the debtor at least 60 days to present evidence, in accordance with procedures established by the State, that all or part of the debt is not past due or not legally enforceable, or, in the case of a covered unemployment compensation debt, the debt is not due to fraud or the debtor's failure to report earnings. In the case of a State income tax obligation, the notice must be sent certified mail, return receipt requested.

(ii) *Determination.* The State must, in accordance with procedures established by the State, consider any evidence presented by a debtor in response to the notice described in paragraph (c)(3)(i) of this section and determine whether an amount of such debt is past due and legally enforceable and, in the case of a covered unemployment compensation debt, the debt is due to fraud or the debtor's failure to report earnings. With respect to State income tax obligations only, where the debtor claims that he or she is immune from State taxation by reason of being an enrolled member of an Indian tribe who lives on a reservation and derives all of his or her income from that reservation, State procedures shall include de novo review on the merits, unless such claims have been previously adjudicated by a court of competent jurisdiction. States shall, upon request from the Secretary of the Treasury, make such procedures available to the Secretary of the Treasury for review.

(iii) *Reasonable efforts.* Prior to submitting a debt to FMS for collection by tax refund offset the State must make reasonable efforts to collect the debt. Reasonable efforts include making written demand on the debtor for payment and complying with any other prerequisites to offset established by the State.

(4) *Correcting and updating notification.* The State shall, in the manner and in the time frames provided by FMS, notify FMS of any deletion or decrease in the amount of past-due, legally enforceable State income tax obligation or unemployment compensation debt referred to FMS for collection by tax refund offset. The State may notify FMS of any increases in the amount of the debt referred to FMS for collection by tax refund offset provided that the State has complied with the requirements of paragraph (c)(3) of this section with regard to those debts.

(d) *Priorities for offset.* (1) As provided in 26 U.S.C. 6402, a tax refund payment shall be reduced first by the amount of any past-due support being enforced under section 464 of the Social Security Act which is to be offset under 26 U.S.C. 6402(c); second by the amount of any past-due, legally enforceable debt owed to a Federal agency which is to be offset under 26 U.S.C. 6402(d); and third by any past-due, legally enforceable debt owed to a State (other than past-due support) which is to be offset under 26 U.S.C. 6402(e) or 26 U.S.C. 6402(f).

(2) Reduction of the tax refund payment pursuant to 26 U.S.C. 6402(a), (c), (d) and (e) shall occur prior to crediting the overpayment to any future liability for an internal revenue tax. Any amount remaining after tax refund offset under 26 U.S.C. 6402(a), (c), (d), (e) and (f) shall be refunded to the taxpayer, or applied to estimated tax, if elected by the taxpayer pursuant to IRS regulations.

(3) If FMS receives notice from a State of more than one debt subject to this section that is owed by a debtor to the State, any overpayment by the debtor shall be applied against such debts in the order in which such debts accrued.

(e) *Post-offset notice.* (1) When an offset occurs, FMS shall notify the debtor in writing of:

(i) The amount and date of the offset and that the purpose of the offset was to satisfy a past-due, legally enforceable State income tax obligation or unemployment compensation debt;

(ii) The State to which this amount has been paid or credited; and

(iii) A contact point within the State that will handle concerns or questions regarding the offset.

(2) The notice in paragraph (e)(1) of this section also will advise any non-debtor spouse who may have filed a joint return with the debtor of the steps which the non-debtor spouse may take in order to secure his or her proper share of the tax refund. See paragraph (f) of this section.

(3) FMS will advise States of the names, mailing addresses, and taxpayer identifying numbers of the debtors from whom amounts of State income tax obligations or unemployment compensation debts were collected, and of the amounts collected from each debtor through tax refund offset.

(4) At least weekly, FMS will notify the IRS of the names and taxpayer identifying numbers of the debtors from whom amounts owed for past-due, legally enforceable State income tax obligations or unemployment compensation debts were collected from tax refund offsets and the amounts collected from each debtor.

(f) *Offset made with regard to a tax refund payment based upon joint return.* If the person filing a joint return with a debtor owing the past-due, legally enforceable State income tax obligation or unemployment compensation debt takes appropriate action to secure his or her proper share of a tax refund from which an offset was made, the IRS will pay the person his or her share of the refund and request that FMS deduct that amount from future amounts payable to the State or that FMS otherwise obtain the funds back from the State. FMS, or the appropriate State, will adjust their debtor records accordingly.

(g) *Disposition of amounts collected.* FMS will transmit amounts collected for debts, less fees charged under paragraph (h) of this section, to the appropriate State. If FMS learns that an erroneous offset payment is made to any State, FMS will notify the appropriate State that an erroneous offset payment has been made. FMS may deduct the amount of the erroneous offset payment from future amounts payable to the State. Alternatively, upon FMS' request, the State shall return promptly to the affected taxpayer or FMS an amount equal to the amount of the erroneous payment (unless the State previously has paid such amounts, or any portion of such amounts, to the affected taxpayer). States shall notify

FMS any time a State returns an erroneous offset payment to an affected taxpayer. FMS, or the appropriate State, will adjust their debtor records accordingly.

(h) *Fees.* The State will pay a fee to FMS to cover the full cost of offsets taken. The fee will be established annually in such amount as FMS determines to be sufficient to reimburse FMS for the full cost of the offset procedure. FMS will deduct the fees from amounts collected prior to disposition and transmit a portion of the fees deducted to reimburse the IRS for its share of the cost of administering the tax refund offset program for purposes of collecting past-due, legally enforceable State income tax obligations or unemployment compensation debts reported to FMS by the States. Fees will be charged only for actual tax refund offsets completed.

(i) *Review of tax refund offsets.* In accordance with 26 U.S.C. 6402(g), any reduction of a taxpayer's refund made pursuant to 26 U.S.C. 6402(e) or (f) shall not be subject to review by any court of the United States or by the Secretary of the Treasury, FMS or IRS in an administrative proceeding. No action brought against the United States to recover the amount of this reduction shall be considered to be a suit for refund of tax. This subsection does not preclude any legal, equitable, or administrative action against the State to which the amount of such reduction was paid.

(j) *Access to and use of confidential tax information.* Access to and use of confidential tax information in connection with the tax refund offset program is permitted to the extent necessary in establishing appropriate agency records, locating any person with respect to whom a reduction under 26 U.S.C. 6402 (e) or (f) is sought for purposes of collecting the debt, and in the defense of any litigation or administrative procedure ensuing from a reduction made under section 6402(e).

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