



Confidentiality of IRS Information

Background

Some of the most powerful tools granted to State child support enforcement agencies involve access to IRS information for locating obligors and their assets, and for obtaining collections through the IRS tax refund offset program. Authority to use IRS information for these purposes is extended to the Internal Revenue Code Section 6103 which allows disclosure of IRS information to Federal, State, and local child support enforcement agencies for the purposes of establishing and collecting child support.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 permits disclosure of certain items of IRS information to state and local child support enforcement agencies and their “agents” under contract with the agency. These items of information are:

- Address of the non-custodial parent;
- Social Security account number of that individual; and
- Amount of any federal income tax refund that has been offset.

To receive IRS information under 6103, the recipient must be a “federal, state or local child support enforcement agency” operating pursuant to Title IV-D of the Social Security Act. The IRS interprets “federal, state, or local” agency as a traditional governmental IV-D agency. HHS and States maintain that Title IV-D permits States to continue operating through other agents of the State such as local Friends of the Court, Clerks of the Court, District Attorneys, tribes or tribal organizations, and private contractors with the state or local IV-D agencies. Accordingly, since the inception of the program, States have utilized a wide variety of governmental and non-governmental entities to provide child support enforcement services and consistently construed the definition of child support enforcement agency broadly.

The IRS does not support disclosure to or utilization of this information by any entity other than the State agency since Section 6103 does not specifically cite private contractors, tribal organizations or any other “agents of the State” as a “child support enforcement agency” providing IV-D services as delineated in their State Plan of Operations.

These IRS policies undermine the IV-D program’s ability to effectively carry out major functions including location, collection and distribution of support, and promoting family self-sufficiency.

THEREFORE, NCSEA in its continuing mission to strengthen and improve the nation's child support enforcement program, resolves that Congress:

1. Amend Section 6103 of 26 U.S.C. and sections 653, 663, and 664 42 U.S.C. to clarify which agents of the child support enforcement agency are entitled to receive IRS information for specified purposes, and whether such information may be redisclosed for limited purposes necessary for establishment and enforcement of child support orders.

Congress should consider when defining these entities as those described in adopted State Plans of Operation for the Child Support Enforcement Agency. These agents of the child support enforcement agency may be defined but are not limited to: local child support enforcement agencies, Courts, Friends of the Court, Clerks of the Court, District Attorneys, Indian tribes or tribal organizations under cooperative agreement with the state, and private for-profit entities under contract with state or local IV-D agencies. The roles of these agents of the State child support enforcement agency are clearly defined in the State Plan of Operation and/or in cooperative agreements or contracts between the State and its agents.

2. Clarify that under 45 C.F.R. § 302.12(a)(3), all agents of the State child support enforcement agency are subject to the same confidentiality and privacy protection safeguards as required of the State agency.

Agents and their employees under contract to a State child support enforcement agency should receive and use IRS tax information in the same manner as the State child support enforcement agency and their employees. Agents should be subject to the same safeguarding requirements as the State child support enforcement agency and the State child support enforcement agency should ultimately be held accountable for compliance with those safeguards.

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