

TITLE 5 POST-SECONDARY EDUCATION
CHAPTER 7 TUITION AND FINANCIAL AID
PART 33 TAX REFUND INTERCEPT BY NEW MEXICO HIGHER EDUCATION DEPARTMENT

5.7.33.1 ISSUING AGENCY: New Mexico Higher Education Department
[5.7.33.1 NMAC, N, 10/31/2017]

5.7.33.2 SCOPE: [RESERVED]
[5.7.33.2 NMAC, N, 10/31/2017]

5.7.33.3 STATUTORY AUTHORITY: Sections 7-2C-1 through 7-2C-13 NMSA 1978.
[5.7.33.3 NMAC, N, 10/31/2017]

5.7.33.4 DURATION: Permanent.
[5.7.33.4 NMAC, N, 10/31/2017]

5.7.33.5 EFFECTIVE DATE: October 31, 2017
[5.7.33.5 NMAC, N, 10/31/2017]

5.7.33.6 OBJECTIVE: Subject to the limitations contained in the Tax Refund Intercept Program Act, the taxation and revenue department, upon request from the New Mexico higher education department, shall render assistance in collection of education debt originated and owned by the New Mexico higher education department.
[5.7.33.6 NMAC, N, 10/31/2017]

5.7.33.7 DEFINITIONS:

A. “Appellant” means the person submitting a request for administrative review whose tax refund has been offset, or his or her spouse, in the administrative review process.

B. “Debtor” means the person against whom an educational loan judgment has been obtained as a result of debt owned and originated by the New Mexico higher education department.

C. “Department” means the New Mexico higher education department.

D. “TRD” means the New Mexico taxation and revenue department.

[5.7.33.7 NMAC, N, 10/31/2017]

5.7.33.8 SUBMITTING REQUESTS TO THE TAXATION AND REVENUE DEPARTMENT (“TRD”):

A. Eligible accounts: Requests for collection by refund offset may be made by the department to enforce repayment of educational loan debts pursuant to the Tax Refund Intercept Program Act, Section 7-2C-3 et seq. NMSA 1978.

B. Criteria for submittal: Debts must meet the following criteria set by TRD for the tax refund offset process:

- (1) the debt must be a loan for educational purposes;
- (2) the debt must be equal to or more than one-hundred (\$100);
- (3) the debt must be:
 - (a) originated by the department; and
 - (b) owned by the department
- (4) the debt must have been reduced to judgment.

C. Procedure for setoff request to TRD/suspense account: Submitting requests: All submissions for setoffs should be made to TRD in the manner required by TRD and by the required date set by TRD. The list of setoffs requested will contain information such as debtor name, social security number, unpaid balance of judgment against debtor and such other information as TRD may require.

D. Suspense account: Upon receipt of money transferred from the TRD, the department shall deposit and hold the money in a suspense account until a final determination of the offset is made.

[5.7.33.8 NMAC, N, 10/31/2017]

5.7.33.9 NOTICE PROCEDURES:

A. Notice to debtor: Within ten days after the department receives notice from TRD of a match of an offset request the department shall send a notice to the affected debtor substantially in the form of Exhibit A in 5.7.33.14 NMAC. The notice will inform the debtor of the following:

- (1) that a transfer of the refund will be made and that the department intends to offset the amount of the transfer against a claimed judgment balance owed by the debtor;
- (2) the amount of the claimed judgment balance and that the judgment arose from an educational loan;
- (3) the name, address and telephone number of the department;
- (4) the amount of the refund to be offset against the claimed judgment balance;
- (5) that the debtor has 30 days from the date of the notice to contest the offset by applying to the department for a hearing with respect to the validity of the judgment balance asserted by the department; and
- (6) that failure by the debtor to apply for a hearing within 30 days will be deemed a waiver of the opportunity to contest the offset and to a hearing.

