

OFFICE OF THE GENERAL COUNSEL  
Division of Operations-Management

MEMORANDUM OM 97-46

July 7, 1997

TO: All Regional Directors, Officers-in-Charge,  
and Resident Officers

FROM: Richard A. Siegel, Acting Associate General Counsel

SUBJECT: Federal Income Tax Refund Offset - Required Submission  
of Information for 1997

This is to request your assistance in the prompt completion and return of the special chart attached in electronic format by **July 28, 1997** so that your responses can be put in appropriate form and submitted to the Internal Revenue Service by August 1. Submission to the IRS by August 1 is required by IRS regulations to permit other agencies, including the NLRB, to utilize federal income tax refund offset.

By Memorandum dated July 5, 1996 (OM 96-47), Regions were informed of the Board's enactment of Rules (29 CFR Part 102, Subparts V and W) that for the first time allow the Agency to utilize two sections of the Debt Collection Act of 1982, 31 U.S.C. Chapter 37, that may prove to be of substantial benefit to the Board in our efforts to more efficiently and effectively carry out the Agency's compliance functions.<sup>1</sup> The first, "administrative offset" (31 U.S.C. §3716), provides a mechanism for obtaining satisfaction of the Board's backpay claims by, in effect, garnishing amounts owed to our respondents by other Government agencies.<sup>2</sup> The second, "Federal income tax refund offset" (31 U.S.C. §3720A), allow us, in effect, to garnish income tax refunds owed to individual and corporate Respondents against whom we have unsatisfied backpay claims. A full set of the applicable Rules are attached to OM Memorandum 96-47.

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<sup>1</sup> The Debt Collection Act of 1982 was first utilized by the Agency in 1995, when the Contempt Litigation Branch successfully employed provisions of that act in order to ensure that sufficient assets of a respondent would be available to satisfy backpay claims arising from the Board's decision in *Alaska Pulp Corp.*, 296 NLRB 1260 ("APC"). In that action, undertaken pursuant to 31 U.S.C. §3728, the General Accounting Office agreed to withhold payment of a judgment award owed to APC by the U.S. Forest Service, in order that the proceeds of that judgment would be available to satisfy the Board's backpay claims. Ultimately, in excess of \$10 million was remitted to the Board to be held in escrow pending final resolution of the Board's backpay proceedings.

<sup>2</sup> This would apply, for example, where a respondent in a Board action against whom we have obtained a money judgment has provided goods or services to another agency or Department of the Federal Government, and is owed money as a result. Through utilization of administrative offset procedures, such moneys would be paid to the Board to the extent necessary to satisfy our judgment.

As required by the Debt Collection Act of 1982, the Rules adopted by the Board require that specific procedural steps be followed before we may utilize offset procedures to collect judgment debts owed to the Board. Moreover, with respect to the Agency's use of Federal income tax refund offset for the 1997 tax year, we are required to provide the Internal Revenue Service with certain specified information by not later than August 1, 1996. In this regard, all such information must be provided to the IRS in specified format through a computer software linkup that has been installed in the Finance Branch at headquarters. Attached hereto is a form to be utilized by all Regions in setting forth the required information regarding all respondents against whom we have unsatisfied monetary claims, the amounts of which have been liquidated by Board order and/or court judgment.<sup>3</sup> Please note, that in order to utilize these offset procedures, it is necessary to provide the IRS with **all** information indicated, including respondents' Federal income tax identification numbers (in the case of businesses) or social security numbers (in the case of individual respondents). In the case of employer-respondents, such information, if not otherwise available, should be readily obtainable from the most recent W-2 or 1099 forms provided to backpay claimants by the employer. However, even if such information is not immediately available, all other information should be listed, since it may be possible to obtain missing data from Dun and Bradstreet, CDB Infotek, or other databases.<sup>4</sup>

**Completed offset information sheets should be forwarded simultaneously to the Contempt Litigation and Compliance Branch by E-mail (in care of Paralegal Catherine Quick), and to the Finance Branch (in care of Sondra Rhodes). The requested information should be provided as soon as possible, and in any case must be received in Washington by not later than July 28, 1996. Completed forms must be returned electronically (by E-mail) so that the data may be input in the format required by the IRS.**

Following receipt of the requested information, all steps necessary to effect collection through Federal income tax refund offset will, at least for the 1997 tax year, be handled through headquarters. To the extent that offset procedures result in the

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<sup>3</sup> All open cases in which monetary claims have been liquidated through a Board order and/or court judgment must be listed. This will include all cases listed 1996, unless the claim has been fully satisfied. Should a Region wish to exclude specific cases from collection through the Federal income tax refund offset program (for example, because a respondent is making timely payments pursuant to an installment payment plan), that exemption must be specifically noted on the reporting form, by inserting the word "no" in the column captioned "Utilize Offset?." In those cases where a bankruptcy petition has been filed by a respondent, and is pending, this fact must be denoted by placement of the letter "B" in the column captioned "Utilize Offset?." In light of the automatic stay provisions of the Bankruptcy Code, offset will generally not be available in such cases, unless the petition is dismissed or the Board's debt is declared nondischargeable. Additional guidance for completing the attached form is provided in the footnotes thereto.

<sup>4</sup> If tax identification or social security numbers are not available for certain respondents, and cannot be obtained by the Region, please provide the last known address(es) of each such respondent, in order that appropriate database searches may be conducted at headquarters. Henceforth, such information should be obtained as part of the processing of all compliance cases.

receipt of funds from the Treasury, each Region will be immediately notified so that appropriate distributions may be made.

Since the Agency's use of administrative offset and Federal income tax refund offset is still in the experimental stage, use of these procedures will continue to be coordinated through the Contempt Litigation and Compliance Branch.<sup>5</sup> Any questions regarding the use of these offset procedures should be directed to the Contempt Branch or your AGC.

R. A. S.

Attachment

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<sup>5</sup> In those situations in which a Region identifies any case(s) with respect to which administrative offset appears to be available, this information should immediately be brought to the attention of the Contempt Litigation and Compliance Branch, and clearance from that Branch should be obtained prior to the initiation of any administrative offset action.







