

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 285

RIN 1510-AA63

Offset of Tax Refund Payments To Collect Past-Due Support

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of proposed rulemaking with request for comments.

SUMMARY: Under Federal law, the Federal tax refund of a taxpayer who owes past-due support is reduced, or offset, by the amounts owed by the taxpayer. The funds offset from the taxpayers' tax refunds are forwarded to the State enforcing the collection of the past-due support. Effective January 1, 1999, the Department of the Treasury will conduct the tax refund offset program as part of the centralized offset program operated by the Financial Management Service (FMS), a bureau of the Department of the Treasury. The provisions of this proposed rule would prescribe the tax refund offset procedures for all Federal tax refunds payable after January 1, 1999, to individuals who owe past-due support being enforced by States. Past-due support includes delinquent child support or other obligations for the support of a child. This proposed rule would establish tax refund offset procedures that will supersede the procedures governing the tax refund offset program established by the IRS and applicable to the collection of past-due support (codified at 26 CFR 301.6402-5). The changes in this proposed rule reflect requirements necessitated by the inclusion of the tax refund offset program as a part of the Treasury Offset Program.

DATES: Comments will be accepted until September 3, 1998.

ADDRESSES: All comments should be addressed to Gerry Isenberg, Financial Program Specialist, Debt Management Services, Financial Management Service, Department of the Treasury, 401 14th Street S.W., Room 151, Washington, D.C. 20227. A copy of this proposed rule is being made available for downloading from the Financial Management Service web site at the following address: <http://www.fms.treas.gov>.

FOR FURTHER INFORMATION CONTACT: Gerry Isenberg, Financial Program Specialist, at (202) 874-6660; Ellen Neubauer or Ronda Kent, Senior Attorneys, at (202) 874-6680.

SUPPLEMENTARY INFORMATION:

Background

Under the provisions of the Debt Collection Improvement Act of 1996 (DCIA), Pub. L. 104-134, 110 Stat. 1321, 1358 (1996), nontax Federal payments to a person owing a delinquent nontax debt to the United States or to a State are reduced, or offset, by the amounts owed by that person. The offset funds are applied to the person's debt. The Financial Management Service (FMS), as the disbursing agency of the Department of the Treasury (Treasury), is responsible for the implementation of centralized offset of Federal payments for the collection of delinquent nontax debt owed to Federal agencies and to States, including past-due support being enforced by the States, in accordance with the provisions of the DCIA. In addition, FMS disburses more than 850 million Federal payments annually, including tax refund payments to taxpayers on behalf of the Internal Revenue Service (IRS).

Under 26 U.S.C. 6402(c) and 42 U.S.C. 664, the tax refund of a taxpayer who owes past-due support is reduced, or offset, by the amounts owed by the taxpayer (also referred to as the "debtor" in this rule). The funds offset from the taxpayers' tax refunds are forwarded to the Department of Health and Human Services (HHS) for transmission to the State enforcing the collection of the past-due support. "Past-due support" means the amount of support, determined under a court order, or an order of an administrative process established under State law, for support and maintenance of a child, or of a child and the parent with whom the child is living, which has not been paid.

The IRS has been collecting past-due support for States by tax refund offset since 1982. FMS has been collecting delinquent nontax debts and past-due support by the administrative offset of other Federal payments under its centralized offset program known as the "Treasury Offset Program." To improve the efficiency of Treasury's collection of debts, operation of the tax refund offset program will be included as part of the Treasury Offset Program effective January 1, 1999. The provisions and legislative history of the DCIA clarified that FMS may conduct tax refund offsets to collect past-due support (see §§ 31001(v)(2) of the DCIA, codified at 42 U.S.C. 664(a); 142 Cong. Rec., 104th Cong. 2d Sess., H4087, H4090 (Apr. 25, 1996)).

