

HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 6 FAMILY AND ADULT SERVICES DIVISION

CHAPTER 606

INCOME TAX SETOFF PROGRAM

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§17-606-1 Purpose. The purpose of this chapter is to establish the provisions by which the state income tax refunds of those persons who owe a debt to the department of human services, family and adult services division, shall be setoff to recover this debt, and to establish the provisions of the administrative hearing process to contest the tax setoff. These rules do not afford the debtor the opportunity to a hearing on any issue which has been previously litigated or for which an opportunity to a hearing has

been previously provided. [Eff 10/4/90; comp 3/19/93]
(Auth: HRS §346-14) (Imp: HRS §§231-51 to -59)

§17-606-2 Definitions. As used in this chapter:

"Administrative hearing" means an administrative proceeding which affords an aggrieved person an opportunity to present an appeal before an impartial department representative for a formal decision.

"Authorized representative" means an individual who has been authorized in a written statement by the claimant to act for and represent the claimant in any and all aspects of the administrative hearing.

"Claimant" means any debtor who has requested an administrative appeal in writing to contest the department's intention to setoff the individual's income tax return to recover a debt. A claimant with a court appointed guardian of the person shall be considered to be represented by the guardian. The guardian shall have all rights and duties of the incapacitated claimant.

"Date of hearing request" means the date the department receives a signed written request for an administrative hearing by the claimant or authorized representative of the claimant which meets all of the criteria of a request for an administrative hearing as defined in this section. When there is no prior written request by the claimant, and no written authorization naming an authorized representative, the date of hearing request shall be the date the authorization is received.

"Debt" means any liquidated sum exceeding \$25 which is due and owing to the department, regardless of whether there is an outstanding judgment for that sum and whether the sum has accrued through contract, subrogation, tort, operation of law, or judicial or administrative judgment or order.

"Debtor" means any person who owes a debt to the department.

"Department" means department of human services, family and adult services division.

"Hearing officer" means an impartial person assigned by the department to conduct administrative hearings and to render a final decision. The hearing

officer shall not have been directly involved in the initial determination of the action in question.

"Informal review" means a review conducted by department's, administrative office, recovery staff, or investigations office staff at the written or oral request of a dissatisfied individual. An informal review is not the same as the administrative hearing provided the individual after a written request for an administrative hearing is received.

"Pretax setoff notice" means the initial setoff notice that is sent to inform the debtor that the department intends to setoff the debtor's state income tax refund.

"Request for an administrative hearing" means a clear written expression, documenting the appeal by the claimant or authorized representative that the claimant wants an administrative hearing because the claimant is contesting the intent of the department to setoff the claimant's income tax refund to recover a debt to the department.

"Tax setoff" means the interception and retention of state income tax refund to recover a delinquent debt.

"Tax setoff notice" means the notice that is sent at the time the debt is set off against the debtor's state income tax refund. [Eff 10/4/90; am and comp 3/19/93; am 10/16/95] (Auth: HRS §346-14) (Imp: HRS §§231-51 to -59)

§17-606-3 Tax setoff process. (a) The department shall setoff any valid debt due and owing the department by the debtor against any debtor's refund. Any amount of the refund in excess of the amount retained to satisfy the debt shall be refunded to the debtor.

(b) The department shall compile an annual list of debtors identified for a tax setoff.

(c) A pretax setoff notice shall be mailed to each debtor.

(d) The debtor shall be provided an opportunity for an informal review of the debt.

(e) All debtors who receive an adverse informal review decision shall be provided an opportunity to request an administrative hearing.

(f) The informal review and pretax setoff administrative hearing shall be conducted and concluded prior to the setoff of the debtor's state tax refund.

(g) The debtor's name shall be referred to the comptroller, department of accounting and general services (DAGS), for tax setoff if no pretax setoff review is requested; or if the debt is established in the review or the pretax setoff administrative hearing.

(h) At the time the setoff is identified, the debtor shall be notified by the comptroller, DAGS, of the State's intention to apply the state income tax refund against the debt.

(i) The debtor shall be provided the opportunity to request an administrative hearing to contest the setoff, regardless of whether an administrative hearing was requested at the time of the pretax setoff notice.

(j) The setoff against the debtor's state income tax refund shall become final if an administrative hearing is not requested. [Eff 10/4/90; am and comp 3/19/93; am 10/16/95] (Auth: HRS §346-14) (Imp: HRS §§231-51 to -59)

§17-606-4 Pretax setoff notice. (a) The department's administrative services office, recovery section (ASO-recovery) shall mail a pretax setoff notice annually to all debtors as identified by the department's administrative services office.

