

**CALIFORNIA DEPARTMENT OF CHILD SUPPORT SERVICES**

P.O. Box 419064, Rancho Cordova, CA 95741-9064



June 24, 2004

CSS LETTER: 04-13

ALL IV-D DIRECTORS  
ALL COUNTY ADMINISTRATIVE OFFICERS  
ALL BOARDS OF SUPERVISORS

SUBJECT: FEDERAL INCOME TAX REFUNDS AND INJURED SPOUSE CLAIMS

This letter provides clarification on distribution of federal joint income tax refund intercepts and potential injured spouse claims.

One of the collection avenues for past-due child support is the federal income tax refund. The local child support agency (LCSA) forwards cases with past-due arrears for inclusion in the State's integrated database (IDB). If the case meets the monetary threshold of \$150 for TANF arrears and \$500 for Non-TANF arrears, the case is forwarded to the federal Office of Child Support Enforcement (OCSE). OCSE maintains the national database and forwards the case to the Federal Management Service (FMS) for collection. Once FMS receives the case, the non-custodial parent's (NCP) Internal Revenue Service (IRS) account is flagged for intercept of their federal income tax refund.

When the NCP files their federal income tax it may be a joint tax return with a new spouse. The new spouse is referred to as the "injured spouse." She/he is not obligated for the past-due child support arrears. The injured spouse could be due one-half of the federal income tax refund. To claim his/her share of the joint federal income tax return, the injured spouse either attaches the form IRS 8379 to the return or she/he can file the IRS 8379 form at a later date. The IRS allows injured spouse claims to be filed as far back as six years prior to the current year.

Reason for this Transmittal

- State Law or Regulation Change
- Federal Law or Regulation Change
- Court Order or Settlement Change
- Clarification requested by One or More Counties
- Initiated by DCSS

The IRS allows an injured spouse to claim one half of the federal income tax return. If the injured spouse files the IRS 8379 form claiming her/his portion of the tax refund at the same time as filing the joint income tax, the IRS will refund the injured spouse their portion and intercept the other half of the federal income tax refund for child support arrears.

If the injured spouse does not file the IRS 8379 form at the time of regular tax filing the child support intercept will take all or a portion of the tax refund to satisfy the arrears. Once the IRS 8379 form is filed, the IRS will retroactively reverse that portion of the tax refund from the LCSA that was due to the injured spouse. The IRS notifies FMS, who in turn notifies OCSE of the reversal. OCSE will subtract this negative adjustment from the next federal claim schedule assigned to the specific LCSA.

The LCSA has been mandated to pay out all collections within a prescribed time period. The money is either paid to the custodial parent for Non-TANF arrears or credited to the NCP's TANF arrears. The TANF credit can be backed out and adjusted. However, the transaction involving money paid to the custodial parent or refunded to the NCP, if over collected, is difficult at best to reverse. This means the LCSA is "on the hook" for the money taken back by OCSE to refund to the injured spouse. It is not uncommon to see negative adjustments in the range of two to five thousand dollars.

Federal regulation, 45 CFR 303.72(h)(5) states: "In cases where the Secretary of the Treasury, through OCSE, notifies the State that an offset is being made to satisfy the non-IV-A (Non-TANF) past-due support from a refund based on a joint return, the State may delay distribution until notified that the unobligated spouse's proper share of the refund has been paid or for a period not to exceed six months from notification of offset, whichever is earlier."

The majority of negative adjustments are processed within a six month time frame, with the greatest number processed within two months. Per legal research, the amount that may be subject to a negative adjustment is not proportionally based on the respective incomes of the NCP and his/her new spouse. Rather, the amount is always 50 percent of the refund.

Therefore, for federal joint income tax refund money that is applied to Non-TANF arrears, 50 percent of the income tax refund intercept shall be disbursed within the two business day time frame as set forth in the current regulations. The remaining 50 percent shall be held up to six months or upon receipt of a negative adjustment, whichever occurs first. The NCP's arrears shall be credited with the full amount of the tax intercept to stop accrual of penalty interest on the held portion. This resolution immediately provides the custodial parent (CP) with support collections that are not subject to negative adjustment.

CSS Letter: 04-13

June 24, 2004

Page 3

At the time the LCSA sends the CP 50 percent of the tax collection it is imperative that the refund be reported to the IDB either through normal update electronic media or by manual process, CS 872 Child Support Intercept - System Certification/Transmittal, CS 871 Child Support Intercept – County Transaction Document (enclosed). The CS 871 is marked “refund” and the amount is entered on the IRS Non-TANF line. Updates are sent weekly to OCSE. Once received at OCSE, the refund update is transmitted to FMS to flag the IRS account. This should prevent any duplicate refunds to the NCP’s injured spouse.

If you have any questions, please contact Tanya Morales at [tanya.morales@dcss.ca.gov](mailto:tanya.morales@dcss.ca.gov) or (916) 464-5261.

Sincerely,

A handwritten signature in black ink that reads "Joan M. Obert". The signature is written in a cursive, flowing style.

JOAN OBERT  
Deputy Director  
Technology Services Division

Attachments: CS 872  
CS 871

# CHILD SUPPORT INTERCEPT SYSTEM CERTIFICATION/TRANSMITTAL

TO: DEPARTMENT OF CHILD SUPPORT SERVICES PRODUCTION CONTROLS, MS 40 P.O. BOX 419064 RANCHO CORDOVA, CA 95741-9064	KEY ENTRY & DATA GUIDANCE USE ONLY  30201/_____ 30203/_____ 30207/_____ E _____ V _____  BP.CSD100.CO _____ .D _____ .T _____ TAPE COUNTY DSH: VOLSER: _____
--	---

COUNTY NAME	COUNTY NUMBER <small>(01 - 58)</small>	CURRENT DATE
-------------	---	--------------

**CERTIFICATION**

I certify that every request for collection and upward modification included with this transmittal meets the following requirement:  
 This agency has verified the obligor's name, Social Security Number, and the accuracy and types of the arrears.  
 This agency has a copy of the order and any modifications, a copy of the payment record or an affidavit signed by custodial parent attesting to the amount of support owed and has in non-assistance cases, the custodial parent's current address.

I, \_\_\_\_\_, declare that I have supervised the compilation of the attached list of arrearages of child support and I am informed and believe that each listed obligor has been identified by the correct Social Security Number and the correct child support arrearage owed.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in the County of \_\_\_\_\_, California

\_\_\_\_\_  
(NAME AND TITLE OF CERTIFYING OFFICER)

MANUAL DOCUMENT INPUT		
TRANSACTION TYPE <small>(DO NOT MIX TRANSACTION TYPES)</small>	CASES PER BATCH	
	MAXIMUM ALLOWED	NUMBER SUBMITTED
ADD	30	
CHANGE	30	
TRANSFER (IRS ONLY)	75	
REFUND (IRS ONLY)	75	
COUNTY ADDRESS	20	
STATE CASE TRANSFER	20	

ELECTRONIC INPUT	
DSN AND MEDIA NUMBER	
NUMBER OF RECORDS	

CONTACT PERSON
PHONE NUMBER ( ) -
(DIRECT DESK NUMBER) ( ) -

**PLEASE NOTE:** DO NOT MIX THE DIFFERENT TRANSACTION TYPES ON THE SAME TRANSMITTAL SHEET.

