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# Creditor/Debtor Law—Collecting Defaulted Student Loans: Income Tax Refund Offset—Thomas V. Bennett, 856 F.2d 1165 (8th Cir. 1988)

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**Creditor/Debtor Law—COLLECTING DEFAULTED STUDENT LOANS: INCOME TAX REFUND OFFSET—*Thomas v. Bennett*, 856 F.2d 1165 (8th Cir. 1988)**

INTRODUCTION

The United States Department of Education has intercepted millions of dollars in tax refunds from thousands of people who have defaulted on their federally guaranteed student loans.<sup>1</sup> This interception of tax refunds was initiated largely because the costs to the federal government of defaulted student loans began to escalate during the mid-1970s. These costs increased primarily for two reasons.<sup>2</sup> First, the large number of student borrowers from the late 1960s and early 1970s moved into repayment status.<sup>3</sup> In 1970, the amount of loans due to be repaid was less than \$500 million.<sup>4</sup> By 1974, this figure had risen to about \$2.5 billion.<sup>5</sup> Second, the percentage of borrowers who defaulted on their student loan repayments began to increase.<sup>6</sup> This increasing default rate was aggravated by the federal government's lack of collection efforts.<sup>7</sup>

Moreover, the tremendous increases in educational costs and the troubled economic conditions of the 1970s and 1980s have forced more and more students to rely upon federally guaranteed student loans to finance their educations.<sup>8</sup> The Guaranteed Student Loan

1. See Rigg, *Intercept of Tax Refunds to Offset Debts Owed Federal Agencies: Part I*, 20 CLEARINGHOUSE REV. 557, 557 (1986) [hereinafter Rigg I]. The Department of Education recovered \$116 million owed the federal government by student loan defaulters by intercepting the defaulters' 1985 income tax refunds. Hanlon, *Tax Refund Intercepts From Loan Defaulters Pay Off for Federal Government*, 31 TAX NOTES 971, 971 (1986). In the first five months of 1985, U.S. attorneys' offices around the country had filed claims against more than 15,000 students. Blodgett, *Pay It Back*, 71 A.B.A. J. 22, 22 (May 1985).

2. NATIONAL COMM'N ON STUDENT FIN. ASSISTANCE, *GUARANTEED STUDENT LOANS: A BACKGROUND PAPER* 23 (1982) [hereinafter BACKGROUND PAPER] (federal government spends money to collect defaulted loans and it is obligated to reimburse lenders for outstanding principal and interest on the loans).

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.* The initial alarm sounded when the default rate increased to twelve percent in the mid-1970s. *Id.*

7. *Id.*

8. Naegele, *The Guaranteed Student Loan Program: Do Lenders' Risks Exceed Their Rewards?* 34 HASTINGS L.J. 599, 601 (1983). As of 1978, over forty percent of all American law schools' gross tuition income was derived from student loans. Swords and Walwer, *Financing Legal Education*, 64 A.B.A. J. 1880, 1885 (1978).

"The federal [government's] role as a provider of student assistance began with the GI Bill after World War II." CONGRESSIONAL BUDGET OFFICE, *FEDERAL STUDENT ASSISTANCE: ISSUES & OPTIONS* 1 (1981) [hereinafter FEDERAL STUDENT ASSISTANCE]. The government expanded this assistance by providing student loans under the National Defense Education Act passed in 1958. *Id.* Congress then passed the Higher

(GSL) Program<sup>9</sup> has become not just a convenience for a small number of students, but an absolute necessity for many students.<sup>10</sup> In addition, the GSL program has developed into one of the most important sources of tuition money for schools throughout the country.<sup>11</sup> This growth of the GSL Program coupled with the increasing number of student loan defaulters forced the government, in the

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Education Act of 1965, Pub. L. No. 89-329, 79 Stat. 1219 (codified as amended at 20 U.S.C. §§ 1060-98 (1982 & Supp. IV 1986)). This Act authorizes the Department of Education to administer several student loan programs. Among these are the Federal Insured Student Loan Program, the Guaranteed Student Loan Program (now called the Robert T. Stafford Student Loan Program, *see infra* note 9), and the National Direct Student Loan Program. Rigg I, *supra* note 1, at 560. This Act was established in response to a concern that minority and lower-income students had much lower rates of college attendance. FEDERAL STUDENT ASSISTANCE, *supra*, at 1. After a few years, Congress expanded the scope of its student assistance by passing the Middle Income Student Assistance Act of 1978. This expansion in student assistance naturally led to tremendous increases in costs to the federal government. *Id.*

9. The Guaranteed Student Loan Program is authorized under the Higher Education Act of 1965. Higher Education Act of 1965, Pub. L. No. 89-329, 79 Stat. 1219 (codified as amended at 20 U.S.C. §§ 1060-98 (1982 & Supp. IV 1986)). In 1988, the Higher Education Act of 1965 was amended and the GSL Program was renamed the Robert T. Stafford Student Loan Program. *Id.*, amended by Act of April 28, 1988, Pub. L. No. 100-297, § 2601, 1988 U.S. CODE CONG. & ADMIN. NEWS (102 Stat.) 130, 330. In this article, however, the name Guaranteed Student Loan Program will be used. It is a federal program which provides assistance to students in securing low-interest, long-term loans to help finance their postsecondary education. These loans are not actually made by the federal government. Rather, they are obtained from eligible private lenders and guaranteed by the government. *See also* BACKGROUND PAPER, *supra* note 2, at 1; Naegele, *supra* note 8, at 599-600; UNITED STATES GENERAL ACCOUNTING OFFICE, THE GUARANTEED STUDENT LOAN INFORMATION SYSTEM NEEDS A THOROUGH REDESIGN TO ACCOUNT FOR THE EXPENDITURE OF BILLIONS 1 (1981) [hereinafter GAO REPORT]. Under the Guaranteed Student Loan Program, the government pays interest to the lender on the insured student loans until the student's repayment period begins. *Id.* The government pays each lender a quarterly special allowance on the loan which is a percentage of the average unpaid principal balance of all eligible loans held by the lender. *Id.* at 2. If the student defaults on a guaranteed loan and the lender cannot collect, the government pays the lender the principal and interest due on the loan. The government is then left to recover the defaulted student loan from the borrower. *Id.* Default occurs if the student borrower fails to make the required loan repayments for at least 120 days (for a loan repayable in monthly installments) or 180 days (for a loan repayable in less frequent installments). *See Skipping Out on Alma Mater: Some Problems Involving the Collection of Federal Student Loans*, 15 COLUM. J.L. & SOC. PROBS. 317, 323 (1980).