B. Notice to the debtor's spouse: Except as provided in Subsection C of 5.7.33.9 NMAC, within ten days after the department receives notice from TRD of a match on a offset request resulting from a joint tax return the department shall send a notice to the spouse of the affected debtor substantially in the form of Exhibit B in 5.7.33.15 NMAC. The notice will inform the debtor's spouse of the following:

- (1) a statement that a transfer of the refund will be made and that the department intends to offset the amount of the transfer against a claimed judgment balance owing by the debtor;
- (2) the total amount of the refund and the amount of the claimed judgment balance;
- (3) the name, address and telephone number of the department;
- (4) a statement that no debt is claimed against the spouse and that the spouse may be entitled to receive all or part of the refund regardless of the claimed judgment balance against the debtor;
- (5) a statement that to assert a claim to all or part of a refund the spouse must apply to the department for a hearing within 30 days of the date indicated on the notice with respect to the entitlement of the spouse to all or part of the refund from which a transfer will be made at the request of the department; and
- (6) a statement that failure of the spouse to apply for a hearing within 30 days may be deemed a waiver of any claim of the spouse with respect to the refund.

C. Judgments against debtor and spouse jointly: In the event the department is asserting a claim for tax refund offset based on a judgment entered jointly against the debtor and spouse, the department shall send notice under Subsection A of 5.7.33.9 NMAC to both persons and no notice under Subsection B of 5.7.33.9 NMAC will be sent.

[5.7.33.9 NMAC, N, 10/31/2017]

5.7.33.10 PROCESSING OF ADMINISTRATIVE HEARING REQUESTS:

A. Written request: All requests for administrative review must be made in writing.

B. Submittal deadline: All requests for administrative review must be received by the department within 30 days of the date of the applicable notice. Failure to submit a request within the prescribed time will be deemed a waiver of the opportunity to contest the offset and to a hearing.

C. Grounds for administrative review: The grounds for administrative review shall be limited to the following:

- (1) no judgment has been filed against the appellant or the appellant's spouse for an educational loan;
- (2) the judgment has been paid in full;
- (3) the judgment creditor has agreed to accept other arrangements for payment of the judgment and the arrangements have been fully complied with;
- (4) the amount of the intercepted refund exceeds the unpaid balance of the judgment; or
- (5) the appellant is entitled to receive all or part of the refund regardless of the claimed judgment debt against the appellant's spouse based upon New Mexico's community property laws.

D. Filing of requests for administrative review: The department representative responsible for the debtor's account will receive the request for administrative review submitted by the appellant and shall file the request in the debtor's loan file.

E. Acknowledgement of receipt of request for administrative review: The department will, upon receipt of the appellant's request for administrative review, send the appellant an acknowledgment of receipt of the request and will file a copy of the acknowledgment in the debtor's loan file. The acknowledgment may be combined with a notice of rejection of the request under Subsection F of 5.7.33.10 NMAC, a notice of informal resolution

under Subsection G of 5.7.33.10 NMAC, or notice of submission of the request to the administrative hearing officer under Subsection H of 5.7.33.10 NMAC.

F. Rejection of request for administrative review: The department shall review the appellant's request for administrative review to determine if the request specifies an allowable ground for review as provided in Subsection C of 5.7.33.10 NMAC. If the appellant has failed to specify an allowable ground for review, the department will prepare and send to the appellant a notice that the request has been rejected for such failure. The department will file a copy of this notice in the debtor's loan file. A request for administrative review which has been rejected shall be treated as if no request had been submitted.

G. Informal resolution by the department: If the request for administrative review specifies an allowable ground for review, the department shall check for possible error and attempt to resolve the request prior to formal hearing, as follows:

(1) Resolution prior to transfer of the refund to the department:

(a) Certified judgment balance incorrect, no judgment, or other arrangements to pay judgment: If, prior to transfer of the refund to the department, the department determines that the debtor owes nothing, that there is no judgment against debtor, or that the debtor has made other arrangements for payment of the judgment and is not in default, the department shall cause the debtor's name to be removed from the tax refund intercept list.

(b) Community property claim by spouse: If prior to transfer of the refund to the department, the department determines that the debtor's spouse is entitled to all or part of the refund, the department must take steps to correct the amount.

(2) Resolution after transfer of the refund to the department:

(a) Improper offset against debtor's refund: If the department determines that an amount which has already been offset is improper because there is no judgment against the debtor, the judgment is paid in full, or the debtor has made other arrangements for payment of the judgment and is not in default, the department must take steps to refund the amount to the debtor promptly. In cases of joint tax returns, the refund check should be made payable to both the debtor and spouse.

