

CHAPTER 21
FEDERAL OFFSET FOR IOWA INCOME TAX OBLIGATIONS

[Prior to 11/2/22, see Revenue Department[701] Ch 150]

701—21.1(421,26USC6402) Purpose and general application of offset of a federal tax overpayment to collect an Iowa income tax obligation. Effective for refunds of overpayments to the Internal Revenue Service (IRS) that are payable beginning January 1, 2000, the IRS may offset, in whole or in part, 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. The purpose of this chapter is to establish a procedure to identify taxpayers that owe Iowa income tax liabilities and to establish a procedure for requesting the offset of the taxpayer's federal tax overpayment to collect a past due legally enforceable Iowa income tax obligation.

[Editorial change: IAC Supplement 11/2/22]

701—21.2(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.

“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 which resulted from a judgment rendered by a court of competent jurisdiction which has determined an amount of state income tax to be due or a determination after an administrative hearing which has determined an amount of state income tax to be due and which is no longer subject to judicial review. In addition, this term also includes a debt which resulted from a state income tax which has been assessed but not collected, for which the time for redetermination has expired, and which has not been delinquent for more than ten years.

“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 rule 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)(i).

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701—21.3(421,26USC6402) Prerequisites for requesting a federal offset. The following are the requirements that the state of Iowa must meet before the state can request an offset of a federal overpayment against an Iowa income tax obligation:

21.3(1) 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 state the following information:

- a.* That the state proposes to request the offset of the person's federal overpayment against a specified Iowa income tax obligation and that such an obligation is past due and legally enforceable;
- b.* That the authority for this offset is Internal Revenue Service Restructuring and Reforms Act of 1998, Pub. L. 105-206, 112 Stat. 685, 779 (1998), as implemented by this chapter;
- c.* That the person owing the obligation has 60 days from the date of the notice to present evidence to the department that all or part of the obligation at issue is not past due or not legally enforceable;
- d.* The mailing address for submitting such evidence;
- e.* That failure to timely submit the evidence waives the taxpayer's right to protest the amount, validity or qualification of the Iowa income tax obligation for offset at any time in the future; and
- f.* Where contact can be made with the department for additional information or questions.

21.3(2) 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.

21.3(3) 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.

21.3(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 to be sent to the taxpayer by the department 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.

21.3(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.

21.3(6) Offset applies to residents of Iowa as defined under these rules.

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701—21.4(421,26USC6402) Procedure after submission of evidence. Upon timely receipt of evidence by the department from the taxpayer as set forth in 150.3(1) "c," the department has 60 days to review the evidence and 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 within 60 days of receiving the evidence from the taxpayer.

The contest 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, Iowa must consider such claims de novo on the merits, unless such claims have been previously adjudicated by a court of competent jurisdiction.

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701—21.5(421,26USC6402) Notice by Iowa to the Secretary to request federal offset. Iowa must notify the Secretary of an Iowa income tax obligation in the manner prescribed by the Secretary.

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701—21.6(421,26USC6402) Erroneous payments to Iowa. If Iowa receives a notice from the Secretary that an erroneous payment has been made to Iowa under these rules, Iowa must promptly pay to the Secretary, in accordance with such rules and regulations as the Secretary may prescribe, an amount equal to the amount of the erroneous payment (without regard to whether any other amounts

payable to Iowa under these rules have been paid to Iowa). In the alternative, Iowa may return the erroneous payment directly to the taxpayer. If this latter alternative is used by Iowa, then Iowa must notify the Secretary of the erroneous offset being paid to the taxpayer, and the taxpayer's records will be adjusted accordingly.

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701—21.7(421,26USC6402) Correcting and updating notice to the Secretary. Iowa must notify the Secretary of any deletion or decrease in the amount of past due legally enforceable Iowa income tax obligation referred to the Secretary for collection by offset under these rules. Iowa may also notify the Secretary of any increases in the amount or amounts referred to the Secretary for collection by offset under these rules provided that Iowa has complied with the requirements of these rules with regard to such amount or amounts.

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

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