



YOUR VOICE AT THE IRS 

Internal Revenue Code (IRC) Section 6402 generally authorizes the IRS to reduce a taxpayer's refund through offset to repay outstanding federal tax liabilities and requires the IRS to make offsets to satisfy past-due child support, unpaid student loans, and certain other federal and state liabilities. The CARES Act provided that EIPs and the RRC could not be offset to satisfy outstanding debts, with the exception of past-due child support. Since the passage of the CARES Act, the IRS has continued to tell taxpayers that it could not correct or issue additional EIP payments due to lack of resources and that individuals who did not receive some or all of their EIPs would need to claim an RRC when they file their 2020 tax return.

The Consolidated Appropriations Act, 2021 (CCA) went a step further and protected the second round of payments from all offsets, including past-due child support. However, it limited that exception only to advance payments and retroactively revised CARES Act Section 2201(d), subjecting RRCs to regular offset rules for unpaid federal taxes and certain other debts. As a result, RRCs are treated differently from EIPs paid in advance.

What this means: If you are an eligible individual who has not yet received your full EIP and you have certain outstanding debts, some or all of your unpaid stimulus payment will be withheld to offset those debts.

This approach – forcing eligible individuals to forgo receiving an EIP that was exempt from offset if paid timely – is a problem the law and the IRS have created. With the change in the law made by the CCA, the rug is being pulled out from under eligible individuals with outstanding debts. Since the spring, the IRS reassured these taxpayers that if they claim the RRC when they file their 2020 returns, they will get the full amount of stimulus money they are eligible for and be made whole. Now that reassurance turns out to be inaccurate based upon the law change.

The current situation treats similarly situated taxpayers differently:

- Eligible individuals who received the full amount of their EIPs in advance, despite having certain outstanding debts, did not have their payments subject to offset (with the exception of past-due child support).
- Eligible individuals who did not receive the full amount of their EIPs in advance and have certain outstanding debts will receive a reduced RRC or none at all when they claim it on their 2020 tax returns later this year.

This disparate result undermines public confidence in the fairness of the tax system. Financially struggling taxpayers who were entitled to receive the full amount of the EIP last year but did not have effectively been harmed once. It is unfair to harm some of these taxpayers a second time by seizing some, or all, of their stimulus payments.

Additionally, some offsets of overpayments attributable to unpaid federal tax liabilities may be inaccurate. As of December 25, 2020, the IRS estimates it still has not fully processed nearly seven million 2019 individual income tax returns and millions of pieces of taxpayer correspondence. As a result, the tax accounts of millions of taxpayers may not be properly adjusted. They may be owed refunds or have challenged a tax liability. As a result, the IRS may end up offsetting refunds to satisfy federal tax debts that no longer exist. Until the IRS is fully caught up in processing 2019 tax returns and correspondence, the risk of improperly offsetting taxpayer refunds is substantially higher than in most years.

Offset Bypass Refund Procedures

Many low-income taxpayers rely on federal tax refunds to pay for basic and necessary living expenses or to prevent hardships such as eviction, utility shut off, or an inability to meet their basic needs. Although not widely used by eligible taxpayers, the Offset Bypass Refund (OBR) process allows taxpayers experiencing economic hardship to request that the IRS bypass any offset of their refund to repay tax debts. When a taxpayer owes outstanding federal taxes, IRC Section 6402(a) permits the IRS to credit or offset the refund against the unpaid taxes. But it also gives the IRS discretion to “bypass” this offset and disburse some or all of the refund to the taxpayer.

We remain in the midst of a global pandemic, and its economic impact cannot be overstated. Jobless claims are higher than in any previous recession based on records dating back to 1967. According to the [Economic Policy Institute](#), 25.7 million workers in the United States remain officially unemployed, are otherwise out of work due to the pandemic, or have experienced a reduction in work hours or pay.

Given the pandemic and the millions of individuals struggling with financial issues, I believe the IRS should use its discretion to issue RRCs without offset against federal tax debts. The reality is that many of the taxpayers who are most likely to be subject to offset – because they cannot afford to pay their bills and have unpaid debts – are the ones who need relief the most. The American Bar Association Section of Taxation recently issued [formal comments](#) making three suggestions regarding how this could be accomplished. One suggestion is to automatically apply the OBR procedures to any offset of unpaid federal taxes for individuals with incomes under 250 percent of the Federal Poverty Level. An automated approach would be a win-win proposition, reducing the need for taxpayers to contact the IRS to request OBRs and reducing the burden on the IRS (and TAS) to process large numbers of OBR requests on a case-by-case basis.

Last Friday, President Biden issued an “Executive Order on Economic Relief Related to the COVID-19 Pandemic.” It requires all executive agencies to “identify actions they can take within existing authorities to address the current economic crisis resulting from the pandemic” and, in doing so, to prioritize actions that provide the greatest relief to individuals, families, and small businesses.” The Department of the Treasury has issued a [press release](#) describing how it will implement the President’s Executive Order, stating that it will be working “to reach households who either were not issued payments or who were unable to access their funds.” This recommendation is in line with what the Administration is looking to achieve.

Conclusion

Offsetting the RRC against federal tax debts runs counter to the objective of the stimulus payments – to allow taxpayers to receive funds to meet their basic needs. Taking a taxpayer’s RRC and applying it to repay a tax debt is punitive and makes little economic sense in this context. Using the IRS’s authority to waive offsets of RRC-based refunds would go a long way toward meeting the Executive Order’s directive that the IRS take actions “within existing authorities to address the current economic crisis resulting from the pandemic.”

We have recommended several alternatives – and there may be others – including creating automated procedures to waive offsets of overpayments against federal tax debts for taxpayers whose refunds are based on the RRC. Alternatively, it could create automated procedures to bypass any offset against federal tax debts for taxpayers with incomes under 250 percent of the Federal Poverty Level. This approach to automating OBR procedures would lessen burdens on taxpayers and the IRS’s resources and provide a needed lifeline to the country’s most vulnerable individuals and families.