

INCOME TAX OFFSET - INJURED SPOUSE CLAIMS FREQUENTLY ASKED QUESTIONS & ANSWERS

Question: What is the income tax offset program?

Answer: There are two programs, one federal and one state designed to offset (intercept or take) the tax refunds of non-custodial parents (obligors) who have past due child support balances (arrears). Federal and state laws allow Ohio to offset a federal and/or state tax refund and redirect it to pay child support arrears. The arrears must be part of a court or administrative order and be Title IV-D eligible. Offset refunds also can be applied to spousal and/or medical support arrears that are part of a current child support order. Once it is offset and processed, the tax refund is forwarded to the obligee (custodial parent or caretaker). If the obligee has been on public assistance, however, the State may retain the funds as reimbursement for that assistance. This is known as “assigned” arrears. If the offset refund amount is greater than the arrears, the obligor receives the difference, provided there are no other debts that are eligible for federal or state tax offset. It is important to note that there may not be a tax refund to offset. This can occur if the obligor has no income to report, if the obligor does not file a return, if the obligor has income and files a tax return but is not owed a refund, or if the obligor owes another debt that supersedes child support.

Question: If an obligor has child support arrears on a case from a former relationship, how can the current spouse prevent his/her share of their income tax refund from being offset?

Answer: For Federal taxes, the obligor and current spouse can file separate returns to avoid confusion. If they file a joint return, the current spouse can file IRS Form 8379 – *Injured Spouse Allocation* by attaching it to the IRS Form 1040, 1040A, or 1040EZ; or it can be filed separately, after the joint return has been sent in. Without IRS Form 8379, offset refunds from joint returns automatically are held for six months. During that time the current spouse can file an injured spouse claim for his/her share of the refund. The IRS determines the amount of the adjustment and refunds it directly to the current spouse.

Answer: For State taxes, again, the obligor and current spouse may want to file separate returns. If they file a joint return, the Ohio Department of Taxation (ODT) allows 21 days for the current spouse to file an injured spouse claim before sending the offset refund to the State. If the claim is not filed within 21 days, ODT may reject it. However, if the claim is filed within the 21 days but not received until after the deadline, ODT may process the injured spouse claim after the offset refund has been sent to the State. In this situation, ODT determines the amount to be refunded to the injured spouse and sends a letter of notification to the state Office of Child Support (OCS) and the obligor. OCS forwards the letter to the child support enforcement agency (CSEA) in the county that handles the case. The county then sends a refund to the injured spouse.

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Question: Why does it take so long to get the money?

Answer: The offset refund must pass through many steps. Specifying the length of time for the process is only approximate, but in some cases it can take more than six months.

For federal taxes, if there is no current spouse refunds may take approximately six weeks from the date of the offset notice to the date the collection is posted to the child support case. If an offset involves a joint federal return, all or part of the refund can be automatically held for six months to allow time for the current spouse to file an injured spouse claim.

For state taxes, refunds may take approximately 45 days from the date of the notice to the date the collection is posted to the child support case.

Question: Does the obligor have a say in the tax offset process?

Answer: Yes, the obligor can dispute the amount of arrears and request a tax offset review. If the obligor recently paid off the arrears, waiting at least 3 weeks before filing tax returns may help to avoid having any refunds offset.

Question: Is there a way to find out what's going on?

Answer: Everyone's income tax information is confidential. IRS regulations prohibit discussing tax information with anyone other than the taxpayer, including other parties in the child support case, attorneys, and courts unless a proper release authorization is on file with the CSEA. The county Child Support Enforcement Agencies have direct responsibility for individual cases. All questions and concerns should be directed there. CSEA phone numbers and addresses can be found on the Internet at: http://jfs.ohio.gov/County/County_Directory.pdf.

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