(b) The notice shall inform debtors of:

- (1) The department's intent to set off the debtor's state income tax refunds due to a debt to the department;
- (2) The total amount of the debt (to include financial and food stamp programs);
- (3) The opportunity to request an informal review of the debt within thirty calendar days from the date of the pretax setoff notice if they disagree with the department's intent;
- (4) The office address and toll free telephone numbers at which an informal review can be requested;
- (5) The opportunity to request a formal administrative hearing to all debtors who receive an adverse informal review decision;

- (6) The commonly used defenses in tax setoff administrative hearings; and
- (7) The opportunity to present the case independently or with the aid of others including legal counsel. [Eff 10/4/90; am and comp 3/19/93; am and comp 8/1/94; am 10/16/95] (Auth: HRS §346-14) (Imp: HRS §§231-51 to -59)

§17-606-5 Informal review. (a) A debtor may request an informal review from ASO-recovery orally or in writing. The request shall be received by ASO-recovery within thirty calendar days of the date of the pretax setoff notice.

(b) The informal review shall be conducted by telephone or in person at the request of the debtor as follows:

- (1) ASO-recovery will review the debtor's account balances using account records and forward any unresolved requests to the investigations office (INVO).
- (2) INVO will review the requests referred by ASO-recovery to resolve account balances using the income maintenance case records and applicable Hawaii Administrative Rules.
- (3) All debtors shall be informed in writing of:
 - (A) The disposition of the review;
 - (B) The opportunity to request an administrative hearing in writing within fourteen calendar days from the date of a written adverse informal review decision; and
 - (C) The office and address at which the request for an administrative hearing may be submitted.

(c) Requests for informal reviews that are not received within the timeframe specified in subsection (a) shall be denied.

(d) The informal review shall be concluded prior to the setoff of the debtor's state tax refund and within forty-five calendar days of the date the request was received. [Eff 10/4/90; am and comp 3/19/93] (Auth: HRS §346-14) (Imp: HRS §§231-51 to -59)

§17-606-6 Tax setoff notice. (a) The tax setoff notice shall be mailed to prospective tax refund recipients who are identified as having a debt at the time that the state income tax refund is identified for setoff by DAGS.

(b) The notice shall inform the debtors of the following:

- (1) The amount of the debtor's state income tax refund for a specified tax year;
- (2) The amount of the debt;
- (3) The amount that has been identified for setoff to repay a debt to the department;
- (4) The balance of the state tax refund that is due to the debtor;
- (5) The applicable state statute;
- (6) The opportunity to request an administrative hearing within thirty calendar days of the date of the tax setoff notice;
- (7) The setoff against the debtor's state income tax refund becomes final after thirty calendar days from the date of the tax setoff notice if an administrative hearing is not requested;
- (8) The commonly used defenses in tax setoff administrative hearings;
- (9) The rights of the debtor as specified in section 17-606-8; and
- (10) The office, address, and toll free telephone numbers to which a written request for an administrative hearing may be submitted. [Eff 10/4/90; am and comp 3/19/93; am 10/16/95]
(Auth: HRS §346-14) (Imp: HRS §§231-51 to -59)

§17-606-7 Right to an administrative hearing. (a) Identified debtors may request an administrative hearing as follows:

- (1) Within fourteen calendar days of the date of the adverse pretax setoff review notice; and
- (2) Within thirty calendar days of the date of the tax setoff notice.

- (3) If the fourteenth or thirtieth day falls on a weekend or holiday, the fourteenth or thirtieth day shall then be the first working day after the weekend or holiday.

(b) All debtors requesting an administrative hearing shall have the right to submit a written request naming an authorized representative for administrative hearing purposes. The written authorization shall be received by the department before the department acknowledges any action taken by the authorized representative on the debtor's behalf. [Eff 10/4/90; am and comp 3/19/93] (Auth: HRS §346-14) (Imp: HRS §§231-51 to -59)

§17-606-8 Rights of the claimant. The claimant or the authorized representative shall have an opportunity to:

- (1) Examine the case record as well as all documents and records to be used at the hearing at a reasonable time before the date of the hearing as well as during the hearing;
- (2) Present the case independently or with the aid of others including legal counsel;
- (3) Bring witnesses, including an interpreter if the claimant is non-English speaking. If the claimant does not have an interpreter and the department believes an interpreter is necessary, an interpreter shall be obtained by the department;
- (4) Establish all pertinent facts and circumstances;
- (5) Advance any arguments appropriate to the issue being heard without undue interference; and
- (6) Question or refute any testimony or evidence, and to confront and cross examine any witness. [Eff 10/4/90; comp 3/19/93] (Auth: HRS §346-14) (Imp: HRS §§231-51 to -59)

§17-606-9 Action on request for an administrative hearing. (a) A request for an administrative hearing after an adverse informal review decision shall be

received by the department within fourteen calendar days of the date of the written adverse informal decision. When an administrative hearing is requested due to an adverse informal review decision on a pretax setoff notice, the department shall not refer the name of the individual to DAGS as a debtor. The individual's name shall be referred to DAGS as a debtor only if the administrative appeals office renders a decision in favor of the department. A circuit court appeal shall not stay the referral.

