

Notice of Proposed Rulemaking

Revision of the Tax Refund
Offset Program

REG-104565-97

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the administration of the Tax Refund Offset Program (TROP). This action is necessary because TROP, which is currently administered by the IRS, is being merged into the centralized administrative offset program known as the Treasury Offset Program (TOP), which is administered by the Financial Management Service (FMS). These regulations will affect State and Federal agencies that participate in TROP.

DATES: Written comments and requests for a public hearing must be received by November 30, 1998.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG-04565-97), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG-104565-97), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave., NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS internet site at http://www.irs.ustreas.gov/prod/tax_reg/comments.html.

FOR FURTHER INFORMATION CONTACT: John J. McGreevy, (202) 622-4910 (not toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Procedure and Administration Regulations (26 CFR part 301) relating to section 6402(c) and (d). The proposed regulations contain revised effective dates for the regulations under section 6402(c) and (d).

Explanation of Provisions

Section 6402(c) provides, in general, that the amount of any overpayment to be

refunded to the person making the overpayment must be reduced by the amount of any past-due support (as defined in section 464(c) of the Social Security Act) owed by that person of which the Secretary has been notified by a State in accordance with section 464 of the Social Security Act.

Section 6402(d) provides, in general, that upon receiving notice from any Federal agency that a named person owes a past-due, legally enforceable debt to that agency, the Secretary must reduce the amount of any overpayment payable to that person by the amount of the debt, pay the amount by which the overpayment is reduced to the agency, and notify the person making the overpayment that the overpayment has been reduced.

The IRS currently makes offsets pursuant to section 6402(c) and (d) according to regulations prescribed under those sections. See §§301.6402-5 and 301.6402-6 of the Regulations on Procedure and Administration.

Section 31001(v)(2) and (w) of the Debt Collection Improvement Act of 1996 (110 Stat. 1321-375), amended 42 U.S.C. 664(a)(2)(A) and 31 U.S.C. 3720A(h), respectively, to clarify that the disbursing agency of the Treasury Department may conduct tax refund offsets. The disbursing agency of the Treasury Department is the FMS.

The IRS and FMS have agreed that the Tax Refund Offset Program (TROP), which is currently administered by the IRS, will be merged into the centralized administrative offset program known as the Treasury Offset Program (TOP), which is administered by the FMS. The merger of the two programs is intended to maximize and improve the Treasury Department's government-wide collection of nontax debts, including those subject to offset against the debtor's Federal tax refund. The full merger of TROP with TOP is expected to occur by January 1, 1999.

Interim rules concerning the manner in which the FMS will administer the collection of nontax federal debts after the merger of TROP with TOP were published by the FMS in the **Federal Register** on June 25, 1997 (62 F.R. 34175) (codified at 31 CFR Part 285) effective for refunds payable after January 1, 1998. The regulations proposed in this document provide an ending effective date for §301.6402-6

to accommodate the beginning effective date of the FMS regulations. Accordingly, §301.6402-6 will not apply to refunds payable after January 1, 1998.

A notice of proposed rulemaking concerning the manner in which the FMS will administer the collection of past-due child support payments was published by the FMS in the **Federal Register** on August 4, 1998 (63 F.R. 41688) (which when finalized will be codified at 31 CFR Part 285), effective for refunds payable after January 1, 1999. The regulations in this document provide an ending effective date for §301.6402-5 to accommodate the expected beginning date for the full merger of TROP with TOP. Accordingly, it is expected that §301.6402-5 will not apply to refunds payable after January 1, 1999.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic or written comments (a signed original and eight (8) copies of written comments) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is John J. McGreevy, Office of Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and the Treasury Department participated in the development of the regulations.

* * * * *

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.6402-5 is amended by adding paragraph (h) to read as follows:

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

* * * * *

(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.

Par. 3. Section 301.6402-6 is amended by revising paragraph (n) to read as follows:

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

* * * * *

(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.

Michael P. Dolan,
*Deputy Commissioner of
Internal Revenue.*