

Subsec. (e). Pub. L. 100-300, §11(3), added subsec. (e).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-33 effective as if included in the enactment of title III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, see section 5557 of Pub. L. 105-33, set out as a note under section 608 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date of amendment by Pub. L. 104-193, see section 395(a)-(c) of Pub. L. 104-193, set out as a note under section 654 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103-432, title II, §214(c), Oct. 31, 1994, 108 Stat. 4461, provided that: "The amendments made by this section [amending this section] shall take effect on October 1, 1995."

EFFECTIVE DATE

Pub. L. 96-611, §9(d), Dec. 28, 1980, 94 Stat. 3573, provided that: "No agreement entered into under section 463 of the Social Security Act [this section] shall become effective before the date on which section 1738A of title 28, United States Code (as added by this title [probably should be "as added by section 8(a) of this Act"]) becomes effective."

§ 664. Collection of past-due support from Federal tax refunds

(a) Procedures applicable; distribution

(1) Upon receiving notice from a State agency administering a plan approved under this part that a named individual owes past-due support which has been assigned to such State pursuant to section 608(a)(3) or section 671(a)(17) of this title, the Secretary of the Treasury shall determine whether any amounts, as refunds of Federal taxes paid, are payable to such individual (regardless of whether such individual filed a tax return as a married or unmarried individual). If the Secretary of the Treasury finds that any such amount is payable, he shall withhold from such refunds an amount equal to the past-due support, shall concurrently send notice to such individual that the withholding has been made (including in or with such notice a notification to any other person who may have filed a joint return with such individual of the steps which such other person may take in order to secure his or her proper share of the refund), and shall pay such amount to the State agency (together with notice of the individual's home address) for distribution in accordance with section 657 of this title. This subsection may be executed by the disbursing official of the Department of the Treasury.

(2)(A) Upon receiving notice from a State agency administering a plan approved under this part that a named individual owes past-due support which such State has agreed to collect under section 654(4)(A)(ii) of this title, and that the State agency has sent notice to such individual in accordance with paragraph (3)(A), the Secretary of the Treasury shall determine whether any amounts, as refunds of Federal taxes paid, are payable to such individual (regardless of whether such individual filed a tax return as a married or unmarried individual). If the Secretary of the Treasury finds that any such amount is payable, he shall withhold from such refunds an amount equal to such past-due

support, and shall concurrently send notice to such individual that the withholding has been made, including in or with such notice a notification to any other person who may have filed a joint return with such individual of the steps which such other person may take in order to secure his or her proper share of the refund. The Secretary of the Treasury shall pay the amount withheld to the State agency, and the State shall pay to the Secretary of the Treasury any fee imposed by the Secretary of the Treasury to cover the costs of the withholding and any required notification. The State agency shall, subject to paragraph (3)(B), distribute such amount to or on behalf of the child to whom the support was owed in accordance with section 657 of this title. This subsection may be executed by the Secretary of the Department of the Treasury or his designee.

(B) This paragraph shall apply only with respect to refunds payable under section 6402 of the Internal Revenue Code of 1986 after December 31, 1985.

(3)(A) Prior to notifying the Secretary of the Treasury under paragraph (1) or (2) that an individual owes past-due support, the State shall send notice to such individual that a withholding will be made from any refund otherwise payable to such individual. The notice shall also (i) instruct the individual owing the past-due support of the steps which may be taken to contest the State's determination that past-due support is owed or the amount of the past-due support, and (ii) provide information, as may be prescribed by the Secretary of Health and Human Services by regulation in consultation with the Secretary of the Treasury, with respect to procedures to be followed, in the case of a joint return, to protect the share of the refund which may be payable to another person.

(B) If the Secretary of the Treasury determines that an amount should be withheld under paragraph (1) or (2), and that the refund from which it should be withheld is based upon a joint return, the Secretary of the Treasury shall notify the State that the withholding is being made from a refund based upon a joint return, and shall furnish to the State the names and addresses of each taxpayer filing such joint return. In the case of a withholding under paragraph (2), the State may delay distribution of the amount withheld until the State has been notified by the Secretary of the Treasury that the other person filing the joint return has received his or her proper share of the refund, but such delay may not exceed six months.

