

TAX COMMISSION LEVY PROCESS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

House Sponsor: Mike K. McKell

LONG TITLE

General Description:

This bill enacts a State Tax Commission levy process using a depository institution data match system to collect certain amounts owed by a delinquent taxpayer.

Highlighted Provisions:

This bill:

- ▶ defines terms and modifies definitions;
- ▶ enacts the Depository Institution Data Match System and Levy Act;
- ▶ provides procedures and requirements for the depository institution data match system and levy process, including:
 - requiring the State Tax Commission to develop and operate the database in coordination with depository institutions;
 - addressing agreements between the State Tax Commission and depository institutions;
 - requiring a depository institution to provide the State Tax Commission with certain information;
 - establishing a levy process for collecting a liability from a delinquent taxpayer using the depository institution data match system;
 - addressing duties of a depository institution and the State Tax Commission in relation to the depository institution data match system and levy process;
 - addressing payments by the State Tax Commission to a depository institution;
 - addressing an amount levied or released in error;
 - addressing the confidentiality and disclosure of information;

- 30 • addressing limits on a depository institution's liability; and
- 31 • granting rulemaking authority to the State Tax Commission; and
- 32 ▶ makes technical and conforming changes.

33 Money Appropriated in this Bill:

34 None

35 Other Special Clauses:

36 This bill provides a special effective date.

37 Utah Code Sections Affected:

38 AMENDS:

39 **7-1-1004**, as last amended by Laws of Utah 2009, Chapter 381

40 **59-1-1402**, as last amended by Laws of Utah 2012, Chapter 357

41 ENACTS:

42 **59-1-1701**, Utah Code Annotated 1953

43 **59-1-1702**, Utah Code Annotated 1953

44 **59-1-1703**, Utah Code Annotated 1953

45 **59-1-1704**, Utah Code Annotated 1953

46 **59-1-1705**, Utah Code Annotated 1953

47 **59-1-1706**, Utah Code Annotated 1953

48 **59-1-1707**, Utah Code Annotated 1953

49 **59-1-1708**, Utah Code Annotated 1953

50 **59-1-1709**, Utah Code Annotated 1953

51 **59-1-1710**, Utah Code Annotated 1953

52 **59-1-1711**, Utah Code Annotated 1953

53 **59-1-1712**, Utah Code Annotated 1953

54 **59-1-1713**, Utah Code Annotated 1953

55 **59-1-1714**, Utah Code Annotated 1953

56 **59-1-1715**, Utah Code Annotated 1953

57 **59-1-1716**, Utah Code Annotated 1953

58 **59-1-1717**, Utah Code Annotated 1953



60 *Be it enacted by the Legislature of the state of Utah:*

61 Section 1. Section **7-1-1004** is amended to read:

62 **7-1-1004. Reimbursement of financial institution for costs of obtaining**
63 **information.**

64 (1) [A] Except as provided in Subsection (2), a financial institution is entitled to
65 reimbursement by a governmental entity seeking information, for costs reasonably and directly
66 incurred in searching for, reproducing, or transporting a record required to be produced if the
67 financial institution produces the record:

68 (a) pursuant to written permission by all account holders of the account referenced in
69 the record in accordance with:

70 (i) Subsection **7-1-1001**(2)(a); or

71 (ii) Subsection **7-1-1006**(2)(b)(iii);

72 (b) in compliance with an order obtained under this part; or

73 (c) in compliance with an order of a court or administrative body of competent
74 jurisdiction.

75 (2) A depository institution is not allowed reimbursement under this section by the
76 State Tax Commission for information the depository institution provides or action the
77 depository institution takes in accordance with Title 59, Chapter 1, Part 17, Depository
78 Institution Data Match System and Levy Act.

79 [~~2~~] (3) The commissioner shall by rule establish the rates and conditions under which
80 a governmental entity shall reimburse a financial institution.

81 Section 2. Section **59-1-1402** is amended to read:

82 **59-1-1402. Definitions.**

83 As used in this part:

84 (1) "Administrative cost" means a fee imposed to cover:

85 (a) the cost of filing;

86 (b) the cost of administering a garnishment; ~~[or]~~
 87 (c) the amount the commission pays to a depository institution in accordance with Title
 88 59, Chapter 1, Part 17, Depository Institution Data Match System and Levy Act; or
 89 ~~[(c)]~~ (d) a cost similar to ~~[Subsection (1)(a) or (b)]~~ Subsections (1)(a) through (c) as
 90 determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah
 91 Administrative Rulemaking Act.

