

§ 301.6402-6 Offset of past-due, legally enforceable debt against overpayment.

(a) *General rule.* (1) A Federal agency (as defined in section 6402(f)) that has entered into an agreement with the Internal Revenue Service with regard to its participation in the tax refund offset program and that is owed a past-due, legally enforceable debt may refer the past-due, legally enforceable debt to the Internal Revenue Service to be collected by Federal tax refund offset. The Service shall, after making appropriate credits as provided by § 301.6402-3(a)(6) (i) and (ii), reduce the amount of any overpayment payable to a taxpayer by the amount of any past-due, legally enforceable debt owed to the agency and properly referred to the Service. This section does not apply to any debt subject to section 464 of the Social Security Act (past-due support).

(2)(i) This section applies to OASDI overpayments provided the requirements of 31 U.S.C. 3720A(f)(1) and (2) are met with respect to such overpayments.

(ii) For purposes of this section, “OASDI overpayment” means any overpayment of benefits made to an individual under title II of the Social Security Act.

(b) *Eligible Federal agencies.* (1) A Federal agency is eligible to participate in the tax refund offset program if the agency—

(i) Has promulgated temporary or final regulations under 31 U.S.C. 3720A, governing the operation of the Federal tax refund offset program in the agency;

(ii) Has promulgated temporary or final regulations under 31 U.S.C. 3716, governing the operation of the administrative offset program in the agency; and

(iii) Has promulgated temporary or final regulations under 5 U.S.C. 5514(a), governing the operation of the salary offset program in the agency (unless the agency has certified that, relying on the most current information reasonably available, it will not refer to the Service any names of present or former Federal employees or other persons whose debts are subject to offset under the provisions of 5 U.S.C. 5514(a)(1)).

(2) An agency prohibited by Federal law from meeting any of the requirements of paragraph (b)(1) or (c) of this section shall notify the Service in writing of the specific legal impediment to meeting these requirements. This notification shall be made prior to entering into an agreement with the Service to participate in the tax refund offset program. The Service will determine in writing whether the agency is prohibited by Federal law from meeting any of the requirements of paragraph (b)(1) or (c) of this section. The Service will waive in writing any requirement that it determines the agency is prohibited by Federal law from meeting.

(c) *Past-due, legally enforceable debt eligible for refund offset.* For purposes of this section, a Federal agency may refer a past-due, legally enforceable debt to the Service for offset if—

(1) Except in the case of a judgment debt or any debts specifically exempt from this requirement (for example, debts referred by the Department of Education that were pending on or after April 9, 1991, and referred to the Service for offset before November 15, 1992), the debt is referred for offset within ten years after the agency’s right of action accrues;

(2) The debt cannot be currently collected pursuant to the salary offset provisions of 5 U.S.C. 5514(a)(1);

(3) The debt 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 currently collected by administrative offset under 31 U.S.C. 3716(a) by the referring agency against amounts payable to the taxpayer by the referring agency;

(4) The agency has notified, or has made a reasonable attempt to notify, the taxpayer that the debt is past-due, and unless repaid within 60 days thereafter, will be referred to the Service for offset against an overpayment of tax;

(5) The agency has given the taxpayer at least 60 days to present evidence that all or part of the debt is not past-due or legally enforceable, has considered any evidence presented by the taxpayer, and has determined that the debt is past-due and legally enforceable;

(6) The debt has been disclosed by the agency to a consumer reporting agency

Internal Revenue Service, Treasury

§ 301.6402-6

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, or unless the amount of the debt does not exceed \$100;

(7) The debt is at least \$25; and

(8) In the case of an OASDI overpayment—

(i) The individual is not currently entitled to monthly insurance benefits under title II of the Social Security Act;

(ii) The notice describes conditions under which the Department of Health and Human Services is required to waive recovery of the overpayment, as provided under section 204(b) of the Social Security Act; and

(iii) If the taxpayer files for a waiver under section 204(b) of the Social Security Act within the 60-day notice period, the agency has considered the taxpayer's request.

(d) *Pre-offset notice and consideration of evidence.* (1) For purposes of paragraph (c)(4) of this section, an agency has made a reasonable attempt to notify the taxpayer if the agency uses the most recent address information obtained from the Service pursuant to section 6103(m) (2), (4), or (5) of the Code, unless the agency receives clear and concise notification from the taxpayer that notices from the agency are to be sent to an address different from the address obtained from the Service. Clear and concise notification means that the taxpayer has provided the agency with written notification including the taxpayer's name and identifying number (as defined in section 6109), the taxpayer's new address, and the taxpayer's intent to have agency notices sent to the new address.