(C) If the other person filing the joint return with the named individual owing the past-due support takes appropriate action to secure his or her proper share of a refund from which a withholding was made under paragraph (1) or (2), the Secretary of the Treasury shall pay such share to such other person. The Secretary of the Treasury shall deduct the amount of such payment from amounts subsequently payable to the State agency to which the amount originally withheld from such refund was paid.

(D) In any case in which an amount was withheld under paragraph (1) or (2) and paid to a State, and the State subsequently determines that the amount certified as past-due support

was in excess of the amount actually owed at the time the amount withheld is to be distributed to or on behalf of the child, the State shall pay the excess amount withheld to the named individual thought to have owed the past-due support (or, in the case of amounts withheld on the basis of a joint return, jointly to the parties filing such return).

(b) Regulations; contents, etc.

(1) The Secretary of the Treasury shall issue regulations, approved by the Secretary of Health and Human Services, prescribing the time or times at which States must submit notices of past-due support, the manner in which such notices must be submitted, and the necessary information that must be contained in or accompany the notices. The regulations shall be consistent with the provisions of subsection (a)(3) of this section, shall specify the minimum amount of past-due support to which the offset procedure established by subsection (a) of this section may be applied, and the fee that a State must pay to reimburse the Secretary of the Treasury for the full cost of applying the offset procedure, and shall provide that the Secretary of the Treasury will advise the Secretary of Health and Human Services, not less frequently than annually, of the States which have furnished notices of past-due support under subsection (a) of this section, the number of cases in each State with respect to which such notices have been furnished, the amount of support sought to be collected under this subsection by each State, and the amount of such collections actually made in the case of each State. Any fee paid to the Secretary of the Treasury pursuant to this subsection may be used to reimburse appropriations which bore all or part of the cost of applying such procedure.

(2) In the case of withholdings made under subsection (a)(2) of this section, the regulations promulgated pursuant to this subsection shall include the following requirements:

(A) The withholding shall apply only in the case where the State determines that the amount of the past-due support which will be owed at the time the withholding is to be made, based upon the pattern of payment of support and other enforcement actions being pursued to collect the past-due support, is equal to or greater than \$500. The State may limit the \$500 threshold amount to amounts of past-due support accrued since the time that the State first began to enforce the child support order involved under the State plan, and may limit the application of the withholding to past-due support accrued since such time.

(B) The fee which the Secretary of the Treasury may impose to cover the costs of the withholding and notification may not exceed \$25 per case submitted.

(c) "Past-due support" defined

In this part the term "past-due support" means the amount of a delinquency, determined under a court order, or an order of an administrative process established under State law, for support and maintenance of a child (whether or not a minor), or of a child (whether or not a minor) and the parent with whom the child is living.

(Aug. 14, 1935, ch. 531, title IV, §464, as added Pub. L. 97-35, title XXIII, §2331(a), Aug. 13, 1981, 95 Stat. 860; amended Pub. L. 98-378, §§11(d), 21(a)-(c), Aug. 16, 1984, 98 Stat. 1318, 1322-1324; Pub. L. 99-514, §2, title XVIII, §1883(b)(8), Oct. 22, 1986, 100 Stat. 2095, 2917; Pub. L. 101-508, title V, §5011(a), (b), Nov. 5, 1990, 104 Stat. 1388-220; Pub. L. 104-134, title III, §31001(v)(2), Apr. 26, 1996, 110 Stat. 1321-375; Pub. L. 104-193, title III, §302(b)(1), Aug. 22, 1996, 110 Stat. 2204; Pub. L. 105-33, title V, §§5513(a)(4), 5531(b), 5532(i)(1), Aug. 5, 1997, 111 Stat. 620, 626, 627; Pub. L. 109-171, title VII, §7301(f)(1), Feb. 8, 2006, 120 Stat. 144.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsection (a)(2)(B), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

2006—Subsec. (a)(2)(A). Pub. L. 109-171, §7301(f)(1)(A), struck out "(as that term is defined for purposes of this paragraph under subsection (c) of this section)" after "owes past-due support".

