

Representative Steve Eliason proposes the following substitute bill:

TAX COMMISSION COLLECTION AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Steve Eliason

LONG TITLE

General Description:

This bill enacts and modifies provisions related to the State Tax Commission's collection processes.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ allows the State Tax Commission to authorize a private collector to contract with a third party;
- ▶ addresses the information the State Tax Commission may disclose to a private collector and allows the private collector to provide any relevant information to a contracted third party;
- ▶ if a taxpayer owes a liability to the State Tax Commission, authorizes the State Tax Commission to issue an administrative garnishment order against the taxpayer's personal property that is in possession of another person; and
- ▶ addresses the procedural and substantive requirements of an administrative garnishment order.

Money Appropriated in this Bill:

None



26 **Other Special Clauses:**

27 This bill provides a special effective date.

28 **Utah Code Sections Affected:**

29 AMENDS:

30 **59-1-1101**, as last amended by Laws of Utah 2000, Chapter 182

31 **59-1-1102**, as enacted by Laws of Utah 1994, Chapter 165

32 ENACTS:

33 **59-1-1420**, Utah Code Annotated 1953



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

36 Section 1. Section **59-1-1101** is amended to read:

37 **59-1-1101. Private collection of tax -- Fee.**

38 (1) The [tax] commission is authorized to employ private collectors for the collection
39 of accounts that are unpaid over 12 months after the assessment date.

40 (2) Up to, but no more than, 33% of the money collected may be used to offset the
41 payment to a private collector.

42 (3) The commission may authorize a private collector described in Subsection (1) to
43 contract with a third party for services for the collection of accounts that the commission refers
44 to the private collector.

45 Section 2. Section **59-1-1102** is amended to read:

46 **59-1-1102. Disclosure of tax information -- Confidentiality.**

47 (1) (a) Notwithstanding Section **59-1-403**, if the commission refers a debt related to a
48 tax, fee, or charge as defined in Section **59-1-401** to a private collector under Section
49 **59-1-1101**, the commission may disclose [the tax due,] to the private collector the following
50 information related to the debt:

51 (i) the name of the taxpayer[~~, and~~];

52 (ii) the taxpayer's contact information, including address and phone number [when any
53 tax is referred to a private collector under Section **59-1-1101**];

54 (iii) the amount of the debt;

55 (iv) other information that identifies the taxpayer; or

56 (v) a combination of the information described in Subsections (1)(a)(i) through (iv).

57 (b) This disclosure may not be made if it would be in violation of Section 6103 [of
58 ~~the~~], Internal Revenue Code.

59 (2) Subject to Subsections (1)(b) and (3), if the commission authorizes a private
60 collector to contract with a third party under Section 59-1-1101, the private collector may
61 disclose to the third party the information described in Subsection (1)(a) that the commission
62 discloses to the private collector and that relates to services the third party provides to the
63 private collector.

64 [~~2~~] (3) [~~Any~~] A private collector or a third party described in Subsection (2) is subject
65 to the confidentiality requirements and penalty provisions provided in Section 59-1-403 with
66 regard to [~~these records~~] information disclosed in accordance with this section.

67 Section 3. Section 59-1-1420 is enacted to read:

68 **59-1-1420. Administrative garnishment order for liability.**

69 (1) As used in this section:

70 (a) "Administrative garnishment order" includes a continuing administrative
71 garnishment order issued under this section.

72 (b) "Disposable earnings" means the same as that term is defined in Section
73 70C-7-103.

74 (c) "Garnishee" means a person to whom the commission issues an administrative
75 garnishment order under this section.

76 (d) "Nonexempt periodic payment" means any recurring payment that, under Title 78B,
77 Chapter 5, Part 5, Utah Exemptions Act, is not exempt from the judicial process to collect an
78 unsecured debt.

79 (2) (a) Subject to Subsection (3), if a taxpayer owes a liability, the commission may
80 issue an administrative garnishment order against the taxpayer's personal property, including
81 wages, in the possession or control of a person other than the taxpayer in the same manner and
82 with the same effect as if the order were a writ of garnishment issued by a court with
83 jurisdiction.

