



4810-AS-P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 285

RIN 1510-AA10

Offset of Tax Refund Payments to Collect Past-Due Support

AGENCY: Bureau of the Fiscal Service, Fiscal Service, Treasury.

ACTION: Interim final rule with request for comments.

SUMMARY: The Department of the Treasury (Treasury), Bureau of the Fiscal Service (Fiscal Service), is amending its regulation governing the offset of tax refund payments to collect past-due support obligations. This rule will limit the time period during which Treasury may recover certain tax refund offset collections from States, when the States have already forwarded such funds to custodial parents as required or as authorized by applicable laws. This change will limit the time period during which Treasury may require States to return the offset funds to six months from the date of such collection, if Treasury has determined that the underlying refund was not due to the taxpayer.

DATES: Effective Date. This interim final rule is effective January 1, 2016.

Comment date. Comments must be received by [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You can download this interim rule at the following website:

<http://www.fms.treas.gov/debt>. You may also inspect and copy this interim rule at: Treasury

Department Library, Freedom of Information Act (FOIA) Collection, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW, Washington, DC 20220. Before visiting, you must call (202) 622-0990 for an appointment.

In accordance with the U.S. government's eRulemaking Initiative, Fiscal Service publishes rulemaking information on www.regulations.gov. Regulations.gov offers the public the ability to comment on, search, and view publicly available rulemaking materials, including comments received on rules.

Instructions for comment submission:

Comments on this rule, identified by docket FISCAL-2014-0005, should only be submitted using the following methods:

- Federal eRulemaking Portal: www.regulations.gov. Follow the instructions on the website for submitting comments. Fiscal Service recommends using this method to submit comments since mail can be subject to delays caused by security screening.
- Mail: Thomas Kobielus, Manager, Treasury Offset Program Division, Debt Management Services, Bureau of the Fiscal Service, 401 14th Street, SW, Room 220B, Washington, DC 20227. Please note that mail may be delayed due to security screening.

The fax and e-mail methods of submitting comments on rules to Fiscal Service have been discontinued.

All submissions received must include the agency name ("Bureau of the Fiscal Service") and docket number FISCAL-2014-0005 for this rulemaking. In general, comments received will be published on Regulations.gov without change, including any business or personal information provided. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not disclose any information in your

comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Thomas Kobielus, Manager, at (202) 874-6810, or Tricia Long, Senior Counsel, at (202) 874-6680.

SUPPLEMENTARY INFORMATION:

I. Background

When a tax refund payment is issued and offset through the Treasury Offset Program (TOP) to collect a delinquent child support debt owed by the taxpayer, the taxpayer receives the benefit of the payment in the form of a credit on the amount of debt owed. If the Internal Revenue Service (IRS) subsequently determines that the taxpayer was not entitled to that tax refund, the taxpayer is accordingly not entitled to the credit on the debt owed. Currently, IRS has unlimited time during which to require Fiscal Service to recover such erroneous offset funds from the Federal or State agency which collected the funds. Fiscal Service requires return of monies representing the offset from State agencies notwithstanding the fact that the State agency may have already forwarded such funds to the custodial parent.

States submit past-due support obligations to TOP both for collection of support debts which have been assigned to the State pursuant to 42 U.S.C. 608(a)(3) and on behalf of custodial parents, pursuant to 42 U.S.C. 654(4). Collections for support debts collected on behalf of custodial parents pursuant to 42 U.S.C. 654(4) are required by 42 U.S.C. 657 to be forwarded by the States to the custodial parent. By regulation, any of those collections resulting from tax refund offsets must be forwarded within 30 calendar days of initial receipt (unless the refund offset

is based upon a joint return, in which case, the State has six months). See 45 CFR 302.32(b)(3)(ii). States also collect money as reimbursement for public assistance paid to the family. States have the option, as authorized by 42 U.S.C. 657, to forward such collections to custodial parents. Therefore, in many cases, the States no longer have the funds in their possession to return to Treasury. Under current procedures, States are required to pay Treasury from their own funds, or Treasury may retain such amounts from subsequent offset collections made on behalf of the States. This rule will impose a six-month limit upon Treasury for seeking recoupment from States for erroneous offset funds which have been forwarded to custodial parents pursuant to 42 U.S.C. 657.

Following implementation of this rule, IRS and Fiscal Service will continue to work with the Federal Office of Child Support Enforcement (OCSE) and State child support agencies to assess the impact of this interim final rule and to identify potential improvements in the tax offset process, including the practice of recouping from States erroneous offset funds that have been forwarded to custodial parents. Once sufficient data respecting implementation of this new rule is available, but in no case later than 2 years, Treasury will work with OCSE to consider further reduction in the time limit placed upon it for seeking recoupment from States.

The six-month limitation in this rule applies only to the offset of tax refund payments to collect past-due support obligations when States have forwarded the collected funds to the custodial parent. This rule does not apply when States have retained the funds. This rule does not apply to any other type of debt being collected by tax refund offset under 31 CFR Part 285. This rule does not affect Treasury's rights to seek recovery of the erroneous offset funds from any person through any other means permitted by law.

