

§ 408.942

collect an overpayment through Federal income tax refund offset will state:

- (a) The amount of the overpayment;
- (b) That unless, within 60 calendar days from the date of our notice, you repay the overpayment, send evidence to us at the address given in our notice that the overpayment is not past due or not legally enforceable, or ask us to waive collection of the overpayment under § 408.910, we intend to seek collection of the overpayment by requesting that the Department of the Treasury reduce any amounts payable to you as refunds of Federal income taxes by an amount equal to the amount of the overpayment;
- (c) The conditions under which we will waive recovery of an overpayment under section 808(c) of the Act;
- (d) That we will review any evidence presented that the overpayment is not past due or not legally enforceable;
- (e) That you have the right to inspect and copy our records related to the overpayment as determined by us and you will be informed as to where and when the inspection and copying can be done after we receive notice from you requesting inspection and copying.

§ 408.942 Will you have a chance to present evidence showing that the overpayment is not past due or is not legally enforceable?

- (a) *Notification.* If you receive a notice as described in § 408.941 of this subpart, you have the right to present evidence that all or part of the overpayment is not past due or not legally enforceable. To exercise this right, you must notify us and present evidence regarding the overpayment within 60 calendar days from the date of our notice.
- (b) *Submission of evidence.* You may submit evidence showing that all or part of the debt is not past due or not legally enforceable as provided in paragraph (a) of this section. Failure to submit the notification and evidence within 60 calendar days will result in referral of the overpayment to the Department of the Treasury, unless, within this 60-day time period, you ask us to waive collection of the overpayment under § 408.910 and we have not yet determined whether we can grant the waiver request. If you ask us to waive

20 CFR Ch. III (4-1-08 Edition)

collection of the overpayment, we may ask you to submit evidence to support your request.

- (c) *Review of the evidence.* If you submit evidence on a timely basis, we will consider all available evidence related to the overpayment. We will make findings based on a review of the written record, unless we determine that the question of indebtedness cannot be resolved by a review of the documentary evidence.
- (d) *Written findings.* We will issue our written findings including supporting rationale to you, your attorney or other representative. The findings will be our final action with respect to the past-due status and enforceability of the overpayment.

§ 408.943 What happens after we make our determination on your request for review or your request for waiver?

- (a) If we make a determination that all or part of the overpayment is past due and legally enforceable and/or your waiver request cannot be granted, we will refer the overpayment to the Department of the Treasury for recovery from any Federal income tax refund due you. We will not suspend our referral of the overpayment to the Department of the Treasury under § 408.945 of this subpart pending any further administrative review of the waiver determination that you may seek.
- (b) We will not refer the overpayment to the Department of the Treasury if we reverse our prior finding that the overpayment is past due and legally enforceable or, upon consideration of a waiver request, we determine that waiver of recovery of the overpayment is appropriate.

§ 408.944 How can you review our records related to an SVB overpayment?

- (a) *What you must do.* If you intend to inspect or copy our records related to the overpayment, you must notify us stating your intention to inspect or copy.
- (b) *What we will do.* If you notify us that you intend to inspect or copy our records related to the overpayment as described in paragraph (a) of this section, we will notify you of the location and time when you may do so. We may

Social Security Administration

§ 408.1000

also, at our discretion, mail copies of the overpayment-related records to you.

§ 408.945 When will we suspend tax refund offset?

If, within 60 days of the date of the notice described in § 408.941 of this subpart, you notify us that you are exercising a right described in § 408.942(a) of this subpart and submit evidence pursuant to § 408.942(b) of this subpart or request a waiver under § 408.910 of this subpart, we will suspend any notice to the Department of the Treasury until we have issued written findings that affirm that an overpayment is past due and legally enforceable and, if applicable, make a determination that a waiver request cannot be granted.

§ 408.946 What happens if your tax refund is insufficient to cover the amount of your SVB overpayment?

If your tax refund is insufficient to recover an overpayment in a given year, the case will remain with the Department of the Treasury for succeeding years, assuming that all criteria for certification are met at that time.

COMPROMISE SETTLEMENTS, OR SUSPENSIONS OR TERMINATION OF COLLECTION

§ 408.950 Will we accept a compromise settlement of an overpayment debt or suspend or terminate collection of an overpayment?

(a) *General.* If we find that you do not, or your estate does not, have the present or future ability to pay the full amount of the overpayment within a reasonable time or the cost of collection is likely to exceed the amount of recovery, we may take any of the following actions, as appropriate.

(1) We may accept a compromise settlement (payment of less than the full amount of the overpayment) to discharge the entire overpayment debt.

(2) We may suspend our efforts to collect the overpayment.

(3) We may terminate our efforts to collect the overpayment.

(b) *Rules we apply.* In deciding whether to take any of the actions described in paragraph (a) of this section, we will apply the rules in § 404.515(b), (c), (d),

(e), and (f) of this chapter and other applicable rules, including the Federal Claims Collection Standards (31 CFR 900.3 and parts 902 and 903).

(c) *Effect of compromise, suspension or termination.* When we suspend or terminate collection of the overpayment debt, we may take collection action in the future in accordance with provisions of the Social Security Act, other laws, and the standards set forth in 31 CFR chapter IX. A compromise settlement satisfies the obligation to repay the overpayment if you or your estate comply with the terms of the settlement. Failure to make payment in the manner and within the time that we require in the settlement will result in reinstatement of our claim for the full amount of the overpayment less any amounts paid.

Subpart J—Determinations and the Administrative Review Process

AUTHORITY: Secs. 702(a)(5) and 809 of the Social Security Act (42 U.S.C. 902(a)(5) and 1009).

SOURCE: 69 FR 25955, May 10, 2004, unless otherwise noted.

INTRODUCTION, DEFINITIONS, AND INITIAL DETERMINATIONS

§ 408.1000 What is this subpart about?

(a) *Explanation of the administrative review process.* This subpart explains the procedures we follow in determining your appeal rights under title VIII of the Social Security Act. The regulations describe the process of administrative review and explain your right to judicial review after you have taken all the necessary administrative steps. The administrative review process consists of several steps, which usually must be requested within certain time periods and in the following order:

(1) *Initial determination.* This is a determination we make about whether you qualify for and can become entitled to SVB or whether your SVB entitlement can continue. It can also be about any other matter, as discussed in § 408.1003, that gives you a right to further review.

(2) *Reconsideration.* If you are dissatisfied with an initial determination, you may ask us to reconsider it.