(b) Excess offset against debtor's refund: If the department determines that an amount which has been offset exceeds the amount of the debtor's unpaid judgement balance, the department must take steps to refund the excess amount to the debtor promptly. In cases of joint tax returns, the refund check should be made payable to both the debtor and spouse.

(c) Resolution of error-community property claim by spouse: If the department determines that the debtor's spouse is entitled to a share of the refund, the department must take steps to refund the proper share to the spouse. The refund check should be made payable solely to the spouse.

(3) Notice to appellant of informal resolution: In the event that the department determines that an error exists, the department shall send the appellant a notice acknowledging the determination of error and resolution. If the department's action fully resolves the request for administrative review in favor of the appellant, the notice shall state that the informal resolution shall be a final resolution of the request unless the appellant requests further review within 15 days of the date of this notice.

(4) No determination of error or determination of error does not fully resolve appeal: If the department determines that no error has been made, or a determination of error does not fully resolve the appeal, the department must provide the appellant with information concerning the administrative review process. If any dispute remains between the department and the appellant at this point, the appellant must be advised that the dispute will be resolved by the administrative hearing officer.

H. Submission of hearing request to administrative hearing officer: When the appellant has specified an allowable ground for administrative review and the department makes a determination of no error, or a determination of error does not fully resolve the appeal and a dispute remains, the department shall transmit the appellant's hearing request to the administrative hearing officer together with such information as may be requested by the hearing officer.

[5.7.33.10 NMAC, N, 10/31/2017]

5.7.33.11 ADMINISTRATIVE HEARINGS:

A. Purpose: The purpose of an administrative hearing is to provide the appellant with a fair and equal opportunity to be heard so that the administrative hearing officer may be completely informed in the matter and enabled to render a proper determination based on all the facts and applicable laws and rules. The burden of proof shall be on the appellant to prove by a preponderance of the evidence that the appellant is entitled to all or a portion of the tax refund.

B. Preliminary conference: Upon receipt of a request for an administrative hearing, the administrative hearing officer may schedule a preliminary conference, which may be conducted by telephone, at which the parties may:

- (1) identify all of the issues;
- (2) secure stipulation on those matters not in dispute;
- (3) identify witnesses to be called and the general subject matter of their testimony;
- (4) agree on procedures for exchange of information; and
- (5) set a date for the hearing.

C. Procedure:

(1) Conduct of hearings: The administrative hearing officer may conduct the hearing by telephone or may require the parties to appear at the department's business office. If a hearing is to be conducted by telephone, the administrative hearing officer will inform the parties of the required manner of identification and submission of exhibits. If the appellant or the appellant's authorized representative, without sufficient cause, fails to appear at a hearing, such failure may be treated as a withdrawal of the request for review and the administrative hearing officer may dismiss the request for review. If the department representative, without sufficient cause, fails to appear at the hearing, such failure may be treated as a default to the appellant. The administrative hearing officer in either case may adjourn the hearing to a future date or take such action as may be just and proper. All hearings will be conducted in as informal a manner as possible, provided that good order is maintained. The technical rules of evidence shall not apply. The administrative hearing officer may clear the room of witnesses not under examination and of any person who is disruptive. The administrative hearing officer shall consider all evidence, including affidavits, having reasonable probative value, but shall exclude immaterial, irrelevant or unduly cumulative testimony.

(2) Consolidation: When two or more requests for hearing are received involving a common question of law or fact arising out of the same or similar circumstances, the administrative hearing officer may consolidate them into one hearing.

(3) Waiver: In all cases the appellant's request for hearing must be postmarked or received within 30 days of the date of the notice informing the debtor or spouse of the right to hearing. Failure of the debtor or spouse to request a hearing within the time required shall constitute a waiver of the right of hearing.

(4) Hearing date: Hearings should be held within 60 days of the date the administrative hearing officer receives the request for hearing unless the administrative hearing officer determines there is good cause for a delay. The administrative hearing officer shall be responsible for providing timely notice of the hearing to the appellant and the department.

(5) Notice of time for decision: At the conclusion of the hearing, the administrative hearing officer must inform the parties that a decision will be made in thirty days.

D. Decision: The administrative hearing officer's determination of the validity and the amount of the offset asserted on the department's application for offset to a refund to which a debtor or spouse asserts entitlement in whole or in part shall be final. The administrative hearing officer should send or deliver a written decision to the parties within thirty days of the hearing date.

