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Governor

NEW YORK STATE
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE
40 NORTH PEARL STREET
ALBANY, NY 12243-0001

Robert Doar
Commissioner

Informational Letter

Section 1

Transmittal:	06-INF-06
To:	Local District Commissioners
Issuing Division/Office:	Employment and Transitional Supports
Date:	February 6, 2006
Subject:	State Tax Refund Offset Program (STROP): <u>Watts v. Wing</u> – Settlement Terms
Suggested Distribution:	Temporary Assistance Staff STROP Contacts Resource and Recovery Staff Accounting Staff
Contact Person(s):	Temporary Assistance Bureau at 1-800-343-8859, extension 4-9344 Medicaid Local District Liaison: Upstate (518) 474-8887; NYC (212) 417-4500
Attachments:	Attachment 1 – Re-notice Attachment 2 – Review Request Form Attachment 3 – A Letter to You From Your Lawyers Attachment 4 – Client Appeal Review Worksheet Attachment 5 – Informational letter regarding child support
Attachment Available On – Line:	<input checked="" type="checkbox"/>

Filing References

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
00 ADM-4 05 INF-7		352.31(d)(5) Part 358 Part 374	SSL 106-c, Tax Law Section 171-f		June 9, 1998 Memo to STROP Contacts Re. Suspension of STROP GIS 03 TA/DC004 GIS 05 TA/DC038

Section 2

I. Purpose

The purpose of this release is to provide information about the settlement terms of the State Tax Refund Offset Program (STROP) and how those terms affect local district social services (LDSSs).

II. Background

STROP was suspended effective May 20 1998, due to a court injunction in Butler v. Wing. Local district STROP contacts were notified of the suspension on June 9, 1998.

STROP was one of the methods available to LDSSs for the collection of Temporary Assistance (TA) overpayments. Such TA debts certified to STROP in tax years 1995, 1996, or 1997 were collected from debtors' State tax refunds 1996, 1997, or 1998.

In GIS 03 TA/DC004, LDSSs were advised to retain their records supporting the debts certified to STROP even if those records were at the end of the period otherwise required for record retention.

GIS 05 TA/DC038 advised LDSSs that the order approving the dates on the STROP settlement poster had been signed and that the posters were required to be displayed no later than October 11, 2005 and until close of business on December 5, 2005. The posters informed potential class members of their right to go to the court hearing and to comment on the settlement before the final determination of the court to approve the settlement.

The settlement has been approved by the court. Notices (Attachment 1), referred to as "re-notices", will be sent to Watts class members. The expected start month of the mailings is February, 2006 when the NYS Department of Taxation and Finance (DTF), the State agency that intercepted the State taxes of the class members, will begin to send re-notices on behalf of OTDA. Re-notices will be mailed by DTF to a portion of the class members each month through December, 2006.

DTF will identify to OTDA those individuals whose re-notice was returned to DTF as undeliverable and OTDA will attempt to find a current address on WMS.

In the year following the original mailing, DTF will send re-notices to the individuals still remaining on the undeliverable list.

III. Program Implications

A. OTDA will handle the requests for review by class members, and issue refunds if appropriate. However, LDSSs will have the responsibility to:

1. Tell class members who receive the re-notice and question it, that they must request their review within 60 days of the date of the re-notice or lose their right to a review. The Review Request Form (Attachment 2) and a postage paid return envelope are provided in the same envelope with the re-notice. The information that the class members receive also includes "A Letter to You from Your Lawyers" (Attachment 3).

In the event that the individual asks the LDSS for a mailing address for the Review Request Form, the address is:

ATTN: STROP
A&QC Riverview Center, 4th Floor
NYS Office of Temporary and Disability Assistance
40 North Pearl Street
Albany, NY 12214-0737

2. Complete and return the State supplied STROP Review Worksheet as requested by the OTDA A&QC staff conducting STROP administrative reviews for class members who request such reviews. Attachment 4 is the State Review Worksheet. The administrative review will determine if one of the following sets of circumstances exists:

- a. The individual's temporary assistance case record does not contain any of the following documentation:
 - i. An initial notice of overpayment for the underlying debt, dated more than 30 days prior to the effective date of case closing, which advises the recipient of a right to a fair hearing;
 - ii. A Decision After Fair Hearing confirming that the underlying debt was owed;
 - iii. A court order confirming that the underlying debt was owed; or
 - iv. Documentation that the debt had been either agreed or determined to be an Intention Program Violation;
- b. The individual was a current recipient of (public) temporary assistance on the date the offset was made;
- c. The individual was mistakenly identified as owing a debt to OTDA when another individual was in fact the debtor;
- d. A bankruptcy petition was filed by the individual after the debt to OTDA had accrued and there currently exists proof of the existence of an automatic stay or of a subsequent discharge in bankruptcy at the time of offset; or
- e. The overpayment amount for the public assistance debt was overstated because the amount collected by DTF was inconsistent with the LDSS's records.

