

# Fame is Fleeting, TOP is Forever

The Treasury Offset Program for UI

# 2008

- ▶ **PL 110-328** amended § 6402 of the Internal Revenue Code (26 U.S.C.A. § 6402) to allow states to offset federal income tax refunds for the recovery of a “covered unemployment compensation debt”
  - ▶ State participation in TOP was voluntary.
  - ▶ UIPL 02-09 Debt must be certified by agency head to Financial Management Services (FMS) at US Treasury as past due legally enforceable and the debtor had a chance to provide evidence that the debt was not legally enforceable (UIPL 02-09, Change 1).
  - ▶ Once certified, always certified (UIPL 02-09, Change 1).

# 2008

- ▶ Unemployment compensation debt includes both benefit overpayments and unpaid contributions and interest and penalties thereon, if:
  - ▶ The Unemployment Compensation Debt was incurred through fraud;
  - ▶ If the debt involves Unemployment Compensation Debt arising out of the payment of benefits, the debt must be “past due” (not current on a repayment plan (UIPL ;
  - ▶ The determination of the debt has become final under state law;
  - ▶ The UC Debt was less than 10 years old;
  - ▶ The UC debt was being recovered from a resident of the state seeking the offset; and
  - ▶ The debtor was give notice via CERTIFIED MAIL, RETURN RECEIPT REQUESTED that debt could be intercepted –
    - ▶ Allow the individual at least 60 days prior to the certification of the debt to the IRS to present evidence as to why the debt is not legally enforceable. **The original determination of fraud is not reviewable, only the issue of whether the debt is legally enforceable is subject to review.**
    - ▶ Presenting evidence does not mean a state must provide the debtor with a formal hearing or appealable decision. UIPL 2-09, Change 1. (A state can provide for hearings if it wants, but it is not required to.)
- ▶ UC -TOP was to expire in 2018.
- ▶ States must pay the IRS a processing fee, but states may deduct it from the overpayment recovery *if state law allows* and the withdrawal standard was amended to authorize crediting the UC Fund with the net recovery.

# 2010

- ▶ **PL 111-291** amended § 6402 to:
  - ▶ Eliminate –
    - ▶ 10 year limitation on age of UC debt.
    - ▶ Requirement for sending notice certified mail, return receipt requested.
    - ▶ Limitations on recovery to residents of the state collecting the overpayment (expanded overpayment recovery to citizens of any state.
    - ▶ Fraud requirement for unpaid contributions.
    - ▶ 10 year sunset on UC TOP.
  - ▶ Expanded potential recoveries of benefit overpayments to include overpayments due to unreported earnings (as well as fraud)

# 2011

- ▶ **UIPL 02-09, Change 3,**
  - ▶ Prior to referring UC debts to TOP, FMS must receive
    - ▶ IRS approval of state's Safeguard Procedures Report (SPR);
    - ▶ Signed Debt Certification from the state;
    - ▶ Agency profile.
  - ▶ UC Debt does not include contributions owed by a corporation (attachment 3, page 4). Or at least it doesn't until the IRS changes its mind in 2015.
- ▶ **UIPL 11-11,** UC TOP recovery is applicable for all unemployment programs, but make sure the recovered funds are returned to the correct account.

# 2013

- ▶ **PL 113-67** amended section 303 of the Social Security Act (42 U.S.C.A. § 503) to make the collection of delinquent unemployment compensation debt due more than one-year old via Treasury Offset Program a conformity requirement.
  - ▶ It is doubtful that Congress realized that unemployment compensation debt includes unpaid contributions, but it does.
- ▶ The term “contributions” includes only that state UI tax deposited to the Unemployment Trust Fund, so it does not include unemployment taxes for state administrative or training tax purposes.

# 2014

## ▶ UIPL 12-14

- ▶ Allows states some time to come into compliance on recovery of contributions through UC TOP.
- ▶ Continues to limit the recovery of TOP to individual income tax refunds.

# 2015

## ▶ UIPL 02-09, Change 3

- ▶ Adopts finding of IRS (reprising *Citizens United*) that corporations are a person and provides that UC TOP can be used to intercept corporate income tax refunds.
- ▶ Notifies (reminds) states that contractors may not access FTI used in UC TOP benefit collections, but can access FTI as a part of the UC TOP collection of unpaid contributions.

# Practice Tips

- ▶ UC TOP requires a certification of compliance with IRS Publication 1075 by:
  - ▶ The SWA and its employees, and
  - ▶ Any contractors legally authorized to access FTI. Include an IRS 1075 compliance clause in every contract with a contractor who may access FTI.
- ▶ The SWA is responsible for insuring compliance with Publication 1075 so make sure you and your IT staff are familiar with its contents.
- ▶ TOP is forever. Unless your state law provides otherwise, never write off a UC debt that is TOP eligible no matter how old it is.
- ▶ If a debt is discharged in bankruptcy, make sure the TOP file sent to FMS is adjusted accordingly.
- ▶ TOP is forever - be aggressive in bankruptcy to preserve the debt.
  - ▶ Debts are potentially non-dischargeable for fraud, or misrepresentation § 523 (a)(2).
  - ▶ Debts are potentially non-dischargeable if the debtor failed to notify the SWA of the bankruptcy and the SWA had a valid defense to discharge § 523 (a)(10).
  - ▶ Debts are non-dischargeable for taxes owed within 3 years of filing of bankruptcy with or without notice to the SWA - § 507 (a) (8) and 523 (a)(1).