

DEPARTMENT OF THE TREASURY**Fiscal Service****31 CFR Part 285****RIN 1510-AA78****Offset of Tax Refund Payments To Collect State Income Tax Obligations****AGENCY:** Financial Management Service, Fiscal Service, Treasury.**ACTION:** Interim Rule with Request for Comments.

SUMMARY: Under provisions of the Internal Revenue Service Restructuring and Reform Act of 1998 the Federal tax refund of a taxpayer who owes past-due, legally enforceable State income tax obligations may be reduced, or offset, by the amounts owed by the taxpayer. The funds offset from the taxpayers' Federal tax refunds are forwarded to the State that reported the State income tax obligation. Effective January 1, 2000, the Department of the Treasury will incorporate the procedures necessary to collect State income tax obligations reported by States as part of the centralized offset program operated by the Financial Management Service (FMS), a bureau of the Department of the Treasury. Under this interim rule, past-due, legally enforceable State income tax obligations include any local income tax that is administered by the chief tax administration agency of the State.

DATES: Effective January 1, 2000. Comments will be accepted until January 19, 2000.

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 interim 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: Dean Balamaci, Division Director, Debt Management Services, at (202) 874-6660; Ellen Neubauer or Ronda Kent, Senior Attorneys, at (202) 874-6680.

SUPPLEMENTARY INFORMATION:**Background***General*

The Internal Revenue Code authorizes the Secretary of the Treasury to offset Federal tax refund payments to satisfy debts owed to the United States and to collect past-due support for States.

Under the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206, 112 Stat. 685, 779 (1998), the authority to offset tax refund payments was amended to allow for the offset of Federal tax refund payments to collect past-due, legally enforceable State income tax obligations reported to the Secretary of the Treasury by States. The amendments authorizing such offsets are effective beginning January 1, 2000.

Prior to January 1999, offsets of tax refund payments were conducted by the Internal Revenue Service (IRS) under the tax refund offset program. Effective January 1, 1999, the IRS tax refund offset program was merged into the Treasury Offset Program, operated by the Financial Management Service (FMS). FMS, a bureau of the U.S. Department of the Treasury, disburses more than 850 million Federal payments annually, including tax refund payments to taxpayers on behalf of the IRS. The Treasury Offset Program is a centralized offset program in which FMS offsets tax refund payments as well as other nontax Federal payments to collect delinquent debts owed to Federal agencies and States.

This rule governs only the offset of one type of payment, i.e., tax refunds, to pay one type of delinquent debt, i.e., past-due, legally enforceable State income tax obligations. 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 tax refund offset for the collection of past-due support. FMS anticipates that Part 285 of this title ultimately will contain all of the provisions relating to centralized offset for the collection of debts owed to the Federal Government and to State governments, including past-due, legally enforceable State income tax obligations.

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 by persons, and by States collecting debts including any past-due support being enforced by States. This database will be expanded to include past-due, legally enforceable State income tax obligations reported by States. As is done by Federal agencies, before submitting a debt to the database, States will certify to FMS that the debt is legally enforceable and that all due process prerequisites have been met. Before a Federal payment is disbursed

to a payee, including Federal tax refund payments, 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, legally enforceable State income tax obligation will remain 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 State Income Tax Obligations Under the Treasury Offset Program

This rule establishes procedures governing the collection of past-due, legally enforceable State income tax obligations by offsetting Federal tax refund payments. 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 remain governed by IRS rules. Although tax refund payments issued beginning January 1, 2000, will be offset to collect past-due, legally enforceable State income tax obligations as part of the Treasury Offset Program, such offsets will be made in accordance with the requirements of 26 U.S.C. 6402(e).

After a tax refund offset occurs, FMS will notify the debtor that the offset has occurred. FMS also will 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 will 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 will continue to be responsible for reviewing tax refund claims by non-debtor spouses. FMS will provide States with sufficient information to identify the State income tax obligation for which amounts have been collected from tax refunds. FMS also will report tax refund offset information to the IRS at least weekly and to States on a periodic basis.

Sectional Analysis

Definitions

Several terms included in this interim rule have specific meanings that are discussed below. Other definitions included in the interim rule do not require explanation.

The term "past-due, legally enforceable State income tax obligation" means a debt which resulted from a final court judgment or a final administrative proceeding which has determined that an amount of State income tax is due. A final court judgment or a final administrative proceeding is one which is no longer subject to judicial review. The term "past-due, legally enforceable State income tax obligation" also means a debt which resulted from a final State income tax assessment which has not been collected provided the debt has not been delinquent for more than 10 years. A final State income tax assessment means an assessment for which the time for redetermination under State law or procedure has expired. The term "assessment" is intended to be interpreted broadly to include self-assessments. The date of delinquency of a debt which resulted from a final state income tax assessment for purposes of determining whether or not the debt has been delinquent for more than 10 years is to be determined in accordance with State law. For purposes of this interim rule, the term "past-due, legally enforceable State income tax obligation" is used interchangeably with the term "debt."

