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United States Government Accountability Office
Washington, DC 20548

May 7, 2009

The Honorable John Lewis
Chairman
The Honorable Charles W. Boustany, Jr.
Ranking Member
Subcommittee on Oversight
Committee on Ways and Means
House of Representatives

Subject: Tax Administration: Possible Implications of Expanding Refund Offset Provisions

Millions of federal taxpayers receive billions of dollars in income tax refunds every year. Many of these refunds are paid to taxpayers who owe money to the federal government or to their state or local government. The law allows certain types of debts to be collected through offsets of federal income tax refunds before payments are issued to taxpayers—in calendar year 2008, over \$5 billion was deducted from income tax refunds and used instead to pay other federal agency nontax debt, state income tax debt, and overdue child support payments. Due in part to the current economic downturn and the financial problems of state and local governments, interest has grown in potential expansion of the refund offset program as a means to collect additional kinds of state or local debts. On the basis of your request, this letter's objectives are to describe (1) recent proposals to expand the refund offset program, and (2) challenges and design issues that would need to be addressed by policymakers and program administrators in the event of program expansion, including the implications of eliminating the current requirement that tax refund offsets for state income tax debts are allowed only when the affected taxpayer lives in the state seeking the offset.

We identified and reviewed recent legislative and interest group proposals to expand the tax refund offset program. We reviewed agency documentation on program operations and obtained summary data from the Department of the Treasury's Financial Management Service (FMS) on debt collected through offset. We determined that the data provided by FMS were sufficiently reliable for background purposes in this letter. We researched the relevant statutory and regulatory provisions pertaining to the offset of federal income tax refunds. We interviewed officials from the Department of Treasury's FMS, Internal Revenue Service (IRS), and Office of Tax Policy to both obtain an understanding of refund offset program operations and officials' perspective on possible program expansion as suggested in

the proposals we identified. We also interviewed representatives from external organizations with an interest in program expansion, including the Federation of Tax Administrators (FTA), and the National Association of State Auditors, Comptrollers and Treasurers. We also interviewed an official from the office of the Arlington County, Virginia, Treasurer who had been closely involved with a proposal to make local government debts eligible for federal income tax refund offsets. We conducted our work from February 2009 to May 2009 in accordance with all sections of GAO's Quality Assurance Framework that are relevant to our objectives. The framework requires that we plan and perform the engagement to obtain sufficient and appropriate evidence to meet our stated objectives and to discuss any limitations in our work.

Background

FMS offsets tax refunds to collect delinquent child support payments, federal nontax debts, and state income tax debts.¹ FMS is the agency in the Department of Treasury charged with implementing the federal government's centralized delinquent debt collection program. Under the law, FMS is required to withhold or reduce certain federal payments to satisfy delinquent nontax debts owed by payment recipients. The main tool FMS uses to carry out this responsibility is the Treasury Offset Program (TOP). The TOP uses a computerized process to compare the names and taxpayer identification numbers (TIN) of debtors with the names and TINs of recipients of federal payments, including tax refunds. If there is a match, the federal payment is reduced, or offset, to satisfy the overdue debt.²

Federal law authorizes tax refund offsets where a taxpayer owes past-due child support.³ Child support debt cases fall into two categories; TANF- (Temporary Assistance to Needy Families) or non-TANF-related. TANF cases are those in which the custodial parent has assigned his or her right to child support payments over to the state as a condition of participation in TANF. Offsets are applied in TANF-related cases when the noncustodial parent owes at least \$150; in non-TANF cases, the amount owed must be at least \$500. State child support enforcement agencies, through the Office of Child Support Enforcement at the Department of Health and Human Services, certify to the Department of the Treasury the names, TINs, and the amount of past-due child support for people who are delinquent in their payments. The funds offset from a taxpayer's tax refund are forwarded by FMS through the Office of Child Support Enforcement to the state child support enforcement agency to repay the past-due support debt.

