

## **Section 6402.—Authority to Make Credits or Refunds**

*26 CFR 301.6402–5: Offset of past-due support against overpayments.*

**T.D. 8837**

### **DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 301**

### **Revision of the Tax Refund Offset Program**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations relating to the administration of the Tax Refund Offset Program (TROP). This action is necessary because effective January 1, 1999, TROP, which had been administered by the IRS, was fully merged into the centralized administrative offset program known as the Treasury Offset Program (TOP), which is administered by the Financial Management Service (FMS). These regulations will affect State and Federal agencies that participate in TROP.

**DATES:** *Effective Dates:* These regulations are effective September 7, 1999.

*Dates of Applicability:* For dates of applicability of these regulations, see §§301.6402–5(h) and 301.6402–6(n).

**FOR FURTHER INFORMATION CONTACT:** Beverly A. Baughman, (202) 622-4940 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

## Background

This document contains final regulations on Procedure and Administration (26 CFR part 301) that revise the effective dates for regulations under section 6402(c) and (d). Those subsections provide rules relating to the offset of past-due support payments and debts owed to Federal agencies against Federal tax refunds, respectively.

On August 31, 1998, a notice of proposed rulemaking (REG-104565-97, 1998-39, I.R.B. 21) under section 6402(c) and (d) was published in the **Federal Register** (63 F.R. 46205). Although written or electronic comments and requests for a public hearing were solicited, no comments were received and no public hearing was requested or held. The proposed regulations under section 6402(c) and (d) are adopted by this Treasury decision without revision.

## Explanation of Provisions

Section 6402(c) provides, in general, that the amount of any overpayment to be refunded to the person making the overpayment must be reduced by the amount of any past-due support (as defined in section 464(c) of the Social Security Act) owed by that person of which the Secretary has been notified by a State in accordance with section 464 of the Social Security Act.

Section 6402(d) provides, in general, that upon receiving notice from any Federal agency that a named person owes a past-due, legally enforceable debt to that agency, the Secretary must reduce the amount of any overpayment payable to that person by the amount of the debt, pay the amount by which the overpayment is reduced to the agency, and notify the person making the overpayment that the overpayment has been reduced.

Prior to January 1, 1998, the IRS made offsets pursuant to section 6402(d) according to regulations prescribed under §301.6402-6. Prior to January 1, 1999, the IRS made offsets pursuant to section 6402(c) according to regulations prescribed under §301.6402-5.

Section 31001(v)(2) and (w) of the Debt Collection Improvement Act of 1996 (110 Stat. 1321-375), amended 42 U.S.C. 664(a)(2)(A) and 31 U.S.C.

3720A(h), respectively, to clarify that the disbursing agency of the Treasury Department may conduct tax refund offsets. The disbursing agency of the Treasury Department is the Financial Management Service (FMS).

The IRS and FMS agreed to merge the Tax Refund Offset Program (TROP), which had been administered by the IRS, into the centralized administrative offset program known as the Treasury Offset Program (TOP), which is administered by the FMS. The merger of the two programs is intended to maximize and improve the Treasury Department's government-wide collection of nontax debts, including those subject to offset against the debtor's federal tax refund. The full merger of TROP with TOP occurred on January 1, 1999.

Final rules concerning the manner in which the FMS will administer the collection of nontax Federal debts after the merger of TROP with TOP were published by the FMS in the **Federal Register** on August 28, 1998 (63 F.R. 46140) (codified at 31 CFR Part 285.2) effective for refunds payable after January 1, 1998. The regulations in this document provide an ending effective date for §301.6402-6 to accommodate the beginning effective date of the FMS regulations. Accordingly, §301.6402-6 does not apply to refunds payable after January 1, 1998.

Final rules concerning the manner in which the FMS will administer the collection of past-due support payments were published by the FMS in the **Federal Register** on December 30, 1998 (63 F.R. 72092) (codified at 31 CFR Part 285.3), effective for refunds payable after January 1, 1999. The regulations in this document provide an ending effective date for §301.6402-5 to accommodate the beginning date for the full merger of TROP with TOP. Accordingly, §301.6402-5 does not apply to refunds payable after January 1, 1999.

## Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C.

chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking that preceded these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

## Drafting Information

The principal author of these regulations is Beverly A. Baughman of the Office of Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and the Treasury Department participated in the development of the regulations.

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## Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

### PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 2. Section 301.6402-5 is amended by adding paragraph (h) to read as follows:

§301.6402-5 *Offset of past-due support against overpayments.*

\* \* \* \* \*

(h) *Effective dates.* This section applies to refunds payable on or before January 1, 1999. For the rules applicable after January 1, 1999, see 31 CFR part 285.

Par. 3. Section 301.6402-6 is amended by revising paragraph (n) to read as follows:

§301.6402-6 *Offset of past-due, legally enforceable debt against overpayment.*

\* \* \* \* \*

(n) *Effective dates.* This section applies to refunds payable under section 6402 after April 15, 1992, and on or be-

fore January 1, 1998. For the rules applicable after January 1, 1998, see 31 CFR part 285.

Robert E. Wenzel,  
*Deputy Commissioner  
of Internal Revenue.*

Approved August 25, 1999.

Jonathan Talisman,  
*Deputy Assistant Secretary  
of the Treasury.*

(Filed by the Office of the Federal Register on September 3, 1999, 8:45 a.m., and published in the issue of the Federal Register for September 7, 1999, 64 F.R. 48547)

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### **Section 7121.—Closing Agreements**

This notice specifies rates the Service will use for the purpose of computing the amount due pursuant to a closing agreement concerning failed life insurance contracts under §7702 of the Internal Revenue Code. See Notice 99-48, page 429.

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### **Section 7702.—Life Insurance Contract Defined**

This notice specifies rates the Service will use for the purpose of computing the amount due pursuant to a closing agreement concerning failed life insurance contracts under §7702 of the Internal Revenue Code. See Notice 99-48, page 429.