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**From:**

**Sent:** 3/3/09

**To:**

**Cc:**

**Subject:** 6402(e) and perhaps priority and perhaps levy

Hi--I spoke with [redacted] about your question this a.m., as she is an expert on overpayment issues. She confirmed that, if one of the offset provisions in section 6402 does not apply, we are without authority to pay the refund to someone other than the taxpayer. The offsets are done by FMS as part of the Treasury Offset Program, which was set up to provide for an orderly mechanism to offset certain debts. Without this mechanism, any party could attempt to assert a prior claim to the refund which would lead to having to evaluate different priority claims, etc.

So a state cannot just submit a levy, for example, and get the refund proceeds. Qualified parties can follow the procedures to seek offset of refunds under the terms of the Treasury Offset Program specifically set forth in section 6402 and Treas. Reg. 285. As you note, however, those provisions would not apply in your case because the address on the return is a different state from the state with an unpaid tax liability.