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| LOCAL COMMISSIONERS MEMORANDUM |
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Transmittal No: 95 LCM-139

Date: December 29, 1995

Division: Management Support &
Quality Improvement

TO: Local District Commissioners

SUBJECT: TAX REFUND OFFSET PROCESS - 1996 GENERAL INSTRUCTIONS

ATTACHMENTS: Attachment # 1 - TAX REFUND OFFSET 1996 - GENERAL
INSTRUCTIONS (Available On-line)

Attachments not available on-line:

Attachment # 2 - Sample of Special Notice for 8/25/95
Billing Statements

Attachment # 3 - Pre-Offset Notice

Attachment # 4 - List of State Central Registries

Attachment # 5 - Interstate Child Support Enforcement
Transmittal

Attachment # 6 - Offset Process Request Form

Attachment # 7 - Deletion/Modification Transmittal

Attachment # 8 - IRS Notice to Taxpayers that Overpaid Tax
Applied to Past-Due Support

Attachment # 9 - Instructions to use the Offset Process
Request form for State Payment Processing

Attachment #10 - Form DSS-3243 (Acknowledgment of
Confidentiality of Internal Revenue
Service Information)

The New York State Office of Child Support Enforcement (NYS OCSE) has initiated the 1996 Tax Refund Offset Process for the collection of past-due child support. All local districts will find instructions and procedures for this year's tax refund offset process in the Child Support Enforcement Manual (CSEM) Vol. II, Chapter 12, and within the attached general instructions letter. For the sake of continuity, we have followed the same basic format as was used in last year's general instructions.

All new or important information contained in the attached instructions is underscored in bold print.

NOTE: Respondents objecting to the tax refund offset process or inquiring as to the specific location of their tax refund should not be referred to the New York State Office of Child Support Enforcement. Estimated average time to process tax refund offsets from the taxing agency to the local district is three months from the date the respondent receives his/her tax refund offset notice from that agency. If respondent inquiries indicate processing time exceeding three months, the local district should first verify that the offset is not in a suspense account. (A non-ADC offset which results from an IRS "Joint Tax Return" can be held for six months in a suspense account before application). Once the district confirms that the offset has not been received, district staff should then contact the New York State Office of Child Support Enforcement (NYSOCSE) Tax Refund Offset Coordinator for assistance at 1 (800) 343-8859, extension 4-3487 or (518) 474-3487.

If you have any questions concerning this release, please contact your district's OCSE County Representative.

David P. Avenius
Deputy Commissioner
Division of Management Support &
Quality Improvement

NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES
OFFICE OF CHILD SUPPORT ENFORCEMENT
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NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES
OFFICE OF CHILD SUPPORT ENFORCEMENT
TAX REFUND OFFSET PROCESS 1996 GENERAL INSTRUCTIONS

SECTION 1. Pre-Offset Notice, Selection Criteria and Complaint Procedures

A. Pre-Offset Notice

1. For respondents whose accounts met the selection criteria (CSEM Vol. II, Chapter 12, Section 12-2), the Child Support Management System (CSMS) generated a billing statement on August 25, 1995, regardless of the billing switch. The billing statement contained a "Special Notice" (See Attachment #2) of intent for the submission of the respondent's name for the offset of his/her Federal, State and City Income Tax refund(s), unless the account was settled by October 13, 1995.

The address listed on the billing statement is chosen according to systems criteria detailed in CSEM Vol. II, Chapter 12, Attachment #1, Item #1. The address selected by CSMS can be identified by the respondent address number listed in the Address Verification field T/O of the CSMS Respondent Information Screen (IVDJRI).

In addition to the billing statement, a "Pre-Offset Notice" (See Attachment #3) was attached which lists the defenses and the procedures that respondents must follow to obtain a review of their case, if they feel that their tax refund should not be offset for the amount of past-due support indicated in the notice or not offset at all.

2. For respondents who pay support in other states which is subsequently forwarded to New York State counties, and where accounts met the submission criteria, CSMS generated a pre-offset notice which was sent to the respondent at his/her address and not to the out-of-state court or agency which is responsible for collecting support from the respondent.

The address selected by CSMS is directed by criteria listed in CSEM Vol. II, Chapter 12, Attachment #1, Item #2. The address selected by CSMS can be identified by the respondent address number listed in the Address Verification Field T/O of the CSMS Respondent Information Screen (IVDJRI).

B. Selection Criteria and Parameters

Cases that meet the selection criteria are outlined in CSEM Vol. II, Chapter 12, Section 12-2.

