

§ 301.6402-4

(f) *Effective/Applicability date.* References in paragraph (e) of this section to Form 8805 or other statements required under § 1.1446-3(d)(2) shall apply to partnership taxable years beginning after April 29, 2008.

[32 FR 15241, Nov. 3, 1967, as amended by T.D. 7102, 36 FR 5498, Mar. 24, 1971; T.D. 7234, 37 FR 28163, Dec. 21, 1972; T.D. 7293, 38 FR 32804, Nov. 28, 1973; T.D. 7298, 38 FR 35234, Dec. 26, 1973; T.D. 7410, 41 FR 11020, Mar. 16, 1976; T.D. 7808, 47 FR 5714, Feb. 8, 1982; T.D. 8053, 50 FR 39662, Sept. 30, 1985; T.D. 8734, 62 FR 53495, Oct. 14, 1997; T.D. 9394, 73 FR 23086, Apr. 29, 2008]

§ 301.6402-4 Payments in excess of amounts shown on return.

In certain cases, the taxpayer's payments in respect of his tax liability, made before the filing of his return, may exceed the amount of tax shown on the return. For example, such payments may arise in the case of the income tax when the estimated tax or the credit for income tax withheld at the source on wages exceeds the amount of tax shown on the return, or where a corporation obtains an extension of time for filing its return and makes installment payments based on its estimate of its tax liability which exceed the tax liability shown on the return subsequently filed. In any case in which the district director or the director of the regional service center determines that the payments by the taxpayer (made within the period prescribed for payment and before the filing of the return) are in excess of the amount of tax shown on the return, he may make credit or refund of such overpayment without awaiting examination of the completed return and without awaiting filing of a claim for refund. However, the provisions of §§ 301.6402-2 and 301.6402-3 are applicable to such overpayment, and taxpayers should submit claims for refund (if the income tax return is not itself a claim for refund, as provided in § 301.6402-3) to protect themselves in the event the district director or the director of the regional service center fails to make such determination and credit or refund. The provisions of section 6405 (relating to reports of refunds of more than \$100,000 to the Joint Committee on Internal Revenue Taxation) are not applicable to the overpayments

26 CFR Ch. I (4-1-10 Edition)

described in this section caused by timely payments of tax which exceed the amount of tax shown on a timely return.

§ 301.6402-5 Offset of past-due support against overpayment.

(a) *Introduction*—(1) *Scope.* Section 6402(c) requires the Secretary of the Treasury or his delegate to reduce the amount of any overpayment to be refunded to a person making an overpayment by the amount of past-due support owed by that person of which the Secretary has been notified in accordance with section 464 of the Social Security Act. Past-due support shall be collected by offset under section 6402(c) and this section in the same manner as if it were a liability for tax imposed by the Internal Revenue Code of 1954 (except that a liability for tax shall be given priority with respect to offset arising under section 6402(a)). Collection by offset under section 6402(c) of this section is a collection procedure separate from the collection procedures provided by section 6305 and § 301.6305-1, relating to assessment and collection of certain child and spousal support liabilities. The sole collection procedure provided by section 6402(c) and this section is that of offset against overpayment. Section 6305 and § 301.6305-1, by contrast, provide for other collection procedures in addition to collection by offset against overpayment. Sections 6305 and 6402(c) have differing procedural requirements and may be used separately or in conjunction with each other.

(2) *General rule.* An amount of past-due support qualifies for offset under this section if it satisfies the requirements of paragraph (b) of this section. A State shall submit to the Department of Health and Human Services a notification of liability for qualifying past-due support containing the information described in paragraph (c) of this section. A qualifying amount of past-due support owed by a taxpayer who has made an overpayment shall be collected in accordance with the procedures set forth in paragraph (d) of this section. Under paragraph (d), the balance of any overpayment remaining after crediting of the overpayment under section 6402(a) to any liability

for an internal revenue tax on the part of the taxpayer shall be offset by the amount of past-due support of which the Internal Revenue Service has been notified. The amount of the overpayment not subject to offset for any liability for an internal revenue tax or for past-due support shall be promptly refunded to the taxpayer. Paragraph (e) of this section requires that the Internal Revenue Service notify the taxpayer of the amount of the offset and of the State to which it has been paid. Under procedures set forth in paragraph (f) of this section, amounts collected by offset shall be transferred to a special account maintained by the Bureau of Government Financial Operations for distribution to the States. The Internal Revenue Service shall make monthly collection reports to the Secretary of Health and Human Services or his delegate. The States shall reimburse the Secretary of the Treasury for the full cost of the refund offset under paragraph (g) of this section.

(b) *Past-due support*—(1) *Definition*. For purposes of this section, the term “past-due support” means the amount of a delinquent obligation, which amount was determined under a court order, or an order pursuant to an administrative process established under State law, for support and maintenance of a child or of a child and the parent with whom the child is living.

(2) *Past-due support qualifying for offset*. Past-due support qualifies for offset under section 6402(c) and this section if—

(i) There has been an assignment of the support obligation to a State pursuant to section 402(a)(26) of the Social Security Act (relating to aid and service to needy families with children) and that State has made reasonable efforts to collect the amount of the obligation;

(ii) The amount of past-due support is not less than \$150.00;

(iii) The past-due support has been delinquent for three months or longer; and

(iv) A notification of liability for past-due support has been received by the Secretary of the Treasury as prescribed by paragraph (c) of this section.