84 (b) In addition to the underlying liability, the commission may satisfy through an
85 administrative garnishment any costs or fees incurred by the commission as a result of issuing
86 the administrative garnishment order.

87 (3) The commission may issue an administrative garnishment order to a person

88 described in Subsection (2) if:

89 (a) the commission has filed a warrant against the taxpayer for the underlying liability
90 in accordance with Section 59-1-1414; and

91 (b) the commission's executive director or the executive director's designee signs the
92 administrative garnishment order.

93 (4) An administrative garnishment order issued in accordance with this section is
94 subject to the procedures and due process protections provided by Rule 64D, Utah Rules of
95 Civil Procedure.

96 (5) The maximum portion of a taxpayer's disposable earnings subject to garnishment
97 under this section is the lesser of:

98 (a) 25% of the taxpayer's disposable earnings; or

99 (b) the amount by which the taxpayer's disposable earnings for a pay period exceeds
100 the number of weeks in that pay period multiplied by 30 times the federal minimum wage as
101 provided in 29 U.S.C. Sec. 201 et seq., Fair Labor Standards Act of 1938.

102 (6) Upon agreement by the garnishee, the parties to an administrative garnishment
103 order may accept and transmit documents relating to the administrative garnishment order by
104 electronic means, including service of process, proof of service, interrogatories, answers, and
105 any other information shared between the garnishee and the commission.

106 (7) In an administrative garnishment order issued under this section, the commission
107 shall:

108 (a) identify the taxpayer, including:

109 (i) the taxpayer's name and address; and

110 (ii) if known:

111 (A) the last four digits of the taxpayer's social security number, or the taxpayer's full
112 social security number, if the taxpayer's full social security number is required by federal law;
113 and

114 (B) the taxpayer's date of birth;

115 (b) contain a statement that includes:

116 (i) if known, the nature, location, account number, and estimated value of the property
117 subject to administrative garnishment;

118 (ii) if known, the name, address, and phone number of the person holding the property

119 subject to administrative garnishment; and

120 (iii) the name, address, and phone number of any person claiming an interest in the
121 property described in Subsection (7)(b)(i) or (ii);

122 (c) state whether any of the property subject to administrative garnishment consists of
123 earnings;

124 (d) state the outstanding amount owed under the warrant described in Subsection
125 (3)(a);

126 (e) state the amount of any applicable costs or fees included in the administrative
127 garnishment;

128 (f) state the manner in which the garnishee shall deliver the property to the
129 commission; and

130 (g) state that the commission shall pay the garnishee the fee described in Subsection
131 [78A-2-216](#).

132 (8) As part of the administrative garnishment order, the commission shall serve on the
133 garnishee the following interrogatories:

134 (a) whether the garnishee is indebted to the taxpayer and, if so, the nature of the
135 indebtedness;

136 (b) whether the garnishee possesses or controls any property of the taxpayer, and, if so,
137 the nature, location, and estimated value of the property;

138 (c) whether the garnishee knows of any property of the taxpayer in the possession or
139 control of another person, and if so, the following information about the property:

140 (i) the nature;

141 (ii) the location; and

142 (iii) the estimated value;

143 (d) (i) whether the garnishee intends to deduct from the property a liquidated claim
144 against the taxpayer;

145 (ii) a description of any claim described in Subsection (8)(d)(i); and

146 (iii) the amount deducted, if any;

147 (e) the date and manner of the garnishee's service of the documents described in
148 Subsection (9)(c) on the taxpayer and any third party;

149 (f) the date on which the taxpayer was previously served with any continuing

150 administrative garnishment order;

151 (g) any other relevant information the commission requests, including:

152 (i) the taxpayer's position;

153 (ii) the taxpayer's rate of pay;

154 (iii) the taxpayer's compensation method;

155 (iv) the taxpayer's pay period; and

156 (v) a computation of the taxpayer's disposable earnings.