For 1996, the selection criteria has been modified to identify for certification any tax offset eligible (i.e., 12B --, 12CA --, 22A --, 22BE --, 22BM --, and 22CA --) interest and judgment ledger type with a fifth position equal to I or J. If a tax offset eligible ledger exists and the fifth position value of that ledger is equal to an I or J, that ledger will be certified for the full amount of the ASAB, if otherwise eligible, regardless of the court order date or NET-DUE on that ledger. Both the tax offset certification run and August pre-offset billing notices were modified to include these ledgers. All previous logic used to certify judgment ledgers with a COLLECTION INDICATOR value of J will now be applied to tax offset eligible judgment and interest ledgers with fifth position values of I and J. However, due to the Velazquez lawsuit, we are barred from certifying any case with an SA-INDICATOR value of V25.

C. Complaint Procedures

1. Local New York State Cases

The pre-offset notice advised respondents that any defense and request for review of their case must have been made to the Support Collection Unit (SCU) no later than October 13, 1995. Any requests received subsequent to October 13, 1995, should be treated as an inquiry regarding the status of SCU accounts, outside of the tax refund offset process. These inquiries should be handled in accordance with existing local procedures for the review and possible correction of SCU records.

If the inquiry concerns a joint federal tax refund that has not yet been offset, the SCU should advise the respondent that if he/she incurred this debt separately from their spouse, who has no legal responsibility for the debt and who has income withholding and/or estimated tax payments, the non-obligated spouse may be entitled to receive his/her portion of the joint refund. If the spouse meets these criteria he/she may receive his/her portion of the joint refund by filing form 8379, "Injured Spouse Claim and Allocation". Form 8379 should be attached to the top of the form 1040 or 1040A when the federal return is filed. If the complaint concerns a joint tax refund that has already been offset, the IV-D Agency must refer the absent parent to the IRS, or if further information is requested, the respondent should be referred to the Internal Revenue Service. For a state tax refund, the State Department of Taxation and Finance requires that form IT-280 "Non-Obligated Spouse Allocation" be filed by the non-obligated spouse to avoid offset. (See Section 5B).

If the review results in a deletion or downward modification of the amount referred for offset, the local (certifying) SCU must take the necessary action to insure that the certification for the case is deleted or modified as specified in Sections 2 or 3 of this package. If the offset occurs prior to the action

taken as a result of the review, and the amount which has been offset is found to exceed the amount of past-due support that should have been certified for offset, the SCU should make every effort to refund the excess amount promptly. In joint return cases, the refund check should be payable to both parties.

2. Intrastate Cases

In cases involving two counties within New York State, the county in which the respondent is ordered to pay support will certify the case (FIPS CODE 2 3 6 __ __ __). The respondent may request a review in the certifying county. For this purpose, these cases are processed as if they were local cases and, therefore, the procedures set forth in Section 1.C.1. above must be followed.

3. Interstate Cases

a. Respondent in New York State

A respondent under order to make support payments to a New York State (NYS) SCU, upon receipt of a notice from another state of possible offset of his tax refund, may request an administrative review from the State that submitted his name. If the complaint cannot be resolved by the submitting State and/or the respondent requests an administrative review in the appropriate NYS county SCU, the submitting State must notify the NYS Interstate Central Registry (ICR) within 10 days of the respondent's request and provide all necessary information, including:

- (1) A copy of the order and any modifications upon which the amount certified is based which specify the date of issuance and amount of support;
- (2) A copy of the payment record or, if there is no payment record, an affidavit signed by the custodial parent attesting to the amount of support owed;
- (3) For non-ADC cases, the custodial parent's current address; and
- (4) A completed Interstate Child Support Enforcement Transmittal.

The NYS ICR will notify the appropriate NYS SCU of the request for an administrative review and will provide the SCU with all information and documentation received from the submitting state.

The NYS SCU must send a notice to the respondent (and to the custodial parent in non-ADC cases) advising of the time and place of the review, conduct the review and make a decision within 45 days of receipt of the notice, then notify the NYS ICR in writing of the results of the administrative review. In turn, the ICR will notify the submitting state. If the review results in a deletion or modification in the amount referred for offset, the SCU must take further action as indicated in Section 2. or 3. of this package.