Subsec. (c). Pub. L. 109-171, §7301(f)(1)(B), substituted "In this part" for "(1) Except as provided in paragraph (2), as used in this part", inserted "(whether or not a minor)" after "a child" in two places, and struck out pars. (2) and (3) defining "past-due support" and "qualified child", respectively.

1997—Subsec. (a)(1). Pub. L. 105-33, §5513(a)(4), substituted "section 608(a)(3)" for "section 602(a)(26)".

Subsec. (a)(2)(A). Pub. L. 105-33, §5531(b), substituted "section 654(4)(A)(ii)" for "section 654(6)" in first sentence.

Pub. L. 105-33, §5532(i)(1), inserted "in accordance with section 657 of this title" after "owed" in penultimate sentence.

1996—Subsec. (a)(1). Pub. L. 104-134, §31001(v)(2)(1), inserted at end "This subsection may be executed by the disbursing official of the Department of the Treasury."

Pub. L. 104-193 substituted "section 657" for "section 657(b)(4) or (d)(3)".

Subsec. (a)(2)(A). Pub. L. 104-134, §31001(v)(2)(2), inserted at end "This subsection may be executed by the Secretary of the Department of the Treasury or his designee."

1990—Subsec. (a)(2)(B). Pub. L. 101-508, §5011(a), struck out ", and before January 1, 1991" after "1985".

Subsec. (c)(2). Pub. L. 101-508, §5011(b)(1), substituted "qualified child (or a qualified child and the parent with whom the child is living if the same support order includes support for the child and the parent)" for "minor child".

Subsec. (c)(3). Pub. L. 101-508, §5011(b)(2), added par. (3).

1986—Subsec. (a)(2)(B). Pub. L. 99-514, §2, substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

Subsec. (b)(2)(A). Pub. L. 99-514, §1883(b)(8), substituted "threshold" for "threshold".

1984—Subsec. (a). Pub. L. 98-378, §21(a), (b)(1), designated existing provisions as par. (1), substituted "shall concurrently send notice to such individual that the withholding has been made (including in or with such notice a notification to any other person who may have filed a joint return with such individual of the steps which such other person may take in order to secure his or her proper share of the refund), and shall pay" for "and pay", and added pars. (2) and (3).

Pub. L. 98-378, §11(d), inserted "or section 671(a)(17)" and substituted "section 657(b)(4) or (d)(3)" for "section 657(b)(3)".

Subsec. (b)(1). Pub. L. 98-378, §21(b)(2), designated existing provisions as par. (1), substituted "The regulations shall be consistent with the provisions of subsection (a)(3) of this section, shall specify" for "The regulations shall specify", substituted "and shall pro-

vide” for “and provide”, inserted provision that any fee paid to the Secretary of the Treasury pursuant to subsec. (b) may be used to reimburse appropriations which bore all or part of the cost of applying such procedure, and added par. (2).

Subsec. (c)(1). Pub. L. 98-378, §21(c), designated existing provisions as par. (1), inserted reference to par. (2), and added par. (2).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-171, title VII, §7301(f)(2), Feb. 8, 2006, 120 Stat. 145, provided that: “The amendments made by paragraph (1) [amending this section] shall take effect on October 1, 2007.”

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 5513(a)(4) of Pub. L. 105-33 effective as if included in section 108 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, at the time such section 108 became law, see section 5518(b) of Pub. L. 105-33, set out as a note under section 652 of this title.

Amendment by sections 5531(b) and 5532(i)(1) of Pub. L. 105-33 effective as if included in the enactment of title III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, see section 5557 of Pub. L. 105-33, set out as a note under section 608 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-193 effective Oct. 1, 1996, or earlier at the State's option, see section 302(c) of Pub. L. 104-193, set out as a note under section 657 of this title.