10. *See* Jenkins, *Regulation of Colleges and Universities Under the Guaranteed Student Loan Programs*, 4 J.C. & U.L. 13, 15 (1976). As of March 1982, the National Commission on Student Financial Assistance reported that, since its inception under the Higher Education Act of 1965, more than 18 million loans had been issued under the Guaranteed Student Loan Program totalling nearly \$30 billion. It was estimated that during the 1981-82 school year alone, over 3 million students would borrow \$8 billion. BACKGROUND PAPER, *supra* note 2, at 1.

11. *See* Jenkins, *supra* note 10, at 15.

early 1980s, to begin a campaign to crack down on defaulters.<sup>12</sup>

Despite the government's efforts to collect defaulted student loans, the number of defaulters continues to grow. As of 1986, \$4 billion to \$5 billion was owed the federal government on defaulted student loans.<sup>13</sup> The dramatic growth in total annual loan volume has resulted in large increases in loans entering repayment status and becoming subject to default.<sup>14</sup> Due to the magnitude of these costs and the current skyrocketing budget deficit, this "crisis" in student loan defaults has been the object of growing scrutiny and concern by the public and Congress.

This Case Note supports the Department of Education's authority to use tax refund offsets to collect past-due, legally enforceable debts. However, this Case Note challenges the recent Eighth Circuit Court of Appeals' decision in *Thomas v. Bennett*,<sup>15</sup> as well as the court's interpretation of the statutes providing for the tax refund offset process. This Case Note will demonstrate that the court of appeals erred when it held that the Department of Education has the

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12. BACKGROUND PAPER, *supra* note 2, at 24. The increasing default rate led the federal government to implement a series of remedies which included expanding the number of government collection agents, using outside collection agencies, restricting the eligibility of institutions with abnormally high default rates, using credit bureaus and IRS records to track down borrowers, and relying more heavily on state guaranty agencies. The government also passed legislation to address the increasing student default costs. See *infra* notes 17–30.

13. See Blodgett, *supra* note 1, at 22; Reuben, *IRS To Join With Education Department in Cracking Down on Delinquent Student Loans*, 28 TAX NOTES 713, 713 (1985); Hanlon, *supra* note 1, at 971.

It was estimated that in 1988 alone, students would default on over \$1.5 billion in guaranteed student loans. *Student Loan Defaults—The Belmont Task Force Report: Hearings Before the Subcomm. on Postsecondary Education of the House Comm. on Education & Labor*, 100th Cong., 2d Sess. 37 (1988) (statement of Matthew G. Martinez, Congressman from California) [hereinafter *Belmont Task Force Report*].

14. See *The Belmont Task Force Report*, *supra* note 13, at 4. The Task Force participants noted that the increase in default costs are more likely attributable to increases in loan volume rather than to increases in the default rate. *Id.* The Task Force stated that because of the relationship between increases in value and increases in default costs, such costs are likely to increase even more in the future. *Id.* Even with improved collection methods, such as tax refund offsets, most defaulted student loans are simply uncollectible because the defaulter is unemployed. The Task Force studied the type of people who are in default and concluded the following:

Contrary to popular perception, the typical defaulter is not a "deadbeat" who refuses to pay, but appears to be a dropout who is unable to pay. Defaulters tend to be first year students, from low income and minority backgrounds, with a small loan balance (90 percent less than \$5,000) who did not complete more than the first year, have borrowed only once, receive no or little assistance from parents in repaying, are likely to be unemployed when the loan comes due, and never make a first payment. . . .

*Id.* at 10. Of course, some defaulters are "deadbeats" who can afford to repay their student loans, but simply refuse to do so.

15. 856 F.2d 1165 (8th Cir. 1988).

authority, *after* the six-year statute of limitations has run, to use tax refund offsets to collect defaulted student loans.<sup>16</sup>

The first section of this Case Note provides background information on Congress' response to increasing student loan defaults. It also provides background on the courts' response to tax refund offsets. The second section sets forth the facts and the court's analysis in *Thomas v. Bennett*. The third section is an analysis of the *Thomas* decision. It examines the statutes of limitations for collection of a debt owed to the federal government and the meaning of the phrase "legally enforceable debt." The final section contains the author's conclusions.

## I. BACKGROUND

### A. Legislative Response to Student Loan Default Rate

On October 25, 1982, the Debt Collection Act<sup>17</sup> became law. The Act gives federal agencies the power to collect debts through several processes such as attaching federal paychecks or retirement checks, reporting defaulted student loans to national credit bureaus, and turning delinquent accounts over to the Justice Department for prosecution.<sup>18</sup>

In attempting to collect on delinquent accounts, it was necessary for the Justice Department to interpret 28 U.S.C. § 2415(a). This section states that: "every action for money damages brought by the United States . . . which is founded upon any contract express or implied in law or fact, shall be barred unless the complaint is filed within six years after the right of action accrues. . . ."<sup>19</sup>

The Justice Department interpreted this statute to mean that "the six year statute of limitations prevents the government from collecting debts over six years old by means of offset."<sup>20</sup> Thus, Congress reasoned that "the government will be unable to collect a just debt from many debtors because the statute of limitations has run out."<sup>21</sup>

Regardless of the validity of the Justice Department's interpreta-

16. *Id.* at 1169 (emphasis added).

17. Debt Collection Act of 1982, Pub. L. No. 97-365, 96 Stat. 1749 (codified at 28 U.S.C. § 2415 (1982 & Supp. IV 1986) and 31 U.S.C. §§ 3711-19 (1982 & Supp. IV 1986)). This Act gave federal agencies the power to collect unpaid debts owed to the federal government by attaching various payments due and payable by the government to the debtor's in default. *Id.*

18. U.S. DEPARTMENT OF EDUCATION, PROGRAM BOOK: A SUMMARY OF 1984-85 PROGRAM STATISTICS B-4 (1986) [hereinafter U.S. DEPARTMENT OF EDUCATION, PROGRAM BOOK].

19. 28 U.S.C. § 2415(a) (1982 & Supp. IV 1986).

