

AMBER SABE,

Appellant,

v.

STATE OF MONTANA,
DEPARTMENT OF REVENUE,

Respondent.

CASE No: IT-2021-13

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, ORDER,
AND OPPORTUNITY FOR
JUDICIAL REVIEW**

STATEMENT OF THE CASE

This is an appeal of a decision by the Department of Revenue’s Office of Dispute Resolution (ODR), which affirmed the Department of Revenue (DOR) correctly offset a debt owed by Ms. Sabe to Montana State University (MSU). We deny Ms. Sabe’s appeal and affirm the ODR decision.

ISSUE TO BE DECIDED

Whether the Department of Revenue properly offset Ms. Sabe’s state income tax refund to apply it to an outstanding debt owed to the Montana State University.

EXHIBIT LIST

The following evidence was submitted at the hearing:

DOR exhibits:

A – SABHRS Accounts Payable Voucher, bates number 0057;

B – Memorandum of Understanding for the Exchange of Information between the Montana Department of Revenue and the Montana Department of Administration, bates numbers 0090-0094;

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C – Memorandum of Understanding for the Use of the Offset System within the Statewide Accounting System between the Montana Department of Revenue and Montana State University, bates numbers 0095-0097;

D – SABHRS Offset System documentation, bates number 0098;

E – DOR Notice of Offset dated February 25, 2020, bates number 0099;

F – Ms. Sabe’s letter objecting to offset dated February 28, 2020, bates numbers 00100-00101;

G – DOR email acknowledging objection dated March 2, 2020, bates number 00102;

H – DOR email to MSU requesting confirmation dated March 2, 2020, bates numbers, 00103-00105;

I -- MSU email responding to DOR dated March 4, 2020, bates numbers 00106-00109;

J – DOR Final Determination Letter dated March 4, 2020, bates number 00110.

Ms. Sabe referenced exhibits:

1. – Notes on ‘WeChat’ Image, 1 page;
2. - Notes on University Withdrawal Form, 2 pages.

FINDINGS OF FACT

1. To whatever extent the foregoing findings of fact may be construed as conclusions of law, they are incorporated accordingly.

2. On February 25, 2020, the DOR sent Ms. Sabe a Notice of Offset informing her the DOR had offset (collected) \$504.00 from a pending DOR payment to Ms. Sabe to apply towards a debt she owed to MSU. *Dept. Ex. E*. The payment the DOR withheld was Ms. Sabe’s 2019 Montana income tax refund. *Dept. Ex. D, ODR Opinion 2020-800-OS-M*. The Notice of Offset stated that the DOR would hold the payment for thirty days to allow Ms. Sabe an opportunity to object to the offset. *Dept. Ex. E*. The letter further stated that any objection she may have only applies to the offset process and not the underlying debt and that she

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must contact the agency that asked the DOR to collect the debt (MSU) if she did not believe she owed the money. *Id.* Ms. Sabe responded to the DOR on February 28, 2020, objecting to the DOR's offset. *Dept. Ex. F.* DOR Research Technician Evan Estrada replied to Ms. Sabe on March 2, 2020, to inform her that DOR would begin the review process. *Dept. Ex. G.* He again informed her that her objection only pertains to the DOR's collection actions, and if she did not believe the debt was valid, she must work directly with the agency that asked the DOR to collect the debt (MSU). *Id.*

