

**Because the claimant's outstanding overpayment had already been satisfied by a federal tax return intercept, a subsequent state tax refund intercept, undertaken pursuant to G.L. c. 151A, § 69B, was incorrect.**

**Board of Review  
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Member  
Michael J. Albano  
Member**

**Issue ID: 69B-16-086**

## **BOARD OF REVIEW DECISION**

### Introduction and Procedural History of this Appeal

The claimant appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA), which concluded that the Department of Revenue had properly intercepted her state tax return to repay an outstanding overpayment. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

On October 28, 2015, the DUA sent the claimant a Notice of State Tax Refund Intercept, which notified the claimant that she still owed \$428.50 to the DUA and that the Massachusetts Department of Revenue (DOR) had the authority to intercept her state tax refund to pay back the balance of the overpaid benefits. The DOR then notified the claimant on March 11, 2016, that \$57.00 had been deducted from her state tax refund (\$47.00 was applied to the overpaid benefits and \$10.00 was taken as an intercept fee). The claimant appealed the March 11, 2016, notice to the DUA hearings department. Following a hearing on the merits, attended by the claimant, the review examiner affirmed the intercept.

In affirming the tax intercept, pursuant to the provisions of G.L. c. 151A, § 69B, the review examiner concluded that the DOR had properly deducted the \$57.00 from the claimant's state tax refund, because, at the time of the intercept, the claimant was still responsible for repaying money to the DUA. After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we accepted the claimant's application for review. Our decision is based upon our review of the entire record.

The issue before the Board is whether the review examiner's decision, which concluded that the state tax intercept was correct, is supported by substantial and credible evidence and is free from error of law, where the DUA's own records show that, prior to the state intercept, the claimant's remaining overpayment balance was repaid through an intercept of her federal tax return.

### Findings of Fact

The review examiner's findings of fact are set forth below in their entirety:

1. The claimant, [Claimant Name] ([SSN] XXX-XX-[ ]), was determined to be overpaid benefits.
2. The claimant was found at fault for the overpayment.
3. The claimant's overpayment was still outstanding when the Department of Revenue intercepted her 2015 state tax refund.
4. On 3/10/16, the claimant was notified of the tax intercept, plus additional administrative fees.
5. On 3/24/16, the claimant requested a hearing on the issue of the tax intercept.

### Ruling of the Board

In accordance with our statutory obligation, we review the decision made by the review examiner to determine: (1) whether the findings are supported by substantial and credible evidence; and (2) whether the review examiner's ultimate conclusion is free from error of law. After such review, the Board adopts the review examiner's findings of fact except as follows. We do not adopt Finding of Fact # 3, because it is not supported by the agency's records, which the Board has reviewed in order to issue this decision. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. As discussed more fully below, we conclude that the intercept of the \$47.00 was improper, because, by that time, the claimant had no outstanding overpayment.

G.L. c. 151A, § 69B, provides, in relevant part, as follows:

[T]he commissioner may request that the amount payable to the department by an individual resulting from an overpayment of unemployment benefits which has become final . . . shall be set off against any refund owed such individual by the department of revenue; provided, however, that such individual is notified of the intention to request a set off of the amount owed and the right to apply to the commissioner for a review of such intention. The application for review shall be filed within twenty days after mailing or delivery of said notice and shall set forth the grounds for such application. The grounds shall be limited to the identity of the individual and the amount to be set off. The commissioner shall review the application and, where applicable, reconsider the intention to request a set off. Thereafter, notice of the results of the commissioner's review of the application shall be mailed to the individual and this notice shall be final and not subject to appeal under any provision of this chapter; except that if a refund is set off for any amount owed the department, the individual may appeal . . . and the commissioner shall refund to the individual any amount which has been set off erroneously. The grounds for appeal shall not include any issue that has been the subject of a prior appeal or which could have been the subject of a prior appeal if the individual or employer had filed a timely appeal.

As dictated by this statute, the grounds for an appeal of a tax intercept are limited to the identity of the claimant and the amount of the set off. In this case, there is no issue relating to the identity of the claimant. The claimant's appeal to the Board only disputes whether she still owed any money to the DUA when the DOR intercepted her state tax refund in early 2016.

As to this narrow issue, the claimant is correct. At the time of the state tax intercept on March 11, 2016, the claimant no longer owed anything to the DUA. This is because, on March 7, 2016, her federal tax return had been intercepted and \$428.50 had been deducted from that return.<sup>1</sup> This \$428.50, which was the figure given to the claimant in the October, 2015, notice, *see* Exhibit # 1, totally satisfied the outstanding debt she owed to the agency. Thus, when the DOR then used \$47.00 from the state tax refund to apply it to the overpayment, an error occurred. Too much money was taken from the claimant. However, we also note that the DUA's records show that the \$47.00 was refunded to the claimant. It appears that the refund was sent to the claimant in April of 2016.

We, therefore, conclude as a matter of law that the review examiner's decision, which concluded that the state tax refund intercept was correct, is not free from error of law, because, as of March 11, 2016, when the state tax refund was intercepted, the claimant no longer owed any money to the DUA.

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<sup>1</sup> The dates and amounts relating to the federal tax intercept are not part of the record before the review examiner. However, we have reviewed the agency's records and our decision is based on those records.

The review examiner's decision is reversed. The March 11, 2016 Notice of State Income Tax Refund Intercept Transfer was incorrect. Because the claimant has already been refunded the incorrectly intercepted \$47.00, no further action need be taken on this issue.



Paul T. Fitzgerald, Esq.  
Chairman

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - November 6, 2018**



Charlene A. Stawicki, Esq.  
Member

Member Michael J. Albano did not participate in this decision.

**ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS STATE DISTRICT  
COURT OR TO THE BOSTON MUNICIPAL COURT  
(See Section 42, Chapter 151A, General Laws Enclosed)**

The last day to appeal this decision to a Massachusetts District Court is thirty days from the mail date on the first page of this decision. If that thirtieth day falls on a Saturday, Sunday, or legal holiday, the last day to appeal this decision is the business day next following the thirtieth day.

To locate the nearest Massachusetts District Court, see:  
[www.mass.gov/courts/court-info/courthouses](http://www.mass.gov/courts/court-info/courthouses)

Please be advised that fees for services rendered by an attorney or agent to a claimant in connection with an appeal to the Board of Review are not payable unless submitted to the Board of Review for approval, under G.L. c. 151A, § 37.

SF/rh