

**TAX COMMISSION LEVY PROCESS**

2016 GENERAL SESSION

STATE OF UTAH

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**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;
  - requiring the State Tax Commission to enter into agreements with 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 a reimbursement the State Tax Commission pays to a depository institution;
  - addressing an amount levied or released in error;
  - addressing the confidentiality and disclosure of information;
  - addressing limits on a depository institution's liability; and
  - granting rulemaking authority to the State Tax Commission; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

33 None

34 **Other Special Clauses:**

35 This bill provides a special effective date.

36 **Utah Code Sections Affected:**

37 AMENDS:

38 **7-1-1004**, as last amended by Laws of Utah 2009, Chapter 381

39 **59-1-1402**, as last amended by Laws of Utah 2012, Chapter 357

40 ENACTS:

41 **59-1-1701**, Utah Code Annotated 1953

42 **59-1-1702**, Utah Code Annotated 1953

43 **59-1-1703**, Utah Code Annotated 1953

44 **59-1-1704**, Utah Code Annotated 1953

45 **59-1-1705**, Utah Code Annotated 1953

46 **59-1-1706**, Utah Code Annotated 1953

47 **59-1-1707**, Utah Code Annotated 1953

48 **59-1-1708**, Utah Code Annotated 1953

49 **59-1-1709**, Utah Code Annotated 1953

50 **59-1-1710**, Utah Code Annotated 1953

51 **59-1-1711**, Utah Code Annotated 1953

52 **59-1-1712**, Utah Code Annotated 1953

53 **59-1-1713**, Utah Code Annotated 1953

54 **59-1-1714**, Utah Code Annotated 1953

55 **59-1-1715**, Utah Code Annotated 1953



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

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

59 **7-1-1004. Reimbursement of financial institution for costs of obtaining**  
60 **information.**

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

64 financial institution produces the record:

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

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

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

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

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

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

76 ~~(2)~~ (3) The commissioner shall by rule establish the rates and conditions under which  
77 a governmental entity shall reimburse a financial institution.

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

79 **59-1-1402. Definitions.**

80 As used in this part:

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

82 (a) the cost of filing;

83 (b) the cost of administering a garnishment; ~~or~~

84 (c) the amount the commission pays to a depository institution in accordance with  
85 Section 59-1-1711; or

86 ~~(c)~~ (d) a cost similar to ~~Subsection (1)(a) or (b)~~ Subsections (1)(a) through (c) as  
87 determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah  
88 Administrative Rulemaking Act.

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

91 (a) an account;

92 (b) a book;

93 (c) an invoice;

94 (d) a memorandum;

- 95 (e) a paper;
- 96 (f) a record; or
- 97 (g) an item similar to Subsections (2)(a) through (f) as determined by the commission  
98 by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 99 (3) "Deficiency" means:
- 100 (a) the amount by which a tax, fee, or charge exceeds the difference between:
- 101 (i) the sum of:
- 102 (A) the amount shown as the tax, fee, or charge by a person on the person's return; and
- 103 (B) any amount previously assessed, or collected without assessment, as a deficiency;
- 104 and
- 105 (ii) any amount previously abated, credited, refunded, or otherwise repaid with respect  
106 to that tax, fee, or charge; or
- 107 (b) if a person does not show an amount as a tax, fee, or charge on the person's return,  
108 or if a person does not make a return, the amount by which the tax, fee, or charge exceeds:
- 109 (i) the amount previously assessed, or collected without assessment, as a deficiency;
- 110 and
- 111 (ii) any amount previously abated, credited, refunded, or otherwise repaid with respect  
112 to that tax, fee, or charge.
- 113 (4) "Garnishment" means any legal or equitable procedure through which one or more  
114 of the following are required to be withheld for payment of an amount a person owes:
- 115 (a) an asset of the person held by another person; or
- 116 (b) the earnings of the person.
- 117 (5) "Liability" means the following that a person is required to remit to the  
118 commission:
- 119 (a) a tax, fee, or charge;
- 120 (b) an addition to a tax, fee, or charge;
- 121 (c) an administrative cost;
- 122 (d) interest that accrues in accordance with Section 59-1-402; or
- 123 (e) a penalty that accrues in accordance with Section 59-1-401.
- 124 (6) (a) Subject to Subsection (6)(b), "mathematical error" is as defined in Section  
125 6213(g)(2), Internal Revenue Code.

