



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224:

OFFICE OF
CHIEF COUNSEL

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INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR

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FROM: Sara M. Coe
Chief, Field Service Procedural Branch
CC:DOM:FS:PROC

SUBJECT: Recovery of Earned Income Credit
FSA Assistance: [REDACTED]

This Field Service Advice responds to your memorandum dated March 1, 1999. Field Service Advice is not binding on Examination or Appeals and is not a final case determination. This document is not to be cited as precedent.

LEGEND:

[REDACTED] [REDACTED]

YEAR 1
YEAR 2
YEAR 3

EIC Earned income credit

ISSUE:

1. Whether amounts offset under IRC § 6402(c) against an overpayment should be retrieved by the Service from the State of [REDACTED] and credited to the taxpayer's account, when it is subsequently discovered that the taxpayer was not entitled to the refund against which the offset was applied.

FACTS:

The taxpayer filed his income tax return for year 1 on [REDACTED], and claimed an EIC of [REDACTED]. On or about [REDACTED], a refund relating to [REDACTED] tax liability in the amount of [REDACTED] was mailed to the [REDACTED]. The overpayment resulted from excess withholding of [REDACTED] and EIC of [REDACTED]. The refund was paid to the State of [REDACTED] under the provisions of § 6402 (c), which provides for the offset of past-due child support payments against overpayments to be refunded. After the offset, during [REDACTED], the EIC credit was reversed resulting in a balance due of [REDACTED], plus interest.

[REDACTED] filed his income tax return for year 2 on [REDACTED], and claimed an EIC of [REDACTED]. On or about [REDACTED], a refund relating to [REDACTED] tax liability in the amount of [REDACTED] was mailed to the State of [REDACTED]. The overpayment resulted from excess withholding of [REDACTED] and EIC of [REDACTED]. The refund was paid to the State of [REDACTED] under the provisions of § 6402 (c). After the offset, during [REDACTED], the EIC credit was reversed, resulting in a balance due of [REDACTED], plus interest.

[REDACTED] filed his income tax return for year 3 on [REDACTED], and claimed an EIC of \$ [REDACTED]. On or about [REDACTED], a refund relating to [REDACTED] tax liability in the amount of \$ [REDACTED] was refunded to the State of [REDACTED]. The overpayment resulted from the EIC. The refund was paid to the State of [REDACTED] under the provisions of § 6402(c). After the offset, during [REDACTED], the EIC credit was reversed resulting in a balance due of \$ [REDACTED], plus interest.

[REDACTED] refunds were paid to the State of [REDACTED], since he was obligated to make child-support payments and had failed meet this obligation and his former wife applied for welfare benefits from the State of [REDACTED]. Since 1975, the program for Aid to Families with Dependent children has required as a condition of eligibility, that applicants for welfare assign to the State concerned any right to child-support payments that have accrued at the time of assignment. Thus, [REDACTED] is indebted to the State of [REDACTED] to the extent of the state benefits received by his dependents.

█ does not dispute the disallowance of the EIC. █ position is that he made a mistake, which he tried to correct with amended returns, when he filed the returns and claimed the EIC. As a result of this mistake, he now has a debt to the Service in the amount of the EIC, and in addition he owes current and past due child-support. █ argues that the Service should secure the return of the refund from the State of █ to alleviate his hardship of making repayments of the refund, while he has the continuing obligation of child-support.

LAW AND ANALYSIS

Under § 6401(b)(1), if an individual's EIC exceeds his tax liability, the excess amount is considered an overpayment. Section 6402 gives the Secretary the authority to credit the amount of any overpayment against any liability of the person who made the overpayment, and requires a refund of the balance to such person. *Sorenson v. Secretary of the Treasury*, 475 U.S. 851 (1986). The provisions of §6402(a) provide a mechanism for disbursing the overpayments, and includes the requirement under §6402(c), that child-support payments be offset against any refund. Under §6402(c), the amount of any overpayment to be refunded to the person making the overpayment is to be reduced by the amount of any past-due support owed by that person of which the Secretary has been notified by a state in accordance with the Social Security Act, 42 U.S. C. §464(a).