20. S. REP. NO. 378, 97th Cong., 2d Sess. 1, 16, *reprinted in*, 1982 U.S. CODE CONG. & ADMIN. NEWS 3377, 3392.

21. *Id.*

tion, Congress added 28 U.S.C. § 2415(i)<sup>22</sup> to the Debt Collection Act in response to this interpretation of the statute of limitations found in section 2415(a).<sup>23</sup> Section 2415(i) extends the statute of limitations for certain administrative offsets to ten years.<sup>24</sup> Congress also enacted 31 U.S.C. § 3716 which prescribes the procedures that must be followed in order to use these offsets.<sup>25</sup>

Less than two years later, in 1984, Congress further expanded the government's debt collection powers. Under the Deficit Reduction Act,<sup>26</sup> Congress provided for tax refund "offsets" by federal agencies to collect debts owed to the federal government.<sup>27</sup> This tax refund offset process was instituted pursuant to 31 U.S.C. § 3720A.<sup>28</sup> The process allows any federal agency that is owed a "past-due legally enforceable debt" to notify the Secretary of the Treasury to intercept and offset the debtor's tax refund.<sup>29</sup> The Deficit Reduction Act also amended section 6402 of the Internal Revenue Code to authorize tax refund offsets.<sup>30</sup>

This tax refund offset process appears to be a cost effective

22. 28 U.S.C. § 2415(i) (1982).

23. Rigg, *Interception of Tax Refunds to Offset Debts Owed Federal Agencies: Part III*, 20 CLEARINGHOUSE REV. 822, 823 (1986) [hereinafter Rigg III].

24. *Id.*

25. *Id.* at 824.

26. Deficit Reduction Act of 1984, Pub. L. No. 98-369, 98 Stat. 494 (codified at 26 U.S.C. § 6402 (1982 & Supp. IV 1986) and 31 U.S.C. § 3720A (Supp. IV 1986)). Section 3720A allows federal agencies which are owed past-due legally enforceable debts to refer debtors' names to the Internal Revenue Service for interception of their tax refunds. Rigg I, *supra* note 1, at 558.

27. U.S. DEPARTMENT OF EDUCATION, PROGRAM BOOK, *supra* note 18, at B-5; Hanlon, *supra* note 1, at 971.

28. Rigg III, *supra* note 23, at 824 & n.26.

29. 31 U.S.C. § 3720A (Supp. IV 1986).

In order to institute a tax refund "offset," the Department of Education provides the Internal Revenue Service with a list of names of students who have defaulted on their student loans. The IRS matches those names with names of taxpayers owed tax refunds. The IRS, then, offsets the refunds up to the amount owed on the defaulted student loans. Reuben, *supra* note 13, at 713. Under this process, a 60-day notice letter must be mailed to the student loan defaulter explaining the nature of their obligation and that their name will be sent to the IRS to offset any tax refunds, if they fail to establish a repayment schedule. *Id.* The federal agencies may only contact the IRS to offset tax refunds as a last resort. *Quayle Bill Would Make Refund Offset Program for Student Loans Permanent*, 34 TAX NOTES 1220, 1220 (1987). Other collection methods such as referring loan defaulters to credit bureaus, offsetting the salaries of defaulters who are federal employees, and turning delinquent accounts over to the Justice Department for prosecution must be employed first. Hanlon, *supra* note 1, at 971.

The constitutionality of the notice provision of the tax offset program is not addressed in this Case Note. For a thorough analysis challenging the constitutionality of such a notice provision see Rigg, *Intercept of Tax Refunds to Offset Debts Owed Federal Agencies: Part II*, 20 CLEARINGHOUSE REV. 702 (1986) [hereinafter Rigg II].

30. 26 U.S.C. § 6402(d) (Supp. IV 1986); *Use of Tax Refund Offsets to Collect Nontax*

method of collecting outstanding debts.<sup>31</sup> In 1988 alone, the Internal Revenue Service collected \$236 million from 456,489 delinquent debtors.<sup>32</sup> The tax refund offset process, which was originally established for a two-year trial period,<sup>33</sup> has been extended to January 10, 1994.<sup>34</sup>

### B. Judicial Response to Tax Refund Offset

Traditionally, the courts have supported the government's right to exercise offset.<sup>35</sup> For example, in *Gratiot v. United States*,<sup>36</sup> the United States Supreme Court stated that the government has the same right that "belongs to every creditor, to apply the unappropriated moneys of his debtor, in his hands, in extinguishment of the debts due to him."<sup>37</sup> In that case, the United States brought a lawsuit against Gratiot to recover money he owed the government for wages paid to him as chief engineer of the United States.<sup>38</sup> The Supreme Court held that the United States had the right to apply all money due to Gratiot to offset and extinguish any balances he owed the United States.<sup>39</sup>

Most of the cases decided prior to *Thomas* concerning debt collection by the government involve court action and not tax refund offset.<sup>40</sup> The courts have consistently held in such cases that the six-

*Federal Debts: Hearing Before the Subcomm. on Oversight of the House Comm. on Ways and Means*, 99th Cong., 1st Sess. 1 (1985).

31. *Over \$400 Million Collected by the Tax Refund Offset Program in Last Two Years*, 39 TAX NOTES 320, 320 (1988). In the first year of its operation, the tax refund offset program collected \$150 million on delinquent debts owed to federal agencies. *Tax Refund Offset Program Nets \$150 Million in Overdue Debts*, 34 TAX NOTES 834, 834 (1987).

32. *Jones, Refund Offset Program Collects \$236 Million in 1988*, 42 TAX NOTES 623, 623 (1989). During the three years it has been in operation (1985-88), the tax refund offset process has recovered \$841 million in delinquent debts owed to the federal government. *Id.* In addition, the Office of Management and Budget estimated that total recoveries in the next five years will be \$2.1 billion. *Id.*

33. Hanlon, *supra* note 1, at 971.

34. *Jones, supra* note 32, at 623.

35. *See, e.g.,* *Pearlman v. Reliance Ins. Co.*, 371 U.S. 132, 140 (1962) (citing *United States v. Munsey Trust Co.*, 332 U.S. 234 (1947)); *United States v. Munsey Trust Co.*, 332 U.S. at 239-40; *McKnight v. United States*, 98 U.S. 179, 186 (1878); *Gratiot v. United States*, 40 U.S. (15 Pet.) 336, 370 (1841); *IML Freight v. United States*, 639 F.2d 676, 679 (Ct. Cl. 1980); *Blake Constr. Co. v. United States*, 585 F.2d 998, 1005 (Ct. Cl. 1978); *Burlington N. Inc. v. United States*, 462 F.2d 526, 529 (Ct. Cl. 1972); *Belgard v. United States*, 232 F. Supp. 265, 268 (W.D. La. 1964); *Western Casualty & Sur. Co. v. United States*, 109 F. Supp. 422, 426 (Ct. Cl. 1953).

