



Updated April 19, 2016

Quick Facts: The IRS and Child Support

This Quick Facts guide provides information about the IRS and the enforcement of child support.

The child support program¹ is a successful federal-state-tribal partnership whose mission is to promote economic stability for children whose parents live apart. The Internal Revenue Service (IRS) serves as an invaluable partner in the effort to collect past-due support, through the offset of federal income tax refunds and the exchange of federal taxpayer information (FTI) for child support purposes.

Refund Offsets and Reversals

The federal tax refund offset program² allows a child support agency (IV-D agency) to request that the IRS intercept tax refunds to collect past-due support. If more than \$500 is owed to the custodial parent or \$150 is owed to the state in assigned arrears, the IRS will intercept the tax refund at the IV-D agency's request up to the amount of past-due child support. In the last reported fiscal year, child support agencies collected over \$1.8 billion in child support through the federal tax refund offset program.³

Recently there has been an increase in the number of fraudulently-filed federal income tax returns. The perpetrator of the fraud files a tax return in the name of a taxpayer and claims a refund. The refund is sent to the address or account number provided by the perpetrator rather than the taxpayer. When the defrauded taxpayer owes past-due child support, the IRS offsets the fraudulent refund and forwards it to the IV-D agency. If the past-due support is owed to the custodial parent, the IV-D agency is required by regulation to promptly disburse the refund to that family. But when the fraud is discovered, which can be many months or even years after the offset, the IRS reverses the offset by deducting that amount from unrelated future payments to the IV-D agency. This deduction occurs even though the unrelated future payment reflects refunds withheld by the IRS from other taxpayers and belongs to other families. As a result, the IRS recoups its losses at the expense of the IV-D agency, which is liable for the funds that were previously disbursed to the family even though it had no knowledge of the fraud and may have already closed the child support case as "paid in full."

¹ Created by Title IV-D of the Social Security Act

² IRC § 6402; 42 USC 664

³ FY2014 OCSE Preliminary Report



On December 30, 2015, the Treasury Department published an interim final rule providing for a six-month limitation on reversal of offsets if the IV-D agency has already disbursed the payment to the family.⁴ While the interim rule mitigates losses to the IV-D agencies, NCSEA’s comments on interim rule note that the Bureau of the Fiscal Service could further mitigate the losses by using its discretion to hold states harmless from all erroneous offsets.

Safeguarding and Permitted Use of FTI

IV-D agencies have federal statutory authority to use FTI for purposes solely related to the child support program.⁵ The IRS has issued guidelines for the use, security, and confidentiality of FTI when accessed by IV-D agencies.⁶ But unlike federal legislation or agency rules, these guidelines were not preceded by a public hearing or public comment period—thereby depriving IV-D agencies of an opportunity to address the important issues on FTI use to collect support for families.

The IRS guidelines in Publication 1075 are based on an overly restrictive reading of the Internal Revenue Code, and can create difficulties for IV-D agencies in using FTI. As a general rule, an “agent” has all the authority and responsibility of the “principal.” However, as identified in an August 2001 resolution of the NCSEA Board of Directors, the IRS does not condone disclosure of FTI to any person or entity other than those specifically listed in IRC 6103. The prohibited entities include the judiciary (even when deciding the child support case), state auditors of IV-D agencies, tribes, vendors, and other agents of a IV-D agency hired to assist in the administration of the child support program.

Child support attorneys and caseworkers cannot disclose the source of a collection if the collection was the result of an IRS tax refund intercept, unless the information is independently verified. The source of collection is important to courts and the parties when they must determine payment histories and patterns, and decide whether a parent is complying with a court order in a civil contempt or criminal case where incarceration is at stake.

The Obama administration’s FY 2017 budget proposes to: (1) consolidate the child support disclosure rules into a single provision; (2) define key terms such as “child support enforcement agency” and “agent;” (3) permit disclosure to tribal child support agencies and other critical entities; and (4) update and streamline the items of tax return information that may be disclosed to each party depending on the purpose and need.⁷

⁴ 80 Fed. Reg. 81463 (Dec. 30, 2015) (amending 31 C.F.R. § 285.3)

⁵ IRC § 6103

⁶ IRS Publication 1075

⁷ Treasury Department Budget: FY 2017 Revenue Proposals (p.258-259)



At a minimum, allowing a public hearing or comment period on the restrictions contained in Publication 1075 would foster a beneficial discussion between the IRS and the child support program on whether the guidelines are reasonable or are so overly restrictive that the guidelines undermine the ability of IV-D agencies to use FTI as Congress intended.

Tribal Child Support

Tribal IV-D agencies certified by the federal Office of Child Support Enforcement (OCSE) do not have direct access to FTI.⁸ OCSE has indicated that tribal IV-D agencies may access tax return information through an agreement with state child support agencies. But direct access to FTI for a tribal IV-D program would place the tribes on equal footing with the state IV-D programs and help tribal IV-D agencies more quickly locate non-custodial parents and enforce child support orders. The improvements outlined in the administration's FY 2017 budget proposal include a provision to ensure tribal child support agencies have uniform access to and use of FTI.

⁸ OCSE PIQT 10-01, TDCL 10-02, AT 10-01