When an administrative review is conducted in the NYS SCU responsible for the collection (SCU with the order), the submitting state is bound by the decision made by that SCU. Cases submitted by another state should not, however, be deleted simply because they would not have been certified, for policy reasons, by the NYS SCU with the order.

b. Respondent Out of State

If an out-of-state respondent wishes an administrative review by the submitting NYS SCU, he/she must contact that SCU directly. In the event that the respondent requests the review in the state/county where the order upon which the certification is based was entered, the NYS SCU must notify and provide necessary documentation to the Central Registry of that State (See Attachment #4, ICR Address List) within 10 days and follow the procedures outlined in Section 1.C.3.a., of this package. A copy of the NYS SCU notification (without attachments) must be provided to the NYS ICR, which will in turn notify the Federal OCSE. The Interstate Child Support Enforcement Transmittal form (Attachment #5 [only page 1 shown]) must be used for this purpose.

If the review in the other state results in the deletion or decrease in the amount referred for offset, that state must notify the Federal OCSE within 10 days of the resolution of the complaint. The Federal OCSE will notify the NYS ICR which will in turn notify the NYS SCU. If the offset of the refund has already occurred, the collecting state must notify the NYS SCU of its decision and the NYS SCU must take prompt action to refund any excess amount offset to the respondent. In joint return cases, the refund check should be payable to both parties. NYS SCUs must not delay refunding excess amounts withheld pending receipt of the offset from IRS. When the review is conducted by the collecting state, the submitting NYS SCU is bound by their decision.

SECTION 2. Administrative Review Resulting in Federal Tax Refund Offset Deletion/Downward Modification

- A. When an administrative review conducted before January 9, 1996 results in a deletion/downward modification to a case identified for IRS Tax Refund Offset, the SCU should only update the CSMS account to reflect the review results. The CSMS nightly accounting run will identify for deletion all cases that no longer meet the \$150 ADC or \$500 non-ADC minimum requirement and identify for modification all cases with a reduced certification amount. In cases where the review determines the wrong person is identified for offset, the account may be deleted from federal tax certification by using negative 64 batches to remove federal offset ledger floors. Under no conditions should negative 64 batches be done without first contacting the New York State Fiscal Operations Unit Tax Offset Coordinator.
- B. When an administrative review conducted after January 9, 1996, results in a deletion or reduction modification to a tax refund offset certification, the local SCU must update the respondent account with the review results and notify the NYSOCSE Fiscal Operations Unit within two work days of the administrative review. (Deletions due to erroneous certifications should be updated to CSMS as described in CSEM Vol. II, Chapter 12, Section 12-10(a). The notification to NYSOCSE must consist of a deletion/modification transmittal (Attachment #7) attached to the Offset Process Request Forms (Attachment #6) submitted. The forms should be marked for either Deletion or Modification, the case type indicator listed as A (ADC) or N (Non-ADC), the dollar amount should be "0" or blank for deletion, or for reduction modification the dollar amount should be the revised certification amount (in whole dollars) to be updated to IRS.

SECTION 3. Administrative Review Resulting in State Tax Refund Offset Deletion/Downward Modification

When results of an administrative review necessitate the deletion/downward modification of a case identified for State Tax Offset, the only action the SCU should initiate is the expeditious updating of the CSMS account to reflect the correct status. The CSMS nightly accounting run will identify for deletion those cases that no longer meet the \$50 minimum certification requirement and identify for modification all cases with a reduced certification amount. In cases where a review determines the wrong person is identified/certified for offset, the account may be deleted from state tax certification by using negative 64 batches to remove state offset ledger floors. Under no conditions should negative 64 batches be done without first contacting New York State Fiscal Operations Unit Tax Offset Coordinator.

SECTION 4. Verification of Erroneous Offset, Refund of Offsets
and Account Reconciliation

Procedures are contained in CSEM Vol. II, Chapter 12, Section 12-10 for these areas of tax refund offset processing.

SECTION 5. IRS and State Joint Refunds

A. IRS Joint Refunds

If a respondent files a joint tax return with his current spouse, the entire amount of the refund may be offset. The non-obligated spouse can, however, file an Injured Spouse Claim and Allocation (form 8379) with the IRS to obtain the legal share of the refund to which he/she is entitled. If this is filed with the original return, the claim will be reviewed and, if applicable, the refund will be made directly to the spouse. The respondent's share (if any) of the tax return will be offset for the past-due support owed. The respondent will then receive a notice from the IRS to inform him/her that the offset will be made. This will be a shortened version of the notice (Attachment #8) which will not contain paragraphs 2-5.