This proposed rule would govern only the offset of one type of payment, tax refunds, to pay one type of delinquent debt, past-due support. FMS has

promulgated separate rules and procedures governing other types of offset, such as tax refund offset for the collection of debts owed to the Federal Government and the offset of nontax Federal payments for the collection of past-due child support. FMS also will promulgate rules governing offset of nontax Federal payments for the collection of debts (other than child support) owed to Federal agencies and States. FMS anticipates that Part 285 of this title ultimately will contain all of the provisions relating to centralized offset by disbursing officials for the collection of debts owed to the Federal Government and to State governments, including past-due child support being enforced by States.

The Treasury Offset Program

The Treasury Offset Program currently works as follows. FMS maintains a delinquent debtor database. The database contains delinquent debtor information submitted and updated by Federal agencies owed debts, and by States collecting debts including any past-due support being enforced by States. Before a Federal payment is disbursed to a payee, FMS compares the payee information with debtor information in the delinquent debtor database operated by FMS. If the payee's name and taxpayer identifying number (TIN) match the name and TIN of a debtor, the payment is offset, in whole or part, to satisfy the debt, to the extent allowed by law. FMS transmits amounts collected to the appropriate agencies or States owed the delinquent debt after deducting a fee charged to cover the cost of the offset program.

Information about a delinquent debt or past-due support obligation remains in the debtor database for offset as long as the debt remains past-due and legally collectible by offset, or until debt collection activity for the debt is terminated because of full payment, compromise, write-off or other reasons justifying termination or removal of the debt from the database.

Offset of Tax Refund Payments To Collect Past-Due Child Support Under the Treasury Offset Program

This proposed rule would establish tax refund offset procedures that will supersede the procedures governing the tax refund offset program established by the IRS and applicable to the collection of past-due support (codified at 26 CFR 301.6402-5). Procedures for processing claims by non-debtor spouses and for rejecting a taxpayer's election to apply his or her refund to future tax liabilities would remain governed by IRS rules.

After January 1, 1999, tax refund payments would be offset to collect past-due support as part of the Treasury Offset Program, subject to the requirements of 26 U.S.C. 6402(c) and 42 U.S.C. 664. Since FMS issues different payment types daily, past-due support could then be satisfied by the offset of a variety of Federal payment types including, but not limited to, vendor, salary, and retirement payments, as well as tax refund payments.

As required under the provisions of 45 CFR 303.72, the HHS rules implementing 42 U.S.C. 664, either the State agency collecting the past-due support or HHS will notify debtors of the State's intention to submit the debt to Treasury for tax refund offset purposes. The debtors would be notified that the State intends to collect the past-due support by tax refund offset, administrative offset, or a combination of both, and of the applicable opportunities for review available to the debtor. HHS will report to FMS information on past-due support debts referred to HHS by States for tax refund offset purposes.

Since under current HHS rules States are required to refer past-due support debts to HHS for offset of Federal payments, HHS would report those debts to FMS. While nothing in this rule is intended to require States to refer past-due support claims directly to FMS for tax refund offset, this rule would provide the flexibility for HHS to amend its rule if HHS decides to provide States with that option. For States submitting debts through HHS, the pre-offset procedures established by HHS (codified at 45 CFR 303.72) for requesting collection of past-due child support by tax refund offset would apply and would be unchanged by this rule. The pre-offset procedures contained in this rule would apply to past-due support debts submitted to FMS directly by States, if authorized by HHS. When a past-due support debt is referred to FMS for offset, the referred debt would be subject to collection by tax refund offset under the provisions of this rule.

After a tax refund offset occurs, FMS would notify the debtor that the offset has occurred. FMS would provide information to the debtor regarding the amount and date of the offset, the State to which the amount offset was paid, and a contact in the State that would handle concerns or questions regarding the delinquent debt that resulted in the tax refund offset. The notice also would advise any non-debtor spouse who may have filed a joint tax return with the debtor of the steps that the non-debtor

spouse may take to secure his or her proper share of the tax refund. IRS would continue to be responsible for reviewing tax refund claims by non-debtor spouses. FMS would provide States, whether through HHS or directly, with sufficient information to identify the past-due support obligation for which amounts have been collected from tax refunds. FMS also would report tax refund offset information to the IRS at least weekly, to HHS at such time and in such manner as FMS and HHS agree but no less than annually, and to States that deal directly with FMS on a periodic basis.