(2) For purposes of paragraph (c)(5) of this section, if the evidence presented by the taxpayer is considered by an agent of the agency, or other entities or persons acting on the agency's behalf, the taxpayer must be accorded at least 30 days from the date the agent or other entity or person determines that all or part of the debt is past-due and legally enforceable to request review by an officer or employee of the agency of any unresolved dispute. The agency

must then notify the taxpayer of its decision.

(e) *Referral of past-due, legally enforceable debt.* A Federal agency must refer a past-due, legally enforceable debt to the Service in the time and manner prescribed by the Service. The referral must contain—

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

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

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

(4) The designation of the Federal agency or subagency referring the debt; and

(5) In the case of an OASDI overpayment, a certification by the Secretary of Health and Human Services designating whether the amount payable to the agency is to be deposited in either the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund, but not both.

(f) *Correction of referral.* If, after referring a past-due, legally enforceable debt to the Service as provided by paragraph (e) of this section, an agency determines that an error has been made with respect to the information transmitted to the Service, or if an agency receives a payment or credits a payment to the account of a taxpayer referred to the Service for offset, the agency shall promptly notify the Service. The Service shall make the appropriate correction of its records. However, this paragraph (f) does not permit an agency to increase the amount of a past-due, legally enforceable debt or refer additional debtors to the Service for offset after an agency makes its original referral of debts for tax refund offset. The agency may refer additional debts to the Service for refund offset in subsequent tax refund offset years.

(g) *Priorities for offset.* (1) An overpayment shall be reduced first by the amount of an outstanding liability for any tax under section 6402(a); second, by the amount of any past-due support assigned to a State under section 402(a)(26) or section 471(a)(17) of the Social Security Act which is to be offset under section 6402(c) and the regulations thereunder; third, by the amount

of any past-due, legally enforceable debt owed to a Federal agency under section 6402(d) and this section; and fourth, by the amount of any qualifying past-due support not assigned to a State which is to be offset under section 6402(c) and the regulations thereunder.

(2) If a taxpayer owes more than one past-due, legally enforceable debt to a Federal agency or agencies, the overpayment shall be credited against the debts in the order in which the debts accrued. A debt shall be considered to have accrued at the time at which the agency determines that the debt became past due.

(3) Reduction of the overpayment pursuant to section 6402 (a), (c), and (d) shall occur prior to crediting the overpayment to any future liability for an internal revenue tax. Any amount remaining after offset under section 6402 (a), (c), and (d) shall be refunded to the taxpayer, or applied to estimated tax, if elected by the taxpayer.

(h) *Post-offset notice to the taxpayer and the agency.* (1) The Service shall notify the taxpayer in writing of the amount and date of the offset for a past-due, legally enforceable debt and of the Federal agency to which this amount has been paid or credited. For joint returns, see paragraph (i) of this section.

(2) The Service shall advise each agency of the names, mailing addresses, and identifying numbers of the taxpayers from whom amounts of past-due, legally enforceable debt were collected and of the amounts collected from each taxpayer. If the refund from which an amount of past-due, legally enforceable debt is to be withheld is based upon a joint return, the Service shall notify the agency and furnish the names and addresses of each taxpayer filing the joint return.

(i) *Offset made with regard to refund based upon joint return.* (1) In the case of an offset from a refund based on a joint return, the Service shall issue a notice in writing to any person who may have filed a joint return with the taxpayer, including the amount and date of any offset and the steps which the non-debtor spouse may take in order to secure his or her proper share of the refund (unless the non-debtor

spouse has already taken these steps prior to offset).

(2) If the person filing the joint return with the taxpayer owing the past-due, legally enforceable debt takes appropriate action to secure his or her proper share of a refund from which an offset was made, the Service shall pay the person his or her share of the refund and shall deduct that amount from amounts payable to the agency.

(j) *Disposition of amounts collected.* Amounts collected under this section shall be transferred to a special account maintained by the Financial Management Service (FMS) for each Federal agency. If an erroneous payment is made to any agency, the Service shall deduct the amount of such payment from amounts payable to the agency.

