

§ 1650.202

29 CFR Ch. XIV (7-1-08 Edition)

§ 1650.202 Past-due legally enforceable debt.

A past-due legally enforceable debt for referral to the IRS is a debt that resulted from any statute administered by EEOC and:

(a) Is an obligation of a debtor who is a natural person;

(b) Except in the case of a judgment debt, has been delinquent at least 3 months but not more than 10 years at the time the offset is made;

(c) Is at least \$25.00;

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

(e) 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 EEOC against amounts payable to or on behalf of the debtor by or on behalf of the EEOC;

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

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

(h) EEOC's records do not contain evidence that the person owing that debt (or his or her spouse) has filed for bankruptcy under title 11 of the United States Code; and

(i) EEOC can clearly establish at the time of the referral that the automatic stay under 11 U.S.C. 362 has been lifted or is no longer in effect with respect to the person owing the debt or his or her spouse, and the debt was not discharged in the bankruptcy proceeding.

§ 1650.203 Notification of intent to collect.

(a) *Notification before submission to the IRS.* A request for reduction of an IRS income tax refund will be made only after EEOC makes a determination

that an amount is owed and past-due and gives or makes a reasonable attempt to give the debtor 60 days written notification of intent to collect by Federal tax refund offset.

(b) *Contents of notification.* EEOC's notification of intent to collect by Federal tax refund offset shall provide:

(1) The amount of the debt;

(2) That unless the debt is repaid within 60 days from the date of EEOC's notification of intent, EEOC intends to collect the debt by requesting the IRS to offset an amount equal to the amount of the debt and all accumulating interest and other charges against any overpayment of tax after liabilities subject to 26 U.S.C. 6402(a) and (c) have been satisfied;

(3) A mailing address for forwarding any written correspondence and a contact and a toll-free or collect telephone number for any questions; and

(4) That the debtor may present evidence to EEOC that all or part of the debt is not past due or legally enforceable by—

(i) Sending a written request for a review of the evidence to the address provided in the notification;

(ii) Stating in the request for review the amount disputed and the reasons why the debtor believes that the debt is not past-due or is not legally enforceable; or

(iii) Including in the request for review any documents that the debtor wishes to be considered to stating that the additional information will be submitted within the remainder of the 60-day period.

§ 1650.204 Reasonable attempt to notify.

In order to constitute a reasonable attempt to notify the debtor, EEOC must have used a mailing address for the debtor obtained from the IRS pursuant to 26 U.S.C. 6103(m)(2) within a period of 1 year preceding the attempt to notify the debtor, unless EEOC receives clear and concise notification from the debtor that notices from the agency are to be sent to an address different from the address obtained from IRS. Clear and concise notification means that the debtor has provided the

agency with written notification, including the debtor's name and identifying number (as defined in 26 CFR 301.6109-1), the debtor's new address, and the debtor's intent to have the agency notices sent to the new address.

§ 1650.205 Consideration of evidence submitted as a result of notification of intent.

(a) *Consideration of evidence.* If, as a result of the notification of intent, EEOC receives notice that the debtor will submit additional evidence or receives additional evidence from the debtor within the prescribed time period, any referral to the IRS will be stayed until EEOC—

(1) Considers the evidence presented by the debtor;

(2) Determines whether or not all or a portion of the debt is still past-due and legally enforceable; and

(3) Notifies the debtor of its determination.

Failure to submit the evidence within 60 days from the date of notification will result in an automatic referral of the debt to IRS without further action by EEOC.

(b) *Notification to the debtor.* Following its review of the evidence, EEOC will issue a written decision notifying the debtor whether EEOC has sustained, amended, or canceled its determination that the debt is past-due and legally enforceable. The notice will advise the debtor of any further action to be taken and explain the supporting rationale for the decision.

(1) EEOC will notify the debtor of its intent to refer the debt to the IRS for offset against the debtor's Federal income tax refund if it sustains its decision that the debt is past-due and legally enforceable. EEOC will also notify the debtor whether the amount of the debt remains the same or is modified.

(2) EEOC will not refer the debt to the IRS for offset against the debtor's Federal income tax refund if it reverses its decision that the debt is past-due and legally enforceable.

§ 1650.206 Notification to Internal Revenue Service.

(a) Except as noted in paragraph (b) of this section, after EEOC's initial no-

tification and referral of a debt to IRS for offset against a debtor's Federal income tax refund, EEOC will promptly notify IRS of any changes in the notification, if EEOC—

(1) Determines that an error has been made with respect to the information contained in the notification;

(2) Receives a payment or credits a payment to the account of the debtor named in the notification that reduces the amount of the debt referred to IRS for offset;

(3) Receives notification that the individual owing the debt has filed for bankruptcy under title 11 of the United States Code or has been adjudicated bankrupt and the debt has been discharged;

(4) Receives notification that an offset was made at a time when the automatic stay provisions of 11 U.S.C. 362 were in effect; or

(5) Refunds all or part of the offset amount to the debtor.

(b) EEOC shall not request the IRS to increase the amount of a debt owed by a debtor named in EEOC's original notification to IRS.

(c) If the amount of a debt is reduced after referral by EEOC and offset by the IRS, EEOC will refund to the debtor or any excess amount and will promptly notify the IRS of any refund made by EEOC.

§ 1650.207 Administrative charges.

All administrative charges incurred in connection with the referral of the debts to the IRS will be assessed on the debt and thus increase the amount of the offset.

Subpart C—Procedures for Collection of Debts by Administrative Offset

SOURCE: 62 FR 32685, June 17, 1997, unless otherwise noted.

§ 1650.301 Purpose.

This subpart sets forth the procedures to be followed in the collection by administrative offset of debts owed to the United States. The general standards and procedures governing the collection, compromise, termination, and referral to the Department