

*Note: The appeal period has expired, pursuant to Iowa Admin. Code rule 701-7.17(8)(d) the Administrative Law Judge's proposed decision is adopted as the final decision by the Department.*

Iowa Department of Inspections and Appeals  
Division of Administrative Hearings  
Wallace State Office Building  
Des Moines, Iowa 50319

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IN THE MATTER OF:

PATRICK GARRISON  
812 Farnam St.  
Harlan, Iowa 51537

DIA No. 20IDR0052  
Rev. No. 2019-200-2-0692

ORDER GRANTING  
SUMMARY JUDGMENT

Individual Income Tax

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Patrick Garrison (Garrison) appealed from a decision of the Department of Revenue (the Department) concerning the offset of a federal income tax refund. The Department filed a motion for summary judgment, statement of undisputed facts, and brief in support of its motion on May 27, 2020. No resistance to the Department's motion was filed on behalf of Garrison.

The Department's motion for summary judgment came on for telephone hearing on July 1, 2020. Assistant Attorney General Michael Thibodeau represented the Department. Also present on behalf of the Department was Reid Jewell. Garrison failed to appear.

### **ISSUE**

Whether the Department is entitled to summary judgment pursuant to 701 Iowa Administrative Code 7.17(5) regarding a notice of offset issued to the taxpayer.

### **FINDINGS OF FACT**

1. The Department issued a notice of assessment to Garrison on October 20, 2016 in the amount of \$37,261.24 for the 2015 tax year. (Exhibit A; Jewell Affidavit).
2. The Department issued a notice of assessment to Garrison on February 15, 2017 in the amount of \$500 for the 2013 tax year and \$500 for the 2014 tax year. (Exhibit B; Jewell Affidavit).
3. The Department issued a notice of assessment to Garrison on August 11, 2017 in the amount of \$2,151.21 for the 2016 tax year. (Exhibit C; Jewell Affidavit).
4. The Department issued a notice of assessment to Garrison on June 13, 2018 for the amount of \$5,178 for the 2017 tax year. (Exhibit D; Jewell Affidavit).

5. The Department issued a notice of assessment to Garrison on June 12, 2019 in the amount of \$3,601.02 for the 2018 tax year. (Exhibit E; Jewell Affidavit).
6. Each of the assessments issued by the Department instructed Garrison that a protest of the same must be filed within 60 days. (Exhibits A-E).
7. Garrison did not protest any of the assessments issued to him by the Department. (Jewell Affidavit).
8. Garrison has outstanding tax liabilities related to the assessments at issue in this matter. (Jewell Affidavit).
9. The Department issued a notice of intent to offset a federal income tax refund to Garrison on or about September 27, 2019. Garrison filed a timely appeal of that notice. (Jewell Affidavit; Appeal Request).

## **CONCLUSIONS OF LAW**

### Summary Judgment Standard

Summary judgment is a mechanism by which certain cases can be decided as a matter of law without the need for a hearing when there is no genuine factual dispute between the parties.<sup>1</sup> By rule, summary judgment is available in revenue proceedings such as this in limited circumstances.<sup>2</sup>

Summary judgment is proper if “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.”<sup>3</sup> The purpose of summary judgment is to avoid useless trials or hearings when the case can be decided as a legal matter.<sup>4</sup> Summary judgment is warranted only when the factual record, viewed in the light most favorable to the nonmoving party and affording that party all reasonable inferences, entitles the moving party to judgment as a matter of law.<sup>5</sup>

### Federal Tax Offset

Iowa law imposes an income tax upon “every resident and non-resident of the state which tax shall be levied, collected, and paid annually upon and with respect to the entire taxable income as defined by statute.”<sup>6</sup> Any person wishing to contest an assessment shall file a protest, in writing, with the department within the time prescribed by the applicable statute or rule for filing notice

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<sup>1</sup> See, e.g., *Brubaker v. Barlow*, 326 N.W.2d 314, 315 (Iowa 1982) (discussing the function of summary judgment in terms of deciding questions of law and not factual disputes).

<sup>2</sup> 701 Iowa Administrative Code (IAC) 7.17(5)(g).

<sup>3</sup> 701 IAC 7.17(5)(g)(2).

<sup>4</sup> *Sorenson v. Shaklee Corp.*, 461 N.W.2d 324, 326 (Iowa 1990).

<sup>5</sup> *Nelson v. James H. Knight DDS, P.C.*, 834 N.W.2d 64, 67 (Iowa 2013) (citing *Pecenka v. Fareway Stores, Inc.*, 672 N.W.2d 800, 802 (Iowa 2003)).

<sup>6</sup> Iowa Code § 422.5(1).

of application to the director for a hearing.<sup>7</sup> A taxpayer may appeal to the director for revision of the tax, interest, or penalties assessed at any time within sixty days from the date of the notice of the assessment of tax, additional tax, interest, or penalties.<sup>8</sup>

It is undisputed that Garrison failed to timely protest the five notices of assessment issued to him between October 20, 2016 and June 12, 2019. Accordingly, the validity of those assessments are not in dispute and the record shows Garrison owed a total of \$49,191.47 in past due taxes, penalty and interest for the tax years 2013 through 2018. It is further undisputed that either all or a portion of said balance remains unpaid.

Once a tax liability is established, the Department is authorized to establish rules and procedures for the collection of it.<sup>9</sup> Pursuant to the Department's rules, the Internal Revenue Service may offset an amount of federal refund payable to an Iowa resident by the amount of any past due legally enforceable Iowa income tax obligation owed by such taxpayer.<sup>10</sup> Therefore, the Department was authorized to collect a federal tax refund to offset Garrison's past due and owing tax liability.

Accordingly, the undersigned administrative law judge concludes no genuine issues of material fact exists as to the Department's authority to collect Garrison's outstanding tax liability by way of offsetting his federal tax refund. For these reasons, the undersigned finds summary judgment is appropriate.

### **ORDER**

The Department's motion for summary is hereby GRANTED and its action in this matter is hereby affirmed. The hearing scheduled to occur on July 13, 2020 for this matter is hereby canceled.

Dated this July 2, 2020.



Kristine M. Dreckman  
Administrative Law Judge

cc: Michael Thibodeau (via email)  
Patrick Garrison (via mail)

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<sup>7</sup> 701 IAC 7.8

<sup>8</sup> Iowa Code § 422.28.

<sup>9</sup> Iowa Code § 421.17(27)(a).

<sup>10</sup> 701 IAC 150.1.

### **NOTICE**

Pursuant to 701 Iowa Administrative Code 7.17(8)(d), this order becomes the final order of the Department for purposes of judicial review or rehearing unless a party files an appeal to or review on motion of the director with 30 days of the date of this order, including Saturdays, Sundays and legal holidays, of the date of this Proposed Decision to file an appeal to the Director of the Department of Revenue. The appeal shall be directed to:

Office of the Director  
Iowa Department of Revenue  
Hoover State Office Building  
Des Moines, Iowa 50319