When the Administrative Review establishes that one of the circumstances described above exists, the individual will be entitled to a refund of the amount offset except when the basis for the refund is that the amount of the debt was overstated, only the overstated amount will be refunded.

3. When a class member is entitled to a refund, the refund will be issued by OTDA. See Section B below for information about the issuance and fiscal implication of the STROP refunds.
4. When a class member is entitled to a refund, **the debt that was the basis for the refund must be terminated**, even if there is a balance unrelated to the STROP collection. See Section C below.
5. Class members who are not entitled to a refund will receive an informational letter regarding child support (Attachment 5) with their OTDA denial letter. The informational letter will tell individuals that if child support was collected during the period the debt was incurred, they may be eligible for a reduction in the debt if child support was collected in an amount that should have reduced the debt, but was not considered. The LDSS must conduct a review of the child support collections if requested by a class member who is denied a refund. The LDSS must provide the individual with the result of the review in writing.
6. Treatment of the STROP refund for TA, FS and Medicaid:
 - f. Temporary Assistance: The payment is not countable as income or as a resource to the TA household.
 - g. Food Stamps: The payment is not countable as income or as a resource for FS.
 - h. Medicaid: The refund is not countable as income or as a resource to the Medicaid household.

B: Fiscal Implications:

The State will pay 100% of the refunds. The OTDA will not charge back a local share to the districts for these refunds, solely on the basis of the dollar amount being relatively minor, the age of the issue and the difficulty in allocating the amounts to districts with the passage of time. This action is not precedent setting.

C: CAMS/Local Overpayment Tracking Systems:

OTDA will issue refunds and notify the local districts of the case number, SSN, and amount collected so that the district can identify and terminate the related claim based on how the collection was posted when collected. OTDA will not automatically terminate the claims. Each local district must identify and terminate the claim related to the refunds for their district.

When a class member is entitled to a refund, the debt that was the basis for the refund must be terminated using the new termination code T70 "STROP Lawsuit" even if there is a balance unrelated to the STROP collection. This termination should occur on the Cash Management System (CAMS) if the debt appears on CAMS. The termination should also occur on any local overpayment tracking system employed on the district level outside of CAMS.

For NYC claims on WMS, the claim must be suspended (PA Recoupment Action Code 3) which translates to "terminate" on CAMS.

Issued By _____
Name: **Russell Sykes**
Title: **Deputy Commissioner**
Division/Office: **Employment and Transitional Supports**

NOTICE

(CONSULTE LA VERSION EN ESPANOL DE ESTE AVISO)

[Date]

[Name of Plaintiff]
[Address of Plaintiff]

Re: Past Offset of Public Assistance Debt
County/Case Number [County/Case No.]

Dear Sir or Madam:

In 1997 and/or 1998, all or part of your state income tax refund was taken ("offset") to pay for the public assistance overpayment debt described below. We referred your debt to the New York State Department of Taxation and Finance ("Tax Department") because the records of your local social services district showed that you owed the New York State Office of Temporary and Disability Assistance ("OTDA") for a past overpayment of public assistance benefits.

Amount of overpayment debt:
Amount of debt actually offset:
Year of offset:

We are sending you this notice because of the settlement of a class action lawsuit. Because your tax refund was offset, you are considered a member of the plaintiff class in that case. As a result of the settlement, we are giving you an opportunity to request a review about whether your debt should have been referred to the Tax Department for offset against your tax refund. If you want a review, you must request it **within 60 days of the date of this notice on the form we have enclosed with this letter**. If we conclude that your debt should not have been offset in whole or in part, we will refund to you the amount that should not have been taken. However, you may still have other debts to OTDA that remain subject to collection.

A letter to you from the attorneys for the plaintiff class in the lawsuit providing additional information is enclosed. Please read this notice and the enclosed letter from the plaintiffs' attorneys carefully and consider what action, if any, you wish to take in connection with the review process described above.

Should You Ask for a Review?