FMS developed this proposed rule in consultation with the IRS and HHS and acknowledges their constructive assistance. As required by 42 U.S.C. 664(b)(1), HHS has approved this proposed rule.

Proposed Changes Under Treasury Offset Program

As described in detail below, this proposed rule would change certain procedures established by the IRS (codified at 26 CFR 301.6402-5) applicable to the collection of past-due support on behalf of States. The changes would not affect a debtor's ability to dispute the nature or amount of the past-due support obligation since States are required to provide the same due process opportunities to debtors under this rule as required by HHS rules codified at 45 CFR 303.72.

The changes in this proposed rule reflect requirements necessitated by the inclusion of the tax refund offset program as a part of the Treasury Offset Program. For example, since FMS would implement tax refund offset, under this rule HHS would transmit past-due support information to FMS, instead of IRS. FMS, rather than IRS, would provide post-offset notices and information to debtors and HHS or States. By including the tax refund offset program as a part of the Treasury Offset Program, States would be permitted to report increases to the amount of the debt as long as the State provided proper notice to the debtor and complied with any other requirements of State law or procedure.

In addition, while not currently allowed under HHS rules, this proposed rule would provide the flexibility for HHS to authorize States to refer information directly to FMS, rather than submitting information through HHS. This proposed rule also would allow States to submit debts for collection by tax refund offset on an ongoing basis, rather than annually, if authorized by HHS.

Section Analysis

(a) Definitions

This rule, as proposed, would include the following definitions.

Debt. For purposes of this rule, the term "debt" would mean past-due support unless otherwise indicated. The definition of debt contained in this rule would not alter the meaning of the term as contained in 31 U.S.C. 3701(b)(1) or other regulations governing the collection of debts other than past-due support. It merely would limit the scope of this rule to debt based on past-due support.

Past-due support. As defined in 42 U.S.C. 664(c), "past-due support" would mean the amount of support determined under a court order or an order of an administrative process established under State law for support and maintenance of a child, or of a child and the parent with whom the child is living, which has not been paid.

Qualified child. "Qualified child" would mean a child (A) who is a minor, or (B) who, while a minor, was determined to be disabled under subchapters II or XVI, Chapter 7, Title 42, United States Code, and for whom an order of support is in force. The age of majority is determined under State law.

State. "State" would mean the several States of the United States. The term "State" also would include 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. Treasury considered including legal subdivisions of States within the definition of "State" to ensure that there were no impediments to collecting past-due support being enforced at, for example, the county level. Legal subdivisions of States were not included in the definition of "State" because of concerns about the potential impact on current relationships between States and their legal subdivisions in the collection of past-due support. The public is invited to comment on the impact of including or excluding legal subdivisions of States in the definition of "State" as well as any other provision of this rule. The public also is invited to comment about whether tribal governments operating child support enforcement programs should be treated in the same manner as States for purposes of this rule.

Tax refund offset. For purposes of this rule, the term "tax refund offset" would mean withholding or reducing a tax refund payment by an amount necessary to satisfy a debt owed by the payee(s) of a tax refund payment. This rule would

govern the offset of tax refund payments under 26 U.S.C. 6402(c) and 42 U.S.C. 664. This rule would not cover the offset of Federal payments other than tax refund payments for the collection of past-due support. See 31 CFR 285.1.

Tax refund payment. For purposes of this rule, the term "tax refund payment" would mean the amount to be refunded to the taxpayer after the IRS has applied the taxpayer's overpayment to the taxpayer's past-due tax liabilities in accordance with 26 U.S.C. 6402(a) and 26 CFR 6402-3(a)(6)(i).

