

2006.0.0 STATE (INCOME) TAX REFUND INTERCEPTION (STRI)

2006.0.1 The purpose of this policy is to provide a methodology and procedures for compliance with Act 372 of 1983 as amended (Ark. Stats. Ann. §§ 84-4901 thru 84-4918) and Act 987 of 1985 which authorized the collection of debts owed the Department of Human Services (DHS) via interception of state income tax refunds.

2006.0.2 This policy is applicable to all DHS Accounts Receivables that have been referred to the Arkansas Department of Finance & Administration for Setoff of State Income Tax Refunds.

2006.1.0 Identification of Debtors

2006.1.1 The Division of Finance/Accounts Receivable will submit a list of households with a receivable balance to the Office of Information Systems, which will combine the list by Social Security number with a list prepared by the Child Support Enforcement Unit, of delinquent child support and other amounts owed to DHS.

2006.1.2 Act 987 requires notification to households who owe a debt to the State before this information is furnished to the Revenue Division of the Department of Finance and Administration. A notice of DHS's intention to intercept refunds will be mailed to the taxpayer prior to December 1 of each year.

2006.1.3 The taxpayer has thirty days from the date the notice is mailed to file a written request for a hearing. If no hearing is requested within thirty (30) days, any refund determined to be available may be intercepted and mailed to the Division of Finance to be allocated within DHS by priority.

2006.2.0 Accounts Eligible for Interception

In order for an account to be submitted for State (Income) Tax Refund Intercept, the following conditions must be met:

- The amount owed the State must be certified by the Submitting Department.
- The taxpayer must have been notified of the debt in at least one demand letter.
- The debt must be at least \$20.00.

2006.3.0 Requesting the Hearing

The taxpayer has thirty days from the mailing date of the Intent to Intercept Notice to file a written request for a hearing. All hearing requests should be sent to the Overpayment Recovery Section of Accounts Receivable, P.O. Box 1437, Slot #3005, Little Rock, Arkansas 72203. The Recovery Section will maintain a chronological register of the hearing requests to ensure that each is acted upon in a timely manner. The Appeals and Hearings Section will be notified of all hearing requests and is responsible for conducting hearings for all STRI categories except the Division of Developmental Disabilities Services.

2006.4.0 Designation of a Representative

A household may designate a representative to act in its behalf during the hearing process by providing a signed statement naming a representative. Once a household has officially designated a representative, this individual will receive a copy of all correspondence and materials mailed or provided to the household regarding the Administrative Hearing Proceedings.

2006.5.0 Beginning the STRI Hearing Process

2006.5.1 When the Appeals and Hearings Section receives a request for a hearing from the Overpayment Recovery Section, all relevant information related to the alleged debt is sent to the Collection Officer for Mental Health Accounts or the designated Accounting Officer for other Accounts Receivable with a memorandum from the Appeals and Hearings Section to prepare an STRI Hearing Statement to be presented at the hearing. The statement will contain the basis for establishing whether the claimed sum asserted as due and owing is correct. The purpose of the hearing is to determine whether or not a valid debt exists.

2006.5.2 The STRI Hearing Statement should be prepared and returned to the Appeals and Hearings Section with seven days of receipt of the memorandum from Appeals and Hearings. The reverse side of the STRI Hearing Statement contains spaces for the Collection Officer to request the subpoena of witnesses.

2006.6.0 Subpoena of Witnesses by Taxpayer

2006.6.1 Upon receipt of the STRI Hearing Statement, the Appeals and Hearings Section will forward copies of the Statement and the information received to the taxpayer for review.

2006.6.2 The DHS-3205 will be attached to the aforementioned information. The taxpayer and/or his representative have the right to subpoena witnesses to testify at the STRI hearing.

2006.7.0 Notification of the Hearing

2006.7.1 The Appeals and Hearings Section will provide written notice to all parties involved at least 10 days prior to the date of the hearing to allow for adequate preparation of the case. The notice will contain:

2006.7.2 The address, and telephone number of the Appeals and Hearings Section to notify if the taxpayer and/or his representative will not be able to attend;

2006.7.3 A statement that the Appeals and Hearings Section will abandon the hearing request if the taxpayer or his representative fails to notify this office 24 hours prior to the date of the hearing that he/she will be unable to attend.

2006.8.0 Postponement of the Hearing

The hearing may be postponed one time at the taxpayer's request.

2006.9.0 Place of the Hearing

The hearing will be conducted in the Appeals and Hearings Section, Little Rock, Arkansas.

2006.10.0 The Hearing Officer

2006.10.1 The Appeals and Hearings Section will designate all Hearing Officers. The Hearing Officer must not have any personal interest or involvement in the case and must not have been involved in the contested action either as a caseworker or in a supervisory capacity.

2006.10.2 The Hearing Officer may not review the case record or other material either prior to or at the hearing unless such material is made available to the taxpayer or his representative.