¹IRS sends its list of authorized refunds to FMS after IRS has already deducted delinquent federal tax debt for an assessed delinquent period from those refund amounts. If a taxpayer is due a refund but owes delinquent federal tax debt for another period, in most instances the IRS will internally apply the current refund to prior tax debt, before informing FMS there is any residual refund payment left for additional offsets or to send to the taxpayer. The federal tax refund offsets discussed in this letter are those administered by FMS and do not include the offsets that IRS takes.

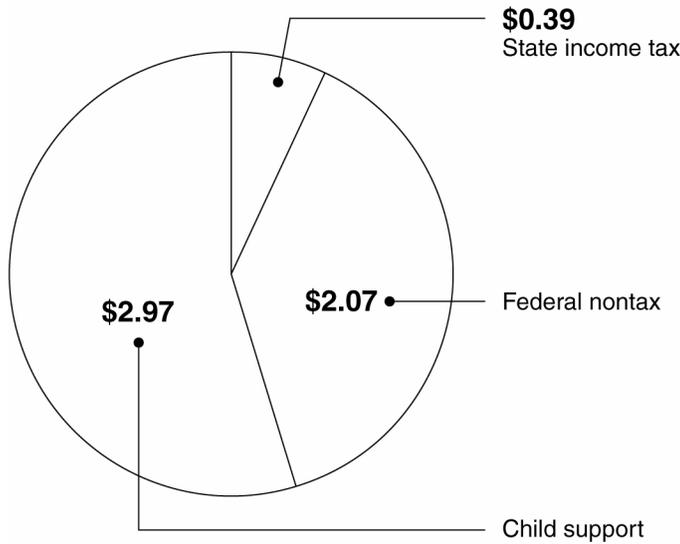
²In addition to offset to collect delinquent nontax debts, the TOP also includes the Federal Payment Levy Program, a program whereby delinquent federal income tax debts are collected by levying nontax federal payments.

³26 U.S.C. § 6402(c).

Offset of tax refunds to collect nontax federal debt is also authorized under the law.⁴ Examples of nontax federal debts include (1) loans made, insured, or guaranteed by the federal government, such as student direct and guaranteed loans, Small Business Administration loans, and Department of Housing and Urban Development loans; (2) overpayments, such as salary or benefit overpayments, duplicate payments, or misused grant funds; (3) the unpaid share of any nonfederal partner in a program involving a federal payment and a matching or cost-sharing payment by the nonfederal partner (e.g., the state share of a benefit-matching program); (4) fines or penalties assessed by an agency, such as civil monetary penalties or Occupational Safety and Health Administration fines for mine safety violations; and other amounts of money or property owed to the federal government, such as license fees. Current FMS regulations require the federal agency submitting the debt to certify, among other requirements, that the debt is at least \$25.⁵ FMS transmits any amounts collected through offset to the appropriate creditor agency.

FMS also offsets federal income tax refunds to collect delinquent state income tax debts.⁶ In calendar year 2008, FMS made offsets totaling about \$5.4 billion, with the largest share going to repay delinquent child support, followed by federal nontax debts, and then state income tax debts, as shown in figure 1. The number of taxpayers who had their federal income tax refunds offset was about 4.5 million in 2008, according to FMS.

Figure 1: Total Tax Refund Offsets Made by FMS, by Type of Debt, for Calendar Year 2008, in Billions of Dollars



Source: GAO analysis of FMS data.

Note: Data includes offsets made against economic stimulus payments issued in 2008.

The share of tax refund offsets going to satisfy delinquent state income tax debts has been significantly smaller than collection of child support and nontax federal debts,

