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| LOCAL COMMISSIONERS MEMORANDUM |
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Transmittal No: 98 LCM-9

Date: February 6, 1998

Division: Office of Child
Support Enforcement

TO: Local District Commissioners

SUBJECT: TAX REFUND OFFSET PROCESS - 1998 GENERAL INSTRUCTIONS

ATTACHMENTS: Attachment # 1 - TAX REFUND OFFSET 1998 - GENERAL
INSTRUCTIONS (Available On-line)

Attachments not available on-line:

Attachment # 2 - Sample of Special Notice for 8/29/97
Billing Statements

Attachment # 3 - Pre-Offset Notice

Attachment # 4 - Interstate Child Support Enforcement
Transmittal

Attachment # 5 - Offset Process Request Form

Attachment # 6 - Deletion/Modification Transmittal

Attachment # 7 - IRS Notice to Taxpayers that Overpaid Tax
Applied to Past-Due Support

Attachment # 8 - Instructions to use the Offset Process
Request form for State Payment Processing

Attachment # 9 - Notice of Withdrawal of Passport Denial

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

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The New York State Office of Child Support Enforcement (NYS OCSE) has initiated the 1998 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 Management System (CSMS) User Reference Guide, Chapter 20, 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 3-0546 or (518) 473-0546.

Local addresses and phone numbers that have changed or have been added during the current processing year must be submitted to the NYSOCSE Tax Refund Offset Coordinator, who in turn will forward the changes to the federal OCSE. Both the local address and local phone number have to be submitted even though only one of them has changed. OCSE will report the changes to IRS so their offset notice will reflect the correct information. The IRS requires each State to certify that all addresses and telephone numbers have been verified. Maintaining accurate address and telephone information is extremely important and it is imperative that local districts provide correct information. Changes should be made by districts throughout the year as they occur and submitted to NYSOCSE so they can be forwarded to federal OCSE and IRS.

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

Robert Doar, Director
New York State Office of
Child Support Enforcement

NEW YORK STATE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE
OFFICE OF CHILD SUPPORT ENFORCEMENT
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NEW YORK STATE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE
OFFICE OF CHILD SUPPORT ENFORCEMENT
TAX REFUND OFFSET PROCESS 1998 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 (CSMS User Reference Guide, Chapter 20, Section 20-2), the Child Support Management System (CSMS) generated a billing statement on August 29, 1997, 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 24, 1997.

The address listed on the billing statement is chosen according to systems criteria detailed in CSMS User Reference Guide, Chapter 20, Attachment #20-1, 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 CSMS User Reference Guide, Chapter 20, Attachment #20-1, 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 CSMS User Reference Guide, Chapter 20, Section 20-2.

C. Complaint Procedures

1. Local New York State Cases

An essential element of the offset process is the opportunity afforded noncustodial parents to contest the offsetting of all or part of their refunds. Upon review of a complaint from a noncustodial parent in response to the advance notice or concerning a tax refund which has already been offset, an attempt must be made to resolve the complaint. If the tax payer requests an administrative review, the SCU must send a notice to the noncustodial parent (and in non-AFDC cases, the custodial parent) of the time and place of the review.

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, or if further information is requested, the IV-D Agency must refer the absent parent 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 of, or decrease in the amount certified, the local (certifying) SCU must take the necessary action to insure that the certification for the case is deleted or decreased 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 certifies the case (FIPS CODE 2 3 6). If the respondent requests a review, the 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 other NYS SCU of the results of the administrative review. 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 notification from another state, may request an administrative review from the other 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 appropriate NYS county SCU within 10 days of the respondent's request and provide all necessary information, including:

- (1) A completed Interstate Child Support Enforcement Transmittal;
- (2) 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;
- (3) 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 and;
- (4) for non-ADC cases, the custodial parent's current address.

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. If the review results in deletion of, or decrease in the amount certified, the SCU must notify Federal OCSE, through NYS OCSE, as described in Section 2.

When an administrative review is conducted in the NYS SCU, the submitting state is bound by the decision made by that NYS 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 a submitting NYS SCU, the respondent should contact that NYS SCU directly. The submitting NYS SCU should follow the procedures in 1.C.1. above.

In the event that the respondent requests of the NYS SCU that a review be conducted in the state/county where the order was entered (upon which the certification is based), the NYS SCU must notify the other state/county and provide the necessary documentation as outlined in 1.C.3.a.(1) through (4) within 10 days, and notify Federal OCSE by sending an Offset Process Request Form (attachment #5) updated with a "T" transaction type and mailed to the New York State Office of Child Support Enforcement, P. O. Box 14, Fiscal Operations Unit, Albany, New York, 12260.

