

REVENUE DEPARTMENT[701]

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 701—Chapters 20 to 25 and 27
“Collection of Tax Debt and Debt Owed to Other State Agencies”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 421.17, 422.25, 252J, 453B, and 472D
State or federal law(s) implemented by the rulemaking: Iowa Code sections 421.17, 422.20, 422.26, 422.72, 272D.2, 272D.5, 272D.6, 272D.7, and 272D.9 and chapters 626 and 642

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

October 25, 2023
1 p.m.

Via video/conference call:
meet.google.com/toe-himx-omj
PH: 252.590.0724
PIN: 233 808 257#
Mute telephone or microphone upon entering the meeting

Participants attending the meeting in person will need to be escorted to the meeting room. Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this Regulatory Analysis.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Revenue and advise of specific needs.

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Email: nick.behlke@iowa.gov

Purpose and Summary

The purpose of this rulemaking is to readopt several chapters related to the collection of tax debt and debt owed to other state agencies and to adopt one new chapter on related topics. The proposed chapters were revised to remove unnecessary or obsolete language and language that is duplicative of statute and to clarify readopted rules.

Chapter 20 provides practices and procedures the Department will follow in filing liens on property to establish a priority interest in assets of the taxpayer for unpaid debt. Chapter 21 provides when and how the Department may offset a taxpayer's federal refund via the Treasury Offset Program to satisfy state income tax obligations. Chapter 22 contains requirements for other state agencies and local government entities to place their debt with the Department for collection. Chapter 23 contains a rule implementing the Department's authority to seize and sell property to collect tax debt and other delinquent liabilities collected by or owed to the State of Iowa. Chapter 24 provides requirements of the Department for sanctioning a professional or other license and the procedure for challenging. Chapter 25 contains the procedure for a debtor to challenge a wage or bank levy issued by the Department. Chapter 27 is a newly created chapter that contains rules on the subpoena of utility companies and the Director's power to release the names of debtors. The rules in this newly created chapter were previously located in other chapters but were moved to Chapter 27 for more intuitive organization.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

The proposed rulemaking does not create costs for any class of persons.

- Classes of persons that will benefit from the proposed rulemaking:

These rules help the public understand their obligations, their rights, and common procedures utilized in the collection of debt. Therefore, any person or entity that owes debt to the State of Iowa will benefit from the rules.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

There is no known economic or other quantitative impact of these chapters. However, the guidance offered by these chapters likely encourages compliance with required procedures.

- Qualitative description of impact:

The qualitative impact of these chapters is to provide guidance to debtors on the mechanisms used by the State of Iowa to collect debt.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

There are no costs to the State beyond what is already required to administer the relevant statutes.

- Anticipated effect on state revenues:

Because these rules implement the mechanisms through which the State of Iowa collects debt, providing guidance to debtors in these rules will likely encourage compliance.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The costs of inaction would be failing to update the rules to remove unnecessary and obsolete language or language that is duplicative of statute. The benefit of the rulemaking is providing guidance to the public about the Department's debt collection practices and procedures and the actions required of debtors.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The proposed rulemaking is not costly or intrusive.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Department considered the possibility of not having rules on these topics but determined that providing guidance on debt collection practices and required procedures was necessary.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The rules that will be repromulgated have been determined to be necessary to provide guidance on the collection of debt by the Department. The rules provide clarity to the public about the Department's practices. There is no less restrictive alternative to achieve the benefit of additional certainty.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

There is no substantial impact on small business through these chapters. There is no difference in how these rules treat small businesses as opposed to other entities.

Text of Proposed Rulemaking

ITEM 1. Rescind 701—Chapter 20 and adopt the following **new** chapter in lieu thereof:

CHAPTER 20
FILING AND EXTENSION OF TAX LIENS
AND CHARGING OFF UNCOLLECTIBLE TAX ACCOUNTS

701—20.1(422,423) Definitions. As used in the rules contained herein, the following definitions apply unless the context otherwise requires:

“*Assessment issued*” means the same as defined in Iowa Code section 422.26(10).

“*Charge off*” means moving an unpaid account to inactive status. “Charge off” does not mean the account is deleted from the department’s records or that the account is not due and owed. Charge off does not prevent the department from recovering all or part of the account through actions including but not limited to bankruptcy, probate, or setoff or through voluntary payment.

“*Department*” means the Iowa department of revenue.

“*Director*” means the director of the department or the director’s authorized representative.

“*Lien*” means the legal right or interest against personal or real property provided by Iowa Code section 422.26 or other Iowa Code sections making reference to Iowa Code section 422.26.