92 (2) "Books and records" means the following made available in printed or electronic
 93 format:

- 94 (a) an account;
- 95 (b) a book;
- 96 (c) an invoice;
- 97 (d) a memorandum;
- 98 (e) a paper;
- 99 (f) a record; or

100 (g) an item similar to Subsections (2)(a) through (f) as determined by the commission
 101 by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

102 (3) "Deficiency" means:

- 103 (a) the amount by which a tax, fee, or charge exceeds the difference between:
- 104 (i) the sum of:
- 105 (A) the amount shown as the tax, fee, or charge by a person on the person's return; and
- 106 (B) any amount previously assessed, or collected without assessment, as a deficiency;

107 and

108 (ii) any amount previously abated, credited, refunded, or otherwise repaid with respect
 109 to that tax, fee, or charge; or

110 (b) if a person does not show an amount as a tax, fee, or charge on the person's return,
 111 or if a person does not make a return, the amount by which the tax, fee, or charge exceeds:

- 112 (i) the amount previously assessed, or collected without assessment, as a deficiency;

113 and

114 (ii) any amount previously abated, credited, refunded, or otherwise repaid with respect
115 to that tax, fee, or charge.

116 (4) "Garnishment" means any legal or equitable procedure through which one or more
117 of the following are required to be withheld for payment of an amount a person owes:

- 118 (a) an asset of the person held by another person; or
- 119 (b) the earnings of the person.

120 (5) "Liability" means the following that a person is required to remit to the
121 commission:

- 122 (a) a tax, fee, or charge;
- 123 (b) an addition to a tax, fee, or charge;
- 124 (c) an administrative cost;
- 125 (d) interest that accrues in accordance with Section 59-1-402; or
- 126 (e) a penalty that accrues in accordance with Section 59-1-401.

127 (6) (a) Subject to Subsection (6)(b), "mathematical error" is as defined in Section
128 6213(g)(2), Internal Revenue Code.

129 (b) The reference to Section 6213(g)(2), Internal Revenue Code, in Subsection (6)(a)
130 means:

131 (i) the reference to Section 6213(g)(2), Internal Revenue Code, in effect for the taxable
132 year; or

133 (ii) a corresponding or comparable provision of the Internal Revenue Code as
134 amended, redesignated, or reenacted.

135 (7) (a) Except as provided in Subsection (7)(b), "tax, fee, or charge" means:

136 (i) a tax, fee, or charge the commission administers under:

- 137 (A) this title;
- 138 (B) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
- 139 (C) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;
- 140 (D) Section 19-6-410.5;
- 141 (E) Section 19-6-714;

- 142 (F) Section 19-6-805;
- 143 (G) Section 32B-2-304;
- 144 (H) Section 34A-2-202;
- 145 (I) Section 40-6-14;
- 146 (J) Section 69-2-5;
- 147 (K) Section 69-2-5.5; or
- 148 (L) Section 69-2-5.6; or
- 149 (ii) another amount that by statute is administered by the commission.
- 150 (b) "Tax, fee, or charge" does not include a tax, fee, or charge imposed under:
- 151 (i) Title 41, Chapter 1a, Motor Vehicle Act, except for Section 41-1a-301;
- 152 (ii) Title 41, Chapter 3, Motor Vehicle Business Regulation Act;
- 153 (iii) Chapter 2, Property Tax Act;
- 154 (iv) Chapter 3, Tax Equivalent Property Act;
- 155 (v) Chapter 4, Privilege Tax; or
- 156 (vi) Chapter 13, Part 5, Interstate Agreements.
- 157 (8) "Transferee" means:
- 158 (a) a devisee;
- 159 (b) a distributee;
- 160 (c) a donee;
- 161 (d) an heir;
- 162 (e) a legatee; or
- 163 (f) a person similar to Subsections (8)(a) through (e) as determined by the commission

164 by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

165 Section 3. Section 59-1-1701 is enacted to read:

166 **Part 17. Depository Institution Data Match System and Levy Act**

167 **59-1-1701. Title.**

168 This part is known as the "Depository Institution Data Match System and Levy Act."

169 Section 4. Section 59-1-1702 is enacted to read:

170 **59-1-1702. Definitions.**

171 As used in this part:

172 (1) "Agreement" means an agreement described in Section 59-1-1704 between a
173 depository institution and the commission.

174 (2) "Delinquent taxpayer" means a person against whom the commission is considered
175 to have obtained a judgment for a liability under Section 59-1-1414.

176 (3) "Depository institution" is a depository institution described in Section 7-1-103 that
177 holds or receives deposits, savings, or share accounts.

178 (4) "Depository institution data match system" means the database that the commission
179 develops, maintains, and operates in accordance with Section 59-1-1703.