If the review in the other state results in the deletion of, or decrease in the amount certified, that state must notify the Federal OCSE within 10 days of the resolution of the complaint. The Federal OCSE will notify New York State of the results. The submitting NYS SCU is bound by this decision. If the offset of the refund has already occurred, when the reviewing state notifies the NYS SCU of its decision, 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.

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

When a notice of bankruptcy or an administrative review results in a deletion of, or decrease in the amount certified, 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.

The notification to NYSOCSE must consist of a deletion/modification transmittal (Attachment #6) attached to the Offset Process Request Forms (Attachment #5) and submitted to the address in 1.C.3.b. above. 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 a decrease, the dollar amount should be the revised certification amount (in whole dollars) to be updated to IRS.

In those instances where a local district chooses to delete federal offset ledger floors using a negative 64 batch, they must first contact the New York State Fiscal Operations Unit Tax Offset Coordinator.

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.

In those instances where a local district chooses to delete state offset ledger floors using a negative 64 batch, they must first contact the 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 CSMS User Reference Guide, Chapter 20, Section 20-10 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 #7) 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 CSMS User Reference Guide, Chapter 20, Section 20-9 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 CSMS User Reference Guide, Chapter 20, Section 20-9 (b) and Attachment #8 of this letter (Instructions to Use the Offset Process Request Form for State Payments) for information on State Payment processing.

SECTION 7. Passport Denial Process

Effective October 1, 1997, a person who has been certified by the Secretary of Health and Human Services (HHS) to the Secretary of State as being in arrears on child support payments by an amount exceeding \$5,000 is ineligible to receive a United States passport or may have their current passport revoked. The Federal Office of Child Support Enforcement automatically extracted those cases with arrears exceeding \$5,000 from the cases certified for the 1998 Federal Tax Refund Offset Process for certification to the Secretary of State.

When the non-custodial parent's arrearage falls below \$5,000 as a result of a collection from Federal Tax Refund Offset, Federal OCSE will automatically submit a delete record to the State Department. Local districts can also request deletes through the NYS OCSE Fiscal Operations Unit using the Notice of Withdrawal of Passport Denial (Attachment #9).

SECTION 8. 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. LOCAL DISTRICTS MUST CONTACT NYS OCSE FISCAL OPERATIONS UNIT FOR SPECIFIC INSTRUCTIONS REGARDING DATA DESTRUCTION. CSEU and SCU staff with access to tax information must 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 OTDA-3243 (Acknowledgment of Confidentiality of Internal Revenue Service Information) (Attachment #10). Completed OTDA-3243's must be maintained by the CSEU Coordinator or SCU Supervisor.

In addition, on August 5, 1997 the Taxpayer Browsing Protection Act was signed into law. This new law closes the loopholes in previous statutes on the willful unauthorized access or inspection of federal tax returns and return information. It provides for criminal sanctions and civil remedies, and contains a taxpayer notification requirement.

The Act provides a criminal misdemeanor penalty for the willful, unauthorized access or inspection of federal tax information. Tax information includes all returns and return information maintained in either paper or electronic format.

The penalty for unauthorized access or inspection is a fine of up to \$1,000 and/or imprisonment up to one year. This applies to all federal employees, state/local employees and contractors who receive federal tax information under provisions of Internal Revenue Code (IRC) section 6103.

The Act also provides a cause of action for civil damages for unauthorized inspection or disclosure. For each act of unauthorized inspection or disclosure, upon a finding of liability, those damages could amount to \$1,000 or actual damages, whichever is greater. In the case of gross negligence or a willfully unauthorized inspection or disclosure, punitive damages may also be assessed. When an employee is indicted for unauthorized access, inspection or disclosure of tax information, IRS is required to notify the affected taxpayer.

IRS has begun, and plans to continue, working closely with all external recipients of federal tax information to ensure their thorough understanding of the new law, as well as implementation of the procedures IRS will establish to carry out the law's requirements. The Service is currently developing a policy and related procedures to address the requirements of the Act.

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 9. Fees

For each case certified by State OCSE to Federal OCSE (and eventually to the IRS) and/or State Tax Department, the State will be charged a fee of \$6.80 from IRS and \$4.50 from State Tax in 1998. 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 1998 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 10. Additional Information

The district may not submit a case in which the noncustodial parent or his or her spouse has filed for bankruptcy under Chapters VII, XI, XII, & XIII of Title 11 of the United States Code. The district may not submit such cases "unless the automatic stay under section 362 of the Bankruptcy Code has been lifted or is no longer in effect with respect to the individual owing the obligation... and the obligation was not discharged by the bankruptcy proceeding." If the district does submit a case in this category, IRS will not offset any refund, or in the event of an offset will reverse the offset. If a district should make a refund because a bankruptcy was in place, the refund should be sent to the trustee of the bankruptcy for distribution and not to the absent parent.

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 1-800-343-8859, ext. 30546 or 518-473-0546.