36. 40 U.S. (15 Pet.) 336 (1841).

37. *Id.* at 370.

38. *Id.* at 337-38.

39. *Id.* at 370.

40. *United States v. Olavarrieta*, 812 F.2d 640 (11th Cir. 1987); *United States v. Tillerias*, 709 F.2d 1088 (6th Cir. 1983); *United States v. Frisk*, 675 F.2d 1079 (9th Cir. 1982); *United States v. Whitesell*, 563 F. Supp. 1355 (D. S.D. 1983); *United*

year statute of limitation established by 28 U.S.C. § 2415(a) governs.<sup>41</sup>

In *Gerrard v. United States Office of Education*,<sup>42</sup> however, a District Court in the Northern District of California addressed the tax refund offset process. In *Gerrard*, a taxpayer brought an action against the Department of Education to recover his tax refund which had been intercepted by the Internal Revenue Service.<sup>43</sup> The offset had been initiated more than six years after the government's right of action had accrued.<sup>44</sup> The *Gerrard* court held that the six-year statute of limitations, pursuant to 28 U.S.C. § 2415(a), did not apply to the tax refund offset.<sup>45</sup> In so holding, the court stated that section 2415 bars the government from bringing a civil action to enforce a debt, but that the government has other lawful means of collecting the debt such as administrative offset.<sup>46</sup> The court in *Gerrard* further held that "[t]he phrase 'legally enforceable' . . . does not mean 'not barred by the statute of limitations.'"<sup>47</sup>

The *Gerrard* court's holding, however, misinterpreted 31 U.S.C. § 3716. It overlooked the fact that under section 3701(d) of title 31,

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States v. Kendrick, 554 F. Supp. 121 (E.D. Ark. 1982); United States v. DeGusta, 512 F. Supp. 1299 (E.D. Cal. 1981); United States v. Lucas, 516 F. Supp. 934 (E.D. Tex. 1981); United States v. Lujan, 520 F. Supp. 282 (D. N.M. 1980); United States v. Wilson, 478 F. Supp. 488 (M.D. Pa. 1979); United States v. Dold, 462 F. Supp. 801 (D. S.D. 1978).

41. *Olavarrieta*, 812 F.2d at 634–44 (“[a]ctions brought by the United States seeking money damages on account of a breach of contract are governed by a six year statute of limitations”). *Accord Tilleraas*, 709 F.2d at 1090; *Frisk*, 675 F.2d at 1081; *Whitesell*, 563 F. Supp. at 1358; *DeGusta*, 512 F. Supp. at 1300–01; *Lucas*, 516 F. Supp. at 935; *Dold*, 462 F. Supp. at 805.

The courts, however, disagree as to when the six-year statute of limitations begins to run. Some courts hold that the statute of limitations begins to run as soon as the debtor defaults. *See Dold*, 462 F. Supp. at 805 (the statute began to run when the defendant “defaulted” as the term is defined in 20 U.S.C. § 1080(e)(2)). *Accord DeGusta*, 512 F. Supp. at 1301 (“[t]his court concurs in the *Dold* result”); *see also Lucas*, 516 F. Supp. at 935. The majority of courts, however, hold that the six-year statute of limitations does not begin to run until the government pays the lender for the defaulted loan. *See Olavarrieta*, 812 F.2d at 644 (the government's cause of action accrues when the government pays the lender). *Accord Tilleraas*, 709 F.2d at 1092–93 (it was not until the government paid the Bank's claim that it obtained its right to sue); *Frisk*, 675 F.2d at 1083 (the government's cause of action accrued when it paid the lender); *Whitesell*, 563 F. Supp. at 1358 (the date it paid the defendant's delinquent obligation); *Kendrick*, 554 F. Supp. at 122; *Lujan*, 520 F. Supp. at 283; *Wilson*, 478 F. Supp. at 490.

42. 656 F. Supp. 570 (N.D. Cal. 1987).

43. *Id.* at 572.

44. *Id.* at 573.

45. *Id.* According to the court, the use of the phrase “legally enforceable debt” does not alter this analysis. *Id.* at 574.

46. *Id.*

47. *Id.*



section 3716 does "not apply to a claim or debt under, or to an amount payable under, the Internal Revenue Code. . . ."48 A tax refund is such an amount. Moreover, the *Gerrard* court misinterpreted the meaning of the phrase "legally enforceable." As this Case Note later demonstrates, the phrase "legally enforceable" means not barred by the applicable six-year statute of limitations.

## II. THE THOMAS DECISION

### A. The Facts

Deborah Thomas brought an action challenging the authority of the Secretary of the United States Department of Education, William Bennett, to collect a defaulted federally guaranteed student loan through an offset of her federal income tax refund after the statute of limitations had expired.<sup>49</sup> Thomas argued that since the statute of limitations had run, the debt was no longer legally enforceable and therefore not collectible by tax refund interception.<sup>50</sup>

In 1976, Deborah Thomas borrowed \$825 from the Minnesota State Student Loan Program to attend secretarial school at the Minneapolis Business College.<sup>51</sup> The loan was federally guaranteed by the Office of Education<sup>52</sup> under the Federal Insured Student Loan (FISL) Program.<sup>53</sup> Upon completion of the course, Thomas was unable to find a job and thus, was unable to repay her student loan.<sup>54</sup> Subsequent collection efforts were unsuccessful.<sup>55</sup> On February 8, 1978, the Office of Education paid the lender the balance due on Thomas' student loan (\$825 principal plus \$48 accrued interest) pursuant to the terms of its insurance agreement.<sup>56</sup> The government did not take any further action until 1985. At that time, the Secretary of Education notified the Secretary of the Treasury of the defaulted loan and requested that, pursuant to 26 U.S.C. § 6402(d), any in-

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48. 31 U.S.C. § 3701(d) (Supp. IV 1986).

49. *Thomas v. Bennett*, 856 F.2d 1165 (8th Cir. 1988).

50. Brief for Appellant at 3, *Thomas*, 856 F.2d 1165 (8th Cir. 1988)(No. 87-5273 MN).

51. *Thomas*, 856 F.2d at 1166.

