



DEPARTMENT OF HEALTH & HUMAN SERVICES

ADMINISTRATION FOR CHILDREN AND FAMILIES
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Washington, D.C. 20447

ORR State Letter

11-04

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TO: STATE REFUGEE COORDINATORS
NATIONAL VOLUNTARY AGENCIES
OTHER INTERESTED PARTIES

FROM: Eskinder Negash
Director
Office of Refugee Resettlement

SUBJECT: Disregard Tax Returns When Determining Eligibility for Cash and Medical Assistance

The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312) was signed into law on December 17, 2010. The law includes a provision that disregards tax refunds received after December 31, 2009 as income and as resources (for a period of 12 months) in programs funded in whole or in part with federal funds, including those operated by States, localities, or others. The law is not retroactive, but applies as of the date of enactment and, thus, ORR-funded means-tested programs must move expeditiously to implement the provision.

Section 728 of the Act states:

“(a) IN GENERAL.—Notwithstanding any other provision of law, any refund (or advance payment with respect to a refundable credit) made to any individual under this title shall not be taken into account as income, and shall not be taken into account as resources for a period of 12 months from receipt, for purposes of determining the eligibility of such individual (or any other individual) for benefits or assistance (or the amount or extent of benefits or assistance) under any Federal program or under any State or local program financed in whole or in part with Federal funds.

“(b) TERMINATION.—Subsection (a) shall not apply to any amount received after December 31, 2012.”

Under prior law, certain refundable tax credits were disregarded as income and resources under rules that varied from program to program. Some programs excluded the Earned Income Tax Credit (EITC) for 12 months while others disregarded it for as little as three months. And, because amounts received due to a specific credit were excluded – but not the entire refund – it could be difficult for eligibility workers to implement than the new provision should be.

Under the new law:

- The total amount of a refund received after December 31, 2009 – regardless of whether the refund is the result of a refundable credit, over-withholding, or both – is disregarded as income and resources in the month received.
- The resource exclusion lasts for 12 months for all programs.

Under this simplified structure, programs that have an asset test can administer the exclusion more simply than under prior law.

Note that the legislation only addresses treatment of federal tax refunds; federal law does not specify how state tax refunds should be treated so it is up to the state to determine whether or to what extent state refunds are considered eligibility and benefit determinations.

Programs Affected

Under the statute, tax refunds must be excluded from consideration as income in the month received and as a resource for twelve months in any program that is funded in whole or in part by federal funds. This includes all major means-tested programs that consider income and may consider assets when determining eligibility, such as (but not limited to) the Refugee Cash and Medical Assistance programs, Supplemental Nutrition Assistance Program (SNAP), Medicaid, and programs funded under various block grants such as the Temporary Assistance for Needy Families block grant, the Social Services Block Grant, and the Child Care and Development Block Grant.

Even prior to this law, refugees' federal tax refund income generally did not cause them to be denied Refugee Cash and Medical Assistance programs. This is because the Refugee Cash and Medical Assistance program has a short-term assistance period (i.e., eight months from date of arrival). Notwithstanding, it is conceivable that some refugees (e.g., who were employed within the first couple of months of arrival and later lose their jobs) may in the third month qualify for cash and medical assistance based on their earned income, but not qualify if the added income from federal tax returns is considered.

Compliance with the Provision

To comply with the requirement that a federal tax refund be disregarded as income in the month the refund is received, the program must ensure that the income information being

sought and that individuals are providing does not include a federal tax refund that may have been received.

Some state and local refugee resettlement programs have flexibility to set asset policy, including whether to have an asset test at all. While that remains the case, if a program has an asset test, its policy must comply with the disregard provision included in P.L. 111-312 and an individual, family, or household may not be determined ineligible for assistance on the basis of having assets above a limit, if the assistance unit would have met the resource limit if the tax refund was disregarded.

While ORR-funded programs have flexibility on how compliance with this provision is achieved, one method for implementing this provision would be to subtract any federal tax refund an individual, family, or household received in the last 12 months from the reported assets of the eligibility unit. If the difference between the unit's reported assets and the amount received from the tax refund is less than resource limit, the assistance unit would meet the resource-related eligibility criteria. This simplified approach will minimize administrative burdens on local refugee resettlement programs and families alike.

To ensure compliance with the P.L. 111-312 provision, it is important for states and Wilson-Fish programs to ensure that their applications and interview protocols are designed such that an application or assistance unit has the opportunity to provide information about a tax refund if receipt of such a refund may affect the unit's eligibility for or level of benefits. This opportunity must be afforded regardless of the manner in which an individual, family or household submits an application or provides information that will be used to update or renew eligibility, including those who submit information in person, by phone, or online and those who do and do not have an interview with an eligibility worker. This is particularly important when applicants are reporting on their assets and simply may be asked for the amount of money in a bank account. An application or request for eligibility renewal should not be denied on the basis of the eligibility unit having assets about a resource limit unless the applicant has been asked whether anyone in the unit has received a tax refund in the last 12 months and those refunds have been properly disregarded. We recognize that the timeframe presents challenges to local refugee resettlement programs and understand that they may not be able to revise automated systems immediately. However, ORR-funded programs must find a mechanism to ensure that applicants or recipients who exceed the asset level due to a tax refund received in the last 12 months are not denied or terminated.

Filing Season

Families will begin to file their 2010 tax returns very shortly and will, in turn, begin to receive tax refunds soon. Low-income families that had earnings in 2010 can receive sizable refunds on the basis of refundable tax credits such as the EITC. Thus, swift implementation of this provision is important to ensure that tax refunds are properly disregarded in eligibility decisions. In addition, because the provision applies to all refunds received after December 31, 2009, individuals applying or updating their

eligibility in 2011 may have a received a tax refund in 2010 that now needs to be disregarded.

If ORR-funded programs are aware of households that were denied Refugee Cash and Medical Assistance or other benefits and services because they were over the resource limit, the ORR-funded programs should inform those households of the new provision and encourage them to reapply.

If you have any questions or need assistance concerning this provision, please contact the State Analyst or Program Coordinator assigned to your program.