“*Recorder*” means the county recorder of any county in the state of Iowa.

“*Taxes*” means all taxes or charges administered by the department and any tax or charge to which Iowa Code section 422.26 applies.

701—20.2(422,423) Place of filing.

20.2(1) A notice of lien may be filed in the office of the recorder in any county.

20.2(2) The director may charge off any account before the lien has lapsed if the taxpayer meets one or more of the following criteria:

a. The taxpayer is deceased, and there are no assets in the estate or there are no assets available for the payment of taxes under Iowa Code section 633.425.

b. The taxpayer is a corporation that has dissolved or ceased to exist with no assets remaining.

c. The taxpayer is retired because of age or total disability (as described in rule 701—104.12(425)) with income and assets such that it would cause the taxpayer undue financial hardship if the department enforced collection of past due taxes. The director may require other evidence to determine when collection of tax would be a hardship on a taxpayer.

d. The taxpayer has unpaid tax amounting to less than \$50.

e. The taxpayer cannot be found, after diligent inquiry, and has no property upon which the lien can attach.

f. The taxpayer is insolvent with no property, real or personal, upon which the lien can attach.

These rules are intended to implement Iowa Code section 422.26.

ITEM 2. Rescind 701—Chapter 21 and adopt the following **new** chapter in lieu thereof:

CHAPTER 21
FEDERAL OFFSET FOR IOWA INCOME TAX OBLIGATIONS

701—21.1(421,26USC6402) Definitions. The following definitions are applicable to the federal offset program:

“*Assessment*” means the determination of a past due tax obligation and includes self-assessments. An assessment includes the Iowa income tax, interest, penalties, fees or other charges associated with the past due legally enforceable Iowa income tax obligation.

“*Department*,” “*state of Iowa*,” “*Iowa*” or “*the state*” means the Iowa department of revenue.

“*Director*” means the director of the Iowa department of revenue or the director’s authorized representative.

“*Overpayment*” means a federal tax refund due and owing to a person or persons.

“*Past due legally enforceable Iowa income tax obligation*” means a debt defined in 26 U.S.C. 6402(e)(5).

“*Resident of Iowa*” means any person with a federal overpayment for the year in which Iowa seeks offset and such person has an Iowa address listed on that person’s federal return for the tax period of overpayment.

“*Secretary*” means the Secretary of the Treasury for the federal government.

“*State income tax obligation*” or “*Iowa income tax obligation*” is intended to cover all Iowa income taxes. This term includes all local income taxes administered by the Iowa department of revenue or determined to be a “state income tax” under Iowa law. Such taxes may include but are not limited to individual income tax, income surtax, fiduciary income tax, withholding tax, or corporate income tax, and penalties, interest, fines, judgments, or court costs relating to such tax obligations.

“*Tax refund offset*” means withholding or reducing, in whole or in part, a federal tax refund payment by an amount necessary to satisfy a past due legally enforceable state income tax obligation owed by the payee (taxpayer) of the tax refund payment. This chapter only involves the offset of tax refund payments under 26 U.S.C. 6402(e); it does not cover the offset of federal payments other than tax refund payments for the collection of past due legally enforceable state income tax obligations.

“*Tax refund payment*” means the amount to be refunded to a taxpayer by the federal government after the Internal Revenue Service (IRS) has applied the taxpayer’s overpayment to the taxpayer’s past due tax liabilities in accordance with 26 U.S.C. 6402(a) and 26 CFR 301.6402-3(a)(6).

701—21.2(421,26USC6402) Prerequisites for requesting a federal offset. The following requirements must be met before the state can request an offset of a federal overpayment against an Iowa income tax obligation:

21.2(1) The state must have made written demand on the taxpayer to obtain payment of the state income tax obligation for which the request for offset is being submitted.

21.2(2) Pre-offset notice. At least 60 days prior to requesting the offset of a taxpayer’s federal overpayment for an Iowa income tax obligation, the state of Iowa must provide notice by certified mail, return receipt requested, to the person owing the Iowa income tax liability. This notice must include information as required by 26 U.S.C. 6402 and 31 CFR 285.8.

21.2(3) The state must consider any evidence presented by the person owing the obligation and determine whether the amount or amounts are past due and legally enforceable.

21.2(4) Additional pre-offset notices. The department must provide a taxpayer with an additional pre-offset notice if the amount of the obligation to be subject to offset is increased due to a new assessment. However, a new pre-offset notice is not required if there is an increase in the amount to be offset due to accrued interest, penalties or other charges associated with an Iowa income tax obligation in which notice has previously been given.