(b) General Rule

Paragraph (b)(1) states that past-due support information would be submitted to FMS, instead of IRS, for collection by tax refund offset. Currently, the IRS rules governing tax refund offset for collection of past-due support are codified at 26 CFR 301.6402-5. The procedures in this rule would supersede the procedures in the IRS rule. This rule would not change the procedures codified at 45 CFR 303.72 which require States to submit past-due support to HHS for collection by tax refund offset. This rule only would give States the option of submitting information directly to FMS, or through HHS, to the extent authorized by HHS rules.

Paragraph (b)(2) describes the offset process.

(c) Notification of Past-Due Support

Paragraph (c) describes the process by which past-due support debt information would be submitted to FMS for tax refund offset. HHS rules require States to participate in the tax refund offset program. HHS rules do not mandate that a State participate in the administrative offset program (offset of nontax Federal payments) created pursuant to the DCIA and operated pursuant to the rules in section 285.1 of this part. For those States electing to collect past-due support debts by administrative offset as well as tax refund offset, nothing in this proposed rule or section 285.1 would require a State to submit duplicate past-due support debt information for collection by offset under both rules. Further, nothing in this proposed rule would prohibit a State from combining into a single notice to the debtor the pre-offset notification required under this proposed rule, Section 285.1, and other laws or regulations.

Paragraph (c)(1) describes the type of past-due support eligible for collection by tax refund offset based on the requirements of 26 U.S.C. 6402(c) and 42 U.S.C. 664. HHS rules establish a minimum past-due support requirement

of \$150 when support has been assigned to the State. Paragraph (c)(1)(i)(A) of this proposed rule would not change the requirement but would provide HHS with the flexibility to reduce the minimum amount to \$25 for assigned cases. Paragraph (c)(1)(i)(B) reflects the statutory provision in 42 U.S.C. 664(b)(2) that establishes a minimum past-due support requirement of \$500 for cases for which a State agency is providing support collection services for parents who are not receiving welfare benefits (non-assigned cases). For non-assigned cases, tax refund offset may be used only to collect past-due support owed to or on behalf of a qualified child, or in some circumstances, a qualified child and the parent with whom the child is living.

Paragraph (c)(2) describes the information that must be included for each past-due support debt owed when a State submits notification to HHS for transmission to FMS. The procedures by which States submit notification of liability to HHS are detailed in 45 CFR 303.72. This rule would not change those procedures. FMS and HHS will provide States with more specific instructions regarding the formatting of information and the required data elements.

Under the existing IRS regulation, codified at 26 CFR 301.6402-5, States are required to submit past-due support information to HHS, which transmits the information to IRS for offset. Paragraph (c)(3) adds a new procedure whereby States, at their option and to the extent authorized by HHS, would be permitted to submit past-due support information for offset directly to FMS, instead of through HHS.

Under paragraphs (c)(2) and (c)(3), States would be required to certify compliance with pre-offset procedures contained in this rule and imposed by State law or procedures. The certifying official would be required to have both the knowledge and authority to certify, on behalf of the State, that the requirements have been met.

Paragraph (c)(4) reiterates the requirements codified at 42 U.S.C. 664 and 45 CFR 303.72 concerning the notice and opportunities that States are required to provide to individuals who owe past-due support before initiating collection by tax refund offset. This proposed rule would not change the procedures.

Paragraph (c)(5) describes the procedures for correcting and updating information transmitted to FMS by a State. If the information is transmitted to FMS through HHS, States would correct and update information through HHS. As currently operated by the IRS,

States may submit past-due support debts once each year for tax refund offset and may not increase the amount owed after the debt is submitted. As operated under the Treasury Offset Program, debts would be submitted for offset on an ongoing basis, rather than annually only, if provided for in HHS rules. Therefore, unlike the IRS rule codified at 26 CFR 301.6402-5(c)(4), under the Treasury Offset Program and this rule, States would be able to increase the amount of past-due support owed by an obligor after the debt is submitted for offset, subject to compliance with pre-offset State law and certification requirements. Decreases in the amount owed also will be reported in the manner and time frames provided by FMS or HHS.