Fiscal Service developed this interim final rule in consultation with the IRS and the Department of Health and Human Services (HHS) and appreciates their assistance. As required by

42 U.S.C. 664(b)(1), HHS has approved this interim final rule.

II. Procedural Analyses

Request for Comment on Plain Language

Executive Order 12866 requires each agency in the Executive branch to write regulations that are simple and easy to understand. We invite comment on how to make this interim rule clearer. For example, you may wish to discuss: (1) Whether we have organized the material to suit your needs; (2) whether the requirements of the rule are clear; or (3) whether there is something else we could do to make this rule easier to understand.

Regulatory Planning and Review

The interim rule does not meet the criteria for a "significant regulatory action" as defined in Executive Order 12866. Therefore, the regulatory review procedures contained therein do not apply.

Regulatory Flexibility Act Analysis

It is hereby certified that the interim rule will not have a significant economic impact on a substantial number of small entities. This rule merely provides a time frame for Treasury to require States to return collections. Moreover, the provisions contained in this interim rule impose no additional costs to small entities. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) is not required.

Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded

Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. We have determined that this interim rule will not result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. Accordingly, we have not prepared a budgetary impact statement or specifically addressed any regulatory alternatives.

Federalism

This rule has been reviewed under Executive Order (EO) 13132, Federalism. This rule relieves the States of an obligation to return funds to the Federal Government after a certain time period when the States have already forwarded the funds to custodial parents, as required or authorized by applicable laws, and they no longer have such funds. Treasury, with assistance from the Office of Child Support Enforcement at the Department of Health and Human Services, consulted with the States when developing this interim rule. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Administrative Procedure Act

This rule is being issued without prior public notice and comment because under 5 U.S.C. 553(b) good cause exists to determine that prior notice and comment rulemaking is unnecessary and contrary to the public interest. The policy being implemented through this rule imposes a time limitation on Treasury for recovering erroneous offset funds from States that have forwarded

such funds onto families. It relieves the States of the burden of having to pay such amounts to Treasury from their own funds and does not adversely affect the rights of the public.

List of Subjects in 31 CFR Part 285

Administrative practice and procedure, Child support, Child welfare, Claims, Credits, Debts, Disability benefits, Federal employees, Garnishment of wages, Hearing and appeal procedures, Loan programs, Privacy, Railroad retirement, Railroad unemployment insurance, Salaries, Social Security benefits, Supplemental Security Income (SSI), Taxes, Veterans' benefits, Wages.

For the reasons set forth in the preamble, 31 CFR Part 285 is amended as follows:

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

1. The authority citation for part 285 continues to read as follows:

Authority: 5 U.S.C. 5514; 26 U.S.C. 6402; 31 U.S.C. 321, 3701, 3711, 3716, 3719, 3720A, 3720B, 3720D; 3720E; 42 U.S.C. 664; E.O. 13019, 61 FR 51763, 3 CFR, 1996 Comp., p. 216.

2. Amend § 285.3 as follows:

- a. Revise paragraph (g).
- b. Redesignate paragraphs (h) through (k) as paragraphs (i) through (l), respectively.
- c. Add a new paragraph (h).

The revision and addition read as follows:

§285.3 Offset of tax refund payments to collect past-due support.

* * * * *

(g) Disposition of amounts collected. Fiscal Service will transmit amounts collected for debts, less fees charged under paragraph (i) of this section, to HHS or to the appropriate State. If IRS notifies Fiscal Service that a tax refund payment that was offset was erroneous or otherwise not due to the taxpayer, Fiscal Service will notify HHS or the appropriate State that the tax refund payment was not eligible for offset. Subject to paragraph (h) of this section, Fiscal Service may deduct the amount of the erroneous offset funds from amounts payable to HHS or the State, as the case may be; or, upon Fiscal Service's request, the State shall return promptly to the affected taxpayer or Fiscal Service an amount equal to the amount of the erroneous funds (unless the State previously has forwarded such amounts, or any portion of such amounts, to the affected taxpayer). HHS and States shall notify Fiscal Service any time HHS or a State returns an erroneous offset payment to an affected taxpayer. Fiscal Service and HHS, or the appropriate State, will adjust their debtor records accordingly.

(h) Time limitation. If IRS notifies Fiscal Service on or after January 1, 2016, that a tax refund payment that was offset was erroneous or otherwise not due to the taxpayer, Fiscal Service shall not deduct the amount of the erroneous offset funds from amounts due to HHS or the State, or otherwise demand return of the offset funds from the State pursuant to paragraph (g) of this section, if the date of IRS's notification to Fiscal Service in paragraph (g) is more than six months after the date the tax refund was offset (i.e., the tax refund payment date); and the State has already forwarded the funds as required or authorized by 42 U.S.C. 657. This paragraph does not apply to paragraph (f) of this section.

David A. Lebryk

Fiscal Assistant Secretary

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