(b) A request for an administrative hearing after a tax setoff notice shall be received by the department within thirty calendar days of the date of the tax setoff notice. When an administrative hearing is requested at the time of the tax setoff, the individual will receive that portion of their state tax refund that was setoff only after a decision favorable to the claimant has been rendered by the administrative appeals office.

(c) When an administrative hearing request is received by a unit other than ASO-recovery, the unit shall stamp the request with the date of receipt and immediately forward the hearing request to ASO-recovery.

(d) When an administrative hearing request is received by ASO-recovery, ASO-recovery shall:

- (1) Stamp the request with the date of receipt if the request is initially received by ASO-recovery;
- (2) Make one copy of the request and send the original request to the administrative appeals office if the request is initially received by ASO-recovery;
- (3) Make copies of the account ledgers of all debts (to include financial and food stamp claims) for the identified debtor; and
- (4) Forward the copy of the administrative hearing request and copies of the account ledgers to the respective program development-income maintenance (PD-IM) office. [Eff 10/4/90; am and comp 3/19/93; am and comp 8/01/94] (Auth: HRS §346-14) (Imp: HRS §§231-51 to -59)

§17-606-10 Department's responsibility. (a) The PD-IM office shall review all requests for fair hearing to assure that all facts are properly considered. If any basis for the grievance is found prior to the hearing, the PD-IM office shall promptly take necessary corrective action.

(b) The PD-IM office shall complete the branch report.

(c) The PD-IM office shall remain in touch with the claimant and shall immediately notify the hearing officer of any change in address or circumstances which may affect the need for the hearing.

(d) The PD-IM office shall represent the department in tax setoff hearings on Oahu branch. In all other branches, the supervisors of the unit in the geographic area nearest the debtor's residence shall be the department's representative at the tax setoff hearing, if a PD-IM representative is not requested. [Eff 10/4/90; comp 3/19/93] (Auth: HRS 3§46-14) (Imp: HRS §§231-51 to -59)

§17-606-11 Responsibility of the administrative appeals office. (a) The administrative appeals office shall accept:

- (1) Any request directly at the administrative appeals office; and
- (2) All requests cleared through the department.

(b) All parties shall be given written notice of hearing by registered or certified mail with return receipt requested at least fifteen calendar days before the hearing. The notice shall include a statement of:

- (1) The date, time, place, and nature of hearing;
- (2) The legal authority under which the hearing is held;
- (3) The particular sections of the statutes and rules involved;
- (4) The issues involved and the basis for the department's action;
- (5) The claimant's right to retain legal counsel;
- (6) The claimant's right to prompt administrative action; and

- (7) The administrative hearing decision shall be rendered within one hundred twenty calendar days of the date of request. [Eff 10/4/90; comp 3/19/93] (Auth: HRS §346-14) (Imp: HRS §§231-51 to -59)

§17-606-12 Denial of request for administrative hearing. (a) An administrative hearing shall not be granted by the department when the claimant has withdrawn the request in writing. Where the claimant verbally reports a desire to withdraw the administrative hearing request, the claimant shall be advised that the withdrawal shall be submitted in writing. If the claimant prefers, the department shall confirm the claimant's request to withdraw in writing to the claimant.

(b) An administrative hearing shall not be granted by the department when the department decides not to complete a tax setoff or refunds the tax setoff before a hearing is scheduled.

(c) An administrative hearing shall not be granted by the hearing officer when the claimant has abandoned the request. Abandonment occurs when the claimant or the authorized representative, without good cause, fails to appear at the administrative hearing scheduled for the claimant.

- (1) The hearing officer shall send the claimant a letter stating that the appeal is considered abandoned unless there was good cause for the claimant's failure to appear. The claimant shall be notified that the request shall continue only if the claimant presents good cause for the failure to appear and contacts the agency within ten calendar days of the notice. If no reply is received within the ten calendar days, the administrative hearing request shall be considered abandoned. If the tenth day falls on a weekend or holiday, the tenth day shall then be the working day after the weekend or the holiday.
- (2) Good cause may be established on the basis of one of the following factors:
- (A) Death in the family;

(B) Personal injury or illness which reasonably prohibits the claimant from attending the administrative hearing; or

(C) Sudden and unexpected emergencies.