52. The Office of Education was replaced by the Department of Education in 1980. At that time, "the Federal influence in education [had grown] large enough to be the basis of a cabinet-level Department of Education, created by President Carter. . . ." N.Y. Times, Sept. 30, 1985, at B7, col. 1. Thus, Deborah Thomas' 1976 loan was guaranteed by the Office of Education which has since become the Department of Education.

53. Brief for Appellee at 5, *Thomas*, 856 F.2d 1165 (8th Cir. 1988)(No. 87-5273 MN). The FISL program was established by Title IV, Part B of the Higher Education Act of 1965, as amended, which is codified at 20 U.S.C. §§ 1071-1087-2.

54. *Thomas*, 856 F.2d at 1166.

55. *Id.*

56. Brief for Appellant, *supra* note 50, at 4.

come tax refund due Thomas be offset against amounts owed on the loan.<sup>57</sup> Thomas' entire 1985 refund was diverted to the Secretary of Education and applied to the outstanding balance due on the loan.<sup>58</sup>

The same collection procedure was initiated in 1986 to collect the balance, at which time Thomas filed suit against the Secretary of Education.<sup>59</sup> Thomas asked for declaratory and injunctive relief against the Secretary of Education to prevent collection of the debt through a tax refund offset.<sup>60</sup> The United States District Court for the District of Minnesota granted summary judgment for the Secretary of Education, and Thomas appealed.<sup>61</sup> The Eighth Circuit Court of Appeals affirmed the district court's decision.<sup>62</sup>

### B. The Court's Analysis

The Eighth Circuit Court of Appeals, in an opinion written by Circuit Judge Beam, acknowledged that the six-year statute of limitations had run, but reasoned that the expiration did not eliminate the underlying debt.<sup>63</sup> Therefore, the court of appeals held that Thomas' student loan obligation remained a "legally enforceable debt" which was properly subject to a tax refund offset.<sup>64</sup>

The *Thomas* court stated that expiration of the statute of limitations does not terminate all of the government's rights to collect on a contract claim after six years.<sup>65</sup> According to the court, the expiration of this statutory period merely eliminates the remedy of filing a lawsuit seeking money damages.<sup>66</sup> In support of its position, the *Thomas* court cited 28 U.S.C. § 2415(f) which provides that the limitation period in section 2415(a) does not prohibit collecting the debt through offset.<sup>67</sup> In addition, the *Thomas* court quoted the *Gerrard* court,<sup>68</sup>

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57. *Thomas*, 856 F.2d at 1166.

58. *Id.* By the time of the offset, interest had accrued on Thomas' loan at a rate of seven percent (the rate called for by the promissory note) through May, 1986 at which time the amount owing was \$1,359.21. Thomas' 1985 income tax refund of \$1,016.98 was credited against the account balance (less a processing fee of \$3.78 paid to the IRS) leaving a remaining balance of \$346.01. Brief for Appellee, *supra* note 53, at 6.

59. *Thomas*, 856 F.2d at 1166.

60. *Id.* at 1166-67.

61. *Id.* at 1165.

62. *Id.* at 1169.

63. *Id.*

64. *Id.* The court of appeals further held that the district court had jurisdiction in an action against the Secretary of Education challenging the validity of executing an offset against a federal income tax refund. *Id.* at 1167. In addition, the claims were not made moot by the transfer of the fund at issue to the Secretary of Education. *Id.* at 1168.

65. *Id.* at 1169.

66. *Id.*

67. *Id.*

which stated that section 2415(a) bars the remedy of a civil action by the government on a debt, but still allows other methods of collection.<sup>69</sup> Although the government could no longer file a lawsuit against Thomas because the six-year statute of limitations had run, the court held that her obligation on the defaulted student loan remained a "legally enforceable debt" under 26 U.S.C. § 6402(d), and was properly subject to a tax refund offset.<sup>70</sup> The *Thomas* court adopted the view expressed in *Gerrard* that "[t]he phrase 'legally enforceable'. . . does not mean 'not barred by the statute of limitations.'" <sup>71</sup> As discussed earlier, the *Gerrard* court's holding is based not only on a misinterpretation of the statutes which established the tax refund offset process, but also, on a misinterpretation of the phrase "legally enforceable." Thus, the *Thomas* court relied on a case which itself was based on an incorrect interpretation of the applicable law. This reliance reinforces the argument that the decision in *Thomas* was incorrect.

### III. ANALYSIS OF THE *THOMAS* DECISION

#### A. *Statute of Limitations*

A statute of limitations is governed by the statute which creates it.<sup>72</sup> It is the role of the state legislatures and Congress to enact specific statutes of limitations. "The purpose of a statute of limitations is to promote justice, discourage unnecessary delay and forestall the prosecution of stale claims."<sup>73</sup> The consequence of the expiration of a statute of limitations is that the remedy provided by the statute is forever barred. In addition, a statute of limitations enacted by a state

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68. 656 F. Supp. 570 (N.D. Cal. 1987).

69. *Thomas*, 856 F.2d at 1169 (quoting *Gerrard*, 656 F. Supp. at 574).

70. *Thomas*, 856 F.2d at 1169.

71. *Id.* (quoting *Gerrard*, 656 F. Supp. at 574).

72. *See Uscienski v. National Sugar Ref. Co.*, 19 N.J. Misc. 240, 242, 18 A.2d 611, 612-13 (1941).

73. *Colorado State Bd. of Medical Examiners v. Jorgensen*, 198 Colo. 275, 279, 599 P.2d 869, 872 (1979)(citing *Rosane v. Senger*, 112 Colo. 363, 369, 149 P.2d 372, 375 (1944)). According to the United States Supreme Court:

Statutes of limitations find their justification in necessity and convenience rather than logic. They represent expedients, rather than principles. . . .

They are by definition arbitrary, and their operation does not discriminate between the just and the unjust claim, or the voidable and unavoidable delay. They have come into the law not through the judicial process but through legislation. They represent a public policy about the privilege to litigate.

