

§ 5.21

§ 5.21 Request for the services of a hearing official from the creditor agency.

(a) The Department will provide a hearing official upon request of the creditor agency when the debtor is employed by the Department and the creditor agency cannot provide a prompt and appropriate hearing before an administrative law judge or before a hearing official furnished pursuant to another lawful arrangement.

(b) The Department will provide a hearing official upon request of a creditor agency when the debtor works for the creditor agency and that agency cannot arrange for a hearing official.

(c) The bureau salary offset coordination officer will appoint qualified personnel to serve as hearing officials.

(d) Services rendered under this section will be provided on a fully reimbursable basis pursuant to the Economy Act of 1932, *as amended*, 31 U.S.C. 1535.

§ 5.22 Non-waiver of rights by payments.

An employee's involuntary payment of all or any portion of a debt being collected under this Subpart must not be construed as a waiver of any rights which the employee may have under 5 U.S.C. 5514 or any other provisions of a written contract or law unless there are statutory or contractual provisions to the contrary.

Subpart C—Tax Refund Offset

AUTHORITY: 31 U.S.C. 3720A; 26 CFR 301.6402-6T.

SOURCE: 52 FR 50, Jan. 2, 1987, unless otherwise noted.

§ 5.23 Applicability and scope.

(a) These regulations implement 31 U.S.C. 3720A which authorizes the IRS to reduce a tax refund by the amount of a past-due legally enforceable debt owed to the United States.

(b) For purposes of this section, a past-due legally enforceable debt referable to the IRS is a debt which is owed to the United States and:

(1) Except in the case of a judgment debt, has been delinquent for at least three months and will not have been

31 CFR Subtitle A (7-1-02 Edition)

delinquent more than ten years at the time the offset is made;

(2) Cannot be currently collected pursuant to the salary offset provisions of 5 U.S.C. 5514;

(3) Is ineligible for administrative offset under 31 U.S.C. 3716(a) by reason of 31 U.S.C. 3716(c)(2) or cannot be collected by administrative offset under 31 U.S.C. 3716(a) by the referring agency against amounts payable to the debtor by the referring agency;

(4) With respect to which the bureau has given the taxpayer at least sixty (60) days to present evidence that all or part of the debt is not past-due or legally enforceable, has considered evidence presented by such taxpayer, and determined that an amount of such debt is past-due and legally enforceable;

(5) Which, in the case of a debt to be referred to the Service after June 30, 1986, has been disclosed by the bureau to a consumer reporting agency as authorized by 31 U.S.C. 3711(f), unless the consumer reporting agency would be prohibited from reporting information concerning the debt by reason of 15 U.S.C. 1681c;

(6) With respect to which the Department has notified or has made a reasonable attempt to notify the taxpayer that:

(i) The debt is past due, and

(ii) Unless repaid within 60 days thereafter, the debt will be referred to the IRS for offset against any overpayment of tax; and

(7) Is at least \$25.

§ 5.24 Designation.

The heads of bureaus and their delegates are designated as designees of the Secretary of the Treasury authorized to perform all the duties for which the Secretary is responsible under the foregoing statutes and IRS Regulations: *Provided, however*, That no compromise of a claim shall be effected or collection action terminated, except upon the recommendation of the bureau Chief Counsel or his or her designee. Notwithstanding the foregoing proviso, no such recommendation shall be required with respect to the termination of collection activity on any claim in which the unpaid amount of the debt is \$300 or less.

§ 5.25 Definitions.

For purposes of this subpart:

Commissioner means the Commissioner of the Internal Revenue Service.

Debt means money owed by an individual from sources which include loans insured or guaranteed by the United States and all other amounts due the U.S. from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines, forfeitures (except those arising under the Uniform Code of Military Justice), administrative costs and all other similar sources.

Memorandum of Understanding (MOU or agreement) means the agreement between the IRS and the individual bureaus which prescribes the specific conditions the bureaus must meet before the IRS will accept referrals for tax refund offsets.

§ 5.26 Preconditions for Department participation.

(a) The Department, through the individual bureaus, will provide information to the Service within the time frame prescribed by the Commissioner of the IRS to enable the Commissioner to make a final determination as to the each bureau's participation in the tax refund offset program. Such information shall include a description of:

- (1) The size and age of the bureau's inventory of delinquent debts;
- (2) The prior collection efforts that the inventory reflects; and
- (3) The quality controls the bureau maintains to assure that any debt the bureau may submit for tax refund offset will be valid and enforceable.

(b) In accordance with the timetable specified by the Commissioner, the bureau will submit test magnetic media to the IRS, in such form and containing such data as the IRS shall specify.

(c) The bureau shall establish a toll free telephone number that the IRS will furnish to individuals whose refunds have been offset to obtain information from the bureau concerning the offset.

(d) The bureau shall enter into a separate agreement with the IRS to provide for reimbursement of the Service's

cost of administering the pilot tax refund offset program in 1987.

§ 5.27 Procedures.

(a) The bureau head or his or her designee shall be the point of contact with the IRS for administrative matters regarding the offset program.

(b) The bureaus shall ensure that:

(1) Only those past-due legally enforceable debts described in § 5.23(b) are forwarded to the IRS for offset; and

(2) The procedures prescribed in the MOU between the bureau and the IRS are followed in developing past-due debt information and submitting the debts to the IRS.

(c) The bureau shall submit a notification of a taxpayer's liability for past-due legally enforceable debt to the IRS on magnetic media as prescribed by the IRS. Such notification shall contain:

(1) The name and taxpayer identifying number (as defined in section 6109 of the Internal Revenue Code) of the individual who is responsible for the debt;

(2) The dollar amount of such past-due and legally enforceable debt;

(3) The date on which the original debt became past-due;

(4) The designation of the referring bureau submitting the notification of liability and identification of the referring agency program under which the debt was incurred;

(5) A statement accompanying each magnetic tape by the referring bureau certifying that, with respect to each debt reported on the tape, all of the requirements of eligibility of the debt for referral for the refund offset have been satisfied. See § 5.23(b).

(d) A bureau shall promptly notify the IRS to correct Treasury data submitted when the bureau:

(1) Determines that an error has been made with respect to a debt that has been referred;

(2) Receives or credits a payment on such debt; or

(3) Receives notification that the individual owing the debt has filed for bankruptcy under Title 11 of the United States Code or has been adjudicated bankrupt and the debt has been discharged.