

D15-03
Treasury Offset Program

Date: February 19, 2015
Proposed by: DWD
Prepared by: Scott Sussman

ANALYSIS OF PROPOSED UI LAW CHANGE

TREASURY OFFSET PROGRAM

1. Description of Proposed Change

The Treasury Offset Program ("TOP") is a centralized collection tool administered by the U.S. Department of Treasury, Bureau of Fiscal Service (Fiscal Service), used to collect delinquent debts owed to federal agencies and states who have submitted debt information to Fiscal Service. In partnership with the U.S. Department of Labor (USDOL), the TOP intercepts federal and state tax refund payments of claimants who owe unemployment insurance (UI) debt. The TOP compares claimant names and taxpayer identification numbers (TIN) to names and TINs in TOP's debtor database.

On December 26, 2013, the Bipartisan Budget Act (Act) was signed into law. This Act requires states, as a condition for receipt of grants to administer UI programs, to use TOP to recover UI debt that remains uncollected as of the date that is one year after the debt was finally determined to be due. Previously it was discretionary with a state regarding whether it wanted to use TOP.

Wisconsin currently participates in TOP to collect delinquent UI debt due to a claimant's fraud or a claimant's failure to report earnings.

This proposed statutory language expands the department's use of TOP to collect unpaid specified UI debt owed by employers resulting from:

- (a) Unpaid UI contributions due to Wisconsin's UI Trust Fund for which the person has been determined to be liable; and,
- (b) Any penalties and interest assessed on such debt.

The USDOL provides that a state must enact conforming legislation in the 2015 session of its state legislature. The department sent the proposed legislation to the USDOL for review. The USDOL has informally confirmed that upon enactment of this proposal Wisconsin law will conform with the requirements imposed on states by the Act.

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2. Proposed Statutory Language

Create: 108.22(1n):

If any individual who is found personally liable under sub. (9) or any employing unit fails to pay to the department any amount found to be due it in proceedings pursuant to s. 108.10, provided that no appeal or review permitted under s. 108.10 is pending and that the time for taking an appeal or review has expired, the department or any authorized representative may offset the amount of the delinquency against a federal tax refund as provided in section 6402 (f) of the federal Internal Revenue Code in effect on June 1, 2009.

Amend s. 108.16 (6m) (g), Stats., to read:

108.16 (6m) There shall be charged against the fund's balancing account: . . .

(g) Except if the fee or payment is not charged to the department, any Any payments of fees or expenses assessed by the U.S. secretary of the treasury under section 6402 (f) of the federal Internal Revenue Code in effect on June 1, 2009, if the fee or expense was assessed to collect an overpayment.

Amend s. 108.16 (10) to read:

All money withdrawn from the fund shall be used solely in the payment of benefits, exclusive of expenses of administration, and for refunds of sums erroneously paid into the fund, for refund of a positive net balance in an employer's reimbursement account under ss. 108.15 (4) and 108.151 (5) on request by the employer, for expenditures made pursuant to s. 108.161 and consistently with the federal limitations applicable to s. 108.161, and if charged by the federal government for payment of fees and expenses for collection of overpayments resulting from fraud or failure to report earnings that are assessed by the U.S. secretary of the treasury under section 6402 (f) of the federal Internal Revenue Code in effect on June 1, 2009.

No amendment necessary to s. 108.22(8)(b)1.d. which currently provides:

(b) 1. To recover any overpayment to an individual which is not otherwise repaid or recovery of which has not been waived, the department may recoup the amount of the overpayment by: . . .

d. If the overpayment results from fraud or failure to report earnings, offsetting the amount of the overpayment against a federal tax refund as provided in section 6402 (f) of the federal Internal Revenue Code in effect on June 1, 2009.

No amendment necessary to s. 108.16(6)(L) which currently provides:

(6) The department shall maintain within the fund a "balancing account," to which shall be credited: . . .

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(L) The amount of any overpayments that are recovered by the department by setoff pursuant to s. 71.93 or the amount of any overpayments resulting from fraud or failure to report earnings that are recovered by the department by offset pursuant to section 6402 (f) of the federal Internal Revenue Code in effect on June 1, 2009.

3. Proposer's Reason for the Change

To comply with the federal mandate and expand the collection tools available to the department to collect unpaid UI debt.

4. Effects of Proposed Changes

- a. Policy. This proposal is mandated by federal law and enhances the department's ability to collect unpaid UI debt.
- b. Administrative Impact. This proposal will expand the collection tools available to the department to collect unpaid UI debt.
- c. Fiscal. See attached fiscal estimate.

5. State and Federal Issues

The Bipartisan Budget Control Act amended Section 303 of the Social Security Act to require states, as a condition of their UI administrative grants, to use the TOP to recover UI debt. It is necessary to amend Wisconsin's law to conform to this federal mandate.

6. Proposed Effective/Applicability Date

This proposal would be effective with other changes made as part of the agreed bill cycle.

Proposal:

**Expansion of the Treasury Offset Program (TOP) to Include Employer Tax Debt
(D15-03)**

Date: 01/27/2015

Prepared by: Technical Services Section

TRUST FUND FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Impact:

This proposal is expected to save the Trust Fund approximately **\$4.3M annually** via additional employer state UI tax collections.

Summary of the Proposal:

The Treasury Offset Program (TOP) is a Federal tax intercept collection tool used to collect unpaid debts owed to various government agencies. DWD UI previously implemented TOP to recover fraud and wage non-fraud overpayment debts from claimants. This proposal expands the use of the TOP program to unpaid employer contributions when personal and corporate liability can be assigned. However, the Federal government does not have the functionality to collect from corporate tax accounts at this time. The proposal is written to include corporate accounts for future enhanced Federal capabilities. Expansion of TOP is mandated by the Federal government. Fees are charged by the TOP program directly to the participant and would not affect the UI Trust Fund.

Methodology:

Employer tax debt that would be certifiable for TOP is mainly debt from preliminarily closed and closed employer accounts. From 2010-2014 the average yearly amount of delinquent debt due to preliminarily closed/closed accounts is approximately \$43M of which approximately 38% is recovered by UI collections.

In 2012, TOP for claimant benefit overpayments was expanded to include fraud and non-fraud wage overpayments. From 2012-2014 the average annual amount of benefit overpayment debt certifiable for TOP was \$25.2M of which approximately \$12M was recovered by UI collections, or 48%.

At a 48% recovery rate, approximately \$20.6M of employer debt certifiable for TOP would be collected annually. Much of the debt UI *already* recovered would now be collected with TOP; however, it would be collected more efficiently. Since UI can already collect approximately 38% of TOP certified debt using other collection tools, adding TOP as an additional tool would increase employer debt tax collections by approximately 10% of the certified debt annually. Ten percent of the average \$43M employer debt certified for TOP would result in Trust Fund savings of approximately \$4.3M annually via *additional* employer tax debt collections.

IT/Administrative Costs:

IT/BITS one-time estimate to expand TOP equates to \$314,570. The UI Administrative one-time cost estimate is \$9,382. Ongoing administrative printing costs are estimated at \$3,000 annually.