



April 1, 2015

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# ENGROSSED HOUSE BILL No. 1358

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DIGEST OF HB 1358 (Updated March 30, 2015 12:26 pm - DI 106)

**Citations Affected:** IC 6-8.1.

**Synopsis:** Garnishment of state tax refunds. Provides that if a debt has been reduced to a judgment in Indiana and the judgment has not been satisfied, set aside, or discharged in bankruptcy, the judgment creditor may garnish a state tax refund otherwise due to the debtor. Specifies the procedures that the judgment creditor must follow in obtaining the garnishment from the department of state revenue. Allows a writ of garnishment to be electronically filed with the department of state revenue. Excludes from garnishment debt subject to a repayment plan if the repayment plan has not been breached. Exempts 50% of a joint tax refund from garnishment if there is no objection to the garnishment, and permits exclusion from garnishment that portion of a tax refund attributable to a spouse of the debtor who is not obligated to pay the debt.

**Effective:** January 1, 2016.

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## Cox, Steuerwald, Dermody, DeLaney

(SENATE SPONSORS — STEELE, BRODEN)

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January 14, 2015, read first time and referred to Committee on Ways and Means.  
January 22, 2015, reassigned to Committee on Judiciary.  
February 3, 2015, amended, reported — Do Pass.  
February 5, 2015, read second time, ordered engrossed. Engrossed.  
February 9, 2015, read third time, passed. Yeas 95, nays 3.

SENATE ACTION

February 24, 2015, read first time and referred to Committee on Civil Law.  
March 31, 2015, amended, reported favorably — Do Pass; reassigned to Committee on Appropriations.

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April 1, 2015

First Regular Session of the 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

## ENGROSSED HOUSE BILL No. 1358

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A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

*Be it enacted by the General Assembly of the State of Indiana:*

1           SECTION 1. IC 6-8.1-9.6 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
3 JANUARY 1, 2016]:  
4           **Chapter 9.6. Garnishment of State Tax Refunds**  
5           **Sec. 1. As used in this chapter, "debt" means any amount due**  
6 **and owing under a judgment.**  
7           **Sec. 2. As used in this chapter, "debtor" means any person or**  
8 **legal entity who owes money to another, if:**  
9               **(1) the debt has been reduced to a judgment in Indiana; and**  
10              **(2) the judgment:**  
11                   **(A) has not been satisfied by court order;**  
12                   **(B) has not been set aside by court order;**  
13                   **(C) has not been discharged in bankruptcy; or**  
14                   **(D) is not subject to the terms of a repayment plan with the**  
15                   **judgment creditor that has not been breached.**

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1           **Sec. 3.** As used in this chapter, "state tax refund" includes the  
2 amount of a state tax credit that is otherwise refundable to a  
3 person.

4           **Sec. 4.** If a debtor owes a debt reduced to a judgment in Indiana,  
5 the judgment creditor may:

6           (1) have the department garnish a state tax refund payable to  
7 the debtor; and

8           (2) have the state tax refund, less any part owed to a  
9 nonobligated spouse, applied against the judgment debt;

10 as provided in this chapter.

11           **Sec. 5. (a)** To obtain a garnishment under this chapter, a  
12 judgment creditor must file a petition for garnishment with the  
13 court in which the original judgment lies. A petition for  
14 garnishment filed under this chapter may be filed not earlier than  
15 thirty (30) days from the entry of judgment.

16           **(b)** A petition for garnishment under this chapter must set forth  
17 the following:

18           (1) The full name of the debtor.

19           (2) The last known address of the debtor.

20           (3) The cause number of the original action on the debt.

21           (4) The full Social Security number of the defendant, in  
22 compliance with the provisions of the Indiana Rules of Trial  
23 Procedure and judicial administrative rules concerning the  
24 filing of documents and information that are excluded from  
25 public access and are confidential.

26           (5) The date on which the judgment was entered.

27           (6) The present balance of the judgment after all payments  
28 have been applied.