3. To begin the review process, Mr. Estrada contacted MSU on March 2, 2020, to verify Ms. Sabe's debt was valid and to confirm that MSU wanted DOR to continue the collection process. *Dept. Ex. H.* Wendy McCarty, on behalf of MSU, responded on March 4, 2020, confirming that Ms. Sabe owed a debt for reversed federal financial aid from the spring semester of 2016 in an amount greater than that of her income tax refund. *Dept. Ex. I.* Ms. Sabe's application for withdrawal from classes at MSU is dated February 23, 2016; however, MSU backdated Ms. Sabe's withdrawal application to predate the beginning of classes so she would not owe any money for tuition or fees to MSU. *Dept. Ex. F, Dept. Ex. I.* The March 4, 2020, email from Ms. McCarty further explained that after Ms. Sabe's financial aid funds, consisting of loans and a grant, were applied to her initial bill at MSU, refunds of the overpayment of financial aid funds were deposited into Ms. Sabe's bank account on January 8, 2016. *Dept. Ex. I.* The email further explained that the U.S. Department of Education requires MSU to return loans and grants to the lender and grant program if a student withdraws during a semester. *Id.* While the record is not clear on the types of financial aid Ms. Sabe was awarded, the March 4, 2020, email stated that MSU returned Ms. Sabe's financial aid funds to the originators as required once she withdrew from classes and that Ms. Sabe was required to return the overpayment of financial aid funds to MSU that she received on January 8, 2016. *Id.* The email stated that MSU & Ms. Sabe had previously worked out a payment plan in repayment of the debt, and Ms. Sabe made payments from May of 2016 to June of 2019 but subsequently quit paying. *Id.*

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4. The DOR issued a final determination letter dated March 4, 2020, informing Ms. Sabe that during its review, MSU confirmed the debt was valid, therefore DOR would hold the income tax refund rather than issue it to her. *Dept. Ex. J*. The letter further explained that if Ms. Sabe did not believe she owed the money, she should contact MSU. *Id.* The letter included the contact information for Ms. McCarty at MSU and directed Ms. Sabe to contact her should Ms. Sabe believe the debt was not valid. *Id.*

5. Ms. Sabe submitted an appeal to the ODR on March 11, 2020, and a hearing was held on July 9, 2020. ODR issued its final decision on February 1, 2021 and found that the DOR had correctly offset Ms. Sabe's debt. *ODR Opinion 2020-800-OS-M*. Ms. Sabe stated during the hearing that she had no issue with the DOR's offset procedures and the "Department of Revenue is very good at their work and their jobs." *ODR Hrg. Transcr. 9:2-7, ODR Opinion 2020-800-OS-M*.

6. Ms. Sabe appealed to MTAB on March 8, 2021, and a hearing was held on July 8, 2021. On June 22, 2021, the DOR filed a motion to dismiss for lack of subject matter jurisdiction regarding the underlying debt, or in the alternative to narrow the issue to whether the DOR used proper procedure when it offset Ms. Sabe's debt by withholding her tax refund. *MTAB Dkt. 5*. At the MTAB hearing, the DOR requested the Board rule on its motion. *MTAB Hrg. 7:20-12:59*. The DOR argued that because the money seized was not tax due to the DOR, and because the DOR was acting under the authority granted to it by state law to withhold the tax refund payment to offset a debt owed to another state agency, the only issue MTAB had jurisdiction to decide was whether the DOR followed proper procedure during the collection process. *Id.* The DOR stated that because Ms. Sabe contested the underlying debt, the ODR limited the issue it heard during the ODR hearing to whether DOR followed proper procedure. *Id.* The DOR argued that if Ms. Sabe was contesting the validity of the

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underlying debt, that issue should be brought to MSU or the district court, rather than the Board. Ms. Sabe responded saying that she understood the issue was whether or not the DOR could offset the funds by going through the process, but the money owed is from a federal loan and MSU has no authority to go through a state agency to collect her state income tax refund to pay a federal debt. *MTAB Hrg. 14:00-15:40*. After deliberation, the Board partially granted the motion to narrow the scope of the appeal to whether the DOR followed proper procedure, laws, and administrative rules when it withheld Ms. Sabe's state income tax refund. *MTAB Hrg. 16:14-17:19*.