180 (5) "Identifying information" means:

181 (a) the name of the account holder;

182 (b) the social security number of the account holder; or

183 (c) other identifying information.

184 (6) "Liability" means the same as that term is defined in Section 59-1-1402.

185 (7) "Satisfy a liability" means to pay in full a liability that is the subject of a levy under
186 this part.

187 Section 5. Section **59-1-1703** is enacted to read:

188 **59-1-1703. Depository institution data match system.**

189 (1) The commission shall develop, maintain, and operate a database as provided in this
190 section.

191 (2) The database described in Subsection (1):

192 (a) shall use automated data exchanges;

193 (b) shall identify a delinquent taxpayer by identifying information;

194 (c) may be accessed only by the commission or a depository institution;

195 (d) shall be used to determine whether a delinquent taxpayer identified in the database
196 has the same identifying information as that of an account holder at a depository institution;
197 and

198 (e) shall be updated by the commission on at least a quarterly basis.

199 Section 6. Section **59-1-1704** is enacted to read:

200 **59-1-1704. Election to enter into an agreement.**

201 (1) A depository institution that does business in this state may elect to use the
202 depository institution data match system to respond to judicial process against a delinquent
203 taxpayer.

204 (2) A depository institution may not make an election under Subsection (1) unless the
205 commission approves the election.

206 (3) A depository institution that elects to use the depository institution data match
207 system shall enter into an agreement with the commission.

208 (4) An agreement under this section shall:

209 (a) address the operation of the depository institution data match system;

210 (b) require the depository institution to comply with this part;

211 (c) address reimbursement to the depository institution for complying with this part;

212 and

213 (d) provide for the security and confidentiality of data contained in the depository
214 institution data match system.

215 (5) An election under this section does not preclude the commission from requiring a
216 depository institution to respond to judicial process against a delinquent taxpayer:

217 (a) by means other than the depository institution data match system; and

218 (b) as provided by law.

219 Section 7. Section **59-1-1705** is enacted to read:

220 **59-1-1705. Requirement to access depository institution data match system.**

221 (1) A depository institution that enters into an agreement with the commission in
222 accordance with Section [59-1-1704](#) shall access the depository institution data match system on
223 or before the 15th day of each calendar quarter.

224 (2) A depository institution that accesses the depository institution data match system
225 shall determine whether a delinquent taxpayer identified in the depository institution data

226 match system has the same identifying information as that of an account holder at the
227 depository institution.

228 Section 8. Section **59-1-1706** is enacted to read:

229 **59-1-1706. Requirement for a depository institution to provide information to the**
230 **commission.**

231 A depository institution that determines under Section [59-1-1705](#) that a delinquent
232 taxpayer identified in the depository institution data match system has the same identifying
233 information as that of an account holder at the depository institution shall provide the
234 commission, within five days after the day on which the depository institution accesses the
235 depository institution data match system:

- 236 (1) the name of the account holder;
- 237 (2) the address of the account holder;
- 238 (3) the account number of the account holder;
- 239 (4) the account balance of the account holder on the day that the depository institution
240 provides the commission the information required by this section;
- 241 (5) the type of account of the account holder;
- 242 (6) the social security number of the account holder;
- 243 (7) other information that identifies the account holder; and
- 244 (8) the name of, and contact information for, other account holders that have access to
245 the account.

246 Section 9. Section **59-1-1707** is enacted to read:

247 **59-1-1707. Commission requirement to provide notice of levy to depository**
248 **institution -- Duration of levy.**

249 (1) The commission shall provide, within three business days after a depository
250 institution provides the commission information described in Section [59-1-1706](#), a notice of
251 levy to the depository institution by electronic means:

- 252 (a) stating that the commission levies an amount equal to the liability of a delinquent
253 taxpayer that is an account holder at the depository institution; and

254 (b) identifying the account subject to levy.
255 (2) A levy described in Subsection (1) is valid until the earlier of:
256 (a) the day on which the commission releases the levy;
257 (b) the day on which the delinquent taxpayer satisfies the liability; or
258 (c) the day on which the depository institution releases, in accordance with Section
259 59-1-1711, the amounts deposited into the account of the delinquent taxpayer.

260 (3) The commission shall provide notice to a depository institution by electronic
261 means:

262 (a) if the commission releases a levy, no later than one business day after the day on
263 which the commission releases the levy; or

264 (b) if a delinquent taxpayer satisfies the liability, no later than one business day after
265 the day on which the delinquent taxpayer satisfies the liability.

