



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF HEARINGS AND APPEALS
OFFICE OF ADMINISTRATIVE LAW JUDGES
400 MARYLAND AVENUE, S.W.
WASHINGTON, D.C. 20202-4615
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In the Matter of
JA

Docket No.: 22-18-OF
Overpayment/Pre-offset Hearing

Respondent

Debt ID 210401774017D

Appearances: Respondent for Self

Kristen Delbridge, the Office of the General Counsel, U.S. Department of Education, for U.S. Department of Education

Before: Daniel J. McGinn-Shapiro, Administrative Law Judge

DECISION

The Office of Hearings and Appeals (OHA) received a request, dated March 21, 2022, for a pre-offset hearing in relation to an overpayment of \$1,193.63. The request was filed by Respondent, a former employee of U.S. Department of Education (ED or the Department). Respondent requests the pre-offset hearing to challenge the amount of the alleged debt. ED has indicated that this debt arose from deferred Old Age, Survivors, and Disability Insurance (OASDI) taxes that ED it is unable to recover because Respondent left his employment with the

Department.¹

Facts and Procedural History

I. President’s Memorandum and Department of Treasury Guidance

In August 2020, the President of the United States issued a “Memorandum for the Secretary of the Treasury.”² In the document, the President ordered the Treasury Secretary to defer OASDI taxes on wages paid to some workers between September 1, 2020 and December 31, 2020.³ Specifically the deferment was for those workers making less than \$4,000 on a bi-weekly basis.⁴ The document also ordered the Treasury Department (Treasury) to issue guidance to implement the deferral program.⁵ Treasury issued its guidance in Notice 2020-65, entitled “Relief with Respect to Employment Tax Deadlines Applicable to Employers Affected by the Ongoing Coronavirus (COVID-19) Disease 2019 Pandemic.”⁶ In the guidance, Treasury directed employers to pay the withheld taxes “ratably from wages and compensation paid between January 1, 2021 and April 30, 2021”⁷ The guidance further provided that if necessary, “the Affected Taxpayer may make arrangements to otherwise collect the total Applicable Taxes from the employee.”⁸ The guidance defined “Affected Taxpayers” as “employers that are required to withhold and pay the employee share of [OASDI] social security tax or the railroad retirement tax equivalent. . . .”⁹

ED issued guidance concerning the deferral program to its employees in a frequently

¹ Debt Letter at 1, Department’s Brief in Support of Debt Determination (hereafter Dept. Brief) at 1.

² See Deferring Payroll Tax Obligations in Light of the Ongoing COVID-19 Disaster, 85 Fed. Reg. 49587 (President of the United States, August 13, 2020).

³ Id. at Sec. 2.

⁴ Id. at Sec. 2(a).

⁵ Id. at Sec. 3.

⁶ Available at <https://www.irs.gov/pub/irs-drop/n-20-65.pdf> (hereafter Treasury Guidance).

⁷ Id. at 2-3.

⁸ Id. at 3.

⁹ Id. at 1.

asked questions (FAQs) format.¹⁰ In the FAQs, the Department provided information consistent with the information that was contained in the President’s memorandum and the Treasury guidance. It also provided additional specific information, including that: (1) eligible federal employees were not be allowed to opt-out of the tax deferral;¹¹ (2) that for active employees, to “help ease the payback burden of deferred taxes owed and to begin the repayment process in January 2021,” the Department’s payroll agent would deduct approximately \$50 or less for most employees whose repayment amount was less than \$1,500 and then evenly split the remaining balance between pay periods 2 and 25 in 2021; (3) that if an employee left ED before the deferred taxes could be collected in 2021, the employee would still be responsible for the tax repayment; and (4) for employees who are in inactive pay status, including after a separation or retirement, the Department would try to deduct the balance owed from the lump sum payment but “if full deduction cannot be made, the deferral becomes a liability to the agency and debt to the employee.” The document further explained what a liability to the Agency and debt to the employee meant, stating that (1) ED “pays the deferred taxes on the former employee’s behalf;” (2) because the Department paid the taxes on the employee’s behalf, the taxes become a debt owed by the former employee to ED; and (3) “the debt will be transferred to [ED] to pursue under [ED’s] normal debt collection process.”