29           (7) A notice to the debtor of the right of the debtor or the  
30 debtor's spouse to object to the garnishment of the state tax  
31 refund not more than twenty-one (21) days after receipt of the  
32 disclosure as described in section 6 of this chapter. The notice  
33 must also contain a box for the debtor and the debtor's spouse  
34 to check to waive the right to a hearing and to waive the right  
35 to any objections under this chapter.

36           (8) The full name, address, and telephone number of the  
37 judgment creditor.

38           (9) The judgment creditor's address for service of process in  
39 Indiana, if different from the judgment creditor's address in  
40 subdivision (8).

41           **(c)** The judgment creditor shall serve a petition for garnishment  
42 under this chapter on the debtor in accordance with the Indiana



1 **Rules of Trial Procedure.**

2 (d) Upon approval by the court, the judgment creditor shall  
3 serve an order of garnishment issued under this chapter on the  
4 department electronically.

5 Sec. 6. (a) Any objection to the petition for garnishment of the  
6 tax refund must be filed with the court not later than twenty-one  
7 (21) days after the date of service of the notice provided to the  
8 judgment debtor under section 5(b)(7) of this chapter.

9 (b) If:

- 10 (1) the state tax refund includes an amount payable to the  
11 spouse of the debtor; and  
12 (2) the spouse is not obligated to pay the judgment on the  
13 debt;

14 the court shall reduce the amount of the state tax refund subject to  
15 garnishment on a pro rata basis. The spouse of the debtor has the  
16 burden of proving the facts described in subdivisions (1) and (2)  
17 and establishing the amount of the state tax refund that is not  
18 subject to garnishment.

19 (c) If the court rules against the judgment debtor, the court shall  
20 issue an order of garnishment. In its order of garnishment, the  
21 court shall clearly indicate that the debtor requested a hearing to  
22 determine whether any part of the state tax refund is attributable  
23 to the spouse of the debtor. The order shall determine by what  
24 percentage the amount of the state tax refund subject to  
25 garnishment shall be reduced, if any, as determined in subsection  
26 (b). The judgment creditor may serve the order of garnishment on  
27 the department. Upon receipt of the order of garnishment, the  
28 department shall deposit the amount available for garnishment as  
29 follows:

30 (1) If the debtor did not file a joint tax return, the department  
31 shall deposit up to one hundred percent (100%) of the  
32 debtor's state tax refund, subject to the terms of the  
33 garnishment order, with the person described in subsection  
34 (f).

35 (2) Except as provided in subsection (d), if:

- 36 (A) the debtor filed a joint tax return; and  
37 (B) the debtor did not object to the garnishment under  
38 subsection (a);

39 the department shall deposit not more than fifty percent  
40 (50%) of the debtor's state tax refund, subject to the terms of  
41 the garnishment order, with the person described in  
42 subsection (f).



**(3) If:****(A) the debtor filed a joint tax return; and****(B) the debtor objected to the garnishment under subsection (a);**

the department shall, subject to the terms of the garnishment order, deposit up to one hundred percent (100%) of the debtor's state tax refund, less the amount excluded from garnishment, if any, with the person described in subsection (f).

The department shall calculate the amount subject to garnishment after deducting the amounts described in section 10 of this chapter.

(d) If an objection is not filed under subsection (a) not later than twenty-one (21) days after the date of service on the debtor, the court shall approve the petition for garnishment and issue an order of garnishment. In its order for garnishment, the court shall clearly state that the debtor did not file an objection.

(e) If debt reduced to a judgment is jointly owed by a debtor and the spouse of a debtor, the department shall deposit up to one hundred percent (100%) of the debtor's state tax refund, subject to the terms of the garnishment order, with the person described in subsection (f).

(f) The department shall deposit an amount garnished under this chapter with the:

(1) judgment creditor's attorney of record in the garnishment action, if the judgment creditor was represented by an attorney in the garnishment action; or

(2) judgment creditor or the judgment creditor's designee, if the judgment creditor is not represented by an attorney in the garnishment action.

Sec. 7. (a) If one (1) or more orders of garnishment are received by the department for the same debtor, the department shall give priority to the order of garnishment that is received first by the department.