266 Section 10. Section **59-1-1708** is enacted to read:

267 **59-1-1708. Depository institution requirement to secure amount subject to levy in**
268 **account holder's account.**

269 (1) Subject to Subsection (2), before the later of two business days after the day on
270 which, or 48 hours after the time at which, a depository institution receives a notice of levy
271 described in Section 59-1-1707 from the commission, the depository institution shall secure the
272 amount subject to levy in a delinquent taxpayer's account by prohibiting:

273 (a) any person that has access to the delinquent taxpayer's account from accessing the
274 amount; or

275 (b) the transfer or other disposition of the amount.

276 (2) For purposes of Subsection (1), a depository institution shall secure an amount
277 subject to levy regardless of whether a person other than the delinquent taxpayer has access to
278 the account or is an account holder.

279 Section 11. Section **59-1-1709** is enacted to read:

280 **59-1-1709. Commission to send notice to delinquent taxpayer.**

281 (1) The commission shall, within three business days after the day on which the

282 commission provides a notice of levy described in Section 59-1-1707 to a depository
283 institution, notify a delinquent taxpayer that the commission has issued the notice of levy to the
284 depository institution.

285 (2) The notice described in Subsection (1) shall:

286 (a) state the amount subject to levy as stated in the notice of levy described in Section
287 59-1-1707;

288 (b) notify the delinquent taxpayer that the depository institution is required to secure
289 the amount subject to levy in accordance with Section 59-1-1708;

290 (c) identify each account subject to levy at the depository institution; and

291 (d) describe the actions a delinquent taxpayer may take to:

292 (i) satisfy the liability; or

293 (ii) resolve an issue as to whether the commission has the authority to receive from a
294 depository institution the amount subject to levy at the depository institution.

295 Section 12. Section 59-1-1710 is enacted to read:

296 **59-1-1710. Commission to determine portion of an amount subject to levy --**

297 **Process for resolution of dispute -- Extension of certain time periods -- District court**

298 **action -- Rulemaking authority.**

299 (1) In accordance with this section, the commission, in consultation with the depository
300 institution, shall determine the portion of the amount subject to a levy under this part.

301 (2) The time period for making the determination required by Subsection (1):

302 (a) begins on the day on which the commission provides a notice of levy described in
303 Section 59-1-1707 to a depository institution; and

304 (b) ends on the first business day after a 21-day period beginning on the day described
305 in Subsection (2)(a).

306 (3) The commission shall provide notice to a depository institution, no later than the
307 last day of the time period described in Subsection (2), of the portion of the amount subject to a
308 levy under this part.

309 (4) The portion of an amount subject to levy under this part that the commission may

310 receive from a depository institution may not exceed the lesser of:

311 (a) the amount of the liability that is subject to the levy;

312 (b) the amount the commission would have been able to receive had the commission
313 obtained a writ of garnishment; or

314 (c) the balance of the delinquent taxpayer's account that a depository institution has
315 secured or will secure in accordance with Section 59-1-1708 minus any amounts that the
316 depository institution holds as a security interest.

317 (5) As part of the determination required by Subsection (1), the commission shall allow
318 a delinquent taxpayer to communicate with and provide information to the commission.

319 (6) The commission shall order a conference between the commission and the
320 delinquent taxpayer in accordance with Section 63G-4-102 if:

321 (a) the commission finds that there is a dispute as to an issue related to the
322 determination required by Subsection (1); or

323 (b) a delinquent taxpayer requests the conference to address a dispute as to an issue
324 related to the determination required by Subsection (1).

325 (7) The time period beginning on the day on which the commission orders a conference
326 in accordance with Subsection (6) and ending on the day on which the conference adjourns
327 may not be included in calculating a time period:

328 (a) during which a levy is valid;

329 (b) during which a depository institution is required to secure an amount in accordance
330 with Section 59-1-1708;

331 (c) for making the determination required by Subsection (1); or

332 (d) for requiring a depository institution to release a portion of an amount to the
333 commission in accordance with Section 59-1-1711.

334 (8) If a conference described in Subsection (6) does not result in the resolution of the
335 issues related to the determination required by Subsection (1), a delinquent taxpayer may file
336 an action in district court:

337 (a) within 14 days after the day on which a conference described in Subsection (6)

338 adjourns; and

339 (b) in the district court located in the county of residence or principal place of business
340 of the delinquent taxpayer.

341 (9) (a) Subject to Subsection (9)(b), the time period beginning on the day on which a
342 delinquent taxpayer files an action in accordance with Subsection (8) and ending on the day on
343 which the action becomes final may not be included in calculating a time period:

344 (i) during which a levy is valid;

345 (ii) during which a depository institution is required to secure an amount in accordance
346 with Section [59-1-1708](#);

347 (iii) for making the determination required by Subsection (1); or

348 (iv) for requiring a depository institution to release a portion of an amount to the
349 commission in accordance with Section [59-1-1711](#).