The term "State" means the States of the United States. The term 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.

The term "State income tax" is intended to cover all taxes determined under State law to be State income tax. The term includes any local income tax that is administered by the chief tax administering agency of the State.

The term "tax refund offset" means withholding or reducing a Federal tax refund payment by an amount necessary to satisfy a debt owed by the payee(s) of a tax refund payment. This rule only governs the offset of tax refund payments under 26 U.S.C. 6402(e); it does not cover the offset of Federal payments other than tax refund payments for the collection of past-due legally enforceable State income tax obligations.

The term "tax refund payment" means 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

Upon notification to FMS of a debt by a State, in accordance with 26 U.S.C. 6402(e) and this interim rule, FMS will collect such debt by means of tax refund offset. The offset will be conducted by comparing tax refund payment records, certified to FMS by the IRS, with records of debts certified and submitted to FMS by States. Under FMS's centralized offset program, a match will occur when the taxpayer identifying number, as defined at 26 U.S.C. 6109, and name on a payment certification record are the same as the taxpayer identifying number and name on a debtor record. Under this interim rule, when a match occurs, and all other requirements for tax refund offset have been met, FMS would reduce the amount of the tax refund payment payable to a debtor by the amount of any past-due, legally enforceable State income tax obligations owed by the debtor. Any amounts not offset would be paid to the payee(s) listed in the payment certification record. As required by law, under this interim rule an offset will not occur if the address listed on the Federal tax return is not an address within the State seeking the offset.

(c) Notification of Past-due, Legally Enforceable State Income Tax Obligations

Paragraph (c) of the interim rule describes the process by which debt information would be submitted to FMS by States for tax refund offset. Paragraph (c)(1) describes the manner in which States would be required to submit past-due, legally enforceable State income tax debts, including certification requirements. In accordance with the requirements of 26 U.S.C. 6402(e), under the interim rule, FMS would be able to reject any notification that fails to meet these requirements.

Paragraph (c)(2) of the interim rule would establish a minimum debt requirement of \$25.00 or such other amounts as determined by FMS. Where an individual owes more than one debt to the same State, the minimum amount will be applied to the aggregate amount of the debts owed. FMS will inform States on an annual basis of any changes in the minimum debt amount. FMS would have the option to reject any debt included in a notification which is below this amount.

Paragraph (c)(3) of the interim rule describes the certification requirements that would be required to be provided for each State income tax debt owed when a State submits notification to FMS. FMS would provide States with more specific instructions regarding the formatting of information and the required data elements.

Under paragraphs (c)(1) and (c)(3), States are required to certify compliance with pre-offset procedures contained in this rule and imposed by State law or procedures. The certifying official is required to have both the knowledge and authority to certify, on behalf of the State, that the requirements have been met. The certification and pre-offset procedures include a requirement that States provide debtors with notice that they intend to collect the debt by referral to Treasury for tax refund offset; that States afford debtors the opportunity to present evidence that all or part of the debt is not due; and that States establish procedures for reviewing evidence presented by debtors. While we are satisfied that these procedures adequately protect taxpayers from erroneous offsets, we are nevertheless of the view that special protections are warranted where a State is attempting to collect a debt by tax refund offset from an enrolled member of an Indian tribe who lives on a reservation and derives all of his or her income from that reservation, and therefore is immune from state taxation. Thus, procedures established for reviewing evidence presented by debtors in response to the notice that their debt is being submitted to Treasury for collection by tax refund offset, must include specific procedures to handle claims of individuals who claim immunity from state taxation on the basis 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. These procedures are intended to ensure that such claims are considered on their merits before being submitted for collection by tax refund offset even in those cases where the individual claiming immunity has previously failed to timely present his or her claim in response to notice regarding the imposition of the tax or in response to the use of other collection tools. Additionally, as an added safeguard, the rule requires that States provide copies of these procedures to the Secretary of the Treasury, upon request, for review. This is to ensure that the conditions for participation in the program prescribed under this rule are being met.

Paragraph (c)(4) of the interim rule describes the procedures for correcting

and updating information transmitted to FMS by a State. As operated under the Treasury Offset Program, debts may be submitted for offset on an ongoing basis. Therefore, States will be able to increase the amount of the state income tax debt owed by an obligor after the debt is submitted for offset, subject to compliance with pre-offset State law and certification requirements where applicable. For example, while States would likely need to provide additional pre-offset notices to a debtor whose debt was being increased due to a new assessment, no additional notice would be required where a debt was being increased due to accrued interest and penalties of which the debtor had previously been notified. Decreases in the amount owed also must be reported in the manner and time frames provided by FMS.

(d) Priorities for Offset

Paragraph (d) of the interim rule describes how a tax refund payment will be applied when a taxpayer owes multiple debts certified for offset. The priorities are mandated by statute, 26 U.S.C. 6402(e). Before authorizing FMS to disburse a tax refund payment, the IRS will apply any amount of overpayment by the taxpayer to Federal 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; third, by the amount of any qualifying past-due support not assigned to a State; and fourth, by the amount of any past-due legally enforceable State income tax obligation.

