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Federal Tax Refund Offset Program

Background

The Child Support Program¹ is a successful federal-state-tribal partnership that seeks to promote economic stability for children whose parents live apart. The program collects \$5.51 for every \$1 in public funds invested. In FY 2020, \$33.6 billion was collected in 13.2 million cases for 13.8 million children.²

The purpose of the Federal Tax Refund Offset Program is to intercept federal tax refunds to collect past due support obligations. The intercepted federal tax refunds are applied to satisfy the delinquent support obligations. This program is administered in cooperation and coordination among the State child support programs, the Federal Office of Child Support Enforcement (OCSE), and the U.S. Department of Treasury. This program has proven to be a very effective collection tool. For example, in FY 2020, \$4.8 billion was collected through the Federal Tax Refund Offset Program, which accounted for 12.9% of all collections made that year.³

Congress authorized the Federal Tax Refund Offset Program with passage of the Omnibus Budget Reconciliation Act of 1981.⁴ Initially, the program was restricted to collecting delinquent child support obligations related to public assistance cases. With passage of the Child Support Enforcement Amendments of 1984, the Federal Tax Refund Offset Program was expanded to include non-public assistance cases.⁵

The Federal Tax Refund Offset Program expanded again with passage of the Omnibus Budget Reconciliation Act of 1990, which authorized use of the Federal Income Tax Refund Offset process in non-public assistance cases for the collection of past-due spousal support when the parent is living with the child and spousal support and child support are included in the same court order.⁶ In addition, cases may be submitted if there is past-due support due on behalf of an adult disabled child for whom there is a support order. These changes took effect January 1, 1991.

To assist in collecting past due support for cases in which a child achieves the ages of majority before the past due support is collected, the Deficit Reduction Act (DRA) of 2005 authorized

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

² [Office of Child Support Enforcement \(OCSE\) FY 2020 Preliminary Report.](#)

³ *Ibid*, table P-29.

⁴ [Public Law 97-35](#) (see Section 2331)

⁵ [Public Law 98-378](#) (see Section 303.72)

⁶ [Public Law 101.508](#) (see Section 5011(b))



State child support programs to submit cases to the Federal Tax Refund Offset Program regardless of the age of the child.⁷ This change was effective October 1, 2007.

Criteria for Eligibility

The past due child and medical support obligation must be based on an underlying court order or administrative order.

The criteria for State child support programs to use the Federal Tax Refund Offset Program to collect past due support obligation are as follows.

- For public assistance cases, the parent owing support owes at least \$150 in past due support; or
- For non-public assistance cases, the parent owing support owes at least \$500 in past due support.

Basic Process

The State child support programs submit and certify the accuracy of information on parents owing past due support who meet at least one of the above criteria to OCSE. The required information to be submitted is the name, Social Security number, and amount of past-due support owed by the individual. OCSE then transfers the information received from the states to the U.S. Department of Treasury.

A Pre-Offset Notice is sent to each parent whose information has been submitted for the Federal Tax Refund Offset Program. The Pre-Offset Notice (1) notifies the individual that an offset will be made from any refund otherwise payable to that individual, (2) instructs the individual owing the past-due support of the steps that may be taken to contest the State's determination that past-due support is owed or the amount of the past-due support, and (3) provides information with respect to procedures to be followed in the case of a joint return.

Each State child support program is required to establish a process for receiving and adjudicating challenges to proposed offset.

A parent owing support may have more than one support obligation and cases in more than one state. If there are multiple cases in a single state, the State child support program submits the consolidated past due amount covering all of the obligations. If multiple states are involved, each State child support program submits its case to the Federal Tax Refund Offset Program.

The State child support programs are required to notify the U.S. Department of Treasury through OCSE if the amount of the past due support on an individual case changes before the tax refund is intercepted.

⁷ [Public Law 109-171](#)



Depending on the amount of the past due support and the amount of the tax refund, all or part of the tax refund can be offset for the past due support obligation.

The U.S. Department of Treasury uses the tax offset process for collecting debts other than past due support. If the amount of the tax refund is not sufficient to pay all of the debts, debts are paid in the following priority order:

- Federal tax debt
- State tax debt
- Past due support debt
- Other debts

If funds are available to be applied to the past due support debt, the U.S. Department of Treasury forwards the intercepted tax refunds through OCSE to the State child support programs.

At the time of the offset, the U.S. Department of Treasury mails a Notice of Offset to the parent owing the past due support advising of the amount of the tax refund intercepted and refers the parent to the State child support program for further information.

Non-obligated or "Injured" Spouse Exception

Some parents owing past due support may have filed a joint tax return with a current spouse. State community property laws control whether the current spouse's share of the federal tax refund can be intercepted to pay the past due support. The current spouse is called a non-obligated or "injured" spouse. The non-obligated or "injured" spouse may be able to secure his or her portion of a refund due by filing an Injured Spouse Allocation of a Joint Return (Form 8379) with the Internal Revenue Service (IRS). The Injured Spouse Allocation of a Joint Return (Form 8379) can be filed at the same time the joint tax return is filed.

Distribution of Funds

States have discretion to hold federal tax refund offsets for specified timeframes in accordance with federal requirements. Federal regulations require states to distribute single return tax refund offset collections within 30 calendar days of receipt.⁸ If the tax refund offset is from a joint return, federal regulations allow a state to hold the joint offset payment for up to six months or until notified that the non-obligated or injured" spouse's proper share has been paid.⁹

States also have the discretion to determine how funds will be allocated when a parent owing support has more than one support obligation. Most states allocate the funds on a pro rata basis. The State child support programs are required to have a process for refunding amounts collected in error or that are owed to a non-obligated or "injured" spouse.

⁸ 45 CFR 302.32 (b)(2)(iv)

⁹ 42 U.S.C. 664(a)(3)(B) and HHS regulations at 45 CFR 303.72 (h)(5)



It should be noted that while families are generally first in line to receive collections through all other collection methods, that is not necessarily the case for Federal Tax Refund Offsets. The DRA included several provisions expanding amounts of support paid to families, but it also gave states the option to retain pre-DRA distribution rules (also known as PRWORA distribution). States that opt to apply the new DRA distribution rules treat Federal tax refund offset collections the same as any other collections for purposes of distribution. States that opt to retain the PRWORA distribution rules apply Federal tax refund offset collections first to assigned arrearages, then to arrearages owed to the family, and never to current support. Currently, most states operate under the PROWRA distribution rules.

Fees to Recover Federal Costs

Federal law requires the U.S. Department of Treasury to charge refund offset and administrative offset fees to the State child support program to recover the costs for operating the Federal Tax Refund Offset Program.¹⁰ The fees are charged per offset and adjusted annually.

States have the option of OCSE sending the Pre-Offset Notice on behalf of the State child support program. The service includes printing and mailing pre-offset notices. If a State requests OCSE to provide the service, a fee per notice is charged to recover the costs of the services. The amount of the fee is updated annually.

Recovery of Erroneous Offsets from States

On December 30, 2015, the U.S. Department of Treasury issued an interim final rule that limits the time period during which Treasury may recover erroneous tax refund offset collections from states in instances where the states have already forwarded such funds to custodial parents as required or as authorized by applicable laws. The interim final rule provides a six-month time limit from the offset date to recover and recoup erroneous offsets from states. After the six-month period, Treasury may not deduct the amount of an erroneous payment from a state's future collections if the state has already forwarded the offset funds to the family. The Interim final rule was effective January 1, 2016.

¹⁰ [Public Law 97-35](#)