If the non-obligated spouse has not filed the Injured Spouse claim and respondent and spouse receive notification that the entire tax refund was offset, the notice they receive from the IRS will contain paragraphs 2-5 which provide the instructions for filing the Injured Spouse claim to obtain their legal share of the refund. If the Injured Spouse claim form is later filed with the IRS, the spouse's share of the refund will be paid by IRS and recouped from the district in a subsequent collection report as a negative adjustment. (Please note that if at any time OCSE processes a refund to a respondent with a non-obligated spouse, it is imperative that a local district complete a State Payment form in accordance with CSEM Vol. II, Chapter 12, Section 12-9 when required, to limit financial vulnerability in this area).

Since the district is authorized to hold non-ADC offsets involving joint returns for six months before disbursing, it is important that the difference in the format of the IRS notice mailed to respondents is noted. If the respondent received a shortened notice (sent when the injured spouse has already filed a form 8379), the injured spouse's portion of the refund will be deducted before the offset is made. If the form 8379 has been filed and the spouse already received his/her share of the refund, there is no reason for the district to continue to hold the offset for six months. Respondents (and their spouses) can provide a copy of the shortened notice to the SCU to verify that they have already filed their Injured Spouse claim. The district may also ask for a notarized statement confirming that the injured spouse has received his/her share of the refund.

B. State Tax Joint Refunds

The New York State Department of Taxation and Finance (State Tax Department) recommends but no longer requires a non-obligated spouse to include Tax Form IT-280 (Non-Obligated Spouse Allocation) with the original return to obtain the legal share of the joint refund. If a joint refund is offset by the State Tax Department, the procedures for a non-obligated spouse to obtain the legal share of the refund will be contained in the notice sent to that spouse by the State Tax Department. A non-obligated spouse is allowed to file a demand, within 10 days after service of notice by the State Tax Department, for the separate calculation and payment of any tax refund owed, but which was withheld by the State Tax Department because of the obligation of the other spouse for support payments.

Any taxpayer having questions about this procedure should be directed to the State Tax Department, Refund Liability Unit at (518) 457-3606, not to the New York State Office of Child Support Enforcement (OCSE). Local districts should not attempt, under any circumstances, to pro-rate or otherwise pay a share of a valid offset to a non-obligated spouse unless requested by New York State OCSE. If there are monies due to the non-obligated spouse, State Tax will notify the OCSE Fiscal Operations Unit, which will in turn notify the local SCU.

If the amount collected on a joint State Tax return is in excess of the amount that should have been offset from the respondent alone, any overage should be returned through a two party check, provided the non-obligated spouse's name is known.

SECTION 6. State Payments

See CSEM Vol. II, Chapter 12, Section 12-9 (b) and Attachment #9 of this letter (Instructions to Use the Offset Process Request Form for State Payments) for information on State Payment processing.

SECTION 7. Security and Safeguarding Requirements

The Internal Revenue Service and the State Department of Taxation and Finance require that all collection and address information provided by them must be protected from unauthorized use and disclosure and that it be maintained in a secure and confidential manner. Extreme care must be exercised in its processing and handling. This data must not be divulged to anyone without a need to know. Collection reports, address listings and related material should not be left in the open when not in use. Data that is no longer of any use should be destroyed in accordance with local procedures. CSEU and SCU staff with access to tax information should be made aware of the sensitivity of this material and that its unlawful use and disclosure may result in severe penalties.

To insure this, each worker with such access must complete and sign Form DSS-3243 (Acknowledgment of Confidentiality of Internal Revenue Service Information) (Attachment #10). Completed DSS-3243's must be maintained by the CSEU Coordinator or SCU Supervisor.

The IRS has indicated that the handling of tax refund offset information will be an area of concern during future security/safeguard reviews of selected districts.

SECTION 8. Fees

For each case certified by State OCSE to Federal OCSE (and eventually to the IRS) and/or State Tax Department, the State was charged a fee of \$5.71 from IRS and \$4.50 from State Tax in 1995, and we do not expect those costs to change significantly for the 1996 process. State Tax also charges an additional fee of \$5.00 for each negative adjustment. These fees, however, will be charged only for cases in which a tax refund over \$25.00 is identified as being available for offset. For the 1996 tax offset year, IRS will continue to deduct the service fee directly from the monthly collection amounts. This, however, will not affect the amount of collections sent to the districts. The local districts' share of the fee will be billed through the normal fiscal settlement process.

SECTION 9. Additional Information

For additional information regarding the Tax Refund Offset Process, local district IV-D coordinators should contact their State OCSE representative or the OCSE Tax Refund Offset Coordinator at 1-800-343-8857, ext. 43487 or 518-474-3487.