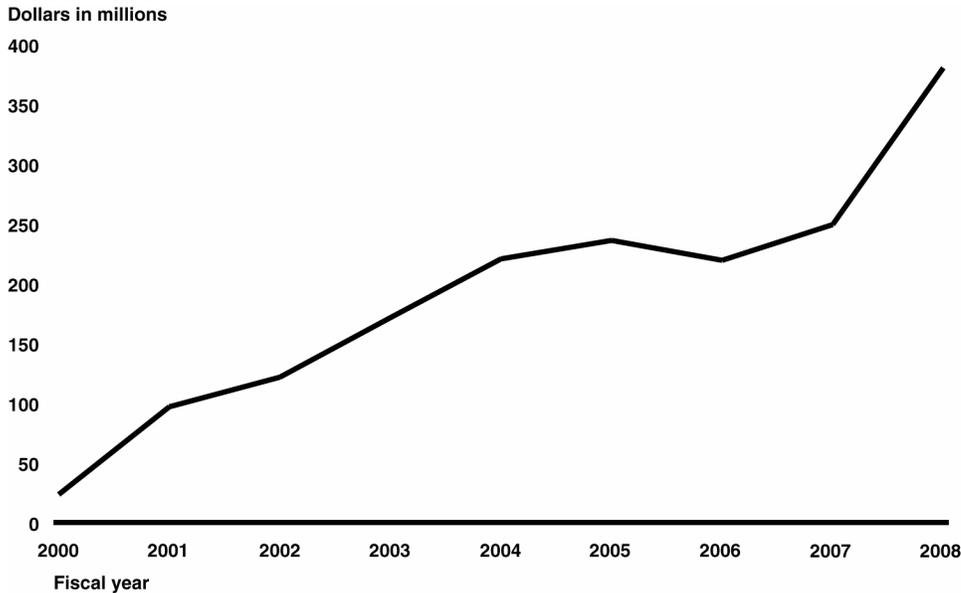
⁴26 U.S.C. § 6402(d).

⁵31 C.F.R. § 285.2(d)(iv).

⁶26 U.S.C. § 6402(e).

but these offsets have grown significantly since 2000. FMS officials and representatives from the Federation of Tax Administrators (FTA) and the National Association of State Auditors, Comptrollers and Treasurers (NASACT) said they viewed the state income tax offset program as an effective collection tool. Since its introduction in January 2000, state participation has grown from an initial 7 states to currently include 40 states⁷ and the District of Columbia. Debt collection through offset has steadily increased as more states have entered the program, and in fiscal year 2008, FMS collected more than \$380 million in delinquent state income tax debt on behalf of states through offset of federal income tax refunds as shown in figure 2.⁸ FMS will only make offsets for state income tax debts of \$25 or more.⁹

Figure 2: Total Delinquent State Income Tax Offset Collections, Fiscal Years 2000-2008



Source: GAO analysis of FMS data.

Some of the increase in offsets from 2007 to 2008 was because of the one-time economic stimulus payments issued in 2008. According to FMS, about 24 percent of state income tax offsets in 2008 were collected from 2008 economic stimulus payments.

⁷Seven states with no individual income tax (Alaska, Florida, Nevada, South Dakota, Texas, Washington, and Wyoming) as well as two states with state income tax limited to dividends and interest income only (New Hampshire and Tennessee) do not participate in the program. Michigan also does not participate. U.S. territories and possessions are also eligible to participate, though none currently do so.

⁸IRS also administers the State Income Tax Levy Program (SITLP), an automated levy program in which states with an income tax can sign agreements with the IRS to permit state tax refunds to be applied to federal tax liabilities. According to IRS, as of April 2009, 28 states and the District of Columbia participate in SITLP. Agreement between IRS and the state of Minnesota has also been reached and the final memorandum of understanding is awaiting final signatures as of May 7, 2009. IRS anticipates adding several more states to the program during 2009 and 2010.

⁹31 C.F.R. § 285.8(c)(2).

FMS is authorized to charge states and creditor agencies a fee to reimburse FMS for the administrative costs associated with offsets taken.¹⁰ Part of the fee that FMS charges includes reimbursement for IRS. Currently FMS charges states \$22.00 per offset. Following the offset, FMS issues notices to the debtors informing them of the date and amount of the offset, as well as a contact point with the state or federal agency that the taxpayer should contact with questions related to the offset. Taxpayers who wish to dispute an offset taken from their income tax refund are directed by FMS to take the matter to the federal or state agency that reported them as debtor and received the funds deducted from their federal income tax refund. The statutes establishing the offset provisions now in place state that the federal courts do not have jurisdiction to review refund offset actions; however, taxpayers are allowed to dispute the underlying debt with the state or federal agency that reported the debt to FMS and received the offset payment.¹¹

Congress's most recent amendment to the law allowed refund offsets to collect unemployment compensation debts resulting from fraud.¹² FMS and the Department of Labor are determining how this offset will work, but have not started making offsets.