7. During the hearing, Ms. Sabe testified that MSU approved a retroactive withdrawal from classes at MSU and sent her an email stating she did owe any money. *MTAB Dkt. 1, MTAB Hrg. 23:44-28:35*. The only evidence presented to the Board was a photograph of a WeChat image of the university withdrawal form with a sticky note in the corner stating, "Student responsible for 0% of tuition as per the committee." *Id.* The note was dated 02/26/16 with the initials of KE. *Id.* Additionally, Ms. Sabe testified that her loan is federal money and if she owed on the debt, it should be repaid directly through her federal loans. *Id.* She further testified that MSU should not be able to go through the DOR to use her state income tax refund to offset the debt because the loan was federal money and not a direct loan from MSU. *Id.* Ms. Sabe testified that the federal government forgave her debt but did not provide any documentation showing any debts had been forgiven. *Id.*

8. DOR Unit manager of the Other Agency Debts Unit, Mary Croghan, testified that the SABHRS (Statewide Accounting, Budgeting and Human Resources Systems) Offset System generates reports to DOR's Other Agency Debt Unit when a debt is owed to another state agency. *MTAB Hrg. 29:00-33:35*. Ms. Croghan testified that when a state agency issues a payment, the SABHRS Offset System matches the Social Security Number (SSN) or Employer Identification Number (EIN) with the SSN or EIN attached to a report of a debt

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within the system and pauses the payment before it is released. *Id.* The SABHRS Offset System then automatically generates a notice informing the debtor of the offset and giving the debtor an opportunity to object. *Id., Dept. Ex. E.* The SABHRS Offset System shows the payment of \$504.00 to Ms. Sabe from DOR being used to reduce the total debt owed to MSU. *MTAB Hrg. 29:00-33:35, Dept. Ex. D.* Ms. Croghan testified that DOR's only means of verifying a debt is to check with the agency that entered the debt into the SABHRS Offset System, and the DOR is not provided additional documentation for the debt. *MTAB Hrg. 39:10-39:27.*

9. The Department of Administration (DOA) and the DOR have entered into a Memorandum of Understanding (MOU) outlining DOA's delegation of authority to DOR to operate the SABHRS Offset System. *Dept. Ex. B, MTAB Hrg. 33:48-35:15.* The DOR has also entered into an MOU with MSU outlining the processes and procedures for offsetting MSU debt. *Dept. Ex. C, MTAB Hrg. 35:30-36:15.* Under the terms of the agreement, MSU may not enter any unliquidated debt (debt that is unassessed, unsettled, or disputed) into the SABHRS Offset System for collections or offset. *Id.*

10. DOR Collections Bureau Chief, Danielle Brenimer, testified that once the DOR receives an objection to the Notice of Offset that is automatically generated in the SABHRS system, the Other Agency Debt Unit typically verifies with the Collections Unit that the debt is valid at the time of the offset. *MTAB Hrg. 37:30-38:08.* Ms. Brenimer testified that Ms. Sabe's debt was verified by MSU through the Other Agency Debt process because the offset came through the SABHRS Offset System rather than through a collections case. *MTAB Hrg. 38:10-39:00.* Ms. Brenimer further testified that the DOR Collections Unit is not required to make an independent determination regarding the validity of the underlying debt for Other Agency Debt, just that the debt is valid. *MTAB Hrg. 41:50-42:18.*

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JURISDICTION AND STANDARD OF REVIEW

11. The Montana Tax Appeal Board is an independent agency not affiliated with the Montana Department of Revenue. Mont. Const., Art. VIII § 7; Mont. Code Ann. § 15-2-101. The Taxpayer filed a timely appeal of the DOR's decision to the MTAB. Therefore, this Board maintains jurisdiction to hear and decide this matter, a direct appeal to MTAB from a decision of the DOR. Mont. Code Ann. § 15-2-302.

12. This Board may hear appeals de novo. *Puget Sound Energy, Inc. v. State*, 2011 MT 141, ¶ 30, 361 Mont. 39, 255 P.3d 171. "A trial de novo means trying the matter anew, the same as if it had not been heard before and as if no decision had been previously rendered." *McDunn v. Arnold*, 2013 MT 138, 303 P.3d 1279 (2013).

13. The Board's order is final and binding upon all parties unless changed by judicial review. Mont. Code Ann. § 15-2-302.

CONCLUSIONS OF LAW

14. To whatever extent the following conclusions of law may be construed as findings of fact, they are incorporated accordingly.