*Chase Sec. Corp. v. Donaldson*, 325 U.S. 304, 314 (1945)(citation omitted). The Supreme Court stated in a more recent case that "[s]tatutes of limitations are not simply technicalities. On the contrary, they have long been respected as fundamental to a well-ordered judicial system." *Board of Regents v. Tomanio*, 446 U.S. 478, 487 (1980).

legislature or Congress supersedes any existing common law.<sup>74</sup> In regard to actions for money damages pursuant to a contract claim brought by the United States, Congress has established a six-year statute of limitations.<sup>75</sup>

As a general rule, a statute of limitations bars the remedy to which it applies, but does not extinguish the right, obligation or cause of action.<sup>76</sup> There are exceptions to this general rule. For example, where the statute by its terms or by necessary implication extinguishes the right itself, the general rule does not apply.<sup>77</sup> In addi-

74. The general rule states that there is no limitation period for the government to bring an action unless a statute specifically authorizes it. S. REP. NO. 1328, 89th Cong., 2d Sess. 1, 8, reprinted in, 1966 U.S. CODE CONG. & ADMIN. NEWS 2502, 2512.

75. See 28 U.S.C. § 2415(a)(1982 & Supp. IV 1986).

76. See, e.g., *Donaldson*, 325 U.S. at 314; *Davis v. Mills*, 194 U.S. 451, 454 (1904); *Campbell v. Haverhill*, 155 U.S. 610, 618 (1895); *Osmundsen v. Todd Pac. Shipyard*, 755 F.2d 730, 733 (9th Cir. 1985); *McClure v. Middletown Hosp. Assoc.*, 603 F. Supp. 1365, 1369 (S.D. Ohio 1985); *Industrial Comm'n of Colorado v. Weaver*, 81 Colo. 1, 1, 254 P. 444, 445 (1927); *State ex rel Anderson v. General Acc. Fire & Life Assur. Corp.*, 134 Minn. 21, 24, 158 N.W. 715, 716 (1916); *Glover v. National Bank of Comm. of New York*, 156 A.D. 247, 250-51, 141 N.Y.S. 409, 412 (1913); *American Nat'l Ins. Co. v. Hicks*, 35 S.W.2d 128, 130 (Tex. Ct. App. 1931).

There is some authority, however, that contradicts this general rule. The United States Supreme Court noted that "[s]ome are of opinion that like the analogous civil law doctrine of prescription limitations statutes should be viewed as extinguishing the claim and destroying the right itself. Admittedly it is troublesome to sustain as a 'right' a claim that can find no remedy for its invasion." *Donaldson*, 325 U.S. at 313 (footnote omitted).

The Wisconsin Supreme Court has held that the right as well as the remedy is extinguished when the statute of limitations expires. See, e.g., *Ginkowski v. Ginkowski*, 28 Wis. 2d 530, 536, 137 N.W.2d 403, 406 (1965)(extinguished the right and remedy of annulment); *Shaurette v. Capitol Erecting Co.*, 23 Wis. 2d 538, 544, 128 N.W.2d 34, 38 (1964)(statute could not operate retroactively so as to bar personal injury action); *First Nat'l Bank of Madison v. Kolbeck*, 247 Wis. 462, 465, 19 N.W.2d 908, 909 (1945)(running of statute of limitations does not prevent foreclosure of mortgage); *Maryland Casualty Co. v. Beleznyay*, 245 Wis. 390, 393, 14 N.W.2d 177, 179 (1944)(running of statute of limitations absolutely extinguishes cause of action even if treated as statute of repose). Similarly, the rule of law in New Jersey is that the statute of limitations bars the right as well as the remedy. See *Standard Oil Co. v. New Jersey*, 341 U.S. 428, 432 n.2 (1951)(citing *State v. Standard Oil Co.*, 5 N.J. 281, 293, 74 A.2d 565, 571 (1950)). In *Standard Oil*, the New Jersey Supreme Court noted:

[I]t would seem that the destruction of the remedy reduces the "right" to a mere moral obligation sufficient only in the law to sustain a new promise without an independent consideration. . . . The abrogation of the remedy is equally a violation of the right, for a right without a remedy is a mere shadow.

*Id.*

77. See *Greene v. Greene*, 145 Miss. 87, 113, 110 So. 218, 223 (1926). The court stated: "where the debt itself is extinguished by the statute of limitation, as it is in our state, the account ceases to be a debt. It is completely extinguished by the statute of limitation. . . ." *Id.* See also *Schafer v. Wegner*, 78 Wis. 2d 127, 134, 254 N.W.2d 193, 197 (1977)(the running of the statute of limitations extinguishes the right as well as the remedy).

tion, where a statute of limitations gives a right of action or creates a liability which did not exist at common law, and makes the time limitation an essential element of the cause of action, the general rule is inapplicable.<sup>78</sup>

The Eighth Circuit Court of Appeals in *Thomas* correctly applied this general rule and held that the statute of limitations bars the government from filing a lawsuit for money damages after six years, but it does not extinguish the underlying debt.<sup>79</sup> The *Thomas* court erroneously concluded, however, that the government could collect the debt by a tax refund offset. Even with the passage of the Debt Collection Act and the Deficit Reduction Act, no statute exists which permits tax refund offsets more than six years after the cause of action has accrued.<sup>80</sup> Section 2415(i) permits only *non-tax* administrative offsets under 31 U.S.C. § 3716.<sup>81</sup>

Section 2415(i) provides that “[t]he provisions of this section shall not prevent the United States or an officer or agency thereof from collecting any claim of the United States by means of administrative offset, in accordance with section 3716 of title 31.”<sup>82</sup> Section 3716(c)(2) states that “[t]his section does not apply . . . when a statute explicitly provides for or prohibits using administrative offset to collect the claim or type of claim involved.”<sup>83</sup> The synthesis of sections 2415(i) of title 28 and 3716(c)(2) of title 31 is that tax refund offsets fall within the exception of section 3716(c)(2) when this section is read in conjunction with 31 U.S.C. § 3701(d).

Section 3701(d) provides in part that sections “3716–3719 of this title do not apply to a claim or debt under, or to an amount payable under, the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*).”<sup>84</sup> Tax refunds are an amount payable under the Internal Revenue Code. This interpretation is confirmed by the legislative history of the Debt Collection Act of 1982. Senate Report Number 378 states that “[t]his revision to Section 2415 would allow administrative offset of delinquent debts owed the government against future payments benefits, or *non-tax* refunds due the delinquent debtor beyond

78. See, e.g., *William Danzer & Co. v. Gulf & Ship Island R.R.*, 268 U.S. 633, 636–37 (1925); *Ray v. Sanitary Garbage Co.*, 134 Neb. 178, 183, 278 N.W. 139, 142–43 (1938) (“limitation is a limitation of right as well as remedy”) (citation omitted).

79. *Thomas v. Bennett*, 856 F.2d 1165, 1169 (8th Cir. 1988) (citing 28 U.S.C. § 2415(f)).