21.2(5) Before offset of the federal refund can be requested by the state of Iowa, the person’s Iowa income tax liability must be at least \$25, unless otherwise provided based on the discretion of the department and the Secretary. If an individual owes more than one Iowa income tax obligation, the minimum amount will be applied to the aggregate amounts of such obligations owed to Iowa.

21.2(6) Only residents of Iowa are subject to offsets under these rules.

701—21.3(421,26USC6402) Submission of evidence. A taxpayer may challenge the offset by submitting evidence that all or part of the debt is not past due or not legally enforceable. The challenge must be postmarked or received within 60 days of the date of the pre-offset notice in the manner described in the pre-offset notice.

701—21.4(421,26USC6402) Procedure after submission of evidence. Following timely receipt of evidence by the department from the taxpayer, the department will notify the taxpayer whether the evidence submitted is sufficient to terminate the intended offset. If the department determines that the evidence is sufficient, the procedure to initiate the federal offset shall be terminated for that obligation and the taxpayer’s record of Iowa income tax obligation for that particular obligation shall be adjusted accordingly. However, if the department determines that the evidence is insufficient to show that the amount or amounts at issue are not, in whole or in part, a past due and legally enforceable income tax obligation, the department must notify the taxpayer of the decision.

The challenge of an offset under these rules is subject to judicial review under Iowa Code section 17A.19 as other agency action.

In cases in which a taxpayer claims immunity from state taxation due to being an enrolled member of an Indian tribe who lives on that member's reservation and derives all of that member's income from that reservation, the taxpayer may refer to 31 CFR 285.8(c)(3)(ii) for additional information.

These rules are intended to implement Iowa Code chapter 421 and 26 U.S.C. 6402(e) et seq.

ITEM 3. Rescind 701—Chapter 22 and adopt the following **new** chapter in lieu thereof:

CHAPTER 22
COLLECTION OF DEBTS OWED THE STATE
OF IOWA OR A STATE AGENCY

701—22.1(421) Definitions. For purposes of this chapter, the following definitions shall govern:

“*Centralized collections unit*” means the unit within the department charged with collecting debt for the department and other entities pursuant to Iowa Code section 421.17(27) or any other Iowa statute.

“*Debtor*” means any person having a delinquent account, charge, fee, loan, or other indebtedness due the state of Iowa or any state agency.

“*Department*” means the Iowa department of revenue.

“*Director*” means the director of revenue or the director's authorized representative.

“*Liability*” or “*debt*” means any liquidated sum due and owing to the state of Iowa or any state agency that has accrued through contract, subrogation, tort, operation of law, or any legal theory regardless of whether there is an outstanding judgment for that sum.

“*Person*” or “*entity*” means individual, corporation, business trust, estate, trust, partnership or association, limited liability company, or any other legal entity, but does not include a state agency.

“*State agency*” or “*agency*” includes but is not limited to entities listed in Iowa Code section 421.17(27) “a.”

701—22.2(421) Participation guidelines. The department may collect on behalf of a public agency at the department's sole discretion. The department may require that a public agency enter into an agreement for collection with the department prior to collecting for the public agency. Agreements will be signed by the director or another staff member of the department designated by the director.

701—22.3(421) Duties of the agency. A public agency seeking the use of the centralized collections unit shall have the following duties regarding the department and debtors.

22.3(1) Notification to the department. The public agency must provide a list of debtors to the department of revenue. This list must be in a format and type prescribed by the department and include information relevant to the identification of the debtor and the source and amount of the debt. The public agency shall terminate all collection activities once notification is given to the department.

22.3(2) Change in status of debt. A public agency that has provided liability information to the department of revenue must notify the department immediately of any change in the status of a debt. This notification shall be made no later than ten calendar days from the occurrence of the change. Change in status may come from payment of the debt or liability, invalidation of the liability, alternate payment arrangements with the debtor, bankruptcy, or other factors.

These rules are intended to implement Iowa Code sections 421.17, 422.20, and 422.72.

ITEM 4. Rescind 701—Chapter 23 and adopt the following **new** chapter in lieu thereof:

CHAPTER 23
DEBT COLLECTION AND SELLING OF PROPERTY
TO COLLECT DELINQUENT DEBTS

701—23.1(421,422,626,642) Definitions.

“*Delinquent debtor*” means an individual, corporation, limited liability company, business trust, estate, trust, partnership, or any other legal entity that owes a delinquent liability, or unpaid taxes to the state or a liability that is collectible by the state.

“*Department*” means the Iowa department of revenue.

