

T-288 Rapid City, SD to Wolback, NE [New]

Rapid City, SD (RAP)	VORTAC	(Lat. 43°58'34" N., long. 103°00'44" W.)
WNDED, SD	WP	(Lat. 43°19'14" N., long. 101°32'19" W.)
Valentine, NE (VTN)	NDB	(Lat. 42°51'42" N., long. 100°32'59" W.)
Ainsworth, NE (ANW)	VOR/DME	(Lat. 42°34'09" N., long. 99°59'23" W.)
FESNT, NE	WP	(Lat. 42°03'57" N., long. 99°17'18" W.)
Wolbach, NE (OBH)	VORTAC	(Lat. 41°22'33" N., long. 98°21'13" W.)

Issued in Washington, DC, on January 20, 2011.

Edith V. Parish,

Manager, Airspace, Regulations and ATC Procedures Group.

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DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 285

RIN 1510-AB29

Offset of Tax Refund Payments To Collect Delinquent State Unemployment Compensation Debts

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Interim rule with request for comments.

SUMMARY: 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) will incorporate the procedures necessary to collect State unemployment compensation debts as part of the Treasury Offset Program (TOP), a centralized offset program operated by the Financial Management Service (FMS), a Treasury bureau. FMS has promulgated a rule governing the offset of federal tax refunds to collect delinquent State income tax obligations. This rule amends FMS regulations to include unemployment compensation debts among the types of State debts that may be collected by tax refund offset. This rule does not affect any of the requirements or procedures for collecting delinquent State income tax obligations.

DATES: This rule is effective January 28, 2011. Comments must be received by March 29, 2011.

ADDRESSES: Treasury participates in the U.S. government's eRulemaking

Initiative by publishing rulemaking information on <http://www.regulations.gov>. Regulations.gov offers the public the ability to comment on, search, and view publicly available rulemaking materials, including comments received on rules. Comments on this rule should be submitted using only the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions on the Web site for submitting comments.

Mail: Thomas Dungan, Senior Policy Analyst, U.S. Department of the Treasury, Financial Management Service, 401 14th St., SW., Washington, DC 20227.

All submissions received must include the agency name ("Fiscal Service") and the title of this rulemaking. In general, comments received will be published on Regulations.gov without change, including any business or personal information provided. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Thomas Dungan, Senior Policy Analyst, at (202)874-6660, or Tricia Long, Senior Counsel, at (202) 874-6680.

SUPPLEMENTARY INFORMATION:

I. Background

General. The Internal Revenue Code authorizes the Secretary of the Treasury to offset Federal tax refund payments to satisfy debts owed to the United States, past-due support collected by States, and income tax debts owed to States. The 2008 Act amended section 6402 of the Internal Revenue Code to authorize tax refund offset to collect an additional type of debt unemployment compensation debts owed to the States which were incurred as a result of fraud, and which were not outstanding for more than ten years. The 2010 Act expanded that authority to include all unemployment compensation debts incurred as a result of the debtor's failure to report earnings, whether or

not the failure constituted fraud. The 2010 Act also eliminated the ten-year time limitation on collection, the requirement that the debtor reside in the State seeking to collect the debt, and the requirement to use certified mail with return receipt for pre-offset notices.

This rule governs the offset of one type of payment (i.e., Federal tax refunds) to pay one type of delinquent debt (i.e., past-due, legally enforceable State unemployment debts). FMS has promulgated separate rules and procedures governing other types of offset, such as tax refund offset to collect nontax debt owed to the United States (see section 285.2 of this title).

The Treasury Offset Program. FMS operates TOP to carry out offsets under the Internal Revenue Code and other laws. TOP is a centralized offset program by which FMS offsets payments to collect delinquent debts owed to Federal agencies and States. TOP currently works as follows. FMS maintains a database containing information about delinquent debts submitted and updated by Federal and State agencies. Before Federal payments, including Federal tax refund payments, are disbursed to a payee, FMS compares the payee information with debt information in the TOP delinquent debt database. If the name and taxpayer identifying number (TIN) associated with a payment match the name (or derivative of the name) and TIN associated with a debt, the payment is offset in whole or part to satisfy the debt. FMS transmits amounts collected to the appropriate agencies or States owed the delinquent debts after deducting a fee charged to cover the cost of the offset program. Information about a delinquent debt or past-due, legally enforceable debt will remain in the debtor database for offset as long as the debt remains past due and legally collectible by offset.

Offset of Tax Refund Payments To Collect Debts Owed to States Through the Treasury Offset Program. TOP will be expanded to include the collection of past-due, legally enforceable State unemployment compensation debts. As is done by States for State income tax debts, before submitting a debt to the database, States will certify to FMS that the debt is past due, legally enforceable

and that all due process prerequisites have been met.

This rule establishes procedures for such collection, and amends section 285.8, which governs tax refund offset to collect State income tax obligations, because the two types of offset are similar.