- 126 (b) The reference to Section 6213(g)(2), Internal Revenue Code, in Subsection (6)(a)  
127 means:
- 128 (i) the reference to Section 6213(g)(2), Internal Revenue Code, in effect for the taxable  
129 year; or
- 130 (ii) a corresponding or comparable provision of the Internal Revenue Code as  
131 amended, redesignated, or reenacted.
- 132 (7) (a) Except as provided in Subsection (7)(b), "tax, fee, or charge" means:
- 133 (i) a tax, fee, or charge the commission administers under:
- 134 (A) this title;
- 135 (B) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
- 136 (C) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;
- 137 (D) Section 19-6-410.5;
- 138 (E) Section 19-6-714;
- 139 (F) Section 19-6-805;
- 140 (G) Section 32B-2-304;
- 141 (H) Section 34A-2-202;
- 142 (I) Section 40-6-14;
- 143 (J) Section 69-2-5;
- 144 (K) Section 69-2-5.5; or
- 145 (L) Section 69-2-5.6; or
- 146 (ii) another amount that by statute is administered by the commission.
- 147 (b) "Tax, fee, or charge" does not include a tax, fee, or charge imposed under:
- 148 (i) Title 41, Chapter 1a, Motor Vehicle Act, except for Section 41-1a-301;
- 149 (ii) Title 41, Chapter 3, Motor Vehicle Business Regulation Act;
- 150 (iii) Chapter 2, Property Tax Act;
- 151 (iv) Chapter 3, Tax Equivalent Property Act;
- 152 (v) Chapter 4, Privilege Tax; or
- 153 (vi) Chapter 13, Part 5, Interstate Agreements.
- 154 (8) "Transferee" means:
- 155 (a) a devisee;
- 156 (b) a distributee;

- 157 (c) a donee;  
 158 (d) an heir;  
 159 (e) a legatee; or  
 160 (f) a person similar to Subsections (8)(a) through (e) as determined by the commission  
 161 by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

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

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

164 **59-1-1701. Title.**

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

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

167 **59-1-1702. Definitions.**

168 As used in this part:

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

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

173 (3) "Depository institution data match system" means the database the commission  
 174 develops, maintains, and operates in accordance with Section 59-1-1703.

175 (4) "Identifying information" means the following that a depository institution provides  
 176 to the commission in relation to an account holder under this part:

177 (a) the name of the account holder;

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

179 (c) other identifying information.

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

181 (6) "Satisfy a liability" means to pay in full a liability that is the subject of a levy under  
 182 this part.

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

184 **59-1-1703. Depository institution data match system -- Agreements between**  
 185 **commission and depository institutions.**

186 (1) The commission shall develop, maintain, and operate a database as provided in this  
 187 section that:

- 188           (a) uses automated data exchanges;  
189           (b) identifies a delinquent taxpayer by identifying information;  
190           (c) may be accessed only by the commission or a depository institution;  
191           (d) is used to determine whether a delinquent taxpayer identified in the database has  
192 the same identifying information as that of an account holder at a depository institution; and  
193           (e) is updated by the commission on at least a quarterly basis.

194           (2) The commission shall enter into agreements with depository institutions doing  
195 business in the state to:

- 196           (a) coordinate the development and operation of the depository institution data match  
197 system;  
198           (b) participate in using the depository institution data match system as provided in this  
199 part;  
200           (c) address reimbursement to the depository institution in accordance with Section  
201 59-1-1711 for complying with the requirements of this part; and  
202           (d) provide for the security and confidentiality of the data contained in the depository  
203 institution data match system.

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

205           **59-1-1704. Depository institution to access depository institution data match**  
206 **system.**

207           (1) A depository institution that enters into an agreement with the commission in  
208 accordance with Section 59-1-1703 shall access the depository institution data match system on  
209 or before the 15th day of each calendar quarter to determine whether a delinquent taxpayer  
210 identified in the depository institution data match system has the same identifying information  
211 as that of an account holder at the depository institution.

212           (2) If a depository institution determines that a delinquent taxpayer identified in the  
213 depository institution data match system has the same identifying information as that of an  
214 account holder at the depository institution, the depository institution shall, within three  
215 business days after the depository institution accesses the depository institution data match  
216 system, provide the commission with the following information the depository institution has  
217 in relation to the account holder:

218           (a) the name of the account holder;

- 219 (b) the address of the account holder;  
220 (c) the account number of the account holder;  
221 (d) the account balance of the account holder as of the date the depository institution  
222 provides the commission the information;  
223 (e) the type of account of the account holder;  
224 (f) the social security number of the account holder;  
225 (g) other information that identifies the account holder; and  
226 (h) the name of and contact information for other account holders that have access to  
227 the account.