For provisions relating to effective date of title III of Pub. L. 104-193, see section 395(a)-(c) of Pub. L. 104-193, set out as a note under section 654 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-508, title V, §5011(c), Nov. 5, 1990, 104 Stat. 1388-220, provided that: “The amendments made by subsection (b) [amending this section] shall take effect on January 1, 1991.”

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 11(d) of Pub. L. 98-378 effective Oct. 1, 1984, and applicable to collections made on or after that date, see section 11(e) of Pub. L. 98-378, set out as a note under section 654 of this title.

Amendment by section 21(a)-(c) of Pub. L. 98-378 applicable with respect to refunds payable under section 6402 of Title 26, Internal Revenue Code, after Dec. 31, 1985, see section 21(g) of Pub. L. 98-378, set out as a note under section 6103 of Title 26.

EFFECTIVE DATE

Section effective Oct. 1, 1981, except as otherwise specifically provided, see section 2336 of Pub. L. 97-35, set out as an Effective Date of 1981 Amendment note under section 651 of this title.

§ 665. Allotments from pay for child and spousal support owed by members of uniformed services on active duty

(a) Mandatory allotment; notice upon failure to make; amount of allotment; adjustment or discontinuance; consultation

(1) In any case in which child support payments or child and spousal support payments are owed by a member of one of the uniformed services (as defined in section 101(3) of title 37) on active duty, such member shall be required to make allotments from his pay and allowances (under chapter 13 of title 37) as payment of such support, when he has failed to make periodic payments under a support order that meets the

criteria specified in section 1673(b)(1)(A) of title 15 and the resulting delinquency in such payments is in a total amount equal to the support payable for two months or longer. Failure to make such payments shall be established by notice from an authorized person (as defined in subsection (b) of this section) to the designated official in the appropriate uniformed service. Such notice (which shall in turn be given to the affected member) shall also specify the person to whom the allotment is to be payable. The amount of the allotment shall be the amount necessary to comply with the order (which, if the order so provides, may include arrearages as well as amounts for current support), except that the amount of the allotment, together with any other amounts withheld for support from the wages of the member, as a percentage of his pay from the uniformed service, shall not exceed the limits prescribed in sections¹ 1673(b) and (c) of title 15. An allotment under this subsection shall be adjusted or discontinued upon notice from the authorized person.

(2) Notwithstanding the preceding provisions of this subsection, no action shall be taken to require an allotment from the pay and allowances of any member of one of the uniformed services under such provisions (A) until such member has had a consultation with a judge advocate of the service involved (as defined in section 801(13) of title 10), or with a judge advocate (as defined in section 801(11)² of such title) in the case of the Coast Guard, or with a legal officer designated by the Secretary concerned (as defined in section 101(5) of title 37) in any other case, in person, to discuss the legal and other factors involved with respect to the member's support obligation and his failure to make payments thereon, or (B) until 30 days have elapsed after the notice described in the second sentence of paragraph (1) is given to the affected member in any case where it has not been possible, despite continuing good faith efforts, to arrange such a consultation.

(b) “Authorized person” defined

For purposes of this section the term “authorized person” with respect to any member of the uniformed services means—

(1) any agent or attorney of a State having in effect a plan approved under this part who has the duty or authority under such plan to seek to recover any amounts owed by such member as child or child and spousal support (including, when authorized under the State plan, any official of a political subdivision); and

(2) the court which has authority to issue an order against such member for the support and maintenance of a child, or any agent of such court.

(c) Regulations

The Secretary of Defense, in the case of the Army, Navy, Air Force, and Marine Corps, and the Secretary concerned (as defined in section 101(5) of title 37) in the case of each of the other uniformed services, shall each issue regulations applicable to allotments to be made under this

¹ So in original. Probably should be “section”.

² See References in Text note below.