

### § 13.33

(a) The Government cannot collect or enforce collection of any significant sum from the debtor, having due regard for available judicial remedies, the debtor's ability to pay, and the exemptions available to the debtor under State and Federal law;

(b) The debtor cannot be located, there is no security remaining to be liquidated, the applicable statute of limitations has expired, and the prospects of collecting by offset are too remote to justify retention of the claim;

(c) The cost of further collection action is likely to exceed the amount recoverable;

(d) The claim is determined to be legally without merit; or

(e) The evidence necessary to prove the claim cannot be produced or the necessary witnesses are unavailable and efforts to induce voluntary payment have failed.

### Subpart G—Referrals

#### § 13.33 Referrals to the Department of Justice.

(a) *Prompt referral.* The Administrator refers to DOJ for litigation all claims on which aggressive collection actions have been taken but which could not be collected, compromised, suspended or terminated. Referrals are made as early as possible, consistent with aggressive agency collection action, and within the period for bringing a timely suit against the debtor.

(1) Unless otherwise provided by DOJ regulations or procedures, EPA refers for litigation debts of more than \$100,000 to the Commercial Litigation Branch, Civil Division, Department of Justice, Washington, DC 20530.

(2) Unless otherwise provided by DOJ regulations or procedures, EPA refers for litigation debts of \$100,000 or less to the United States Attorney in whose judicial district the debtor can be found.

(b) *Claims Collection Litigation Report (CCLR).* Unless an exception has been granted by DOJ, the CCLR is used for referrals of all administratively uncollectible claims to DOJ and is used to refer all offers of compromise.

### 40 CFR Ch. I (7–1–04 Edition)

### Subpart H—Referral of Debts to IRS for Tax Refund Offset

SOURCE: 59 FR 651, Jan. 5, 1994, unless otherwise noted.

#### § 13.34 Purpose.

This subpart establishes procedures for the Environmental Protection Agency (EPA) to refer past-due debts to the Internal Revenue Service (IRS) for offset against the income tax refunds of persons owing debts to EPA. It specifies the Agency procedures and the rights of the debtor applicable to claims for the payment of debts owed to EPA.

#### § 13.35 Applicability and scope.

(a) This subpart implements 31 U.S.C. 3720A, which authorizes the IRS to reduce a tax refund by the amount of a past-due legally enforceable debt owed to the United States.

(b) For purposes of this section, a past-due legally enforceable debt referable to the IRS is a debt which is owed to the United States and:

(1) Except in the case of a judgment debt, has been delinquent for at least three months but has not been delinquent for more than ten years at the time the offset is made;

(2) Cannot be currently collected pursuant to the salary offset provisions of 5 U.S.C. 5514(a)(1);

(3) Is ineligible for administrative offset under 31 U.S.C. 3716(a) by reason of 31 U.S.C. 3716(c)(2) or cannot be collected by administrative offset under 31 U.S.C. 3716(a) by the Agency against amounts payable to or on behalf of the debtor by or on behalf of the Agency;

(4) With respect to which EPA has given the taxpayer at least 60 days from the date of notification to present evidence that all or part of the debt is not past-due or not legally enforceable, has considered evidence presented by such taxpayer, if any, and has determined that an amount of such debt is past-due and legally enforceable;

(5) Has been disclosed by EPA to a consumer reporting agency as authorized by 31 U.S.C. 3711(f), unless a consumer reporting agency would be prohibited from using such information by 15 U.S.C. 1681c, or unless the amount of the debt does not exceed \$100.00;