Proposals to Expand Refund Offsets

Legislation to expand the types of debts or the types of entities eligible to participate in federal income tax refund offsets have been introduced to Congress in recent years. Congress has also considered but not enacted changes to the requirements with regard to existing offsets.

The proposals for adding additional types of debts to the offset program include proposals to add state judicial debt.¹³ These are past-due, legally enforceable debts resulting from a state criminal or traffic court's judgment or sentence, including court costs, fees, fines, assessments, and restitution to victims of crime. There have also been proposals to add local government tax debt to the list of allowable offsets.¹⁴

Proposals to expand the offset program to include new types of debts submitted by local governments differed in the proposed methods for submitting the debt to FMS. For example, one proposal would have allowed states to submit local tax debts on behalf of local governments for offset by FMS. Another proposal would have allowed eligible local governments to not involve the state revenue agency and instead submit their tax debt directly to FMS. Another proposal would have tested the direct submission of local government tax debt with a limited pilot project.

¹⁰26 U.S.C. § 6402(e)(6); 31 U.S.C. § 3720A(d); 31 C.F.R. §§ 285.2(i), 285.3(h), 285.8(h). The fee is only charged for actual offsets completed. The fee is established annually by FMS.

¹¹26 U.S.C. § 6402(g).

¹²Pub. L. No. 110-328, § 3, 122 Stat. 3570, 3573 (Sept. 30, 2008).

¹³For example, S. 1321, § 707, 109th Cong. (2006); S. 3512, 109th Cong. (2006); S. 1287, 110th Cong. (2007); H.R. 6172, 110th Cong. (2008).

¹⁴For example, H.R. 3498, 109th Cong. (2005); H.R. 1865, 110th Cong. (2007); H.R. 7335, 100th Cong. (2008).

There have also been proposals to alter requirements governing existing tax offsets.¹⁵ For example, under current law state income tax and unemployment compensation offsets are allowed only if the address shown on a debtor's federal income tax return is within the state seeking offset. Recognizing the effectiveness of the state income tax offset program, in 2004 the Senate Committee on Finance recommended elimination of this provision,¹⁶ though the change was not enacted.

Challenges and Design Issues Associated with Expanding Refund Offsets

Residency Requirement

As noted above, under current law, federal income tax refunds can only be offset for state income tax debt and unemployment compensation debt when the address on the taxpayer's federal tax return is in the state seeking the offset.¹⁷ Some of the legislative proposals we reviewed included a similar restriction on new offset provisions. Over recent years FTA has also advocated removing this requirement from the state income tax debt offset provision. An FMS official responsible for managing the offset program estimated that in 2008, about 380,000 refund offsets worth over \$150 million were not applied because of the state residency requirement.

If the restriction preventing offsets for state income tax debts for taxpayers whose address on their income tax filing is not in the state seeking the offset were eliminated, other aspects of the program (which are discussed in the following sections of this letter) such as notice, privacy considerations, prioritization, and dispute resolution would remain intact unless Congress chose to also alter those aspects of the state income tax offset program. As also discussed in a following section, the additional offsets generated by such a change could strain FMS's systems if the number of new offsets was sufficiently great. However, FMS officials noted that the number of new offsets that such a change would generate is unknown. FMS only knows the number of offset requests that it rejected because of the residency requirement, but not the number of offsets that states did not request because state officials knew that the debtor had left their state. FMS officials told us that while a very large increase in offset volume could mean they would need new, larger capacity systems to handle the workload at some future point, the existing system capacity could handle processing the additional known offsets (i.e., the estimated 380,000 in 2008) that would result from eliminating the residency requirement with little to no adverse effect.

Notice and Other Due Process Requirements

Current law requires states to notify a taxpayer in advance that the state proposes to have the taxpayer's delinquent state income tax debt satisfied through the offset of a federal income tax refund. By statute, the notice must be sent by certified mail with return receipt and the taxpayer must be given 60 days to present evidence to the state that all or part of the debt is not past-due or legally enforceable.¹⁸ The state must

¹⁵For example, S. 882, § 111, 108th Cong. (2004); H.R. 1528, § 111, 108th Cong. (2004); S. 1321, § 305, 109th Cong. (2006).