II. Deferred OASDI Taxes

Respondent previously worked in the Department’s Office of Federal Student Aid (FSA).¹² During each pay period between pay periods 19 and 26 in 2020, a \$155.42 deduction

¹⁰ ED Exhibit 5 - Dep’t of Educ., *Deferring Payroll Tax Obligations for ED Employees*.

¹¹ Id. at 1. See also Dep’t of the Interior, *Payroll Tax Withholding Deferral FAQs*, available at <https://www.doi.gov/sites/doi.gov/files/2020-10-19-updated-payroll-tax-withholding-deferral-faq.pdf> (indicating the same).

¹² See ED Ex. 2.

was not taken from Respondent's gross pay for OASDI taxes.¹³ Effective January 2, 2021, Respondent resigned from ED.¹⁴

The U.S. Department of the Interior's Business Center (IBC) handles ED employees' payroll matters for ED. On May 4, 2021, the debt was transferred from IBC to ED.¹⁵

In a letter, dated February 16, 2022, (Debt Letter) ED notified Respondent that an overpayment of salary had been identified and that he owed a debt of \$1,193.63. The Debt Letter stated that the debt resulted from "deductions paid by the U.S. Department of Education on your behalf for OASDI DEFERRED TAXES."¹⁶

III. Process Before OHA

Respondent requested a pre-offset hearing in an email to OHA on March 21, 2022.¹⁷ In his request, Respondent indicated that he believed that "there is an error in the government's calculation" of the debt. Also on March 21, 2022, I issued an Order Governing Proceeding directing the Department to file a "short brief setting forth the basis for its position in relation to the overpayment at issue in this matter" by April 11, 2022, and that if Respondent "so chooses," he could file a response to the Department's brief by May 2, 2022. On April 11, 2022, ED filed its brief. Respondent did not file a response on or before May 2, 2022. On May 12, 2022, I

¹³ See ED Ex. 3. Although the leave and earnings statements in this exhibit show a deduction for OASDI, the net pay that Respondent received is \$699.97 less than Respondent's gross pay, and so does not include the deduction of \$155.42 for OASDI. Additionally, the relevant leave and earnings statements explicitly warn that the employee's net pay includes the deferred OASDI tax amount but reflects the deduction not taken.

¹⁴ See ED Ex. 2.

¹⁵ ED Ex. 1 – Debt Letter at 5.

¹⁶ ED Ex. 1 – Debt Letter at 1.

¹⁷ The Department notes that Respondent has not indicated when he received the notice of his debt nor whether he filed his request for a pre-offset hearing within fifteen days of receipt of the notice. See Dept. Brief at 1-2 n. 3. 34 C.F.R. § 32.6(a) starts that a request for a pre-offset hearing must be made within 15 days of receipt of a "written notice given under § 32.3" or within 10 days of receipt of notice that a request for a waiver has been denied. The fifteen-day period for Respondent to file his request, however, did not run because the Department's notice did not meet all of the requirements of 34 C.F.R. § 32.3. Specifically, the Debt Letter did not provide Respondent the opportunity to enter a written repayment agreement, nor did it provide information on how the records supporting the overpayment would be made available for inspection and copying. See 34 C.F.R. §§ 32.3(c) and (g).

ordered the Department to submit supplemental documentation related to whether any lump sum payment was made to Respondent upon his separation from the Department. The Department filed the ordered documentation on May 26, 2022. The record is closed and this matter is now ready for a decision.

Issue

Whether Respondent has shown that the debt assessed by the Department is not valid or for an incorrect amount.

Summary of Decision

Respondent has not shown that the debt assessed is a not a valid debt owed to the Department or that it is for an incorrect amount.

Analysis

The President's memorandum and Treasury's guidance implementing that memorandum dictated that the Department was required to defer withholding OASDI taxes from the paychecks of ED employees making less than \$4,000 on a biweekly basis between September 1 and December 31, 2020. Respondent's gross pay for a two-week period was approximately \$2600.¹⁸ The Department, therefore, properly did not withhold OASDI tax deductions from Respondent's pay starting with pay period 19, which included September 1, 2020, and ending with pay period 26, the last pay period in 2020.¹⁹ In each of those pay periods, the Department did not withhold \$155.42 in deductions, which normally would have been withheld for OASDI tax deductions.²⁰ Therefore, over the eight pay periods, ED deferred OASDI deductions totaling \$1,243.36.