“*Director*” means the director of revenue or the director's authorized representative.

“*Property*” means any property, including but not limited to real property, tangible property, and intangible property. “*Property*” includes but is not limited to a homestead.

“*State*” means the state of Iowa.

This rule is intended to implement Iowa Code sections 421.17 and 422.26 and chapters 626 and 642.

701—23.2(421,422,626,642) Sale of property. Property may be seized and sold to satisfy unpaid taxes, delinquent liabilities owed to the state, and liabilities collected by the state. A homestead may be sold to satisfy delinquent taxes collected under Iowa Code section 422.26 and any other similar section. However, a homestead may not be sold for collection of any other liability owed to or collected by the state other than taxes unless specifically authorized by statute.

This rule is intended to implement Iowa Code sections 421.17 and 422.26 and chapters 626 and 642.

ITEM 5. Rescind 701—Chapter 24 and adopt the following **new** chapter in lieu thereof:

CHAPTER 24

LICENSE SANCTIONS FOR COLLECTION OF DEBTS OWED THE STATE OF IOWA OR A STATE AGENCY

701—24.1(272D) Definitions. For purposes of this chapter, the following terms shall have the same definitions as Iowa Code section 272D.1:

1. Certificate of noncompliance.
2. Liability.
3. License.
4. Licensee.
5. Licensing authority.
6. Obligor.
7. Person.
8. Unit.
9. Withdrawal of a certificate of noncompliance.

701—24.2(272D) Notice to person of potential sanction of license. Before issuing a certificate of noncompliance, the unit must send a notice to a person in accordance with Iowa Code section 272D.3.

701—24.3(272D) Challenges. A person may challenge the unit’s issuance of a certificate of noncompliance by requesting a conference. Upon receiving a timely written request for a conference, the unit shall grant the person a stay of the issuance of a certificate of noncompliance. The stay shall remain in effect pending the decision of the unit under Iowa Code section 272D.6(1).

24.3(1) Conference. The person may request a conference with the unit to challenge the unit’s issuance of a certificate of noncompliance following the mailing of the notice of potential license sanction or at any time after a licensing authority serves notice of suspension, revocation, denial of issuance, or nonrenewal of a license. The request for a conference shall be made in writing to the unit. If the conference is requested pursuant to and after the unit’s mailing of a notice of potential license sanction under rule 701—24.2(272D), the request must be received by the unit within 20 days following the mailing or service of that notice.

24.3(2) Notification. The unit shall notify the person of the date, time, and location of the conference by regular mail, with the date of the conference to be no earlier than ten days following the unit’s issuance of the notice of the conference. If the person fails to appear at the conference, the unit shall issue a certificate of noncompliance.

24.3(3) Location. The conference will be conducted by telephone unless otherwise indicated in the written notification by the department.

701—24.4(272D) Issuance of certificate of noncompliance.

24.4(1) If the person fails to appear at the conference, the unit shall issue a certificate of noncompliance. If the person does not timely request a conference or pay the amount of liability owed within 20 days of the date the notice was postmarked, the unit shall issue a certificate of noncompliance.

24.4(2) However, the unit will not issue a certificate of noncompliance if:

- a. The unit finds a mistake in the identity of the person;

- b. The unit finds a mistake in determining the amount of the liability;
- c. The unit determines the amount of the liability is less than \$1,000;
- d. The obligor pays the amount due or enters into an acceptable payment plan;
- e. The obligor is in bankruptcy; or
- f. The unit finds additional time is required for the person to comply.

701—24.5(272D) Written agreements. The obligor and the unit may enter into a written agreement for payment of the liability owed pursuant to Iowa Code section 272D.5.

701—24.6(272D) Decision of the unit.

24.6(1) If the unit mails a notice to a person and the person requests a conference, the unit shall issue a written decision if any of the conditions in Iowa Code section 272D.6(1) exist.

24.6(2) Mailing of decision. The unit shall send a copy of the written decision as described in Iowa Code section 272D.6(2).

701—24.7(272D) Certificate of noncompliance to licensing authority.

24.7(1) The unit shall issue a certificate of noncompliance to any appropriate licensing authority as required by Iowa Code section 272D.7.

24.7(2) The suspension, revocation, or denial shall be effective no sooner than 30 days following the date of notice to the person.

701—24.8(272D) Requirements of the licensing authority. Licensing authorities shall observe the requirements and procedures of Iowa Code section 272D.8.