Paragraph (c)(6) would require States that are enforcing a past-due support order issued by another State, or otherwise have knowledge that another State is involved in enforcing a particular past-due support order, to inform any other State involved in enforcing the order that it has notified FMS of the past-due support and of any amounts received as a result of an offset. The purpose of this proposed notification is to avoid duplicate offsets for the same debt referred by more than one State and to ensure that debt balances are maintained accurately.

(d) Priorities for Offset

This paragraph describes how a tax refund payment would be applied when a taxpayer owes multiple past-due support debts certified for offset. Since the priorities are mandated by statute, 26 U.S.C. 6402(c), the priorities as stated in the IRS regulation, codified at 26 CFR 301.6402-5, would not change. Before authorizing FMS to disburse a tax refund payment, the IRS would apply any amount of overpayment by the taxpayer to tax liabilities of the taxpayer. See definition of "tax refund payment" in paragraph (a) of this section.

Paragraph (d)(1) states that, unless otherwise provided by Federal law, the tax refund payment will be reduced and applied to a taxpayer's debts in the following order of priority: first by the amount of any past-due support assigned to a State; second, by the amount of any past-due, legally enforceable debt owed to a Federal agency; and third, by the amount of any qualifying past-due support not assigned to a State. The public is invited to comment on how a tax refund payment should be applied to a taxpayer's multiple debts within the same category e.g., if a taxpayer owes

two or more support obligations that have been assigned to a State.

Paragraph (d)(2) reiterates that the tax refund payment would be applied to the outstanding nontax debts of a taxpayer prior to the taxpayer's future estimated tax liabilities. Any amounts remaining after offset would be applied to estimated tax, or would be refunded to the taxpayer.

(e) Post-Offset Notice

Under this paragraph (e), once an offset of a tax refund payment has occurred, FMS, rather than IRS, would provide notice to the payee and HHS or the State that refers past-due support directly to FMS. In its notice to the payee, FMS also would notify a non-debtor spouse who files a joint income tax return with a debtor of the procedures that may be taken to secure his or her proper share of the tax refund. FMS would notify the IRS of any offsets. At such time and in such manner as FMS and HHS agree, but no less than annually, FMS would provide HHS with statistical information regarding offsets for collection of past-due support.

(f) Offset Made With Regard to a Tax Refund Payment Based Upon Joint Return

This paragraph (f) states that a non-debtor spouse who files a joint income tax return with a debtor should take appropriate action to secure his or her proper share of a tax refund from which an offset was made. Such procedures are governed by IRS rules and would not be affected by this rule.

(g) Disposition of Amounts Collected

This paragraph (g) describes how amounts collected from tax refund payments would be transmitted to HHS or the appropriate State.

(h) Fees

As did the IRS, FMS would charge a fee to cover the costs of the tax refund offset program incurred by FMS, including any costs charged to FMS by the IRS. FMS would deduct the fee from the amount offset before that amount is transmitted to the State or HHS. The fee will be established annually in such amount as FMS and HHS agree to be sufficient to reimburse FMS for the full cost of the offset procedure. FMS would provide notification, in advance, of any changes in the fee.

(i) Review of Tax Refund Offsets

As provided in 26 U.S.C. 6402(f), the reduction of a taxpayer's refund made pursuant to 26 U.S.C. 6402(c) 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. This provision does not impact any rights a debtor may otherwise have to dispute the existence or amount of the debt.

(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 governed by 26 U.S.C. 6103. Paragraph (j) describes permitted uses of confidential tax information in connection with tax refund offset.

(k) Effective Date

The inclusion of the tax refund offset program as a part of the administrative offset program conducted by FMS will be effective for all tax refund payments payable after January 1, 1999. Before that date, States would be required to comply with all of the tax refund offset prerequisites, such as providing notice to debtors, in order to submit debts for collection from tax refund payments payable after January 1, 1999.