II. Procedural Analyses

Administrative Procedure Act

FMS is promulgating this interim rule without opportunity for prior public comment pursuant to the Administrative Procedure Act, 5 U.S.C. 553 (the "APA"), because FMS has determined, for the following reasons, that a comment period would be unnecessary and contrary to the public interest. The authority to offset tax refund payments to collect delinquent State unemployment debt incurred as a result of fraud was effective on September 30, 2008, and the authority to collect unemployment compensation debts not resulting from fraud was effective December 8, 2010. A comment period is unnecessary because this interim rule is not required in order to exercise this authority and does not change the ongoing TOP offset process. It only provides guidance for State agencies and Federal disbursing officials to facilitate the addition of State unemployment debts into TOP. Under this interim rule, State agencies are required to provide to the debtor the same pre offset notice, opportunities, and rights to dispute the debt and seek waiver as currently required by 26 U.S.C. 6402. Since this interim rule provides important guidance ensuring that debtors receive appropriate notices and opportunities from States that elect to participate, FMS believes that it is in the public interest to issue this interim rule without delaying the effective date to wait for prior public comment.

For the same reasons, FMS has determined that good cause exists to make this interim rule effective upon publication without providing the 30-day period between publication and the effective date contemplated by 5 U.S.C. 553(d)(3). The public is invited to submit comments on the interim rule, which will be taken into account before a final rule is issued.

Request for Comment on Plain Language

Executive Order 12866 requires each agency in the executive branch to write regulations that are simple and easy to understand. We invite comment on how to make the proposed rule clearer. For example, you may wish to discuss: (1) Whether we have organized the material to suit your needs; (2) whether the

requirements of the rule are clear; or (3) whether there is something else we could do to make this rule easier to understand.

Regulatory Analysis Planning and Review

This interim rule is not a significant regulatory action as defined in Executive Order 12866. Because no notice of proposed rulemaking is 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 TOP 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.

List of Subjects in 31 CFR Part 285

Administrative practice and procedure, Black lung benefits, Child support, Claims, Credit, Debts, Disability benefits, Federal employees, Garnishment of wages, Hearing and appeal procedures, Loan programs, Privacy, Railroad retirement, Railroad unemployment insurance, Salaries, Social Security benefits, Supplemental Security Income (SSI), Taxes, Unemployment compensation, Veterans' benefits, Wages.

For the reasons set forth in the preamble, 31 CFR Part 285 is amended as follows:

PART 285—DEBT COLLECTION AUTHORITIES UNDER THE DEBT COLLECTION IMPROVEMENT ACT OF 1996

■ 1. The authority citation for part 285 continues to read as follows:

Authority: 5 U.S.C. 5514; 26 U.S.C. 6402; 31 U.S.C. 321, 3701, 3711, 3716, 3719,

3720A, 37203, 3720D; 42 U.S.C. 664; E.O. 13019, 61 FR 51763, 3 CFR, 1996 Comp., P. 216.

■ 2. Amend § 285.8 as follows:

■ a. Revise the section heading.

■ b. In paragraph (a), revise the definition of "Debt", revise the definition of "Debtor", and add a definition of "Unemployment compensation debt" in alphabetical order.

■ c. Revise paragraph (b).

■ d. In paragraph (c), revise the heading, paragraphs (c)(1), (c)(3)(i), and (c)(3)(ii).

■ e. In paragraph (d)(2), remove the words "6402(a), (c), (d) and (e)" wherever they appear, and add, in their place, "6402(a), (c), (d), (e) and (f)".

■ f. In paragraph (i), revise the first sentence.

■ g. In paragraph (j), remove the word "6402(e)" and add, in its place, "6402(e) or (f)" wherever it occurs.

■ h. Remove paragraph (k).

■ i. In paragraphs (c)(4), (e)(1)(i), and (f), remove the words "State income tax obligation" and add, in their place, "State income tax obligation or unemployment compensation debt" wherever they occur.

■ j. In paragraphs (e)(3), (e)(4), and (h), remove the words "State income tax obligations" and add, in their place, "State income tax obligations or unemployment compensation debts" wherever they occur.

The revision and additions read as follows:

§ 285.8 Offset of tax refund payments to collect certain debts owed to States.

(a) * * *

Debt means past-due, legally enforceable State income tax obligation or unemployment compensation debt unless otherwise indicated.

Debtor means a person who owes a debt.

* * * * *

Unemployment compensation debt has the same meaning as the term "covered unemployment debt" as defined in 26 U.S.C. 6402(f)(4), and means

(1) A past-due debt for erroneous payment of unemployment compensation due to fraud or the person's failure to report earnings which has become final under the law of a State certified by the Secretary of Labor pursuant to 26 U.S.C. 3304 and which remains uncollected;

(2) Contributions due to the unemployment fund of a State for which the State has determined the person to be liable and which remain uncollected; and

(3) Any penalties and interest assessed on such debt.

(b) *General rule.* (1) FMS will offset tax refunds to collect debt under this section in accordance with 26 U.S.C. 6402(e) and (f) and this section.

