Treasury Offset Program (TOP)
What is TOP?

• TOP is a federal offset program, operating since 1996, to collect debts owed to the federal government and the states.
• Delinquent debts are submitted by “creditor agencies” that certify the debts qualify for collection under TOP.
• When a governmental agency is paying a business (e.g., a federal contractor or a business receiving an IRS refund), debtor information is compared to see if taxpayer’s identification number (TIN) and name match.
• If there is a match, an offset is made, and continued to be made until the debt is satisfied.
What Qualifies for a TOP Offset?

- Federal or applicable state debt
- Delinquent and legally enforceable (e.g., not in bankruptcy or in litigation)
- $25 or more is owed
- Delinquent debts are submitted by “creditor agencies” that certify the debts qualify for collection under TOP
- Due process safeguard requires at least 60-day prior notice to debtor of intent to offset and notice must explain debtor’s right to dispute the debt and/or obtain more information about the debt
- States send out their own notices when offsetting federal debts
State TOP Participation

• There are five programs in which a state can participate under TOP:

  • **Child Support Program** – all states - $1.76 billion FY 18
  • **Income Tax Program** – 42 states - $564 million FY 18
  • **SNAP** – all states except VT - $208 million FY 18
  • **State Reciprocal Program** – 12 states - $84 million FY 18
  • **Unemployment Compensation** – 49 states - $300 million

Total Offsets for State TOP - FY 2018: $2.9 billion
State Reciprocal Program (SRP)

- State Reciprocal Program is a federal offset program, started in 2007, that by agreement allows non-tax delinquent debts owed to a federal or state agency to be offset – 12 states participated in SRP in FY 2017

<table>
<thead>
<tr>
<th>Participating states with FY 2017 Recovery</th>
<th>$85.2 million</th>
</tr>
</thead>
<tbody>
<tr>
<td>District of Columbia - $27.3 million</td>
<td>New Jersey - $5.3 million</td>
</tr>
<tr>
<td>Kansas – $0.7 million</td>
<td>New York - $15.1 million</td>
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<tr>
<td>Kentucky - $10.5 million</td>
<td>Oregon - $1.8 million</td>
</tr>
<tr>
<td>Louisiana - $3.3 million</td>
<td>Virginia - $3.2 million</td>
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<tr>
<td>Maryland - $7.1 million</td>
<td>West Virginia - $0.7 million</td>
</tr>
<tr>
<td>Minnesota - $7 million</td>
<td>Wisconsin – $3.2 million</td>
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Issues Arising from TOP/SRP

- **Failure of Due Process**
  - Debts are certified that are not legally enforceable
    - Still a pending administrative determination
    - Still subject to or was appealed
  - Debt notice not sent to correct location at least 60 days prior
    - Some notices are generic and contained in a billing notice/assessment – a specific notice of a debt is not sent to avoid duplicative certified mail charge
    - Notice is not clear on what the debt is for and offset language is often buried in the notice
    - Notice goes to the wrong location – e.g., for combined return filers – the address of the entity with the debt may not be the same as that used for the filing of the combined return
- **Attempt to offset debt from affiliated entity**
  - There should be a TIN and name match and the liability of tax taxpayer group should not be offset for the debt of an affiliated entity in that group
Issues Arising from TOP/SRP

- **Lack of Communication between Offset Agency & Creditor**
  - Agency with the debt often unable to readily determine what the debt was for and where it was applied
  - Offset agency often does not know what another agency’s debt being offset was for – this is especially true with the SRP
  - Lack of good contact person
  - Lack of account number, billing period, etc.
  - Delay in creditor agency responding to and determining what the debt is for
  - Offsetting an administrative determination that is still pending/appealed

- **Poor Reconciliation Results in Over-Collection of Debt**
  - Multiple TOP offsets that are each below total debt amount but together result in overcollection of the debt
    - Hard to work with all the agencies to reconcile overpayment
    - Also hard to internally (within the business’s books and records) to address the offset

- **Claimed Recovery Amounts Are Overstated**
  - Wrongly treats many businesses debts as “delinquent” and reconciliation work, both for businesses and the government agencies, to address an offset can be very burdensome – different than individuals

- **Services to Government Cutoff Due to Offset**
  - An offset could be applied to a government payment for a service, e.g., fuel or communications, and the service is disrupted because the business identifies it as a non-payment
Examples of TOP/SRP Issues from NCSL Taskforce Sponsors
Our ask …
Solutions to State TOP Issues

- Pressure/Require offsetting agency (e.g., revenue agency) to provide adequate notice separate from any billing notice issued by the agency
- Review state’s participation in the SRP
- Require designated person to handle issues with TOP for all agencies
  - Could be revenue department’s problem resolution office/officer
Questions?

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