

Treasury Offset Program (TOP)

TOP Database

Payments

Debts

PRESENTED BY:

XXX
XXX
XXX

TOP Database

Payee Name & TIN match
Debtor Name & TIN

No

- Call Payee or EFT

Yes

- Notice to Debtor
- SS to Creditor Agency

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

TOP Database

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

Payments

- **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)

TOP Database

- 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

Participating states with FY 2017 Recovery - \$85.2 million

District of Columbia - \$27.3 million	New Jersey - \$5.3 million
Kansas – \$0.7 million	New York - \$15.1 million
Kentucky - \$10.5 million	Oregon - \$1.8 million
Louisiana - \$3.3 million	Virginia - \$3.2 million
Maryland - \$7.1 million	West Virginia - \$0.7 million
Minnesota - \$7 million	Wisconsin – \$3.2 million

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

TOP Database

Payments

Debts

Questions?

Does Payee Name
Match
Debtor Name & TIN

No

- Call
Payee or EFT

Yes

- Notice to Deb
- SS to Creditor
Agency

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