During pay period 1 in 2021, ED followed what it stated in the FAQs and withheld

¹⁸ See ED Ex. 3 – LES statements

¹⁹ Id. at 1-8.

²⁰ Id. at 1-8.

\$49.73 from Respondent's paycheck to begin recovering the deferred OASDI payments.²¹ As noted, Respondent left ED effective January 2, 2021, which is the final day of pay period 1 of 2021.²² Having only recovered \$49.73 of the \$1,243.36 in deferred OASDI taxes, a balance of \$1,193.63 remained.

Treasury directed agencies that they were to "make arrangements to otherwise collect the total Applicable Taxes from the employee."²³ ED told its employees that if they moved into inactive pay status because they separated from the Department, and the balance from the deferred taxes was not recouped from a lump sum payout, the deferral would become a debt owed by the former employee to ED and "the debt will be transferred to [ED] to pursue under [ED's] normal debt collection process."

The record indicates that Respondent received a lump sum payment when he left ED of \$14.90, which was paid in pay period 3 of 2021.²⁴ The Department asserts that because it was unable to deduct the \$1,193.63 of deferred tax payments, it converted the deferred tax payment amount to a debt owed. The record does not indicate that any of the lump sum payment made to Respondent, or any other monies beyond the \$49.73 deducted during pay period 1 in 2021, were used to collect the deferred OASDI taxes. Therefore, following the steps explicitly detailed to ED employees in the FAQs, the debt was transferred to the Department and the Department issued a debt notice to Respondent to collect the deferred OASDI taxes. Respondent has not provided a reason to determine that the debt asserted by the Department is invalid or for the

²¹ See ED Ex. 3 at 9 (indicating that Respondent was paid \$1679.70, which is \$49.73 less than his net pay would have been if the only deductions were the \$855.37 of deductions indicated as regular deductions. The guidance from Treasury originally directed that deferred OASDI taxes be collected between January 1 and April 30, 2021. Later, that directive was changed to allow employers to collect deferred taxes throughout 2021. See IRS, Internal Revenue Bulletin 2021-6 (Feb. 8, 2021), available at https://www.irs.gov/irb/2021-06_IRB.

²² See ED Ex. 2.

²³ Treasury Guidance at 3.

²⁴ See ED Ex. 2; Attachment 1 to Dept. Statement and Supplemental Documentation.

wrong amount.

Findings of Fact and Conclusions of Law

1. Respondent was a Department employee until he resigned effective January 2, 2021.
2. In compliance with a memorandum from the President of the United States and guidance from the U.S. Department of the Treasury, the Department of Education deferred the collection of OASDI taxes from Respondent's pay between pay periods 19 and 26 in 2020. In total, \$1,243.36 in OASDI taxes were deferred from Respondent's pay.
3. In compliance with a memorandum from the President of the United States, guidance from the U.S. Department of the Treasury, and its own promulgated FAQs, the Department of Education began the collection of those deferred OASDI taxes during the first pay period in 2021.
4. During pay period 1 in 2021, the Department withheld \$49.73 from Respondent's paycheck to begin recovering the deferred OASDI payments. When Respondent separated from the Department on January 2, 2021, the Department had only recovered \$49.73 of the \$1,243.36 in deferred OASDI taxes owed, and a balance of \$1,193.63 remained.
5. Because Respondent separated from the Department on the last day of the first pay period of 2021 and the Department did not offset the amount owed by the lump sum paid to Respondent, the Department did not collect the balance of the deferred OASDI taxes from Respondent's pay. In compliance with published FAQs, the Department converted the balance of the deferred OASDI taxes owed to a debt in the amount \$1,193.63.

Order

Based on the foregoing findings of fact and conclusions of law, it is **HEREBY ORDERED** that the Department has established a valid debt of \$1,193.63.

Daniel J. McGinn-Shapiro
Administrative Law Judge

Date of Decision: June 21, 2021