(c) *Notification of liability for past-due support*—(1) *Form*. A State shall, by Oc-

tober 1 of each year, submit a notification (or notifications) of liability for past-due support on magnetic tape to the Special Collection Activities Unit, Office of Child Support Enforcement, Department of Health and Human Services, 6110 Executive Boulevard, Suite 900, Rockville, Maryland 20852, Attention: Tax Refund Offset—Tape Processing.

(2) *Content*. The notification of liability for past-due support shall contain with respect to each taxpayer—

(i) The name of the taxpayer who owes the past-due support;

(ii) The social security number of that taxpayer;

(iii) The amount of past-due support owed; and

(iv) The alphabetical designation of the State submitting the notification of liability for past-due support.

The Secretary of Health and Human Services may also require such other information from the State submitting the notification as is necessary for his orderly consolidation of data for transmittal to the Internal Revenue Service.

(3) *Transmittal of notification to Internal Revenue Service*. The Secretary of Health and Human Services shall, by December 1 of each year, consolidate and transmit to the Internal Revenue Service on magnetic tape the data contained in the notifications of liability for past-due support submitted by the participating States.

(4) *Correction of notification*. If, after submitting a notification of liability for past-due support, a State determines that an error has been made with respect to the information contained in the notification, or if a State receives a payment or credits a payment to the account of a taxpayer named in this notification, the State shall promptly notify the Office of Child Support Enforcement of the Department of Health and Human Services of these corrections in accordance with any time limitations specified by the Office of Child Support Enforcement. That Office shall promptly transmit these corrections to the Internal Revenue Service and the Internal Revenue Service shall make the appropriate correction of the notification of liability for past-due support. However, in no case shall a State notify the

Internal Revenue Service under this paragraph (c)(4) of an increased amount of past-due support owed by a taxpayer named in its notification of liability for past-due support. The correction notification described in this paragraph (c)(4) is to be submitted only for the purpose of completing or correcting the information contained in the notification of liability for past-due support.

(d) *Collection*—(1) *Priority of offset for outstanding tax liability.* Under section 6402(a) and §301.6402-1, the Commissioner may credit any overpayment of tax against any outstanding liability for any tax owed by the person making the overpayment. Only the balance remaining after such crediting is available for offset under section 6402(c) of this section. Thus, if a taxpayer making an overpayment has both an outstanding tax liability and a liability for past-due support subject to this section, then the entire amount of the overpayment shall be credited first against the outstanding tax liability under section 6402(a) and §301.6402-1 and only the remainder, if any, of the overpayment will be offset by the amount of past-due support. However, an overpayment shall be offset by an amount of past-due support under section 6402(c) before any crediting of the overpayment to any future liability for an internal revenue tax. Thus, for example, if no outstanding tax liability is owed and the amount of an overpayment is equal to or less than the amount of past-due support, the Internal Revenue Service shall offset the overpayment by the amount of past-due support before crediting the overpayment against the taxpayer's estimated income tax for the succeeding taxable year under section 6402(b).

(2) *Amounts subject to offset.* The balance of any overpayment remaining after a crediting of the overpayment under section 6402(a) to any outstanding liability for tax on the part of the taxpayer shall be offset by the amount of past-due support of which the Internal Revenue Service has been notified under this section.

(3) *Amounts not subject to offset.* The amount of an overpayment not subject to offset for any liability for tax or for

past-due support shall be promptly refunded to the taxpayer.

(e) *Notice of offset.* The Internal Revenue Service shall notify the taxpayer in writing of the amount and date of the offset for past-due support and of the State to which this amount of past-due support has been paid.

(f) *Disposition of amounts collected.* Amounts collected under this section shall be transferred to a special account maintained by the Bureau of Government Financial Operations. The Internal Revenue Service shall advise the Secretary of Health and Human Services or his delegate on a monthly basis of the names and social security numbers of the taxpayers from whom the amounts of past-due support were collected, of the amounts collected from each taxpayer, and of the State on whose behalf each collection was made. After authorization by the Division of Finance of the Social Security Administration, the Bureau of Government Financial Operations of the Department of the Treasury shall pay to the participating States amounts equal to the amounts collected under this section.

(g) *Fee.* A refund offset fee in the amount of \$17.00 per offset for taxable year 1981, or such greater or smaller amount as the Secretary of the Treasury and the Secretary of Health and Human Services have agreed to be sufficient to reimburse the Internal Revenue Service for the full cost of the offset procedure, shall be billed and collected from the participating States by the Secretary of Health and Human Services or his delegate and deposited in the United States Treasury and credited to the appropriation accounts of the Internal Revenue Service which bore all or part of the costs involved in making the collection.

(h) *Effective dates.* This section applies to refunds payable on or before January 1, 1999. For the rules applicable after January 1, 1999, see 31 CFR part 285.

[T.D. 7895, 48 FR 22709, May 20, 1983, as amended by T.D. 8837, 64 FR 48548, Sept. 7, 1999]