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

229 **59-1-1705. Commission requirement to provide notice of levy to depository**  
230 **institution -- Duration of levy.**

231 (1) The commission shall provide, within three business days after a depository  
232 institution provides the commission information described in Subsection 59-1-1704(2), a  
233 notice of levy to the depository institution by electronic means:

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

236 (b) identifying the account subject to levy.

237 (2) A levy described in Subsection (1) is valid until the earlier of:

238 (a) the date the commission releases the levy;

239 (b) the date the delinquent taxpayer satisfies the liability; or

240 (c) the date the depository institution makes the final subsequent release in accordance  
241 with Section 59-1-1709 of amounts deposited into the account of the delinquent taxpayer.

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

244 (a) if the commission releases a levy, no later than one business day after the date the  
245 commission releases the levy; or

246 (b) if a delinquent taxpayer satisfies the liability, no later than one business day after  
247 the date the delinquent taxpayer satisfies the liability.

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

249 **59-1-1706. Depository institution requirement to secure amount subject to levy in**



250 **account holder's account.**

251 (1) Subject to Subsection (3), no later than one business day after the date a depository  
252 institution receives a notice of levy described in Section 59-1-1705 from the commission, the  
253 depository institution shall secure the amount subject to levy in a delinquent taxpayer's account  
254 by prohibiting:

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

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

258 (2) Subject to Subsection (3), if, on the date a depository institution secures an amount  
259 under Subsection (1), the balance of the delinquent taxpayer's account is less than the amount  
260 subject to levy stated on the notice of levy described in Section 59-1-1705, the depository  
261 institution shall secure deposits into the account holder's account:

262 (a) made after the date the depository institution secures the amount under Subsection  
263 (1);

264 (b) in an amount that in total does not exceed the amount of the liability stated on the  
265 notice of levy described in Section 59-1-1705; and

266 (c) until the earlier of:

267 (i) the date the commission provides notice to the depository institution in accordance  
268 with Section 59-1-1705 that the commission has released the levy;

269 (ii) the date the commission provides notice to the depository institution in accordance  
270 with Section 59-1-1705 that the delinquent taxpayer has satisfied the liability; or

271 (iii) the date the depository institution makes the final subsequent release in accordance  
272 with Section 59-1-1709 of amounts deposited into the account of the delinquent taxpayer.

273 (3) For purposes of Subsections (1) and (2), a depository institution shall secure an  
274 amount subject to levy regardless of whether a person other than the delinquent taxpayer has  
275 access to the account or is an account holder.

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

277 **59-1-1707. Commission to send notice to delinquent taxpayer.**

278 (1) The commission shall, within three business days after the date the commission  
279 provides a notice of levy described in Section 59-1-1705 to a depository institution, notify a  
280 delinquent taxpayer that the commission has issued the notice of levy to the depository

281 institution.

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

283 (a) state the amount subject to levy as stated in the notice of levy described in Section  
284 59-1-1705;

285 (b) notify the delinquent taxpayer that the depository institution is required to secure  
286 the amount subject to levy in accordance with Section 59-1-1706;

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

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

289 (i) satisfy the liability; or

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

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

293 **59-1-1708. Commission to determine portion of an amount subject to levy that the**  
294 **commission may receive from a depository institution -- Process for resolution of dispute**  
295 **-- Extension of certain time periods -- District court action -- Rulemaking authority.**

296 (1) In accordance with this section, the commission shall determine the portion of the  
297 amount subject to a levy under this part that the commission may receive from a depository  
298 institution.

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

300 (a) begins on the date the commission provides a notice of levy described in Section  
301 59-1-1705 to a depository institution; and

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

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

307 (4) The portion of an amount subject to levy under this part that the commission may  
308 receive from a depository institution may not exceed the lesser of:

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

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

312 (c) the balance of the delinquent taxpayer's account that a depository institution has  
313 secured or will secure in accordance with Section 59-1-1706.

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

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

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

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

322 (7) The time period beginning on the date the commission orders a conference in  
323 accordance with Subsection (6) and ending on the date the conference adjourns may not be  
324 included in calculating a time period:

325 (a) during which a levy is valid;

326 (b) during which a depository institution is required to secure an amount in accordance  
327 with Section 59-1-1706;

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

329 (d) for requiring a depository institution to release a portion of an amount to the  
330 commission in accordance with Section 59-1-1709.