█ does not dispute that under the offset provision the Service's actions were proper in remitting the refunds to the State of █, since █ does not dispute his liability to the State of █. █ argues that since it was determined he was not entitled to the EIC the Service should contact the State of █ and secure from it the repayment of these refunds, which can then be applied to his account.

Under Treas. Reg. § 301.6402-3(a)(5) the original returns filed by █ constitute claims for refunds to the extent of any overpayment disclosed on the returns. The returns as filed claimed EIC credit. Section 6401(b) provides that EIC credits shall be considered overpayments.

Under §6402(a) the refund of the overpayment was made to █, but was reduced by the amounts required under §6402(c). Thus, under §6402 █ is treated as if he received the full amount of EIC at issue, even though the funds were disbursed to the State of █.

After the refunds were processed the EIC was reversed. It was determined that a deficiency in the amount of the EIC generated erroneous refunds was owed. Assessments were made under §6213 (g) in the amounts of \$█, \$█ and \$█ for the taxable years █, █ and █, respectively. Since the Service is

recovering the erroneous refund under the deficiency procedures, we anticipate no additional action will be taken to collect the erroneous refund. The transcripts in the file indicate that ■■■ is making payments on these assessment on a monthly basis.

In this case, ■■■ has no appeal rights relative the offset to either the Secretary or to a court. Section 6402(f) provides “No court of the United States shall have jurisdiction to hear any action, whether legal or equitable, brought to restrain or review a reduction authorized by subsection (c) or (d). No such reduction shall be subject to review by the Secretary in an administrative proceeding. No action brought against the United States to recover the amount of any such reduction shall be considered to be a suit for refund of tax.” In the recent case of Columbus v. Commissioner, T.C. Memo. 1998-60, the Tax Court held that no court had jurisdiction to hear an action to review or restrain a reduction authorized by § 6402(c).

■■■ claim amounts to a request that the Service recover the erroneous refund from the State of ■■■ rather than from him. In Rev. Rul. 84-171, 1984-2 C.B. 310, situation 2, the taxpayer was entitled to a refund of \$800. The Service, in compliance with a request from a state offset, \$700 of the refund for past-due child support. It later developed that the state made an error and the correct amount of the offset should have been \$200. The revenue ruling held that the Service would not issue a subsequent refund and that the taxpayer must seek relief from the state. While the reasoning of the Revenue Ruling is not stated, we believe that it is apparent that under §6402(c) and §6402(f) the Service’s policy is to offset the amount requested by a state, and the decision to offset will not be open to subsequent appeals. The offset amount is an issue between the taxpayer and the state. In the instant case the same approach should be applied.

31 CFR section 285.3 (g) provides a mechanism by which an erroneous offset payment can be corrected. This section provides a procedure for adjusting an erroneous offset payment that has been made to HHS or a State, when FMS learns that the offset payment, paid to HHS or the State, exceeds the debtor’s past-due support. This mechanism is limited to the recovery of payments by FMS of amounts that were paid in excess of the debtors’ past-due support amount. In the instant matter, the offset payment did not exceed ■■■ past-due support, so no adjustment would be appropriate under this provision.

Under such an approach, excess payments under § 6402(c) are not subject to any action by the Service with respect to repayment from the State of ■■■. The taxpayer must seek whatever relief is available from the state. ■■■ should contact the State of ■■■.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS:

The facts as stated have been given to the Service by the taxpayer during a problem solving day. The Service has not investigated this case.

We do not believe that the Service has any litigation hazards as to the taxpayer's request that the Service recover the erroneous refund from the State of [REDACTED].

The taxpayer should be informed that if he is unable to make payments on the tax liabilities for years involved this he should discuss this with the local collection office.

While it appears inequitable to the taxpayer that the Service cannot correct its error by recovering the erroneous refund from the State of [REDACTED], our research does not disclose any statutory authority which provides the Service a method to initiate adjustments to a taxpayer's account. The Problem Resolution Personnel handling this matter may wish to explore recommending a regulatory solution to the FMS, which now administers the refund offset program.

If you have any further questions, please call the branch telephone number.

Sara M. Coe
Branch Chief, Field Service
Procedural Branch

By: _____
BLAISE G. DUSENBERRY
Assistant to the Branch Chief
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