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

Paragraph (d)(3) provides that, where FMS receives notice from a State that more than one debt subject to this section is owed by the debtor, any overpayment will be applied to the oldest debt first.

(e) Post-Offset Notice

Under paragraph (e) of this interim rule, once an offset of a tax refund payment has occurred, FMS will provide notice both to the payee and to the State that referred the debt to FMS.

FMS will also notify the IRS of any offsets.

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

Paragraph (f) of the interim rule would provide that a non-debtor spouse who files a joint income tax return with a debtor may 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 are not affected by this rule.

(g) Disposition of Amounts Collected

Paragraph (g) of the interim rule, describes how amounts collected from tax refund payments would be transmitted to the appropriate State. This paragraph also discusses the procedures applicable when an erroneous payment is made to a State.

(h) Fees

Paragraph (h) of the interim rule describes how FMS would determine the amount of the fee it would charge a State. It states that the fee would be set at an amount necessary for FMS to cover the full cost of the offset procedure, including any costs charged to FMS by the IRS. Under this interim rule, FMS would deduct the fee from the amount offset before that amount is transmitted to the State. Under this interim rule, the amount of the fee would be established annually, and States would be notified in advance of any changes in the amount of 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(e) is not 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) of the interim rule describes permitted uses of confidential tax information in connection with tax refund offset.

(k) Effective Date

In accordance with section 3711(d) of Pub. L. 105-206, the inclusion of past-due, legally enforceable State income tax debts as part of the Treasury Offset Program will be effective for all tax

refund payments payable beginning January 1, 2000.

Regulatory Analyses

This interim rule is not a significant regulatory action as defined in Executive Order 12866.

Executive Order 12866 and the President's Memorandum of June 1, 1998 require each agency to write all rules in plain language. We invite your comments on how to make this interim rule easier to understand.

Special Analyses

FMS is promulgating this interim rule without opportunity for prior public comment pursuant to the Administrative Procedure Act, 5 U.S.C. 553 (the APA) because a comment period would be unnecessary, impracticable and contrary to the public interest. The Internal Revenue Code provisions authorizing the offset of Federal tax refunds to collect State income tax apply to refunds payable after December 31, 1999. A comment period is unnecessary because this interim rule does not change the ongoing offset process under the Tax Refund Offset Program, but rather provides guidance for States and disbursing officials to facilitate the addition of State income tax debts into the Tax Refund Offset Program. This interim rule merely establishes procedural requirements governing the transfer of information to and from States and reiterates and clarifies requirements established by statute. Since this interim rule provides critical guidance needed to facilitate the offset of tax refund payments to collect delinquent income tax debts owed to States, FMS believes that it is in the public interest to issue this interim rule without opportunity for prior public comment.

The public is invited to submit comments on the interim rule which will be taken into account before a final rule is issued. The public is specifically invited to comment upon whether this rule should impose any requirements on States regarding notification to taxpayers and review of delinquent debts in addition to those required by statute and reiterated and clarified in this rule.

List of Subjects in 31 CFR Part 285

Administrative practice and procedure, Claims, Debts, Privacy, Taxes.

Authority and Issuance

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

2. Section 285.8 is added to subpart A to read as follows:

§ 285.8 Offset of tax refund payments to collect state income tax obligations.

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

Debt as used in this section means past-due, legally enforceable State income tax obligation unless otherwise indicated.

Debtor as used in this section means a person who owes a state income tax obligation.

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.

(b) *General rule.* (1) FMS will collect past-due, legally enforceable State income tax obligations by tax refund offset upon notification to FMS of a past-due, legally enforceable State income tax obligation in accordance with 26 U.S.C. 6402(e) 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 on 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, legally enforceable State income tax obligation owed by the debtor. Any amounts not offset will be paid to the payee(s) listed in the payment certification record.

(3) FMS only will offset a tax refund payment 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.* (1) Notification to FMS of past-due, legally enforceable State income tax obligations. States notifying FMS of state income tax obligations shall do so 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 any requirements applicable to the offset of Federal tax refunds to collect past-due, legally enforceable State income tax obligations imposed by State law or procedures. 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 of past-due, legally

enforceable State income tax obligations which do 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 by certified mail, return receipt requested, informing the debtor that the State intends to refer the debt for collection by tax refund offset. The notice must also 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.

(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. In those cases where a 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 consideration of such claims de novo 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 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 assigned to a State; second, by the amount of any past-due, legally enforceable debt owed to a Federal agency; third, by the amount of any qualifying past-due support not assigned to a State and fourth, by any past-due, legally enforceable State income tax obligation.

(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) and (e) 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;

(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 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 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 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 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(f), any reduction of a taxpayer's refund made pursuant to 26 U.S.C. 6402(e) 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) 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).

(k) *Effective date.* This section applies to tax refund payments payable under 26 U.S.C. 6402 beginning January 1, 2000.

Richard L. Gregg,
Commissioner.

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