(b) The department shall process each order of garnishment in order of the date of receipt until the state tax refund of the debtor has been applied in its entirety, subject to the terms of the order.

Sec. 8. A judgment creditor must pay to the department a processing fee of eight dollars (\$8) that is chargeable to the debtor for each order of garnishment under this chapter that is served on the department. The judgment creditor must pay the fee at the time the order of garnishment is served on the department.

Sec. 9. (a) The department's liability to the judgment creditor



1 under an order of garnishment under this chapter is limited to the  
2 amount of the state tax refund due to the defendant for the period  
3 the order of garnishment is in effect, less any setoff, counterclaim,  
4 or other demand of the state against the defendant. The  
5 department is not liable for the department's negligence in  
6 carrying out its duties under this chapter.

7 (b) After the department has deposited the amount available  
8 under section 6 of this chapter, the department has no further  
9 liability in the matter unless:

10 (1) an order of garnishment is received by the department for  
11 a subsequent year; or

12 (2) the amount deposited by the department under section 6  
13 of this chapter is in question.

14 Sec. 10. A setoff by a claimant agency under IC 6-8.1-9.5 or of  
15 a child support obligation under IC 6-8.1-9.5 has priority over a  
16 garnishment order or any other action under this chapter.



## COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1358, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, line 34, after "(d)" delete "The" and insert "**Upon approval by the court, the**"

Page 2, line 35, delete "in accordance with the" and insert "**electronically.**".

Page 2, delete line 36.

Page 2, line 39, delete "disclosure on the defendant." and insert "**notice provided to the judgment debtor under section 5(b)(7) of this chapter.**".

Page 3, line 4, delete "defendant," and insert "**debtor, the court shall approve the writ of garnishment and**".

Page 3, line 5, delete "shall" and insert "**may**".

Page 3, line 7, delete "plaintiff's" and insert "**judgment creditor's**".

Page 3, line 8, delete "plaintiff" and insert "**judgment creditor**".

Page 3, line 9, delete "plaintiff" and insert "**judgment creditor**".

Page 3, line 9, delete "plaintiff's" and insert "**judgment creditor's**".

Page 3, line 22, delete "plaintiff" and insert "**judgment creditor**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1358 as introduced.)

STEUERWALD

Committee Vote: yeas 7, nays 0.

## COMMITTEE REPORT

Madam President: The Senate Committee on Civil Law, to which was referred House Bill No. 1358, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete line 3 and insert "JANUARY 1, 2016]:".

Page 1, line 10, delete "judgment has not been:" and insert "**judgment:**".

Page 1, line 11, after "(A)" insert "**has not been**".

Page 1, line 12, after "(B)" insert "**has not been**".

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Page 1, line 12, delete "or".

Page 1, line 13, after "(C)" insert "**has not been**".

Page 1, line 13, delete "bankruptcy." and insert "**bankruptcy; or (D) is not subject to the terms of a repayment plan with the judgment creditor that has not been breached.**".

Page 2, line 6, delete "refund" and insert "**refund, less any part owed to a nonobligated spouse,**".

Page 2, line 10, delete "writ of" and insert "**petition for**".

Page 2, line 11, after "lies." insert "**A petition for garnishment filed under this chapter may be filed not earlier than thirty (30) days from the entry of judgment.**".

Page 2, line 12, delete "writ of" and insert "**petition for**".

Page 2, line 25, delete "debtor's right" and insert "**right of the debtor or the debtor's spouse**".

Page 2, line 29, after "debtor" insert "**and the debtor's spouse**".

Page 2, line 29, delete "debtor's".

Page 2, line 30, delete "debtor's".

Page 2, between lines 30 and 31, begin a new line block indented and insert:

**"(8) The full name, address, and telephone number of the judgment creditor.**

**(9) The judgment creditor's address for service of process in Indiana, if different from the judgment creditor's address in subdivision (8)."**

Page 2, line 31, delete "writ of" and insert "**petition for**".

Page 2, line 35, delete "a writ of garnishment" and insert "**an order of garnishment issued**".