[5.7.33.11 NMAC, N, 10/31/2017]

5.7.33.12 FINAL DETERMINATION AND NOTICE OF OFFSET:

A. Final determination: A final determination occurs:

- (1) when the administrative hearing officer makes his decision; or
- (2) if no request for hearing has been properly and timely submitted, thirty days following the date of the notice provided in accordance with 5.7.33.9 NMAC; or
- (3) upon informal resolution of any dispute as provided in Subsection G of 5.7.33.10 NMAC.

B. Refunds: Upon final determination of the entitlement of an appellant to any or all of that portion of a refund which has been transferred to the department, the department shall remit to the appellant from the suspense fund the amount determined to be due together with all such interest as is required by law to be paid and an appropriate accounting. A copy of the accounting shall be sent to TRD.

C. Remittances to the department: Upon final determination the department shall remit to itself from the suspense account that amount determined to be due the department, as applicable and shall credit that amount against the debt. Upon such remittance the department shall notify the debtor in writing of the final determination of the offset. A copy of the notice shall be sent to TRD. The notice shall include:

- (1) a final accounting of the refund against which the debt was offset, including the amount of the refund to which the debtor was entitled prior to offset;

(2) the final determination of the amount of the debt that has been satisfied and the amount of the debt, if any, still due and owing; and

(3) the amount of the refund in excess of the debt finally determined to be due and owing and the amount of any interest due.

[5.7.33.12 NMAC, N, 10/31/2017]

5.7.33.13 CONFIDENTIALITY: The information obtained by the department from the TRD under the Tax Refund Intercept Program Act shall be confidential and shall be used by the department only in pursuit of the collection of a judgment debt on an educational loan under the act.

[5.7.33.13 NMAC, N, 10/31/2017]

5.7.33.14 EXHIBIT A: Because there is an outstanding educational loan judgment balance which has not been paid, your name has been referred to the New Mexico Taxation and Revenue Department for the collection of this obligation. Any tax refund to which you may be entitled may be retained in full or partial satisfaction of this obligation. This action involving the Taxation and Revenue Department is authorized by the Tax Refund Intercept Program Act, Sections 7-2C-1 through 7-2C-13 NMSA 1978.

Our records shows \$ _____ total unpaid judgment balance, including principal, accrued interest, costs and attorney's fees as of _____, 20____.

Case Number:

Judgment Creditor:

Social Security No:

Refund Amount:

Applied to Judgment Balance:

Date of the Notice

HEARING REQUEST

If you disagree with this notice, you have the right to a hearing. In order for you to request a hearing, you must return this portion of the notice within 30 days from the date indicated on the notice, and you must indicate to the office below that you are requesting a hearing based on one or more of the following grounds: (1) [---] no judgment has been filed against me for an educational loan in the referenced case; (2) [---] the judgment filed against me in the referenced case has paid in full; (3) [---] the amount of the intercepted refund exceeds the unpaid balance of the judgment filed against me in the referenced case; (4) [---] the judgment creditor has agreed to accept other arrangements for payment of the judgment and I am not in default thereon. **FAILURE TO APPLY FOR A HEARING WITHIN 30 DAYS OF THIS NOTICE SHALL BE DEEMED A WAIVER OF ANY CLAIM WITH RESPECT TO THE REFUND.**

Telephone Number: _____ Best Time to Call _____

Send request for hearing to:

New Mexico Higher Education Department

[Address]

[5.7.33.14 NMAC, N, 10/31/2017]

5.7.33.15 EXHIBIT B: Because a judgment for an educational loan debt has been filed against your spouse, your name has been referred to the New Mexico state taxation and revenue department for collection of this obligation. Any tax refund to which you may be entitled may be retained in full or partial satisfaction of this obligation. This action applies because you filed jointly for an income tax refund with a spouse who owes the obligation. No debt is claimed against you, however, and you may be entitled to receive all or part of the refund regardless of the claimed judgment balance against your spouse. This action involving the taxation and revenue department is authorized by the Tax Refund Intercept Program Act, Sections 7-2C-1 through 7-2C-13 NMSA 1978.

Our records show \$ _____ total unpaid judgment balance, including principal, accrued interest, costs and attorney's fees as of _____, 20____.