350 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
351 commission may make rules for determining when an action under this section becomes final.

352 Section 13. Section **59-1-1711** is enacted to read:

353 **59-1-1711. Depository institution to release portion of amount subject to levy.**

354 (1) Subject to the other provisions of this section, a depository institution shall release
355 the portion of the amount subject to a levy under this part that the commission may receive in
356 accordance with Section [59-1-1710](#) from the depository institution.

357 (2) On the first business day after the day on which the commission provides the notice
358 described in Subsection [59-1-1710](#)(3) to the depository institution, the depository institution
359 shall release the lesser of the following:

360 (a) the portion of the amount the commission may receive in accordance with Section
361 [59-1-1710](#) from the depository institution; or

362 (b) the balance of the delinquent taxpayer's account on the first business day after the
363 day on which the commission provides the notice described in Subsection [59-1-1710](#)(3) to the
364 depository institution minus:

365 (i) the \$10 reimbursement to the depository institution described in Section [59-1-1713](#);

366 and

367 (ii) the fees that an account holder agreed to pay the depository institution to process a
368 writ of garnishment in a deposit agreement.

369 Section 14. Section **59-1-1712** is enacted to read:

370 **59-1-1712. Limitations on commission authority to levy.**

371 (1) During the time period that a levy the commission imposes on the account of a
372 delinquent taxpayer is valid, the commission may not impose another levy on that account.

373 (2) The commission may impose a levy in accordance with the procedures and
374 requirements of this part on an account subject to a previous levy under this part if that
375 previous levy is no longer valid.

376 Section 15. Section **59-1-1713** is enacted to read:

377 **59-1-1713. Commission payment to depository institution to secure amount**
378 **subject to levy.**

379 In addition to any compensation that the commission pays to the depository institution
380 in accordance with an agreement, the commission shall pay the depository institution \$10 if the
381 depository institution secures an amount subject to levy under Section [59-1-1708](#).

382 Section 16. Section **59-1-1714** is enacted to read:

383 **59-1-1714. Amount levied or released in error -- Rulemaking authority.**

384 (1) If the commission levies an amount in error, the commission shall:

385 (a) pay the cost of a depository institution charge incurred as a result of the levy; or

386 (b) if a person other than the commission pays the depository institution charge,
387 reimburse the person for the depository institution charge incurred as a result of the levy.

388 (2) If a depository institution releases an amount in an account holder's account to the
389 commission in error, the commission shall return the amount to the depository institution by
390 electronic means for deposit into the account holder's account.

391 (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
392 commission may make rules prescribing:

393 (a) what constitutes levying or releasing an amount in error; and

394 (b) the depository institution charges the commission shall pay.

395 Section 17. Section **59-1-1715** is enacted to read:

396 **59-1-1715. Limits on a depository institution's authority to disclose or provide**
397 **notice -- Depository institution authority to provide information.**

398 (1) Before a depository institution secures an amount subject to levy in a delinquent
399 taxpayer's account in accordance with Section [59-1-1708](#) and except as provided in Subsection

400 (2), a depository institution may not disclose or provide notice to an account holder at the
401 depository institution that the depository institution:

402 (a) provided information to the commission or the commission provided information to
403 the depository institution in relation to the account holder or the account holder's account in
404 accordance with this part; or

405 (b) took an action in relation to the account holder or the account holder's account in
406 accordance with this part.

407 (2) A depository institution may provide information to an account holder describing
408 the depository institution's duties under this part if the information the depository institution
409 provides does not identify that the depository institution:

410 (a) provides or has provided information to the commission in relation to a particular
411 account holder or account holder's account in accordance with this part; or

412 (b) takes or has taken an action in relation to a particular account holder or account
413 holder's account in accordance with this part.

414 Section 18. Section **59-1-1716** is enacted to read:

415 **59-1-1716. Limits on depository institution liability.**

416 A depository institution is not liable to a person for the following if the depository
417 institution acts in good faith:

418 (1) providing or failing to provide information; or

419 (2) taking or failing to take an action.

420 Section 19. Section **59-1-1717** is enacted to read:

421 **59-1-1717. Confidentiality of information.**

422 Except for the exchange of information between the commission and a depository
423 institution that is necessary to meet the requirements of this part, information the commission
424 obtains from a depository institution is subject to Section [59-1-403](#) as if the information had
425 been gained from a return filed with the commission.

426 Section 20. **Effective date.**

427 This bill takes effect on January 1, 2017.