Regulatory Analyses

This proposed rule is not a significant regulatory action as defined in Executive Order 12866. It is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required. This regulation will not impose significant costs on small businesses because this regulation only impacts individuals who receive tax refunds and who owe past-due support.

The public is invited to submit comments on the proposed rule which will be taken into account before a final rule is issued.

List of Subjects in 31 CFR Part 285

Administrative practice and procedure, Child support, Child welfare, Claims, Debts, Privacy, Taxes.

Authority and Issuance

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

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

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

Authority: 26 U.S.C. 6402; 31 U.S.C. 321, 3716, 3720A; 42 U.S.C. 664; E.O. 13019.

2. Section 285.3 is proposed to be added to subpart A to read as follows:

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

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

Debt as used in this section is synonymous with the term *past-due support* unless otherwise indicated.

Debtor as used in this section means a person who owes past-due support.

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

HHS means the Department of Health and Human Services, Office of Child Support Enforcement.

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

Past-due support means the amount of support, determined under a court order, or an order of an administrative process established under State law, for support and maintenance of a child, or of a child and the parent with whom the child is living, which has not been paid, as defined in 42 U.S.C. 664(c).

Qualified child means a child:

(i) Who is a minor, or

(ii) Who, while a minor, was determined to be disabled under subchapters II or XVI, Chapter 7, Title 42, United States Code, and for whom an order of support is in force.

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.

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

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 tax on the part of the person who made the overpayment.

(b) *General rule.* (1) Past-due support will be collected by tax refund offset upon notification to FMS in accordance with 26 U.S.C. 6402(c), 42 U.S.C. 664 and this section. Collection by offset under 26 U.S.C. 6402(c) is a collection procedure separate from the collection procedures provided by 26 U.S.C. 6305 and 26 CFR 301.6305-1, relating to the assessment and collection of certain child and spousal support liabilities. Tax refund offset may be used separately or in conjunction with the collection procedures provided in 26

U.S.C. 6305, as well as other collection procedures.

(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 of a payment certification record are the same as the taxpayer identifying number and name of a delinquent debtor 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 support debt owed by the debtor. Any amounts not offset will be paid to the payee(s) listed in the payment certification record.

(c) Notification of past-due support.

(1) *Past-due support eligible for tax refund offset.* Past-due support qualifies for tax refund offset if:

(i)(A) There has been an assignment of the support obligation to a State and the amount of past-due support is not less than \$25.00; or

(B) A State agency is providing support collection services under 42 U.S.C. 654(5), the amount of past-due support is not less than \$500.00, and the past-due support is owed to or on behalf of a qualified child (or a qualified child and the parent with whom the child is living if the same support order includes support for the child and the parent); and

(ii) A notification of liability for past-due support has been received by FMS as prescribed by paragraphs (c)(2) or (c)(3) of this section.

(2) *Notification of liability for past-due support transmitted to FMS by HHS.* States notifying HHS of past-due support shall do so in the manner and format prescribed by HHS. The notification of liability shall be accompanied by a certification that the State has complied with the requirements contained in paragraph (c)(4) of this section and with any requirements applicable to the offset of Federal tax refunds to collect past-due support imposed by State law or procedures. HHS shall consolidate and transmit to FMS the information contained in the notifications of liability for past-due support submitted by the States provided that the State has certified that the requirements of paragraph (c)(4) of this section have been met.

(3) *Notification of liability for past-due support transmitted directly to FMS by States.* States notifying FMS of past-due support shall do so in the manner and format prescribed by FMS to the extent authorized by HHS regulations.

The notification of liability shall be accompanied by a certification that the State has complied with the requirements contained in paragraph (c)(4) of this section and with any requirements applicable to the offset of Federal tax refunds to collect past-due support imposed by State law or procedures. FMS may reject a notification of past-due support which 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.