80. Rigg III, *supra* note 23, at 824.

81. 28 U.S.C. § 2415(i) (1982) (emphasis added). See 31 U.S.C. § 3716 (1982); Rigg III, *supra* note 23, at 824.

82. 28 U.S.C. § 2415(i) (1982).

83. 31 U.S.C. § 3716(c)(2) (1982).

84. 31 U.S.C. § 3701(d) (1982 & Supp. IV 1986). See Rigg III, *supra* note 23, at 824.

the six-year statute of limitations.”<sup>85</sup>

Tax refund offset is authorized by section 3720A of title 31. This section, however, does not state a specific period of limitation. Instead, it authorizes the Secretary of the Treasury to “issue regulations prescribing the time or times at which agencies must submit notices of past-due legally enforceable debts. . . .”<sup>86</sup> Pursuant to this authorization, the Secretary of the Treasury has adopted a temporary regulation which defines a “past-due legally enforceable debt” as one “which . . . has been delinquent for at least three months but has not been delinquent for more than ten years at the time the offset is made.”<sup>87</sup> This regulation, however, does not have the full force of law.<sup>88</sup> Section 3720A(d) gives the Secretary of the Treasury the authority to establish procedures for the submission of requests for offsets.<sup>89</sup> It does not authorize the Secretary to define the statutory terms,<sup>90</sup> such as “legally enforceable,” nor does it give the Secretary of the Treasury the authority to extend the general six-year statute of limitations established by Congress and codified in 28 U.S.C. § 2415(a).<sup>91</sup>

It is undisputed that 28 U.S.C. § 2415(a) establishes a six-year statute of limitations for the federal government to initiate a court action against a defaulter. Once this statute of limitations expires, the government is barred from filing a lawsuit to collect the debt.

There is controversy surrounding the application of this six-year limitation period to tax refund offsets since there is not a specified statute of limitations for such an offset. Although the federal government has ten years to initiate a *non-tax* administrative offset this does not apply to a tax refund offset. The key to the federal government’s ability to use a tax refund offset to collect a defaulted loan is that the debt must be a “legally enforceable debt.” The next section of this Case Note will demonstrate that the six-year statute of limitations found in 28 U.S.C. § 2415(a) applies to a tax refund offset.

### B. Meaning of “Legally Enforceable Debt”

The applicable statutes require that debts be “past-due legally enforceable debts” in order to be subject to tax refund offset.<sup>92</sup> The

85. S. REP. NO. 378, 97th Cong., 2d Sess., 1, 17, *reprinted in*, 1982 U.S. CODE CONG. & ADMIN. NEWS 3377, 3393 (emphasis added).

86. 31 U.S.C. § 3720A(d) (Supp. IV 1986).

87. 26 C.F.R. § 301.6402-6T(b)(1) (1988).

88. *Gerrard v. United States Office of Educ.*, 656 F. Supp. 570, 574 n.4 (N.D. Cal. 1987).

89. *See* 31 U.S.C. § 3720A(d) (Supp. IV 1986).

90. *Gerrard*, 656 F. Supp. at 574.

91. Rigg III, *supra* note 23, at 825.

92. 31 U.S.C. § 3720A (Supp. IV 1986) and 26 U.S.C. § 6402(d) (Supp. IV 1986).

meaning of the phrase "legally enforceable" is not defined in any statute or in the legislative history of the Deficit Reduction Act of 1984.<sup>93</sup> Moreover, the case law is contradictory. Several courts hold that a debt is legally enforceable even after the statute of limitations has expired.<sup>94</sup> Other courts hold that a debt is only "legally enforceable" within the statutory limitation period.<sup>95</sup>

Because the phrase "legally enforceable" is not defined by statute or in the legislative history, it is assumed that "the congressional purpose is expressed by the plain meaning of the statutory language and the language must be considered conclusive."<sup>96</sup> It is a firmly established principle that in interpreting a statute, "its words are to be taken according to the meaning given in common usage, in the absence of an indication of a contrary intent or unless to do so would defeat the purpose for which the Act was passed."<sup>97</sup>

In determining the meaning of "legally enforceable," the District Court of Minnesota looked to the definitions of "legally" and "enforce" in *Black's Law Dictionary*.<sup>98</sup> In interpreting these definitions, the district court concluded that "[t]hese definitions contemplate that a 'legally enforceable debt' is a debt that is enforceable as a matter of substantive law."<sup>99</sup> The district court, however, did not explain what it meant by "enforceable as a matter of substantive law."<sup>100</sup> Moreover, the concept of "a debt that is enforceable as a matter of substantive law" is logically inconsistent since substantive law is separate and independent from enforcement issues.<sup>101</sup> Never-

93. Deficit Reduction Act of 1984, Pub. L. 98-369, 98 Stat. 494 (codified at 26 U.S.C. § 6402 and 31 U.S.C. § 3720A (Supp. IV 1986)). See Rigg III, *supra* note 23, at 825.

94. *Thomas v. Bennett*, 856 F.2d 1165, 1169 (8th Cir. 1988); *Gerrard v. United States Office of Educ.*, 656 F. Supp. 570, 574 (N.D. Cal. 1987); *Atwater v. Roudebush*, 452 F. Supp. 622, 632 (N.D. Ill. 1976).

95. See, e.g., *Grace Line, Inc. v. United States*, 255 F.2d 810, 813 (2d Cir. 1958); *Hurst v. United States Dep't of Educ.*, 695 F. Supp. 1137, 1139 (D. Kan. 1988); *Flying Tiger Line, Inc. v. United States*, 170 F. Supp. 422, 426 (Ct. Cl. 1959).

96. *Arkansas v. Block*, 825 F.2d 1254, 1258 (8th Cir. 1987) (citing *American Tobacco Co. v. Patterson*, 456 U.S. 63, 68 (1982)).

97. *Bruhn's Freezer Meats, Inc. v. United States Dep't of Agric.*, 438 F.2d 1332, 1338 (8th Cir. 1971).

98. Memorandum and Order of District Court at 5, *Thomas v. Bennett*, 856 F.2d 1165 (8th Cir. 1988) (No. 3-86-1027) (found in Addendum to Brief for Appellant). The definitions relied upon by the court are the following:

"Legally. Lawfully, according to law." BLACK'S LAW DICTIONARY 805 (5th ed. 1979).