(k) *Fees.* The agency shall enter into a separate agreement with the Service and FMS to reimburse the Service and FMS for the full cost of administering the tax refund offset program. The fees shall be deducted from amounts collected prior to disposition. The fees shall be deposited in the United States Treasury and credited to the appropriation accounts which bore all or part of the costs involved in administering the refund offset procedures.

(l) *Review of offset of refunds.* Any reduction of a taxpayer's refund made pursuant to section 6402(c) or (d) shall not be subject to review by any court of the United States or by the Service in an administrative proceeding. No action brought against the United States to recover the amount of this reduction shall be considered to be a suit for refund of tax. Any legal, equitable, or administrative action by any person seeking to recover the amount of the reduction of the overpayment must be taken against the Federal agency to which the amount of the reduction was paid. Any action which is otherwise available with respect to recoveries of overpayments of benefits under section 204 of the Social Security Act must be taken against the Secretary of Health and Human Services.

(m) *Access to and use of confidential tax information.* Access to and use of confidential tax information in connection with the tax refund offset program are restricted by section 6103 of the

Code. However, section 6103(l)(10) permits Federal officers and employees of agencies participating in the tax refund offset program to have access to and use of confidential tax information. Agencies receiving such information are subject to the safeguard, recordkeeping, and reporting requirements of section 6103(p)(4) and the regulations thereunder. The agency shall inform its officers and employees who access or use confidential tax information of the restrictions and penalties under the Internal Revenue Code for misuse of confidential tax information.

(n) *Effective dates.* This section applies to refunds payable under section 6402 after April 15, 1992, and on or before January 1, 1998. For the rules applicable after January 1, 1998, see 31 CFR part 285.

[T.D. 8413, 57 FR 13038, Apr. 15, 1992; 57 FR 36691, Aug. 14, 1992, as amended by T.D. 8837, 64 FR 48548, Sept. 7, 1999]

§ 301.6402-7 Claims for refund and applications for tentative carryback adjustments involving consolidated groups that include insolvent financial institutions.

(a) *In general*—(1) *Overview.* Section 6402(i) authorizes the Secretary to issue regulations providing for the payment of a refund directly to the statutory or court-appointed fiduciary of an insolvent corporation that was a subsidiary in a consolidated group, to the extent the Secretary determines that the refund is attributable to losses or credits of the insolvent corporation. This section provides rules for the payment of refunds and tentative carryback adjustments to the fiduciary of an insolvent financial institution that was a subsidiary in a consolidated group.

(2) *Notice.* This section provides notice to the common parent of a consolidated group of which an insolvent financial institution is or was a member that—

(i) The fiduciary for the institution may, in addition to the common parent, act as agent for the group in certain matters relating to the tax liability of the group in the year in which a loss arose and for the year to which a claim for refund or application for ten-

tative carryback adjustment relates; and

(ii) The Internal Revenue Service may deal directly with the common parent or the fiduciary (or both) as agent for the group to the extent provided in this section.

(b) *Definitions.* For purposes of this section, the following terms have the meanings set forth below:

(1) *Carryback year group.* A carryback year group is a consolidated group of which a corporation that is or becomes an insolvent financial institution is a member during a consolidated carryback year.

(2) *Consolidated carryback year.* A consolidated carryback year is a consolidated return year to which a loss arising in a loss year is carried back.

(3) *Fiduciary.* A fiduciary is—

(i) The Federal Deposit Insurance Corporation;

(ii) The Resolution Trust Corporation; or

(iii) Any other entity established by federal law, or a federal agency, that is identified by the Commissioner in a revenue ruling or revenue procedure as a fiduciary for purposes of this section; in its capacity as an authorized receiver or conservator of an insolvent financial institution.

(4) *Insolvent financial institution.* An insolvent financial institution (an institution) is a bank or domestic building and loan association for which the fiduciary is authorized to act as a receiver or conservator—

(i) On the ground that the institution is insolvent within the meaning of 12 U.S.C. 191, 12 U.S.C. 1821(c)(5)(A), 12 U.S.C. 1464(d)(2)(A)(i), or 12 U.S.C. 1464(d)(2)(C)(i) or any applicable state law (or any successor statute which adopts a substantially similar standard); or

(ii) On grounds other than insolvency, provided that the institution is insolvent within the meaning of paragraph (b)(4)(i) of this section at any time after commencement of the conservatorship or receivership.

A reference to an institution under these regulations includes, as the context requires, a reference to predecessors and successors of the institution.