Page 2, line 37, delete "writ of" and insert "**petition for**".

Page 2, between lines 40 and 41, begin a new paragraph and insert:

**"(b) If:**

**(1) the state tax refund includes an amount payable to the spouse of the debtor; and**

**(2) the spouse is not obligated to pay the judgment on the debt;**

**the court shall reduce the amount of the state tax refund subject to garnishment on a pro rata basis. The spouse of the debtor has the burden of proving the facts described in subdivisions (1) and (2) and establishing the amount of the state tax refund that is not subject to garnishment."**

Page 2, line 41, delete "(b)" and insert "(c)".

Page 2, line 41, after "debtor, the" insert "**court shall issue an order of garnishment. In its order of garnishment, the court shall clearly**



indicate that the debtor requested a hearing to determine whether any part of the state tax refund is attributable to the spouse of the debtor. The order shall determine by what percentage the amount of the state tax refund subject to garnishment shall be reduced, if any, as determined in subsection (b). The".

Page 2, line 42, delete "writ" and insert "order".

Page 3, line 1, delete "writ" and insert "order".

Page 3, line 2, delete "in the same manner" and insert "as follows:

**(1) If the debtor did not file a joint tax return, the department shall deposit up to one hundred percent (100%) of the debtor's state tax refund, subject to the terms of the garnishment order, with the person described in subsection (f).**

**(2) Except as provided in subsection (d), if:**

**(A) the debtor filed a joint tax return; and**

**(B) the debtor did not object to the garnishment under subsection (a);**

**the department shall deposit not more than fifty percent (50%) of the debtor's state tax refund, subject to the terms of the garnishment order, with the person described in subsection (f).**

**(3) If:**

**(A) the debtor filed a joint tax return; and**

**(B) the debtor objected to the garnishment under subsection (a);**

**the department shall, subject to the terms of the garnishment order, deposit up to one hundred percent (100%) of the debtor's state tax refund, less the amount excluded from garnishment, if any, with the person described in subsection (f).**

**The department shall calculate the amount subject to garnishment after deducting the amounts described in section 10 of this chapter."**

Page 3, delete line 3.

Page 3, line 4, delete "(c)" and insert "(d)".

Page 3, line 6, delete "writ of garnishment and the judgment" and insert "**petition for garnishment and issue an order of garnishment. In its order for garnishment, the court shall clearly state that the debtor did not file an objection.**"

Page 3, delete lines 7 through 12, begin a new paragraph and insert:

**"(e) If debt reduced to a judgment is jointly owed by a debtor and the spouse of a debtor, the department shall deposit up to one**



hundred percent (100%) of the debtor's state tax refund, subject to the terms of the garnishment order, with the person described in subsection (f).

(f) The department shall deposit an amount garnished under this chapter with the:

(1) judgment creditor's attorney of record in the garnishment action, if the judgment creditor was represented by an attorney in the garnishment action; or

(2) judgment creditor or the judgment creditor's designee, if the judgment creditor is not represented by an attorney in the garnishment action."

Page 3, line 13, delete "writs" and insert "**orders**".

Page 3, line 15, delete "writ" and insert "**order**".

Page 3, line 17, delete "writ" and insert "**order**".

Page 3, line 19, delete "entirety." and insert "**entirety, subject to the terms of the order.**".

Page 3, line 22, delete "writ" and insert "**order**".

Page 3, line 24, delete "writ" and insert "**order**".

Page 3, line 26, delete "a writ" and insert "**an order**".

Page 3, line 28, delete "writ" and insert "**order**".

Page 3, line 33, delete "6(c)" and insert "**6**".

Page 3, line 35, delete "a writ" and insert "**an order**".

Page 3, line 37, delete "6(c)" and insert "**6**".

Page 3, line 41, after "garnishment" insert "**order**".

and when so amended that said bill do pass and be reassigned to the Senate Committee on Appropriations.

(Reference is to HB 1358 as printed February 3, 2015.)

ZAKAS, Chairperson

Committee Vote: Yeas 8, Nays 0.

