

13965, (eff 5-16-24)

Readopt with amendment Emp 409, effective 9-27-13 (Document #10424), to read as follows:

Emp 409.01 Purpose. The purpose of this part is to address the requirements for offset of tax refund payments against unpaid benefit overpayments pursuant to 31 C.F.R. 285.8 and proper criteria for forbearance.

Emp 409.02 Definitions. For purposes of this part:

(a) “Debt” means past-due, legally enforceable overpayment of unemployment compensation benefits plus penalties and interest;

(b) “Department” means the department of employment security;

(c) “Individual” means a person who owes a debt;

(d) “Fiscal Service” means a bureau of that name in the Department of the Treasury;

(e) “Immediate family” means spouse, parent, and minor child under the age of 18 whether the relationship is a biological, adoption, step-, half-, or in-law relationship;

(f) “Internal Revenue Service (IRS)” means a bureau of that name in the Department of the Treasury;

(g) “Tax refund offset” means withholding or reducing a tax refund overpayment by an amount necessary to satisfy a debt owed by the payee(s) pursuant to 26 U.S.C. 6402(a);

(h) “Tax refund payment” means any overpayment of federal taxes to be refunded to the person making the overpayment after the IRS makes the appropriate credits as provided in 26 U.S.C. 6402(a) and 26 CFR 301.6402–3(a)(6)(i) for any liabilities for any federal tax on the part of the person who made the overpayment; and

(i) “Overpayment debt” means “covered unemployment compensation debt” as defined in 26 U.S.C. 6402(f)(4). The term includes:

(1) A “past-due debt for erroneous payment of unemployment compensation benefits due to fraud or the person's failure to report earnings which has become final under the law of a State certified by the Secretary of Labor pursuant to 26 U.S.C. 3304 and which remains uncollected; and

(2) Any penalties and interest assessed on such debt.”

Emp 409.03 Advance Notification and Opportunity to Present Evidence.

(a) The department shall provide a written notification to the individual by U.S. mail, to the individual's last known address, informing the individual that the department intends to refer the debt for collection by federal tax refund offset and advising the individual of the individual's rights and limitations under Emp 409.03 (b), (d), (f), (i), and (j). Such written notification shall inform the individual that the individual has the right to request forbearance.

(b) The individual shall have 60 days to present documentation that all or part of the overpayment debt is not past due, not legally enforceable, or is not due to fraud or the individual's failure to report earnings.

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(c) The department shall consider any documentation presented by an individual in response to the notice described in Emp 409.03(a) and determine whether an amount of such overpayment debt is not past due, not legally enforceable, or is not due to fraud or the individual's failure to report earnings.

(d) The individual shall not have new or further right to appeal, or otherwise have reviewed on the merits, any final determination which determined the individual's overpayment debt and which the individual already had rights of appeal under RSA 282-A:42-68.

(e) The department shall advise the individual of its determination under Emp 409.03(c) in writing and shall notify the individual of the individual's right to submit a request for reconsideration.

(f) If the individual disagrees with the department's determination under Emp 409.03 (c), the individual may submit a written request for reconsideration to the commissioner within 14 days of the date of the notice of the department's determination. Requests for reconsideration postmarked or received later than 14 days after the date of the notice of the department's determination shall not be considered unless the commissioner or the commissioner's designee finds sufficient grounds to justify or excuse the individual from filing a timely request for reconsideration.

(g) For purposes of this section, sufficient grounds shall include any unforeseeable circumstance beyond the individual's control that prevented the individual from making a timely request for reconsideration.

(h) The commissioner's review shall be on the record. If reconsideration is requested, the commissioner shall designate a person to participate in the commissioner's review who shall be different than any person who was designated to make the initial determination in accordance with Emp 409.03 (c).

(i) The department shall advise the individual of the commissioner's determination under Emp 409.03(h) in writing. The department shall also notify the individual(s) that if they believe that the department incorrectly certified that their overpayment debt is either past due, legally enforceable, or the debt is due to fraud or the individual's failure to report earnings, the individual may file a complaint with Fiscal Service. The department shall provide the individual with the address and telephone number for Fiscal Service.

(j) The individual may contact the department to request that the department grant forbearance in whole or in part if the tax refund offset would cause extreme financial hardship pursuant to Emp 409.08.

Emp 409.04 Certification. Upon satisfying the requirements of Emp 409.03, the department shall certify overpayment debts for tax refund offset with Fiscal Service in accordance with the procedures set forth in 31 C.F.R. 285.8, unless the department determines that forbearance is appropriate pursuant to Emp 409.05-Emp 409.07.

Emp 409.05 Forbearance.