If any of the following circumstances is true, you should notify us by requesting a review:

1. You never received a notice about the overpayment debt that offered you an opportunity to contest it at a fair hearing;
2. You were denied a fair hearing because your public assistance case was closed;
3. You were receiving public assistance on the date your tax refund was taken;
4. You were mistakenly identified as owing an overpayment debt when another individual was in fact the debtor;

5. You filed for bankruptcy and the automatic bankruptcy stay was in effect at the time your tax refund was taken or the debt had been discharged by the bankruptcy court before your tax refund was taken (if this applies, you should send documents showing when the bankruptcy petition was filed and a copy of the order of discharge); or
6. Your overpayment amount was overstated and there was an over-collection of your tax refund.

How to Ask for a Review

If you decide to request a review, you must complete the enclosed form ("REVIEW REQUEST FORM") with your signature, social security number, current mailing address, and the date, and mail it in the enclosed pre-addressed, postage-paid envelope, **within 60 days of the date of this notice**. If you believe your debt should not have been offset because you were involved in a bankruptcy proceeding, you must send documentation showing when the bankruptcy petition was filed and a copy of the order of discharge.

We will inform you in writing of our decision about your offset no more than seven months after we receive your request for a review.

If you have any questions about this letter or want more information about your overpayment debt, you may contact your local social services district. However, to obtain a review it is **not enough** just to contact your local social services district. You **must** make a written request for review in accordance with the procedure described above.

If you make or provide any knowingly false or frivolous statements, representations, or evidence, you may be liable for civil and/or criminal penalties under applicable law.

REVIEW REQUEST FORM

IF YOU WISH TO REQUEST A REVIEW OF YOUR OFFSET, PLEASE FILL IN YOUR SOCIAL SECURITY NUMBER, YOUR MAILING ADDRESS, YOUR SIGNATURE, AND TODAY'S DATE IN THE BLANKS ON THIS FORM, AND MAIL THE FORM IN THE ENCLOSED PRE-ADDRESSED, POSTAGE-PAID ENVELOPE.



CONTROL #:

NAME: _____

SSN:

CASE NUMBER: _____

District:

MAILING ADDRESS:

Street name and number and apartment number (if any), or P.O. Box

City

State

Zip Code

I HEREBY REQUEST A REVIEW OF THE OFFSET OF MY PUBLIC ASSISTANCE (PA) DEBT.

SIGNATURE _____

DATE _____

If you believe your debt should not have been offset because you were involved in a bankruptcy proceeding, you must send documentation showing when the bankruptcy petition was filed and a copy of the order of discharge.

A Letter to You From Your Lawyers

Dear Sir or Madam:

Do not worry. The notice you are getting in this envelope from the Office of Temporary and Disability Assistance (OTDA) is not to tell you that you owe money to OTDA. It is not a bill.

OTDA's notice is only to tell you that, some time during 1997 and/or 1998, they took some or all of your New York State income tax refund. OTDA took your refund back then because they decided you owed money for a past overpayment of public assistance (welfare).

Before the State can take your tax refund to repay a debt, they are supposed to follow certain rules. Because we believed OTDA did not follow all the rules, we filed two class action lawsuits called Watts v. Wing and Danzler v. Wing. We filed these cases for everyone like you, who had their income tax refunds taken during 1997 and/or 1998 by OTDA to collect past overpayments of public assistance.

These lawsuits have now been settled. Because of the settlement, OTDA is giving you this chance to ask for a review of your case. If you ask for a review by completing and submitting the enclosed form to OTDA, OTDA will look at your file to see if all the rules were followed before they took your tax refund. If the rules were not followed, OTDA will return some or all of the tax refund taken.

A form is enclosed for you to sign and return in the pre-addressed envelope if you want OTDA to review your case. You must sign and return the form within the next 60 days if you want the review. We strongly advise you to ask for a review if you think that your tax refund was improperly taken to collect the overpayment debt.

OTDA will notify you of its decision after its review. If OTDA decides some or all of your money should not have been taken, you will get some or all of your income tax refund returned to you.

Sincerely yours,

Jane Greengold Stevens, Esq.
Constance P. Carden, Esq.
New York Legal Assistance Group
450 West 33rd Street, 11th Floor
New York, NY 10001-2603
Plaintiffs' Lawyers in Watts v. Wing

Susan C. Antos, Esq.
Barbara Weiner, Esq.
Greater Upstate Law Project, Inc.
119 Washington Avenue
Albany, New York 12210
Plaintiffs' Lawyers in Danzler v. Wing

STROP REVIEW

State Tax Refund Offset Program (STROP)

Client Appeal Review Worksheet

Instructions: Complete as instructed below. **If the STROP Referral involves multiple claims, a separate worksheet must be completed for each claim.**

County _____ Case Name _____

Case Number _____ Offset Amount _____

PLEASE NOTE: NO REVIEW IS REQUIRED IF ALL OF THE OFFSET WAS ALREADY REFUNDED TO THE DEBTOR BY THE DISTRICT!