¹⁶S. Rep. No. 108-257, at 13 (2004).

¹⁷26 U.S.C. § 6402(e)(2), (f)(3).

¹⁸26 U.S.C. § 6402(e)(4). See also, 31 C.F.R. § 285.8. FTA representatives told us that they have asked Congress to eliminate the requirement that states must send certified letters to taxpayers notifying them of the pending offset to their federal income tax refund. They said that, while the certified

consider any evidence presented and determine that the debt is indeed past-due and legally enforceable. The state must also make reasonable efforts to collect the debt itself. States must certify to FMS that they complied with these requirements. Federal tax refunds may not be offset to collect state income tax debts that have been delinquent for more than 10 years.¹⁹

Similar but not identical requirements apply to the offset of federal income tax refunds for federal nontax debts and past-due child support debts.²⁰ For example, regulations require a creditor agency to notify the debtor that a debt will be submitted to FMS for offset and must give the debtor 60 days to present evidence that all or part of the debt is not past-due or legally enforceable. However, FMS's regulations on offsets of tax refund payments to collect federal nontax debt do not specify that the notification must be by certified mail. As with the states, federal agencies must certify to FMS that they complied with the applicable requirements. Notice and other due process requirements are specific to each of the current offset provisions and the appropriate requirements for any new offset would need to be established.

Privacy

Under current law, taxpayer information is protected by section 6103 of the Internal Revenue Code, among other provisions. The protection of taxpayer information is commonly thought to be critical to voluntary compliance with the tax code and necessary to protect taxpayer privacy. The tax offset program requires the sharing of limited taxpayer information protected by section 6103. Current offsets are permitted in section 6103, under which the sharing of information is limited to the information necessary to conduct the tax offset program.²¹ Any expansion of the tax offset program to include local government entities would require allowing the sharing of taxpayer information. This would, in turn, also mean additional work for IRS to ensure that local government entities adequately safeguard this taxpayer information.

Prioritization

Current law prioritizes the different types of debt to which a tax refund offset can be applied.²² After any federal income tax debt, the highest priority is given to past-due child support, followed by federal nontax debt. Last in line are state income tax debts and unemployment compensation debts resulting from fraud.²³ FMS offsets lower-priority debts only after making offsets for higher-priority debts. Any proposal to create new tax offsets would need to specify the priority of the new offset.

mailing requirement ensures that taxpayers have adequate notice of the pending offset, they contend that the requirement is both costly and unnecessary because taxpayers already receive multiple notices about their state income tax debts prior to inclusion in the federal tax refund offset program.

¹⁹26 U.S.C. § 6402(e)(5)(B); 31 C.F.R. § 285.8(a)(3).

²⁰26 U.S.C. § 6402(c), (d); 42 U.S.C. § 664(a)(3)(A); 31 C.F.R. §§ 285.2, 285.3.

²¹26 U.S.C. § 6103(l)(10).

²²26 U.S.C. § 6402(c), (d)(2), (e)(3), (f)(2). The priority of debts for offset was amended by the Deficit Reduction Act of 2005. Pub. L. No. 109-171, § 7301(d), 120 Stat. 4, 144 (Feb. 8, 2006) (the effective date of these amendments is October 1, 2009, unless a state elects to have the amendments apply on an earlier date, as long as that earlier date is after September 30, 2008).

²³Offsets are also permitted for estimated future federal income tax liabilities.

Dispute Resolution

By statute, no federal court has jurisdiction to restrain or review any current tax offset. In addition, no current offset is reviewable by the Department of the Treasury in an administrative proceeding. Taxpayers whose refunds are offset are only allowed to dispute the underlying debt with the state or federal agency that received the offset payment.²⁴ When a taxpayer disputes a tax refund offset applied by FMS, FMS directs the taxpayer to the entity that receives the offset payment. FMS officials told us that some taxpayers file lawsuits against the Department of the Treasury disputing an offset and the department must then argue in court that the court does not have jurisdiction. They said that an increase in the number of offsets would likely increase the number of times this happens and that they would need more resources to handle these cases, even with the exemptions that are in current law. Any new refund offset provisions without such limitations to jurisdiction as found in current law would likely mean even more burden for FMS to have to resolve disputes or defend offset actions in court regarding debts that they do not control.