(d) An administrative hearing shall not be granted if the administrative hearing request is not received within the timeframes specified in section 17-606-7(a).

(e) When a request for an administrative hearing is denied or dismissed, the department shall inform the claimant in writing, stating the reasons for the denial or dismissal. Written notice shall be provided the claimant within one hundred twenty calendar days of the date of administrative hearing request. [Eff 10/4/90; am and comp 3/19/93] (Auth: HRS §346-14) (Imp: HRS §§231-51 to -59)

§17-606-13 The administrative hearing. (a) The administrative hearing shall include consideration of:

(1) Evidence received, including oral testimony and exhibits; and

(2) Proposed findings and exceptions.

(b) The claimant shall be required to appear in person at the administrative hearing unless authorization for an authorized representative was received by the department. When mutually agreed upon by the claimant and the department, a hearing may be conducted over the telephone. Unless both the department and the claimant agree to the presence of other individuals, the hearing officer or other person conducting the administrative hearing shall limit attendance to the following individuals necessary for the conduct of the hearing:

(1) The claimant, the authorized representative, or both, interpreter, if any, legal counsel, and witnesses;

(2) Representatives of the state family and adult services division; and

(3) Hearing officer and members of the administrative appeals office staff.

(c) An interpreter shall be provided by the department when requested by the claimant.

(d) The claimant or the authorized representative shall, upon request, be able to examine the case record as well as all available documentary evidence that shall be used by the department at the administrative hearing as specified in section 17-606-8.

(e) The administrative hearing shall be conducted at a reasonable time, date, and place and shall generally be held in the jurisdiction of the branch in which the claimant is living at the time of the administrative hearing. The administrative hearing shall be conducted at a location specified by the hearing officer unless the claimant is unable to travel to the site because of health or transportation problems.

(f) The decision of the hearing officer shall be based exclusively on evidence and other material introduced at the administrative hearing. If, after an administrative hearing has begun, additional evidence is necessary for the proper determination of the case, the hearing officer may:

- (1) Continue the administrative hearing at a later date. The hearing officer may order further investigation and may direct either party to produce additional evidence; or
- (2) Close the administrative hearing and hold the record open for a period not to exceed thirty days to permit the receipt of additional documentary evidence. [Eff 10/4/90; comp 3/19/93] (Auth: HRS §346-14) (Imp: HRS §§231-51 to -59)

§17-606-14 Administrative hearing decision. (a) All matters relating to the administrative hearing shall be heard and disposed of within one hundred twenty calendar days from the date of request for an administrative hearing except when the hearing is continued or the record is held open as specified in section 17-606-13(f). The time limit shall be extended only for the period of the continuance.

(b) Unless the record is held open for additional documentary evidence, after closing the administrative hearing, the hearing officer shall prepare the decision in writing. The decision shall contain a statement

concerning the claimant's right to judicial review, the reasons for the decision, the evidence, and the rules supporting the decision. A copy of the written decision shall be provided the claimant or the authorized representative and the department.

(c) The transcript, recording, or an official record containing the substance of the administrative hearing proceedings, together with all papers filed in the proceeding and the hearing officer's decision shall constitute the exclusive record and shall be maintained in the administrative appeals office. The record shall be made available to the claimant or the authorized representative during normal business hours through the administrative appeals office.

(d) The department shall comply with the administrative hearing decision immediately upon receipt of the decision.

(1) When the pretax setoff administrative hearing is favorable to the department, the department shall refer the claimant's name to the comptroller, department of accounting and general services, as a debtor. A circuit court appeal shall not stay the referral.

(2) When the tax setoff administrative hearing is in favor of the claimant, the claimant shall receive that portion of the claimant's state income tax refund that was setoff.

(e) All administrative hearing decisions shall be accessible to the public, subject to the provision of safeguarding public assistance information stated in section 346-10, HRS, and the department's confidentiality provisions specified in chapter 17-601. [Eff 10/4/90; am and comp 3/19/93] (Auth: HRS §346-14) (Imp: HRS §§231-51 to -59)

§17-606-15 Appeal rights of the claimant. The claimant may appeal an adverse administrative hearing decision to the state circuit court. At the time of the hearing decision which upholds the department's action, the claimant shall be notified of the right to pursue judicial review with the circuit court. [Eff 10/4/90; am and comp 3/19/93] (Auth: HRS §346-14) (Imp: HRS §§231-51 to -59)