

0313 COLLECTION OF OVERPAYMENTS VIA STATE TAX REFUND OFFSET

0313.05 SETOFF OF STATE PERSONAL INCOME TAX REFUND

EFF: 10/2009

In accordance with Sections 44-30.1-1, 44-30.1-3, 44-30.1-4 and 44-30.1-8 of the Rhode Island General Laws in Chapter 44-30.1 entitled 'Setoff of Refund of Personal Income Tax', DHS through the CCR/Fraud Unit can recover Medical Assistance benefit overpayment claims and cost share arrearages through offset of the individual state income tax refund.

"Medical Assistance benefit overpayment" means any amount of medical assistance benefits which constitutes an overpayment of Medical Assistance benefits. The amount of overpayment of benefits may include the overpayment of benefits due to the fact that the Medical Assistance recipient failed to pay the cost share obligation lawfully imposed in accordance with Rhode Island law. "Medical assistance cost share arrearage" means any amount due and owing to the department of human services as a result of a Medical Assistance recipient's failure to pay their cost share obligation, including any amount due for a cost sharing obligation or medical assistance premium obligation, imposed in accordance with Title 40, Chapter 8.4 of the Rhode Island General Laws.

0313.05.05 Criteria for Referral for Setoff

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The claim must meet the following requirements for the State Personal Income Tax Refund Offset procedure.

The claim must be:

- * Established by court order, by administrative hearing conducted by the Department of Human Services, or by written agreement between the Department of Human Services and the individual;
- * Greater than or equal to the minimum amount required for submission for setoff by the R.I. Division of Taxation;
- * Submitted in the name of one individual or must be reduced by any amount submitted as a separate claim for other individuals who are jointly or severally liable for the claim; and
- * Not involved in a bankruptcy stay or discharged in bankruptcy.

In addition, the agency must notify the individual of the intended action prior to offset and of her or his appeal rights.

0313.05.10 Setoff Procedures and Notification of Debtor

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The CCR/Fraud Unit will notify the individual of its intent to refer a claim to the R.I. Division of Taxation for offset and give the individual thirty (30) days to appeal the intended referral by presenting evidence that all or part of the claim is not legally enforceable. The pre-offset notice or thirty (30) day notice shall contain the following information:

- A. The amount of the claim(s);
- B. That the individual has been previously notified of the claim;
- C. That the claim is legally enforceable;
- D. The individual's DHS Case Identifier;
- E. That the claim(s) is to be referred to the R.I. Division of Taxation for offset unless the claim is paid in full within thirty (30) days of the date of the letter;
- F. Instructions about how to pay the claim(s), and the address and telephone number of the CCR/Fraud Unit to call to discuss the claim and the intended intercept.
- G. That the individual has the right to appeal the offset. The notice will advise the individual that:
 - (1) The individual is entitled to an administrative hearing to contest the setoff. The appeal request must be in writing and must be received by CCR/Fraud Unit not later than thirty (30) days after the date of the notice.
 - (2) That the individual should be prepared to provide evidence or documentation of his or her defenses to the claim.
 - (3) The individual's right to judicial review of the administrative hearing decision.

The notice must also state that a claim may not be referred for offset where a bankruptcy stay is in effect or if the claim has been discharged in bankruptcy.

0313.05.15 Transfer of Funds by Division of Taxation

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At the time of the transfer of funds to DHS, the Division of Taxation shall notify the debtor that the transfer has been made.

The notice shall state the name of the debtor, the amount of Medical Assistance benefit overpayment or cost share arrearage being claimed, and the transfer of funds to DHS.

In the case of a joint refund, the Division of Taxation notice shall also state the name of a taxpayer-spouse named in the return, if any, against whom no Medical Assistance benefit overpayment or cost share arrearage is claimed, the opportunity to request that the refund be divided between the spouses by filing an amended income tax return showing each spouse's share of the tax and the contribution to the overpayment of tax resulting in the refund.

Upon receipt of funds transferred from the Division of Taxation, DHS Financial Management deposits and holds the funds in an escrow account until final determination of setoff. Upon final determination of the amount of the claim to be setoff by 1) default for failure to apply for an administrative hearing, or by 2) decision of the administrative hearing officer, the claimant agency shall remove from the account of the claim payment from the escrow account and credit the amount to the debtor's obligation. The pendency of judicial proceedings to review the administrative decision shall not stay nor delay the setoff, transfer, and disbursement of the tax refund in question.

With respect to setoff for Medical Assistance benefit overpayments and cost share arrearages, the Division of Taxation shall provide the debtor's address and social security number to the Department of Human Services. The information obtained by a claimant agency through the Division of Taxation retains its confidentiality and is only used by DHS in pursuit of its Medical Assistance benefit overpayments and cost share arrearages collection duties and practices, and any employee or prior employee of any claimant agency who unlawfully discloses that information for any other purpose, except as specifically authorized by law, is subject to the penalties specified by RIGL 44-30- 95(c).

0313.10 ADMINISTRATIVE HEARINGS

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As appropriate, an administrative hearing may be held pursuant to DHS Policy Manual Section 0110. The appeals officer must be issue her or his decision in writing in accordance with Section 0110. If the decision is made that the claim does not meet the requirements for offset, CCR/Fraud must take appropriate corrective action.