

*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  
 Administrative Hearings Division  
 Wallace State Office Building, Third Floor  
 Des Moines, Iowa 50319

Tommy Rice  
 909 E. 28<sup>th</sup> Ct.  
 Des Moines, IA 50317,

Appellant,

v.

Iowa Department of Revenue,  
 Respondent.

Case No. 21IDRIT0003  
 Rev. Docket No. 2019-200-1-0050

### **PROPOSED DECISION**

### **STATEMENT OF THE CASE**

The hearing in this case was held on March 17, 2021. Tommy Rice ("Rice") appeared on his own behalf and testified. Andrew Jensen and Paxton Williams appeared on behalf of the Iowa Department of Revenue ("IDR"), as did a tax specialist who testified. The entire administrative file was admitted into the record, and the matter is now fully submitted.

### **FINDINGS OF FACT**

On July 27, 2017, IDR received a tax return from Rice and his former spouse for the 2011 tax year, indicating they owed \$472 of tax. Ex. C, at p. 2. Rice and his former spouse filed as "married filing separately on [a] combined return." *Id.*, at p. 1. IDR concluded that the claimed out-of-state credit on the return was not properly substantiated, and this ultimately lead IDR to issue a Notice of Assessment on November 21, 2018, assessing \$1,835.11 of tax, penalty, and interest. Ex. A.

Rice timely appealed the Notice, and during the pendency of the appeal, Rice provided the needed verification for the credit, which caused IDR to reduce the underlying tax liability to \$473, once a rounding error in the Rice's submitted return was corrected. Ex. H, at p. 3. IDR adjusted the late-filing and non-payment penalties down to \$47.30, and it also adjusted down the interest due. *Id.* By the time of the hearing, Rice only raised one issue that the Tribunal could consider, namely whether a September 19, 2016 divorce decree absolved him of liability for the tax due.<sup>1</sup> The divorce decree between Rice and his former spouse stated in relevant part the former spouse was "solely responsible for any and all outstanding federal and state tax liability amounts incurred when the parties filed taxes jointly as husband and wife," holding Rice "harmless" for the amounts owed. Ex. L, at p. 6.

<sup>1</sup> At the hearing, Rice renewed his attempt to raise additional issues beyond the scope of the assessment, including whether certain, recent tax offsets were appropriate. As explained at the hearing and before the hearing, the Tribunal has no authority to consider those issues at this point because that goes beyond the scope of the assessment and protest that was transmitted to the Tribunal for hearing. See generally, 701 Iowa Administrative Code § 7.8 (detailing protests and the transfer of cases to the Tribunal).

In closing, IDR argued Rice is responsible for the assessment because Iowa Code section 422.21(7) makes married taxpayers who filed a combined returns jointly liability and because, even if this section did not apply, the terms of the divorce decree only applied to “joint” returns of which the filing status of married filing separately on a joint return is not. In response, Rice indicates the divorce decree should control and he has done his best.

### **CONCLUSIONS OF LAW**

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. Iowa Code § 422.5(1). “Taxable income” is defined as the net income minus allowable deductions. Id. § 422.4(16). “Net income” means the adjusted gross income before the net operating loss deduction as properly computed for federal income tax purposes under the Internal Revenue Code with the adjustments provided for pursuant to the Iowa Code. Id. § 422.7. “Tax year” is defined as the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the net income is computed. Id. § 422.4(17). “If married taxpayers file a joint return or file separately on a combined return . . . , both spouses are jointly and severally liable for the total tax due on the return” except for an innocent spouse exception that does not apply to this case. Iowa Code § 422.21(7)

In this case, the parties dispute whether Rice’s divorce decree extinguished his liability for the 2011 tax year. There does not appear to be any material dispute about the amount of tax owed or the required penalties and interest, all of which are supported by the record. With respect to the divorce decree, Rice and his former spouse filed the 2011 return as married filing separately on a combined return. As IDR notes, Iowa law directly states that such a filing status makes both parties jointly and severally liable for the tax due, which would include penalty and interest as well. See generally, Clark v. Iowa Dep't of Revenue & Fin., 644 N.W.2d 310, 316 (Iowa 2002) (discussion of the issue). Thus, while a divorcee decree may assign liability among divorcing spouses, it cannot extinguish liability for both as to IDR. This maybe why the divorce decree contains the language about holding Rice “harmless” for the tax liabilities. Also, even aside from the controlling statute, it is not entirely clear that the divorce order covers this situation because it uses the language about joint returns and because the filing status here was not such. In short, while Rice may be frustrated at the outcome and other action by IDR or the IRS, the Tribunal has no choice but to AFFIRMED IDR’s assessment as MODIFIED by it during the course of this case.

### **ORDER**

IDR’s action in this matter is AFFIRMED as MODIFIED by it during the pendency of this proceeding. IDR shall take all necessary action to implement this decision.

IT IS SO ORDERED.

Dated this March 19, 2021.

A handwritten signature in blue ink, appearing to read "J. M. Gallagher", is written over a horizontal line.

Jonathan M. Gallagher  
Administrative Law Judge

cc: Appellant (By mail)  
Andrew Jensen, Assistant Attorney General (By email)  
Paxton Williams, Assistant Attorney General (By email)  
File

**NOTICE**

Any aggrieved party has 30 days, 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. 701 I.A.C. § 7.17(8)(d). The appeal must be made in writing. The appeal shall be directed to:

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