(4) *Advance notification to debtor of intent to collect by tax refund offset.* The State is required to provide a written notification to the debtor, pursuant to the provisions of 45 CFR 303.72, informing the debtor that the State intends to refer the debt for collection by tax refund offset. The notice also shall:

(i) Instruct the debtor of the steps which may be taken to contest the State's determination that past-due support is owed or the amount of the past-due support;

(ii) Advise any non-debtor who may file a joint tax return with the debtor of the steps which a non-debtor spouse may take in order to secure his or her proper share of the tax refund; and

(iii) In cases when a debt is being enforced by more than one State, advise the debtor of his or her opportunities to request a hearing with the State enforcing collection or the State issuing the support order as prescribed by the provisions of 45 CFR 303.72(g).

(5) *Correcting and updating notification.* The State shall, in the manner and in the time frames provided by FMS or HHS, notify FMS or HHS of any deletion or net decrease in the amount of past-due support referred to FMS, or HHS as the case may be, for collection by tax refund offset. The State may notify FMS or HHS 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)(4) of this section with regard to those debts.

(6) *Collection of past-due support enforced by multiple States.* When a State has knowledge that the debt is being enforced by more than one State, the State notifying FMS, or HHS as the case may be, of the debt shall inform any such other State involved in enforcing the debt when it receives the offset amount.

(d) *Priorities for offset.* (1) As provided in 26 U.S.C. 6402 as amended, a tax refund payment shall be reduced first by the amount of any past-due

support assigned to a State (welfare cases) which is to be offset under 26 U.S.C. 6402(c), 42 U.S.C. 664 and this section; 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), 31 U.S.C. 3720A and § 285.2 of this part; and third, by the amount of any qualifying past-due support not assigned to a State (non-welfare cases) which is to be offset under 26 U.S.C. 6402(c), 42 U.S.C. 664 and this section.

(2) Reduction of the tax refund payment pursuant to 26 U.S.C. 6402(a), (c), and (d) 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), and (d) shall be refunded to the taxpayer, or applied to estimated tax, if elected by the taxpayer pursuant to IRS regulations.

(e) *Post-offset notice.* (1) (i) FMS shall notify the debtor in writing of:

(A) The amount and date of the offset to satisfy past-due support;

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

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

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

(2) FMS will advise HHS of the names, mailing addresses, and identifying numbers of the debtors from whom amounts of past-due support were collected, of the amounts collected from each debtor through tax refund offset, the names of any non-debtor spouses who may have filed a joint return with the debtor, and of the State on whose behalf each collection was made. Alternatively, FMS will provide such information to each State that refers debts directly to FMS. FMS will inform HHS and each State that the payment source is a tax refund payment.

(3) 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 support were collected from tax refund offsets and the amounts collected from each debtor.

(4) At such time and in such manner as FMS and HHS agree, but no less than annually, FMS will advise HHS of the States which have furnished notices of past-due support, the number of cases in each State with respect to which such notices have been furnished, the amount

of past-due support sought to be collected by each State, and the amount of such tax refund offset collections actually made in the case of each State.

(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 support 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 amounts payable to HHS or the State, as the case may be. FMS and HHS, 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 HHS or to the appropriate State. If FMS learns that an erroneous offset payment is made to HHS or any State, FMS will notify HHS or the appropriate State that an erroneous offset payment has been made. FMS may deduct the amount of the erroneous offset payment from amounts payable to HHS or the State, as the case may be. 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). HHS and States shall notify FMS any time HHS or a State returns an erroneous offset payment to an affected taxpayer. FMS and HHS, or the appropriate State, will adjust their debtor records accordingly.

(h) *Fees.* The State will pay a fee to FMS for the full cost of administering the tax refund offset program. The fee will be established annually in such amount as FMS and HHS agree 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. 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(f), any reduction of a taxpayer's refund made pursuant to 26 U.S.C. 6402(c) 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.

(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(c) 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(c).

(k) *Effective date.* This section applies to tax refund payments payable under 26 U.S.C. 6402 after January 1, 1999.

Dated: July 29, 1998.

Richard L. Gregg,

Commissioner.

[FR Doc. 98-20731 Filed 8-3-98; 8:45 am]

BILLING CODE 4810-35-P