701—24.9(272D) District court hearing. A person may file an application for review of the decision by the unit or following issuance of notice by the licensing authority with the district court as described in Iowa Code section 272D.9. Actions initiated by the unit under this chapter shall not be subject to contested case proceedings or further review pursuant to Iowa Code chapter 17A, and any resulting court hearing shall be an original hearing before the district court.

These rules are intended to implement Iowa Code sections 272D.2, 272D.5, and 272D.9.

ITEM 6. Rescind 701—Chapter 25 and adopt the following **new** chapter in lieu thereof:

CHAPTER 25
CHALLENGES TO ADMINISTRATIVE LEVIES

701—25.1(421) Challenges to administrative levies. A challenge to an administrative levy can only be made by an obligor or an account holder of interest. A challenge to an administrative levy will be reviewed by the centralized collections unit of the department. This review is not subject to the provisions of Iowa Code chapter 17A. An account holder of interest means a person named on the account.

701—25.2(421) Form and time of challenge. The obligor or an account holder of interest must submit a written challenge to an administrative levy within ten days of the date of the notice. Challenges must be submitted to the department in the manner described on the notice furnished by the department to the obligor or account holder of interest.

701—25.3(421) Issues that may be raised. The issues raised by the challenging party, which are limited to a mistake of fact, may include but are not limited to:

1. The challenging party has the same name as the obligor but is not the obligor.
2. The challenging party does not have an interest in the account that is being seized.
3. The amount listed in the notice to the obligor is greater than the amount actually owed.

These rules are intended to implement Iowa Code sections 421.17 and 421.17A.

ITEM 7. Adopt the following new 701—Chapter 27:

CHAPTER 27
SUBPOENA OF RECORDS FROM UTILITY COMPANIES
AND PUBLICATION OF NAMES OF DEBTORS

701—27.1(421) Subpoena of records from public or private utility company. The director may subpoena records of a public or private utility company to the extent permitted by Iowa Code section 421.17(32).

27.1(1) Definitions.

“*Reasonable efforts*,” for purposes of Iowa Code section 421.17(32), will be considered complete when the department has attempted to reach the individual using the individual’s last-known address as determined pursuant to subrule 7.33(2).

“*Utility*” means the same as “public or private utility company” as defined in Iowa Code section 421.17(32) “*f.*”

27.1(2) Procedure for issuing a subpoena; data transfer.

a. The department shall submit the subpoena to the utility’s designated recipient on or before the date a secure data file is submitted for processing. The subpoena will include the director’s authority to make the request, the name of the file submitted for processing, the information to be provided for each individual, the expected response date, and the department’s contact information. The subpoena must be signed by the director. The data file provided to the utility by the department will include social security numbers, names, and last-known addresses in the mutually agreed-upon format.

b. Within 30 days of receiving the department’s data file, the utility will process and return the data file to the department.

27.1(3) Confidentiality. The utility must keep confidential all records received from the department. After the department has received the requested information from the utility, the utility must delete the data files the utility received in a secure manner. The department must keep confidential all records received from the utility in compliance with all applicable state and federal laws regarding individual privacy and the privacy rights of public and private utility companies.

This rule is intended to implement Iowa Code sections 421.17(32), 422.20, and 422.72.

701—27.2(421) List for publication.

27.2(1) The director may compile and make available for publication a list of names, with last-known addresses and amounts of indebtedness owed to or being collected by the state if the indebtedness is subject to the centralized debt collection procedure established in Iowa Code section 421.17(27) and 421.17(34). The director may determine when to compile the list.

27.2(2) Names selected for release for publication shall be based on the records of the centralized collections unit. The director will not include the names of persons who owe less than \$100 or the threshold amounts determined by the director. The threshold amounts may vary by the debt types being collected by the centralized collections unit. The director may withhold names from publication if, in the director’s opinion, publication would not assist in the collection of the debt.

27.2(3) The director will not release for publication names of persons who have entered into a payment agreement with the centralized collections unit to pay the outstanding debt and are current in liquidating the debt based on the payment agreement. Upon entering a payment agreement with the centralized collections unit, the name of the party will be removed from publication within 60 days if the person is current in paying on the payment plan. This rule does not prevent the department from disclosing information under a provision of law other than Iowa Code section 421.17(27) “*i.*”

701—27.3(421) Release of information. The director may release the information, as the director deems necessary, as follows:

1. The director may issue an announcement describing the manner in which a copy of the list of names for publication may be obtained. The director will make the list available in an electronic medium of the director’s choice.

2. The director may release to credit reporting agencies the names selected for release for publication upon request. The names are to be released in the same electronic medium as the names are released for publication.

These rules are intended to implement Iowa Code section 421.17.