(2) FMS will compare tax refund payment records, as certified by the IRS, with records of debts submitted to FMS. A match will occur when the taxpayer identifying number (as that term is used in 26 U.S.C. 6109) and name on a payment certification record are the same as the taxpayer identifying number and name (or derivative of the name) on a delinquent debt record. When a match occurs and all other requirements for tax refund offset have been met, FMS will reduce the amount of any tax refund payment payable to a debtor by the amount of any past-due, legally enforceable State income tax obligation or unemployment compensation debt owed by the debtor. Any amounts not offset will be paid to the payee(s) listed in the payment certification record.

(3) FMS will only offset a tax refund payment for a State income tax obligation if the address shown on the Federal tax return for the taxable year of the overpayment is an address within the State seeking the offset.

(c) *Notification of past-due, legally enforceable State income tax obligations or unemployment compensation debts.*

(1) Notification. States shall notify FMS of debts in the manner and format prescribed by FMS. The notification of liability must be accompanied by a certification that the debt is past due and legally enforceable and that the State has complied with the requirements contained in paragraph (c)(3) of this section and with all Federal or State requirements applicable to the collection of debts under this section. With respect to State income tax obligations only, the certification must specifically state that none of the debts submitted for collection by offset are debts owed by an individual who has claimed immunity from State taxation by reason of being an enrolled member of an Indian tribe who lives on a reservation and derives all of his or her income from that reservation unless such claim has been adjudicated de novo on its merits in accordance with paragraph (c)(3). FMS may reject a notification that does not comply with the requirements of this section. Upon notification of the rejection and the reason for rejection, the State may resubmit a corrected notification.

* * * * *

(3)(i) *Advance notification to the debtor of the State's intent to collect by Federal tax refund offset.* The State is required to provide a written notification to the debtor informing the

debtor that the State intends to refer the debt for collection by tax refund offset. The notice must give the debtor at least 60 days to present evidence, in accordance with procedures established by the State, that all or part of the debt is not past due or not legally enforceable, or, in the case of a covered unemployment compensation debt, the debt is not due to fraud or the debtor's failure to report earnings. In the case of a State income tax obligation, the notice must be sent certified mail, return receipt requested.

(ii) *Determination.* The State must, in accordance with procedures established by the State, consider any evidence presented by a debtor in response to the notice described in paragraph (c)(3)(i) of this section and determine whether an amount of such debt is past due and legally enforceable and, in the case of a covered unemployment compensation debt, the debt is due to fraud or the debtor's failure to report earnings. With respect to State income tax obligations only, where the debtor claims that he or she is immune from State taxation by reason of being an enrolled member of an Indian tribe who lives on a reservation and derives all of his or her income from that reservation, State procedures shall include de novo review on the merits, unless such claims have been previously adjudicated by a court of competent jurisdiction. States shall, upon request from the Secretary of the Treasury, make such procedures available to the Secretary of the Treasury for review.

* * * * *

(i) * * * In accordance with 26 U.S.C. 6402(g), any reduction of a taxpayer's refund made pursuant to 26 U.S.C. 6402(e) or (f) shall not be subject to review by any court of the United States or by the Secretary of the Treasury, FMS or IRS in an administrative proceeding.

* * *

Dated: January 20, 2011.

Richard L. Gregg,

Fiscal Assistant Secretary.

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BILLING CODE 4810-35-M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 515

Cuban Assets Control Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control ("OFAC") is amending the Cuban Assets Control Regulations to continue efforts to reach out to the Cuban people in support of their desire to freely determine their country's future. These amendments implement policy changes announced by the President on January 14, 2011, designed to increase people-to-people contact, support civil society in Cuba, enhance the free flow of information to, from, and among the Cuban people, and help promote their independence from Cuban authorities. To implement these policy changes, OFAC is taking steps that build upon the President's April 2009 initiative to, among other things, allow for greater licensing of travel to Cuba for educational, cultural, religious, and journalistic activities and expand licensing of remittances to Cuba. These amendments also modify regulations regarding authorization of transactions with Cuban national individuals who have taken up permanent residence outside of Cuba, as well as implement certain technical and conforming changes.

DATES: *Effective Date:* January 28, 2011.

FOR FURTHER INFORMATION CONTACT:

Assistant Director for Compliance, Outreach & Implementation, tel.: 202-622-2490, Assistant Director for Licensing, tel.: 202-622-2480; Assistant Director for Policy, tel.: 202-622-4855, or Chief Counsel (Foreign Assets Control), tel.: 202-622-2410 (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (<http://www.treasury.gov/ofac>). Certain general information pertaining to OFAC's sanctions programs also is available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622-0077.

Background

The U.S. Government issued the Cuban Assets Control Regulations, 31 CFR part 515 (the "Regulations"), on July 8, 1963, under the Trading With the Enemy Act (50 U.S.C. App. 5 *et seq.*). On September 3, 2009, OFAC amended the Regulations to implement measures announced by the President in April 2009 to promote democracy and human rights in Cuba by easing travel restrictions to facilitate greater contact between separated family members in the United States and Cuba and by