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DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 285

RIN 1530-AA02

Offset of Tax Refund Payments to Collect Certain Debts Owed to States

AGENCY: Bureau of the Fiscal Service, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: This final rule adopts the interim rule, published in the Federal Register on January 28, 2011, concerning the collection of delinquent State unemployment compensation debts through the offset of overpayments of Federal taxes.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: In accordance with the U.S. government's eRulemaking Initiative, the Bureau of the Fiscal Service publishes rulemaking information on <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Thomas Kobielus, Manager, Treasury Offset Program Debt Policy Branch, Treasury Offset Program Division, Debt Collection Program Management Directorate, Debt Management Services, Bureau of the Fiscal Service, at (202) 874-6810, or Michelle M. Cordeiro, Attorney, Office of Chief Counsel, Bureau of the Fiscal Service, at (202) 874-6680.

SUPPLEMENTARY INFORMATION:

I. Background

This rule implements the authority added by the SSI Extension for Elderly and Disabled Refugees Act of 2008 (“2008 Act”), as amended by the Claims Resolution Act of 2010 (“2010 Act”), to offset overpayments of Federal taxes (referred to as “tax refund offset”) to collect delinquent state unemployment compensation debts. The Department of the Treasury (“Treasury”) has incorporated the procedures necessary to collect state unemployment compensation debts as part of the Treasury Offset Program, a centralized offset program operated by Treasury’s Bureau of the Fiscal Service (“Fiscal Service”).

On January 28, 2011, Fiscal Service (then, the Financial Management Service) published an interim rule with request for comments at 76 FR 5070, implementing this new authority. Specifically, this rule amended Fiscal Service regulations to include

unemployment compensation debts among the types of state debts that may be collected by tax refund offset.

II. Summary of Comments Received and Treasury's Responses

Treasury sought comments on all aspects of the proposed rule. Treasury received comments from one private company that provides worldwide tax services. The following is a discussion of the substantive issues raised in the comments.

1. Notice

The commenter suggested that the rule provide guidelines to the states regarding how to notify debtor populations who may be affected by this rule. While this comment is outside the scope of this rule, Fiscal Service notes that this rule requires debtor-specific pre-offset notification (see 31 CFR 285.8(c)(3)(i)). The commenter also suggested that Fiscal Service mandate that states provide a pre-offset notice by certified mail, return receipt requested. In the 2010 Act, Congress explicitly removed this requirement in the case of unemployment compensation debt. Fiscal Service is unaware of any evidence that certified mail is more likely to reach the debtor than is regular first class mail, and notes that the cost of sending a notice by certified mail, return receipt requested, is high relative to sending a notice by regular first class mail. Therefore, Fiscal Service has not adopted this suggestion. As required by statute, however, notice must be sent by certified mail, return receipt requested prior to pursuing Federal tax refund offset to collect delinquent state income tax obligations.

The commenter also suggested that Fiscal Service mandate that the notice to the debtor include certain details about the debt. Fiscal Service notes that, prior to submitting a debt to the Treasury Offset Program for tax refund offset purposes, a state is required to certify to Fiscal Service that it has provided the debtor with sufficient due process, including identification of the debt the state seeks to collect by offset. The information that must be provided may differ with the specific circumstances, and states may provide notice beyond what is specifically required by statute and regulation. Because identification of the debt is already required, Fiscal Service has not incorporated this suggestion.

2. Reasonable Efforts

The commenter suggested that this rule provide specific actions that states should take and state what documentation they should retain to demonstrate that they have made reasonable efforts to collect a debt prior to pursuing Federal tax refund offset. The rule provides detail on what a reasonable effort includes — namely, making written demand on the debtor for payment and following state law and procedure. In addition, the rule was designed to provide flexibility because what constitutes a reasonable effort may differ based on the specific circumstances. Therefore, Fiscal Service believes that providing specific actions that states should take is unnecessary and not practicable and has not adopted this suggestion.

3. Central Repository for Information

The commenter suggested that debtors be able to obtain information through a centralized location within the Treasury Offset Program website and through an automated telephone system on why their payment was offset and on state appeals processes. While this suggestion is outside the scope of this rule, Fiscal Service notes that debtors currently may access certain offset information through an automated telephone system. Fiscal Service further notes that it is exploring other self-service options that would permit debtors to obtain information about their own debts.

4. Other Concerns

The commenter suggested that the description of the required appeal process contain more detail. Fiscal Service is not aware of any additional detail that needs to be included and, therefore, has not made any changes to the rule based on this suggestion.

The commenter also suggested that Fiscal Service consider extending the period of dispute to 90 days because debtors are unlikely to have retained records for long periods of time. Fiscal Service notes that several other delinquent debt collection tools provide a due process period of 60 days or fewer, including the offset of Federal nontax payments to collect Federal nontax debts (31 CFR 285.5(d)(6)(ii)(A)); the offset of Federal nontax payments to collect state debts (31 CFR 285.6(e)(2)); the offset of Federal tax payments to collect Federal nontax debts (31 CFR 285.2(d)(1)(ii)(B)); and the administrative garnishment of wages to collect Federal nontax debts (31 U.S.C. 3720D(b)(2)). Moreover, Fiscal Service believes that an additional 30 days is not likely to help debtors locate and produce such records, and is not aware of any evidence that 60

days is insufficient. Given the time period for other debt collection tools, Fiscal Service believes it would be best to leave the interim rule unchanged.

The commenter also expressed concern that lifting the 10-year time limitation will create burdens for Treasury's Internal Revenue Service, due to an increase in injured spouse claims. Fiscal Service is unaware of any evidence to support this concern. Fiscal Service further notes that the 10-year limitation was removed by statute.

Procedural Matters

This rule is not a significant regulatory action as defined in Executive Order 12866. Because no notice of proposed rulemaking was required for this rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) do not apply.

Federalism

This rule has been reviewed under Executive Order 13132, federalism. This rule will not have substantial direct effects on states, on the relationship between the national government and the states, or on distribution of power and responsibilities among the various levels of government. Participation in the program governed by this rule is voluntary for the states; this rule only sets forth the general procedures for state participation. States already participate in offset of tax refunds to collect delinquent state income tax obligations pursuant to 31 CFR 285.8. This rule merely updates the regulations to reflect the statutory change authorizing states to submit additional debts to Treasury Offset Program for collection by tax refund offset. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

For the reasons stated above, the interim rule amending 31 CFR 285.8, published at 76 FR 5070, January 28, 2011, is adopted as final without change.

David A. Lebryk

Fiscal Assistant Secretary

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