Administrative Capacity

FMS officials said that expansion of tax refund offsets would need to be carefully managed and balanced against other agency priorities. FMS officials said that their top priority is the timely disbursement of refunds and expressed concern that expansion of refund offsets could mean greater administrative demands and disrupt or delay timely refund disbursement.

The offset process is highly automated, so any legislative changes to the program that would authorize additional government entities to certify debt directly to FMS, such as local governments, would require FMS to devote additional resources to establishing a reliable working relationship with those entities, including training, resolving technical issues with the electronic data transmission of debt files, and providing legal support. Based on past experience with adding new agencies to the program, officials estimated that it usually takes between 18 and 24 months for new entities to work out the details associated with transmitting the correct debt data in the required format. Additionally, officials from the added government entities might require training in the legal requirements of the offset program and the certification requirements. In regard to the prospect of adding local debts to the offset program, FMS officials stated a preference for continuing to work through their established channels at the state level rather than establishing channels with possibly thousands of local entities.

One of the bills proposing to expand the refund offset program to include local government debts would have required local debts to be consolidated at the state level and transmitted to FMS by the state. Consolidating local debts at the state level in this way could eliminate the need for direct interaction between FMS and multiple local governments. However, FTA representatives said that it is unclear whether some states currently participating in the state income tax refund offset program would have the ability to readily handle consolidating and certifying local government debts. While some states have their own internal offset program for local government debts, other states may not have the necessary infrastructure to do this.

²⁴This would remain the case if Congress eliminated the residency requirement for state income tax refund offsets, unless Congress made other changes to the law.

Also, some states do not participate in the state income tax offset program. According to FTA, a legislative requirement that local tax debts be submitted by the state rather than directly to FMS may impede or delay local governments' ability to participate in the program.

Another concern with adding local government debt involves the way that an entity requesting an offset identifies the debtor. FMS regulations currently allow tax refund offsets only when there is a name and TIN match between IRS's list of tax refund payment recipients and the debtor information.²⁵ FMS officials said that they need the TIN to correctly match a payment with a debt. However, if tax refund offsets were expanded to include local debts, local jurisdictions may not know the TINs or Social Security numbers (SSN) of their debtors. For example, we spoke to an official in Virginia knowledgeable about debt offsets who told us that local officials can obtain SSNs for local residents from the state's Department of Motor Vehicles because those numbers are required to obtain a Virginia drivers license. However, local officials may not know the SSNs of residents who do not have a driver's license. The cost of determining names and identifying numbers that would allow FMS to apply an offset would likely be the responsibility of local officials and may add to their cost of collecting debts through such offsets.

Both FMS and IRS officials stated that, in the event the number of debts submitted for offset increases, they would anticipate an increase in the number of telephone calls received from taxpayers inquiring about offsets. FMS officials said they do not track refund offset-related telephone calls separately from other inquiries from taxpayers, but they noted that FMS received over 4.3 million telephone calls in 2008 and that an increase in the number of offsets would likely also mean an increase in the number of calls they receive. FMS officials said that an increase in call volume associated with a relatively small increase in debts might be manageable with existing resources in the near term, but a large increase could not be managed with existing resources.

IRS officials also expressed concern that increasing the number of debts in the refund offset program would result in an increase in the number of injured spouse cases. An injured spouse is defined by IRS as a married partner who claims that their portion of a jointly filed income tax refund has been improperly offset to satisfy the other partner's debt(s). IRS has procedures in place for individuals who claim they are not responsible for the debt that their spouse owes, allowing the injured spouse request the return of their share of the income tax refund. They said that an increase in the number of offsets would likely mean an increase in the number of injured spouse claims and IRS would require additional staff to handle them.