2006.11.0 Conducting the Hearing

2006.11.1 A Hearing Officer will conduct the hearing. The taxpayer may be accompanied by friends or other persons and may be represented by a friend, attorney or designated representative. DHS will be represented by either a designated Collection Officer for Mental Health Accounts, or a designee assigned by the Accounts Receivables Administrator.

2006.11.2 The hearing will be conducted in an informal but orderly manner. The STRI Hearing Statement will be read by the DHS Representative who will present the case for DHS. This includes presenting evidence, questioning witnesses and cross examining the taxpayer's witnesses.

2006.11.3 The taxpayer or his representative will then present his case which includes presenting witnesses, advancing arguments, offers additional evidence, and questioning or rebutting any testimony or evidence. The taxpayer or his representative will be allowed to question the DHS Representative and to confront and cross examine any adverse witnesses. If the taxpayer is unable to present his evidence, the Hearing Officer will assist him. Questioning of all parties will be confined to the issue involved.

2006.11.4 When all relevant information has been obtained, the Hearing Officer will summarize the issues, the evidence, the agency policy, and will explain that he will recommend a decision to the Administrator, Appeals and Hearings Section, who will make the final decision.

2006.11.5 The taxpayer will also be advised of his right to judicial review in the event of an adverse ruling.

2006.12.0 The Administrative Hearing Decision

Prompt, definitive, and final administrative actions must be taken within 60 days of receipt of a request for an Administrative Hearing. The hearing decision is based upon documentary evidence contained in the Administrative Hearing file and the testimony presented at the hearing.

2006.13.0 Contents of the Administrative Hearing Decision

The hearing decision will contain the following information.

- A. An Introduction - This part of the decision will summarize the reason for the appeal. Any pertinent information regarding the appeal is included. The date and location of the hearing must appear. The participants in the hearing must be named.
- B. Findings of Fact - The facts upon which the decision is rendered are contained in this section.
- C. Conclusions of Law - This part will summarize the appropriate program policy which will either validate or invalidate the debt.
- D. Decision - This part contains the decision. Based upon the facts presented and the appropriate conclusions of law, a decision is rendered. The decision will determine if the debt is valid. If so, then the tax refund would be intercepted, if not, then it would be released.

2006.14.0 Notification of Decision

The Final Order will be issued to the taxpayer and the designated Collection Officer for Accounts Receivable and the Overpayment Recovery Section.

2006.15.0 Judicial Review

- 2006.15.1 Hearing decisions adverse to the household are sent via certified mail, return receipt requested. This procedure ensures that timely filing for judicial review may be ascertained.
- 2006.15.2 Households not satisfied with an Administrative Hearing decision have the right to judicial review under the Administrative Procedures Act.
- 2006.15.3 The household must file a petition in the Circuit Court of the county in which the household lives or does business or in the Circuit Court of Pulaski County within thirty days of the date the household received the Administrative Hearing decision. Copies of the petition are served on DEMS and other parties of record by personal delivery or mail.
- 2006.15.4 Within thirty days from the date of the service of the petition on DEMS (or additional time granted by the Court, not to exceed ninety days total), the Office of General Counsel must transmit to the Court the original or a certified copy of the entire record of the hearing under review.

2006.15.5 The review will be conducted by the Court without jury and will be confined to the record unless a question of irregularity in procedure exists which is not indicated in the record. Testimony may then be taken before the Court.

2006.16.0 Allocation Of State Tax Refund

A State (Income) Tax Refund intercepted to apply to debts owed the State is normally allocated within the Department as follows:

- If only one account exists for an individual in only one category, the refund amount is amount is applied in its entirety to that debt.
- If more than one account exists for an individual, the refund amount is applied according to the priority of assignment within DHS.

2006.17.0 Priority of Assignment Within DHS

| <u>Priority</u> | <u>Category</u> | <u>Sub-Category</u> |
|-----------------|-------------------------------------|--|
| 1 | Court Ordered Accounts | Any account under court order currently in arrears |
| 2 | Child Support Accounts | 01 AFDC Child Support 02 non-AFDC Child Support |
| 3 | Recipient Overpayment Accounts | 05 Food Stamps 19 Medicaid 20 AFDC 30 Foster Care/State Funded 31 Foster Care/Mixed Funding 50 Third Party Reimbursement 60 CSEU Related 90 Miscellaneous |
| 4 | Developmental Disabilities Accounts | 03 DDS |
| 5 | Mental Health Accounts | 04 MH |

Any excess refund remaining after the full amount of the debt is satisfied is returned to the taxpayer.

2006.18.0 Department Contact

Department of Human Services

Division of Finance and Administration
Administrator
Accounts Receivable
Donaghey Plaza West
Slot WG-2
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Telephone: (501) 682-6421