Was the entire offset refunded? ____ YES ____ No (NO REVIEW REQUIRED) Please advise below of the reason and date of the refund.

Was part of the offset refunded?

____ YES (What is the amount refunded?_____)

____ NO, no amount was refunded (YES or NO, continue to 1.A.)

1.A. Is the initial NOTICE OF OVERPAYMENT for the overpayment claim(s) in question available? (If YES, please attach a copy).

____ YES (go to 1B) ____ NO (go to 1C)

1.B. Was the case active for at least 30 days after the date of the notice?

____ YES (go to Part 2) ____ NO (go to 1C)

1C. Is there a Fair Hearing decision or Court Order upholding the overpayment claim? (If Yes, please attach copy).

____ YES (go to Part 2)

_____ NO (STOP – The review is completed. The claim in question is not certifiable to STROP and must be terminated from CAMS/WMS. Complete the Claims Disposition section on page 4 and check Disposition code A.)

Comments: _____

2. Is the Debtor identity correct? Does the SSN and/or the name of the person responsible for the claim in question correspond with the case record information (i.e. member of the household at the time the overpayment occurred.)?

_____ YES (go to Part 3)

_____ NO (STOP – The review is completed. The claim in question is not certifiable to STROP and must be terminated from CAMS/WMS. Complete the Claims Disposition section on page 4 and check Disposition code C.

Comments: _____

3. Did the client provide information concerning a bankruptcy or are there documents in the case record that indicate the client filed for bankruptcy?

_____ YES (STOP! The Appeal Review is completed. The claim in question is not certifiable for STROP. Complete the Claims Disposition section on page 4 and check Disposition Code D.)

_____ NO (go to Part 4)

4. Was client an active PA recipient at the time that the offset was made?

_____ YES (STOP! The Appeal Review is completed. The claim in question is not certifiable for STROP. Complete the Claims Disposition section on page 4 and check Disposition Code B.)

_____ NO (go to Part 5)

5. Was the delinquent PA overpayment claim amount reported correctly? (i.e. Does it reconcile with CAMS/WMS or local district accounting information and were any/all payments correctly posted and only the net amount reported for STROP Referral?).

_____ YES

_____ **NO STOP!** The Review can not be completed until the claim in question is revised. Once revised, complete the Claims Disposition section on page 4 and check Claim Disposition code E.

Revised Claim Amount \$ _____

Review is complete. If no other codes were checked the claim is certifiable for STROP as reviewed. Complete the Claims Disposition section on page 4 and check Claims Disposition code F.

CLAIMS DISPOSITION (Check as directed)

NON-CERTIFIABLE CODES

- A. _____ Claim is NOT Certifiable. Initial notice and/or fair hearing/court decision upholding the debt was not found.
- B. _____ Claim is NOT Certifiable as debtor was an active PA recipient at the time of the offset.
- C. _____ Claim is NOT Certifiable as Debtor identity is not accurate.
- D. _____ Claim is NOT Certifiable because of bankruptcy.

CERTIFIABLE CODES

- E. _____ Claim is Certifiable but debt amount is revised.
- F. _____ Claim is Certifiable. All appropriate documentation is present.

I certify that the information provided in this worksheet is correct and is based upon a review of the Public Assistance claims file and a current WMS/CAMS printout.

Name _____ Title _____ Date _____

Signature _____

Supervisor Name _____ Signature _____

Date _____

We took your tax refund in 199X to recover a public assistance overpayment in the amount of _____ for the months of _____. If child support was collected on your behalf by the local social services district during any of these months, you may be able to reduce the debt that you owe. This is true if:

1. Child support was collected and kept by the local social services district during any month that you were overpaid.
2. The child support collected was paid when it was due. This is called "current" child support and means it can not be a payment on arrears.
3. The child support collected has not already been applied to reduce your debt.

ALL THREE STATEMENTS MUST BE TRUE IN ORDER TO POSSIBLY REDUCE YOUR DEBT.

The child support collected in the month is applied first against correctly paid public assistance. So, if you had an overpayment in a month but you were still eligible for some public assistance, you may not be eligible for any reduction in your debt.

If "current" child support was collected on your behalf by the local social services district, the first \$50, often called the "pass-through" or "bonus," should have been passed through to you and the remainder kept by the social services district to reimburse them for the public assistance that they paid you. It is only the amount beyond this \$50 that may reduce your debt.

If you believe that current child support was collected on your behalf in any month that you were assessed an overpayment, contact your local social services district at _____ [local address and phone number].