

Collection of Debts from Overpayments
(Past due Child Support and defaulted Student loans)

Chapters 545 and 546 of the Laws of 1982, amended and added certain sections to the New York Tax Law to provide for the crediting of New York State and City of New York personal income tax overpayments against past-due support obligations and past-due amounts owed on guaranteed student loans.

Sections 171-c and 171-d, added by chapter 545 and amended by chapter 546, set forth the requirements for these agreements. The Tax Commission is required to notify the taxpayer in writing of the amount of overpayment and interest certified as the amount to be credited against past due support or the amount of the default in repayment of a guaranteed student loan.

Section 171-c(8) defines past-due support to mean the amount of a delinquency determined from a final court order, no longer subject to appellate judicial review, for support and maintenance of a child or of a child and the parent with whom the child is living which has been assigned to the State Department of Social Services.

Section 171-d(2) provides that for defaulted guaranteed student loans the amount to be applied against an overpayment is only that amount as to which the New York State Higher Education Services Corporation has obtained a final judgement no longer subject to judicial review.

From the time the Tax Department is notified of a liability for past due support or for a defaulted guaranteed student loan by the Department of Social Services or the New York State Higher Education Services Corporation, it is relieved from all liabilities to taxpayers, successors, assigns, heirs or representatives for the amount of overpayment and interest which is certified to be credited against past-due child support or defaulted guaranteed student loans.

When the New York State Tax Department has been notified by the Department of Social Services or by the New York State Higher Education Services Corporation that a taxpayer owes past due child support or has defaulted on a student loan, the personal income tax overpayment and interest thereon will be credited against the amounts owed by the taxpayer in the following manner:

- 1) a liability of the taxpayer for taxes imposed under Chapter 60 of the New York Tax Law such as the resident and nonresident personal income tax, corporation tax, sales tax, miscellaneous tax, etc.
- 2) a liability of the taxpayer for taxes imposed by the authority of Chapter 60 of the New York Tax Law or any other law if such tax is administered by the Tax Commission such as the New York City resident and nonresident personal income tax, etc.
- 3) the amount of overpayment claimed from the current year's return to be a credit for the succeeding year's estimated tax account (New York State and City resident and non resident).

- 4) the balance of overpayment and interest remaining is then applied against past due child support and defaults in repayment of a guaranteed student loan, respectively.

Sections 651(b)(4)(B) and 651(b)(5)(iii) provide that if New York State separate returns are filed on one form or if a joint New York State return is filed, the total overpayment (including interest) of both spouses will be credited against the amounts of past due child support and/or a defaulted guaranteed student loan owed by either spouse. The spouse not liable for either obligation may demand that his/her overpayment not be applied against the debt owed by the other spouse by attaching a statement with the original filing of the return. Where this statement is attached to the original return, the amount of the overpayment attributable to each spouse, will be determined based upon Section 145.10(f) of the New York State Code of Rules and Regulations. Tax returns may not be amended for the purpose of making this demand.

The Administrative Code of the City of New York Title T and Title U has been similarly amended to reflect the above law changes.