

## Department of Justice

## § 11.9

(ii) An administrative or judicial order directs the Department to make a refund.

(2) Unless required by law or contract, refunds under this paragraph (k) shall not bear interest.

(1) *Request from a creditor agency for the services of a hearing official.* (1) The Department may provide a hearing official upon request of the creditor agency when the debtor is employed by the Department and the creditor agency cannot provide a prompt and appropriate hearing before a hearing official furnished pursuant to another lawful arrangement.

(2) The Department may provide a hearing official upon request of a creditor agency when the debtor works for the creditor agency and that agency cannot arrange for a hearing official.

(3) The salary offset coordination officer shall arrange for qualified personnel to serve as hearing officials.

(4) Services rendered under this paragraph (l) shall be provided on a fully reimbursable basis pursuant to 31 U.S.C. 1535.

(m) *Non-waiver of rights by payments.* A debtor's payment, whether voluntary or involuntary, of all or any portion of a debt being collected pursuant to this section shall not be construed as a waiver of any rights that the debtor may have under any statute, regulation, or contract except as otherwise provided by law or contract.

### § 11.9 Administrative offset.

(a) *Collection.* The organization head may collect a claim pursuant to 31 U.S.C. 3716 from a person, organization, or entity other than an agency of the United States Government by administrative offset of monies other than salaries payable by the government. Collection by administrative offset shall be undertaken where the claim is certain in amount, where offset is feasible and desirable and not otherwise prohibited, where the applicable statute of limitations has not expired, and where the offset is in the best interest of the United States.

(b) *Withholding of payment.* Prior to the completion of the procedures described in paragraph (c) of this section, the Department may withhold a payment to be made to a debtor, if:

(1) Failure to withhold payment would substantially prejudice the Department's ability to collect the debt; and

(2) The time before the payment is to be made does not reasonably permit completion of the procedures described in paragraph (c) of this section. Such prior withholding shall be followed promptly by the completion of the procedures described in paragraph (c) of this section.

(c) *Debtor's rights.* Unless the procedures described in paragraph (b) of this section are used, prior to collecting any claim by administrative offset, the organization head shall provide the debtor with the following:

(1) Written notification of the nature and amount of the claim, the intention of the organization head to collect the claim through administrative offset, and a statement of the rights of the debtor under this paragraph;

(2) An opportunity to inspect and copy the records of the Department with respect to the claim;

(3) An opportunity to have the Department's determination of indebtedness reviewed by the organization head. Any request for review by the debtor shall be in writing and be submitted to the Department within 30 days of the date of the notice of the offset. The organization head may waive the time limit for requesting review for good cause shown by the debtor; and

(4) An opportunity to enter into a written agreement for the repayment of the amount of the claim at the discretion of the Department.

If the procedures described in paragraph (b) of this section are employed, the procedures described in this paragraph shall be effected after offset.

(d) *Interest.* The Department is authorized to assess interest and related charges on debts that are not subject to 31 U.S.C. 3717 to the extent authorized under the common law or other applicable statutory authority.

### Subpart C—IRS Tax Refund Offset Provisions for Collection of Debts

SOURCE: Order No. 1792-93, 58 FR 51223, Oct. 1, 1993, unless otherwise noted.

## § 11.10

## 28 CFR Ch. I (7-1-08 Edition)

### § 11.10 Scope.

The provisions of 26 U.S.C. 6402(d) and 31 U.S.C. 3720A authorize the Secretary of the Treasury, acting through the Internal Revenue Service (IRS), to offset a delinquent debt owed to the United States Government from the tax refund due a taxpayer when other collection efforts have failed to recover the amount due. The purpose of these statutes is to improve the ability of the Government to collect money owed it while granting the debtor notice and certain other protections. This subpart authorizes the collection of debts owed to the United States Government by persons, organizations, and entities by means of offsetting any tax refunds due to the debtor by the IRS. It allows referral to the IRS for collection of debts that are past due and legally enforceable but not reduced to judgment and debts that have been reduced to judgment.

### § 11.11 Definitions.

(a) *Debt.* Debt means money owed by an individual, organization or entity from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, services, overpayments, civil and criminal penalties, damages, interest, fines, administrative costs, and all other similar sources. A debt becomes eligible for tax refund offset procedures if it cannot currently be collected pursuant to the salary offset procedures of 5 U.S.C. 5514(a)(1) and is ineligible for administrative offset under 31 U.S.C. 3716(a) by reason of 31 U.S.C. 3716(c)(2), or cannot currently be collected by administrative offset under 31 U.S.C. 3716(a) against amounts payable to the debtor by the Department of Justice. A non-judgment debt is eligible for tax refund offset procedures if the Department's or the referring agency's right of action accrued more than three months but less than ten years before the offset is made. Judgment debts are eligible for referral at any time. Debts that have been referred to the Department of Justice by other agencies for collection are included in this definition.

(b) *Past due.* All accelerated debts and all judgment debts are past due for purposes of this section. Such debts re-

main past due until paid in full. An accelerated debt is past due if, at the time of the notice required by § 11.12(b), any part of the debt had been due, but not paid, for at least 90 days. Such an unaccelerated debt remains past due until paid to the current amount of indebtedness.

(c) *Notice.* Notice means the information sent to the debtor pursuant to § 11.12(b). The date of the notice is the date shown on the notice letter as its date of issuance.

(d) *Dispute.* A dispute is a written statement supported by documentation or other evidence that all or part of an alleged debt is not past due or legally enforceable, that the amount is not the amount currently owed, that the outstanding debt has been satisfied, or, in the case of a debt reduced to judgment, that the judgment has been satisfied or stayed.

### § 11.12 Procedures.

(a) The Department may refer any past due, legally enforceable non-judgment debt of an individual, organization or entity to the IRS for offset if the Department's or the referring agency's rights of action accrued more than three months but less than ten years before the offset is made. Debts reduced to judgment may be referred at any time. Debts in amounts lower than \$25.00 are not subject to referral.

(b) The Department will provide the debtor with written notice of its intent to offset before initiating the offset. Notice will be mailed to the debtor at the current address of the debtor, as determined from information obtained from the IRS pursuant to 26 U.S.C. 6103(m)(2), (4), (5) or from information regarding the debt maintained by the Department of Justice. The notice sent to the debtor will state the amount of the debt and inform the debtor that:

(1) The debt is past due;

(2) The Department intends to refer the debt to the IRS for offset from tax refunds that may be due to the taxpayer;

(3) The Department intends to provide information concerning the delinquent debt exceeding \$100 to a consumer reporting bureau (credit bureau) unless such debt has already been disclosed; and