(a) For any overpayment debt which is certified, or would otherwise be certified, pursuant to Emp 409.04, the department shall, to the extent it determines that offset of all or part of the federal tax refund will cause extreme financial hardship to the individual or a member of the individual's immediate family:

- (1) Not certify such overpayment debt;
- (2) Reduce the amount of such certification; or
- (3) Return, in whole or in part, tax refund offset moneys to the individual.

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(b) Forbearance which is granted in whole or in part shall only apply to the tax year at issue in the debtor's request for forbearance.

Emp 409.06 Contents of Request For Forbearance.

(a) A request for forbearance by an individual shall be in writing and shall include:

- (1) The individual's name and address;
- (2) An explanation of the reasons why the individual believes that the amount of the offset or proposed offset will cause extreme financial hardship to the individual or a member of the individual's immediate family, and copies of any documents that the individual wishes to have considered in support of the individual's claim of extreme financial hardship;
- (3) An alternative offset proposal, if any;
- (4) The following information:
 - a. Current marital status;
 - b. Tax filing status for the tax year in question;
 - c. Income from all sources;
 - d. Assets;
 - e. Liabilities;
 - f. Names and ages of dependents;
 - g. Expenses for food, housing, heat, electricity, water, clothing, and transportation;
 - h. Medical expenses; and
 - i. Exceptional expenses, if any;
- (5) Documents as requested by the department in connection with the request for forbearance;
- (6) Copies of all documents that the individual wishes to have considered to support the objections raised by the individual regarding the claim of extreme financial hardship;
- (7) Certification that all statements and attachments are true to the best of the individual's knowledge and belief; and
- (8) The individual's signature.

(b) The individual may submit the information required in (a) on a Request for Forbearance of Federal Income Tax Refund form provided by the department. The department shall make such a form available to the individual upon request, or if the request for forbearance is incomplete.

(c) The individual shall provide the department with the documentation and information described in Emp 409.06 (a) within 20 days of the department's request for such documentation and information, unless sufficient grounds for extension of the 20 days is shown.

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(d) For purposes of this section, sufficient grounds shall include any unforeseeable circumstance beyond the individual's control that prevented the individual from making a timely request for reconsideration.

Emp 409.07 Injured Spouse Allocation.

(a) The department shall not consider a request for forbearance until the individual has demonstrated through documentation the individual's tax filing status for the tax year in question for which a tax refund offset may be, or has been, certified by the department to satisfy a debt owed by the individual.

(b) If the individual's tax filing status is such that another individual would be entitled to file a request for injured spouse allocation with the IRS in order to claim a portion of the tax refund, the department shall not consider a request for forbearance until the injured spouse allocation process with the IRS has been exhausted.

(c) If following exhaustion of the injured spouse allocation process, the individual demonstrates through documentation that the injured spouse allocation request has been rejected by the IRS, the department shall then consider a request for forbearance.

Emp 409.08 Extreme Financial Hardship.

(a) In determining whether an individual has established that offset of all or part of the federal tax refund will cause extreme financial hardship to the individual or a member of the individual's immediate family, the department shall determine whether the credible, relevant documentation submitted demonstrates that the offset or proposed offset would prevent the individual from meeting the costs necessarily incurred for essential subsistence expenses of the individual and the individual's spouse and dependents.

(b) For purposes of this determination, essential subsistence expenses shall include costs incurred only for food, housing, utilities, clothing, essential transportation and medical care.

(c) In making this determination, the department shall consider:

- (1) The income from all sources of the individual, and the individual's spouse and dependents;
- (2) The extent to which the assets of the individual and the individual's spouse and dependents are available to meet the offset and the essential subsistence expenses;
- (3) Whether these essential subsistence expenses are reasonable under all the circumstances; and
- (4) The extent to which the individual and the individual's spouse and dependents have other exceptional expenses that should be taken into account, and whether these expenses are reasonable under all the circumstances.

(d) The department shall advise the individual of its determination in writing. Such determination shall not be appealable. Such determination shall advise the individual of the individual's right to request an adjustment of the individual's account by compromise in accordance with Emp 408.

Emp 409.09 The Offset of Federal Tax Refund Payments and Requests for Forbearance. An individual's request for forbearance shall not:

- (a) Stay the offset of federal tax refund payments;

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(b) Stay any other collection process; or

(c) Act as a request for compromise under Emp 408, unless the individual’s communication to the department can reasonably be construed as a request for compromise under Emp 408, in which case the department shall treat the request as a request for compromise under Emp 408.

APPENDIX

Rule Number	State Statute / Federal Regulation Implemented
Emp 409	26 U.S.C. 6402(f); 26 C.F.R. 301.6402–3(a)(6)(i); 31 C.F.R. 285.8
Emp 409.05, Emp 409.06, Emp 409.08	RSA 282-A:141-156, 163-165
Emp 409.07	31 C.F.R. 285.8 (f)-(g)