15. DOR is entitled to a "presumption of correctness if its decisions are pursuant to an administrative rule or regulation, and the rule or regulation is not arbitrary, capricious or otherwise unlawful." *Dept. of Revenue v. Burlington N. Inc.*, 169 Mont. 202, 214, 545 P.2d 1083, 1090 (1976). However, DOR cannot rely entirely on the presumption in its favor and must show the propriety of their action. *Western Air Lines, Inc. v. Michunovich*, 149 Mont. 347, 353, 428 P.2d 3, 7 (1967).

16. When construing a statute, it is the Board's role to "determine what in terms or substance is contained in it, and not to insert what has been omitted or to omit what has been inserted."

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State v. Minett, 2014 MT 225, ¶ 12, 376 Mont. 260, 332 P.3d 235; Mont. Code Ann. § 1-2-101.

17. “When faced with a problem of statutory construction great deference must be shown to the interpretation given the statute by the officers or agency charged with its administration.” *Dep’t of Revenue v. Puget Sound Power & Light Co.*, 179 Mont. 255, 262, 587 P.2d 1282, 1286 (1978) (citing *Udall v. Tallman*, 380 U.S. 1, 16 (1965)).
18. “[T]ax statutes are to be strictly construed against the taxing authority and in favor of the taxpayer.” *Western Energy Co. v. State, Dep’t of Revenue*, 1999 MT 289, ¶ 10, 297 Mont. 55, 990 P.2d 767.
19. “Administrative agencies enjoy only those powers specifically conferred upon them by the legislature. Administrative rules must be strictly confined within the applicable legislative guidelines. Indeed, it is axiomatic in Montana law that a statute cannot be changed by administrative regulation. We look to the statutes to determine whether there is a legislative grant of authority.” *Bick v. State, Dep’t of Justice, Div. of Motor Vehicles*, 224 Mont. 455, 457, 730 P.2d 418, 420 (1986).
20. “A valid and enforceable agency rule cannot exceed its enabling statute....” *Glendive Med. Ctr., Inc. v. Montana Dep’t of Pub. Health & Human Servs.*, 2002 MT 131, ¶ 29, 310 Mont. 156, 49 P.3d 560.
21. The Board “may not amend or repeal any administrative rule of the department,” but may enjoin its application if the Board concludes the rule is “arbitrary, capricious, or otherwise unlawful.” Mont. Code Ann. § 15-2-301.

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22. Once a debt of an agency has been transferred to the department, the department may collect it. The department may contract with commercial collection agents for recovery of debts owed to agencies. Mont. Code Ann. § 17-4-105(1).
23. "The department shall, when appropriate, offset any amount due an agency from a person or entity against any amount, including refunds of taxes, owing the person or entity by an agency. The department may not exercise this right of offset until the debtor has first been notified by the department and been given an opportunity for a hearing pursuant to Mont. Code Ann. § 15-1-211..." Mont. Code Ann. § 17-4-105(2).
24. (1) Prior to submitting any debt to the department for collection services, the agency shall:
- (a) enter into a memorandum of understanding with the department addressing debt collection services; and
 - (b) establish criteria for uncollectibility and provide those criteria to the department.
- (2) The agency shall not submit to the department any unliquidated debts.
- (3) The agency must have followed its internal policies and procedures regarding debtor notification and dispute resolution on any debts it submits to the department.
- (4) To submit a debt to the department, the agency shall certify the amount of the debt and that the debt is uncollectible in accordance with the agency. *Mont. Admin. R. 42.10.502.*
25. "Collection methods" means any action taken in an attempt to collect on a debt, including but not limited to making a demand for payment, issuing collection notices, obtaining a judgment, and levying wages and bank accounts. *Mont. Admin. R. 42.10.501(1).*
26. "Criteria for uncollectibility" means the agency's written standards stating the collection methods that must occur in order for the agency to determine that the debt is uncollectible. *Mont. Admin. R. 42.10.501(2).*

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27. "Unliquidated debt" means a debt where the amount is unassessed, unsettled, or disputed.
Mont. Admin. R. 42.10.501(3).