"Enforce. To put into execution; to cause to take effect; to make effective; as, to enforce a particular law, a writ, a judgment, or the collection of a debt or fine; to compel obedience to. See e.g. Attachment; Execution; Garnishment." *Id.* at 474.

99. Memorandum and Order, *supra* note 98, at 5.

100. *Id.* Brief for Appellant, *supra* note 50, at 28.

101. Brief for Appellant, *supra* note 50, at 29-30.

theless, the Eighth Circuit Court of Appeals in *Thomas* apparently adopted the district court's interpretation of the phrase "legally enforceable debt" without question. However, the district court's interpretation is clearly unsupported by the standard definitions of these terms.

The definition of "enforce" strongly implies the use of judicial action as an element of enforceability. This definition uses the phrase "putting into execution," which assumes an ability to sue and secure a judgment.<sup>102</sup> The phrase "legally enforceable" is not defined in *Black's Law Dictionary*. The phrase "legally determined," however, is defined as "determined by process of law."<sup>103</sup> It can be argued, therefore, that the definition of "legally enforceable" means enforceable by process of law. For a definition of "process of law," *Black's Law Dictionary* provides a cross-reference to the definition of "due process of law."<sup>104</sup> The definition of "due process of law" is "[l]aw in its regular course of administration through courts of justice."<sup>105</sup> Thus, the phrase "legally enforceable debt" means a debt which is enforceable by the courts through the filing of a lawsuit. Therefore, once the statute of limitations has expired on bringing an action, the debt is no longer "legally enforceable."

At least one court decision, *Hurst v. United States Department of Education*,<sup>106</sup> decided seven days after the *Thomas* decision, confirms this interpretation of the phrase "legally enforceable."<sup>107</sup> In *Hurst*, the District Court of Kansas held that "[i]n its most basic sense, 'legally enforceable' means that a party could go to court and obtain a judgment on the debt."<sup>108</sup>

Before *Hurst* was decided, some court decisions relied on the definition of the phrase "past-due legally enforceable debt" promulgated in a temporary regulation<sup>109</sup> issued by the Secretary of the Treasury.<sup>110</sup> As mentioned in a previous section of this Case Note, however, such a regulation does not have the full force of law.<sup>111</sup> The definition of the phrase "legally enforceable" in *Hurst* has the full force of law and, therefore, should have greater persuasive force than the definition established by the Secretary of the Treasury.

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102. *Id.* at 29.

103. BLACK'S LAW DICTIONARY, *supra* note 98, at 806 (citing *Black Diamond S.S. Corp. v. Fidelity & Deposit Co. of Maryland*, 33 F.2d 767, 769 (D. Md. 1929)).

104. BLACK'S LAW DICTIONARY, *supra* note 98, at 1085.

105. *Id.* at 449 (emphasis added).

106. 695 F. Supp. 1137 (D. Kan. 1988).

107. *Id.* at 1139.

108. *Id.*

109. See 26 C.F.R. § 301.6402-6T(b)(1),(2) (1988).

110. See *Thomas v. Bennett*, 856 F.2d 1165, 1169 n.4 (8th Cir. 1988); *Gerrard v. United States Office of Educ.*, 656 F. Supp. 570, 574 (N.D. Cal. 1987).

111. *Gerrard*, 656 F. Supp. at 574 n.4.



## CONCLUSION

The Eighth Circuit Court of Appeals in *Thomas* incorrectly held that a debt was "legally enforceable" after the six-year statute of limitations had expired. Although the debt that Thomas owed the government on her defaulted student loan was a legal debt, it was no longer a "legally enforceable debt" at the time the government offset her tax refund.

Section 2415(a) of title 28 provides that every action for monetary damages brought by the federal government, pursuant to a contract claim, is barred unless a complaint is filed within six years after the right of action accrues. Therefore, the government only has six years to institute legal action against the defaulter to collect on the debt. This statute of limitations, however, appears to apply only to court action since it does not bar the government from executing certain administrative offsets.

Section 2415(i) extended this six-year period to ten years for *non-tax* administrative offsets. Non-tax administrative offsets may be initiated by the government to collect debts for a period of ten years after the cause of action accrues. This is allowed even though the debt is no longer a "legally enforceable debt" because it is still a legal debt. However, this ten-year statute of limitations does not apply to tax refund offsets.

Authority for the tax refund offset process is contained in 31 U.S.C. § 3720A and 26 U.S.C. § 6402(d). Although neither of these statutes explicitly provides a statute of limitations, they both mandate that the debt be a "past-due legally enforceable debt" to be subject to the tax refund offset. The phrase "legally enforceable debt" means a debt collectible through judicial process. Once the six-year statute of limitations for bringing a court action expires, it follows that the debt is no longer a "legally enforceable debt." Therefore, after six years, the federal government can no longer use the tax refund offset as a means for collecting the defaulted loan amount.

The statutes which provide for tax refund offset, 26 U.S.C. § 6402(d) and 31 U.S.C. § 3720A, clearly restrict the scope of the government's interception power to "past-due legally enforceable debts."<sup>112</sup> The use of this phrase was intentional. Congress could have simply used the word "debt," but instead it chose to use the phrase "legally enforceable debt." This phrase is only found in section 6402(d) of title 26 and section 3720A of title 31. The repetitive use of this phrase in both sections strongly indicates that it has a

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112. In 31 U.S.C. § 3720A, the phrase "past-due legally enforceable debt" is used three times. 31 U.S.C. § 3720A (Supp. IV 1986). The repeated use of this phrase suggests that it was inserted deliberately and with meaning. Brief for Appellant at 7, *Thomas v. Bennett*, 856 F.2d 1165 (8th Cir. 1988) (No. 87-5273 MN).

special meaning and was inserted deliberately.<sup>113</sup>

In *Thomas*, the Eighth Circuit Court of Appeals' interpretation of section 3720A allowed the federal government to use the tax refund offset against Thomas despite the expiration of the applicable six-year statute of limitations. This interpretation renders the statutory phrase "legally enforceable debt" meaningless. It is a well-established principle that a statute should be interpreted so as to give effect to all of its provisions and not to render any of them superfluous.<sup>114</sup> The *Thomas* court's decision not only violates this principle, but it also disregards the applicable six-year statute of limitations.

*Trudy K. Sternad*

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113. *Id.*

114. See *Conway County Farmers Ass'n v. United States*, 588 F.2d 592, 598 (8th Cir. 1978); Brief for Appellant at 32.