157 (9) Within seven days after the day on which an administrative garnishment order is

158 served, the garnishee shall:

159 (a) answer each interrogatory described in Subsection (8);

160 (b) serve the answers to the interrogatories on the commission;

161 (c) serve the taxpayer and any other person known to the garnishee to have an interest

162 in the property a copy of:

163 (i) the administrative garnishment order; and

164 (ii) the answers to the interrogatories described in Subsection (9)(b); and

165 (d) inform the taxpayer of the taxpayer's right to reply to the answers described in

166 Subsection (9)(b) and request a hearing as provided by Rule 64D, Utah Rules of Civil

167 Procedure.

168 (10) (a) A garnishee who acts in accordance with this section and the administrative

169 garnishment order is released from liability unless an answer to an interrogatory is successfully

170 controverted.

171 (b) Except as provided in Subsection (10)(c), if a garnishee fails to comply with the

172 administrative garnishment order without a court or final administrative order directing

173 otherwise, the garnishee is liable for an amount including:

174 (i) the lesser of the value of the property or the balance owed under the warrant

175 described in Subsection (3)(a);

176 (ii) reasonable costs and fees; and

177 (iii) attorney fees incurred by the parties as a result of the garnishee's failure.

178 (c) If a garnishee demonstrates that the garnishee took reasonable steps to secure the

179 property, the commission may excuse the garnishee of liability in whole or in part.

180 (11) If the commission files a motion for an order to show cause to enforce an

181 administrative garnishment order under this section, the commission shall attach to the motion
182 a statement that the commission has in good faith conferred or attempted to confer with the
183 garnishee in an effort to settle the issue without court action.

184 (12) A garnishee is not liable for drawing, accepting, making, or endorsing a negotiable
185 instrument that is not in the possession or control of the garnishee at the time the administrative
186 garnishment order is served.

187 (13) A garnishee may deduct from the property any liquidated claim against the
188 taxpayer.

189 (14) (a) If a debt owed by the taxpayer to the garnishee is secured by the property
190 subject to the administrative garnishment order, the commission may apply the property to the
191 debt.

192 (b) An administrative garnishment order described in Subsection (14)(a) remains in
193 effect regardless of whether the commission applies the property to the debt.

194 (15) (a) The commission may issue a continuing administrative garnishment order
195 against any nonexempt periodic payment.

196 (b) A continuing administrative garnishment order applies to payments to the taxpayer:

197 (i) beginning on the day on which the continuing administrative garnishment order is
198 served; and

199 (ii) ending on the earlier of:

200 (A) subject to Subsection (15)(c), one year after the day on which the continuing
201 administrative garnishment order is served;

202 (B) 120 days after the day on which a second or subsequent continuing administrative
203 garnishment against the taxpayer is served;

204 (C) the day on which the last nonexempt periodic payment subject to the continuing
205 administrative garnishment order occurs;

206 (D) the day on which the warrant described in Subsection (3)(a) is stayed, vacated, or
207 satisfied in full; or

208 (E) the day on which the commission releases the continuing administrative
209 garnishment order.

210 (c) If the commission issues a continuing administrative garnishment order during the
211 term of another continuing administrative garnishment order against the same taxpayer, the

212 period described in Subsection (15)(b)(i) is tolled if the other continuing administrative
213 garnishment order:

214 (i) is in effect at the time the commission serves the subsequent continuing
215 administrative garnishment order; and

216 (ii) requires payments greater than or equal to the maximum portion of disposable
217 earnings described in Subsection (5).

218 (d) For each periodic payment period, no later than seven days after the day on which
219 the periodic payment period ends, the garnishee shall:

220 (i) answer each interrogatory described in Subsection (8);

221 (ii) serve the answers to the interrogatories on the commission, the taxpayer, and any
222 other person known to the garnishee to have an interest in the property; and

223 (iii) deliver the property to the commission in the manner specified in the continuing
224 administrative garnishment order.

225 (16) (a) The commission may not name more than one garnishee in an administrative
226 garnishment order.

227 (b) Priority among garnishments is according to the order of service on the garnishee.

228 (c) An administrative garnishment order applies to earnings accruing during the pay
229 period in which the order is effective.

230 (17) This section is subject to Title 78B, Chapter 5, Part 5, Utah Exemptions Act.
231 **Section 4. Effective date.**

232 This bill takes effect July 1, 2021.