

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

BERT PLAGGEMEYER,)	
)	Docket No. MT-2009-2
Appellant,)	
-vs-)	
)	
)	CORRECTED ORDER
DEPARTMENT OF REVENUE)	
OF THE STATE OF MONTANA,)	
)	
Respondent.)	

The only change to this order is the addition of the appeal rights on page 5.

Statement of the Case

On January 20, 2009, the Department of Revenue (DOR) held a portion of a refund due Mr. Plaggemeyer from the Department of Natural Resources and Conservation (DNRC) for possible offset against an outstanding liability claimed by Montana State University. Bert Plaggemeyer (the Appellant in this matter) pursued the appeal procedures available within the DOR to protest the withholding of the refund including a hearing and a proceeding before the Office of Dispute Resolution (ODR). ODR failed in this case to render a decision within the 180-day timeline. On October 19, 2009, the Appellant appealed to this Board pursuant to the order from ODR dated October 16, 2009.

The above-entitled appeal was heard on January 12, 2010, in Helena, Montana, in accordance with an order of the State Tax Appeal Board of the

State of Montana (the Board). The notice of the hearing was duly given as required by law.

At the hearing before this Board, the appellant and Mrs. Plaggemeyer testified in favor of appellant's case. John Cameron, Unit Manager, Department of Revenue and Bonnie Holden, Director of State Accounts, Montana State University testified on behalf of DOR.

Issue

The issue in this matter is whether the DOR has statutory authority to hold funds for offset against liabilities without first notifying the debtor and giving them an opportunity for a hearing.

Summary of Decision

Mr. Plaggemeyer is the appellant in this proceeding and, therefore, has the burden of proof. Based on the evidence and testimony, the Board finds that the decision of the Department of Revenue is affirmed.

Findings of Fact

1. Due, proper and sufficient notice was given of this matter, the hearing hereon, and of the time and place of the hearing. All parties were afforded opportunity to present evidence, oral and documentary.
2. Mr. Plaggemeyer has two delinquent Federal Student loans owed to Montana State University (MSU). The University requested DOR to assist in collection of the balance from refunds that become available to Mr. Plaggemeyer from State agencies. (Exh. 1).
3. Mr. Plaggemeyer has been in default of the Federal Perkins Student loans since March 1996. (Exh. 2, Exh. attached to original complaint).

4. The DOR was made aware of funds due Mr. Plaggemeyer from the DNRC in the amount of \$5,793.56 on January 20, 2009. (Exh. 1).
5. On January 20, 2009, the DOR froze the funds due Mr. Plaggemeyer for possible offset. The monies are held in escrow until it has been determined if they qualify for offset. (Exh. 1, Testimony of Mr. Cameron).
6. The DOR sent a Notice of Offset and Opportunity for Hearing on January 20, 2009, notifying Mr. Plaggemeyer the DOR intended to offset his funds toward the unpaid debt. (Notice of Offset and Opportunity for Hearing attached to original complaint dated 1/20/09).
7. Mr. Plaggemeyer responded in writing requesting a hearing on January 21, 2009. (Exh. attached to original complaint).
8. On February 12, 2009, Montana State University notified Mr. Plaggemeyer that they intended to apply the offset against the outstanding loans. (Exh. attached to original complaint).
9. In a letter dated February 13, 2009, the DOR outlined the statutes that authorized the DOR to withhold Mr. Plaggemeyer's monies. (Exh. C).
10. The ODR held a telephonic hearing on July 9, 2009, concerning the possible offset of Mr. Plaggemeyer's monies from the DNRC. (Exh. 1).
11. The ODR issued an Order removing case to the Montana State Tax Appeal Board on October 16, 2009, due to exceeding the 180-day time limit. (Order attached to original complaint).

Board Discussion and Conclusions of Law

The issue to be decided is whether the DOR had the right to freeze funds for offset prior to notifying the debtor and providing a right to a hearing.

Mr. Plaggemeyer testified the debt owed MSU was his and past due. MSU has tried unsuccessfully to collect the outstanding debt from Mr. Plaggemeyer for over 14 years. *FOF 3*. MSU requested the DOR to assist in the collection of the balance due. In turn, the DOR argues it is obligated by statute to collect debt owed a State Agency and has the authority to collect said debt. *See* §17-4-105(2) MCA.

Appellant (Mr. Plaggemeyer) claims the DOR does not have right of offset without first notifying the debtor and giving an opportunity for a hearing. He also contends, in this case, the offset occurred before the notice was given, contrary to the requirements in §17-4-105(2) MCA.

The Board disagrees with appellant's argument. The DOR correctly notified Mr. Plaggemeyer of the pending offset and his right to hearing. *FOF 5*. He requested a hearing and it was held January 12, 2010, but no reason to stop the funds from being used in the offset was offered. Further testimony leads the Board to find that the confiscated funds are held in escrow and have yet to offset any debts owed by Mr. Plaggemeyer.

The State of Montana, like any other debtor, has a right to expect payment for debt owed. The Board finds that Mr. Plaggemeyer has made no effort to reduce his debt with MSU since 1996. We further find the DOR has an obligation to collect said debts when asked to assist in collection by another state agency.

Therefore, the appeal is denied and the DOR was correct to hold Mr. Plaggemeyer's funds for eventual offset.

ORDER

IT IS HEREBY ORDERED from the foregoing Findings of Fact and Conclusions of Law that the Department's decision to offset funds to MSU is affirmed.

DATED this 2nd day of February, 2010.

BY ORDER OF THE
STATE TAX APPEAL BOARD

(S E A L)

/s/ _____
KAREN E. POWELL, Chairwoman

/s/ _____
DOUGLAS A. KAERCHER, Member

/s/ _____
SAMANTHA SANCHEZ, Member

Notice: You are entitled to judicial review of this Order in accordance with § 15-2-303, MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 2nd day of February, 2010, a true and correct copy of the foregoing has been served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

Bert Plaggemeyer
334 Big Timber Canyon Road
Big Timber, MT 59011

U.S. Mail
 Hand delivered
 E-Mail
 Telecopy

Brendan R. Beatty
Special Assistant Attorney General
Office of Legal Affairs
Department of Revenue
Mitchell Building
PO Box 7701
Helena, Montana 59604-7701

U.S. Mail
 Hand delivered
 Interoffice delivery
 E-Mail
 Telecopy
 Telecopy

/s/ _____
DONNA EUBANK
Paralegal