

COVID-19 and Direct Payments to Individuals: Federal Tax Offset for Past-Due Child Support

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The Coronavirus Aid, Relief, and Economic Security Act (CARES Act; P.L. 116-136, enacted March 27, 2020) includes [direct payments to individuals in 2020](#)—referred to by the Internal Revenue Service (IRS) as “[economic impact payments](#).” These payments are structured as tax credits automatically advanced to households that meet certain criteria. [Section 2201\(d\)](#) of the CARES Act provides that these payments cannot be offset for past due debts to federal agencies, past due state income tax debt, or unemployment compensation debt, but it does not exempt those payments from offset for past-due child support for cases enforced by the [Child Support Enforcement \(CSE\) program](#).

As of the date of this Insight, the federal [Office of Child Support Enforcement \(OCSE\)](#) and the [Department of Treasury](#) each has provided public guidance related to the applicability of tax offset procedures to these payments. This Insight provides a brief summary of how the CSE federal tax refund offset mechanism generally operates, and historical background on how it was used to withhold past-due child support from similar direct payments to individuals—the [2008 IRS economic stimulus payments](#). [According to OCSE](#), the offset of these payments resulted in an additional \$863 million in collections in processing year 2008, which was an 88.4% increase relative to 2007. The offset of CARES Act direct payments to individuals might also be expected to result in increased collections for past-due child support through the CSE program.

Overview of the CSE Federal Tax Offset

All 50 states, the District of Columbia, Guam, Puerto Rico, the Virgin Islands, and 60 tribal nations [operate CSE programs](#) pursuant to [Title IV-D of the Social Security Act](#). The program is federally administered by OCSE in the [Administration for Children and Families \(Department of Health and](#)

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Human Services). The program is estimated to handle the majority of all child support cases; the remaining cases are handled by private attorneys, collection agencies, or through mutual agreements between parents. In FY2018, the program served 14.7 million children (about 20% of children in the United States) and collected an estimated \$34 billion in child support, of which \$7.7 billion was for obligations that were past-due (“arrear”). The amount of arrears paid were about 7% of the \$118.1 billion in cumulative arrears owed to cases enforced by the program.

One of the enforcement methods available to the CSE program for collecting past-due support is intercepting federal income tax refunds pursuant to Section 464 of the Social Security Act, and Section 6402(c) of the Internal Revenue Code. For a refund to be subject to the “tax offset,” the child support arrears owed by a child support obligor (which may be combined from multiple cases for the same obligor) must be at least

- \$150 for cases where the custodial family receives cash payments under the Temporary Assistance for Needy Families (TANF) program or where the child receives assistance through the IV-E foster care program, or
- \$500 for all other types of child support cases (“non-TANF” or “Medicaid-only”).

In FY2018, the tax offset mechanism is estimated to have yielded \$1.6 billion in collections.

The tax offset mechanism, which is part of the Federal Collections and Enforcement Program, operates through a partnership between OCSE and the Department of the Treasury. According to OCSE, after it transmits to the Treasury information on qualifying obligors, those obligors are sent a Pre-Offset Notice that includes the amount of arrears that are owed at that time of the notice and how to contest that amount. When the Treasury ultimately processes the refund and intercepts the past-due support, it notifies the obligor of the offset and sends the funds to the relevant state child support program via OCSE. The amount that is offset may be based on more up-to-date information about the arrears that are owed than the amount listed in the Pre-Offset Notice.

When the state CSE program receives the offset—usually within two or three weeks of the intercept—it may wait to disburse the funds for up to six months from when they were withheld from a joint tax return. Non-obligated spouses may file an Injured Spouse Allocation Form 8379 with the IRS in order to recoup their portion of the refund.

Tax Offset and the 2008 IRS Economic Stimulus Payments

The Economic Stimulus Act of 2008 (P.L. 110-185, enacted February 13, 2008), provided for direct payments to individuals that, like those in the CARES Act, were also structured as advanced refundable tax credits (“economic stimulus payments”). Nothing in the act exempted these payments from the tax offset provisions under Internal Revenue Code Section 6402, including those that apply in cases of past-due child support. An OCSE Dear Colleague Letter (February 22, 2008) clarified that the payments would be subject to the tax offset. Guidance in a subsequent OCSE Dear Colleague Letter (March 17, 2008) provided additional information (excerpted below):

- IRS is mailing two notices regarding the economic stimulus payments. They will begin mailing the first notice, “Economic Stimulus Payment Notice,” in early March. It will inform the recipient of the stimulus payments and when payments will begin.
 - The second notice will ... advise how much the recipient should expect to receive and when the payment should arrive.
 - The time frame for issuing stimulus payments will be May – September 2008. OCSE expects to begin receiving offsets from the stimulus payments as early as mid-May.
 - Stimulus payments will be treated like any other tax offset refund.
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- Injured Spouse Claims (Form 8379) will be calculated at up to 50 percent of the eligible amount of the stimulus payment prior to offset, regardless of the percentage of income claimed by the unobligated spouse for tax year 2007.
- The unobligated spouse will not be required to file an additional Form 8379 to receive their portion from the stimulus payment if they already filed an injured spouse claim against money offset from tax year 2007. IRS will automatically calculate up to 50 percent of the eligible amount of the stimulus payment prior to offset.

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