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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 parent receiving support 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 parent receiving support, 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."

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

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

² IRC § 6402; 42 USC 664

³ FY2017 OCSE Preliminary Report

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





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.

Tribal Child Support

Tribal IV-D agencies certified by the federal Office of Child Support Program (OCSE) do not have direct access to FTI.⁷ OCSE has indicated that tribal IV-D agencies may access tax return information through an agreement with state child support agencies. However, 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 parents paying support and enforce child support orders.

⁵ IRC § 6103

⁶ IRS Publication 1075

⁷ OCSE PIQT 10-01, TDCL 10-02, AT 10-01