According to FMS officials, the \$22.00 per offset fee the agency currently charges to state agencies receiving the offset funds covers current program costs. However, FMS officials also said that their current systems are limited in, for example, how many additional offsets can be entered at one time or how many calls their phone system can handle. A large increase in the number of offsets or in the number of agencies certifying debt to FMS could mean that some offsets could not be applied without disrupting the disbursement function of FMS and would necessitate

²⁵31 C.F.R. §§ 285.2(b)(2), 285.3(b)(2), 285.8(b)(2).

expanding FMS systems to handle the increased workload. Funds for significant system changes could possibly come from an increase in the fee charged per offset, or from an increase in FMS's budget for new systems to handle the increased number of offsets.

Voluntary Compliance

When considering refund offset provisions in the 1990s, Congress was concerned about how refund offsets might affect taxpayer compliance in filing tax returns and paying the amounts they owe. In 1991, we studied the effect of refund offsets on taxpayer filing and payment behavior.²⁶ We found that while nonfiling increased during the year immediately following an offset, there was virtually no effect 2 years later. We also found no evidence that an offset taxpayer was more likely not to pay taxes due when filing a tax return the year after an offset. Our earlier analysis compared the federal revenue lost due to nonfiling with the federal debt recovered from people who had defaulted on their student loans, finding that the amounts recovered through offsets were 4 times greater than the potential revenue lost due to nonfiling. In the case of possible new state and local tax refund offsets, however, any loss in tax revenue would be to the federal government, while the revenue from the offsets would go to state and local governments. In our interviews for this engagement, IRS and FMS said that neither agency has conducted any recent research on this issue. We also could not identify any current research on the effect refund offsets may have on taxpayer compliance.

Agency Comments and Our Evaluation

In addition to providing technical corrections which have been incorporated into this letter as appropriate, FMS and IRS provided additional comments through their respective GAO liaisons related to potential expansion of tax refund offsets.

FMS stated that FMS's statutory mission is to disburse payments in an accurate and timely manner, and that implementation of offset programs cannot interfere with that function. FMS also repeated its concern that at some point, an increase in tax refund offsets of sufficient volume might mean the need for additional agency resources, including systems hardware and personnel. Additionally, FMS requested that any statutory change to the tax refund offset program should include a provision enabling the Secretary of Treasury to issue regulations related to implementing the revision.

IRS reiterated a number of potential issues, included in this letter, related to adding local government tax debts to the tax refund offset program. These issues include establishing safeguards to ensure that local governments adequately protect taxpayer information and addressing potential agency resource constraints. IRS expressed concern that the expansion of tax refund offsets to include additional local tax debts might strain agency resources by resulting in an increase in telephone call volume and injured spouse cases. IRS stated it could handle some increase in this workload without any additional staffing, but that a large increase would require additional staffing and training. IRS also acknowledged that there is no way to know the number

²⁶GAO, *Tax Policy: Refund Offset Program Benefits Appear to Exceed Costs*, GAO/GGD-91-64 (Washington, D.C.: May 14, 1991).

of injured spouse cases or offset-related calls it might receive if additional offsets were implemented. IRS noted that adding state judicial debts and local tax debts may result in the need for obtaining additional guidance from its Office of Chief Counsel, possibly slowing the refund process to taxpayers seeking recovery of improperly offset funds under the injured spouse provision. Before expanding the tax refund offset program, IRS stated its preference that additional study be conducted on the effect of an expansion on tax administration. However, IRS also stated that it supports the idea of eliminating the current restriction on refund offsets for state income tax debts when the address on the taxpayer's return is in a state other than the state seeking the offset.

We will send copies of this letter to the Secretary of the Treasury; the Commissioner of Internal Revenue; and other interested parties. In addition, this letter will be available at no charge on the GAO Web site at <http://www.gao.gov>.

If you or your staff have any questions, please contact me on (202) 512-9110 or whitej@gao.gov. Contact points for our offices of Congressional Relations and Public Affairs may be found on the last page of this letter. David Lewis, Assistant Director; Ellen Rominger; and A.J. Stephens made key contributions to this report.



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