DISCUSSION

28. This Board's jurisdiction in this matter is limited to whether the DOR followed state law, administrative rules, and the proper procedure when it withheld Ms. Sabe's income tax refund and applied it to reduce the total debt MSU reported through the SABHRS Offset System. We find that it did.

29. The Montana Legislature sets the boundaries of what types of disputes MTAB may resolve and that is memorialized in the Montana Code Annotated (Montana law). MTAB does not have the authority, or jurisdiction, to go beyond that boundary to decide cases not within our jurisdiction. In this case, if Ms. Sabe is unable to resolve the dispute regarding the underlying debt with MSU, she has the right to file in the appropriate Montana District Court to request relief. It is the District Court which, under Montana law, has jurisdiction and the ability to resolve the dispute of the underlying debt, but not the Montana Tax Appeal Board.

30. Confining our decision to the issue within this Board's jurisdiction in this case, we find the DOR performed a debt collection service on behalf of MSU in accordance with state law. State law and the terms of the MOU between the DOR and MSU require MSU to take certain steps prior to entering a debt into the SABHRS Offset System. DOR was not required to independently verify that MSU had followed all required steps prior to entering the debt into the SABHRS Offset System. When Ms. Sabe objected to the Notice of Offset, the DOR fulfilled its requirement to verify with MSU that the debt was still valid and to confirm that DOR should proceed with the offset. DOR notified Ms. Sabe more than once to contact MSU if she believed she did not owe the debt.

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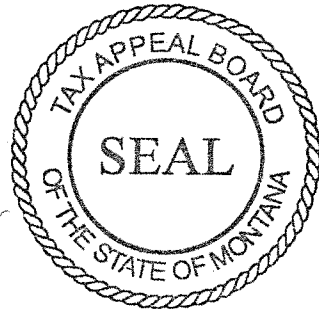
31. Throughout the MTAB hearing, Ms. Sabe testified that because the financial aid funds came from the federal government, the DOR had no authority to withhold her state income tax refund. Additionally, Ms. Sabe testified that the federal government forgave her debt, although she did not provide evidence. These arguments go to the validity of the underlying debt and are outside of this Board's jurisdiction. Ms. Sabe has been directed by the DOR on several occasions to contact MSU with any disputes she has regarding the underlying debt. This Board has also encouraged Ms. Sabe to contact Montana Legal Services Association to request information or advice on the appropriate steps to take to dispute the underlying debt if she does not believe the debt is valid. The record and testimony do not indicate she has asked for any legal assistance in this matter.

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ORDER

32. The Department of Revenue properly offset Ms. Sabe's 2019 Montana tax return to satisfy the debt to Montana State University. Amber Sabe's appeal and complaint is denied.

Ordered September 2, 2021



A handwritten signature in cursive script, appearing to read "David L. McAlpin".

David L. McAlpin, Chairman
MONTANA TAX APPEAL BOARD

A handwritten signature in cursive script, appearing to read "Amie Zendron".

Amie Zendron, Member
MONTANA TAX APPEAL BOARD

A handwritten signature in cursive script, appearing to read "Daniel Zolnikov".

Daniel Zolnikov, Member
MONTANA TAX APPEAL BOARD

Notice: You may be entitled to judicial review of this Order by filing a petition in district court within 60 days of the service of this Order. Mont. Code Ann. § 15-2-303(2). The Montana Dept. of Revenue shall promptly notify this Board of any judicial review to facilitate the timely transmission of the record to the reviewing court. MCA § 15-2-303(2).

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Certificate of Service

I certify that I caused a true and correct copy of the foregoing Findings of Fact, Conclusions of Law, Order and Opportunity for Judicial Review to be sent by email and by United States Mail via Print & Mail Services Bureau of the State of Montana on September 2, 2021, to:

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Teresa G. Whitney
Montana Department of Revenue
Legal Services Office
P.O. Box 7701
Helena, MT 59604-7701



Lynn Cochran, Legal Secretary
MONTANA TAX APPEAL BOARD