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

334 (a) within 14 days after the date a conference described in Subsection (6) adjourns; and

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

337 (9) (a) Subject to Subsection (9)(b), the time period beginning on the date a delinquent  
338 taxpayer files an action in accordance with Subsection (8) and ending on the date the action  
339 becomes final may not be included in calculating a time period:

340 (i) during which a levy is valid;

341 (ii) during which a depository institution is required to secure an amount in accordance  
342 with Section 59-1-1706;

343 (iii) for making the determination required by Subsection (1); or  
344 (iv) for requiring a depository institution to release a portion of an amount to the  
345 commission in accordance with Section 59-1-1709.

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

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

349 **59-1-1709. Depository institution to release portion of amount subject to levy.**

350 (1) Subject to the other provisions of this section, a depository institution shall release  
351 the portion of the amount subject to a levy under this part that the commission determines the  
352 commission may receive in accordance with Section 59-1-1708 from the depository institution.

353 (2) On the first business day after the date the commission provides the notice  
354 described in Subsection 59-1-1708(3) to the depository institution, a depository institution shall  
355 make an initial release of the lesser of the following:

356 (a) the portion of the amount the commission determines the commission may receive  
357 in accordance with Section 59-1-1708 from the depository institution; or

358 (b) the balance of the delinquent taxpayer's account as of the first business day after the  
359 date the commission provides the notice described in Subsection 59-1-1708(3) to the  
360 depository institution.

361 (3) (a) Subject to Subsections (3)(b) and (c), if, as of the first business day after the  
362 date the commission provides the notice described in Subsection 59-1-1708(3) to a depository  
363 institution, the balance of the delinquent taxpayer's account is less than the portion of the  
364 amount the commission determines the commission may receive in accordance with Section  
365 59-1-1708 from the depository institution, the depository institution shall make one or more  
366 subsequent releases to the commission of deposits made into the delinquent taxpayer's account:

367 (i) after the first business day after the date the commission provides the notice  
368 described in Subsection 59-1-1708(3) to the depository institution; and

369 (ii) in an amount not to exceed the portion of the amount the commission determines  
370 the commission may receive in accordance with Section 59-1-1708 from the depository  
371 institution.

372 (b) A depository institution required by Subsection (3)(a) to make a subsequent release  
373 of a deposit shall make the release no later than seven days after the date the deposit is made

374 into the delinquent taxpayer's account.

375 (c) A depository institution may not make a subsequent release described in Subsection  
376 (3)(a) of a deposit to the commission if the deposit is made:

377 (i) after the date the commission provides notice to the depository institution in  
378 accordance with Section 59-1-1705 that the commission has released the levy;

379 (ii) after the date the commission provides notice to the depository institution in  
380 accordance with Section 59-1-1705 that the delinquent taxpayer has satisfied the liability; or

381 (iii) more than 60 days after the date the commission provides the notice of levy  
382 described in Section 59-1-1705 to the depository institution.

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

384 **59-1-1710. Limitations on commission authority to levy.**

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

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

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

391 **59-1-1711. Commission requirement to pay a reimbursement to a depository**  
392 **institution.**

393 (1) Subject to Subsection (2), the commission shall, in accordance with the agreement  
394 required by Section 59-1-1703, pay a reasonable reimbursement to a depository institution:

395 (a) as determined by the commission;

396 (b) to comply with the requirements of this part; and

397 (c) that does not exceed the costs a depository institution incurs to comply with this  
398 part.

399 (2) If a depository institution secures an amount subject to levy in accordance with  
400 Section 59-1-1706, the commission shall pay the depository institution \$10 to secure the  
401 amount.

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

403 **59-1-1712. Amount levied or released in error -- Rulemaking authority.**

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

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

406 (b) if a person other than the commission pays the depository institution charge,

407 reimburse the person for the depository institution charge incurred as a result of the levy.

408 (2) If a depository institution releases an amount in an account holder's account to the

409 commission in error, the commission shall return the amount to the depository institution by

410 electronic means for deposit into the account holder's account.

411 (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

412 commission may make rules prescribing:

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

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

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

416 **59-1-1713. Limits on a depository institution's authority to disclose or provide**

417 **notice -- Depository institution authority to provide information.**

418 (1) Except as provided in Subsection (2), a depository institution may not disclose or

419 provide notice to an account holder at the depository institution that the depository institution:

420 (a) provided information to the commission or the commission provided information to

421 the depository institution in relation to the account holder or the account holder's account in

422 accordance with this part; or

423 (b) took an action in relation to the account holder or the account holder's account in

424 accordance with this part.

425 (2) A depository institution may provide information to an account holder describing

426 the depository institution's duties under this part if the information the depository institution

427 provides does not identify that the depository institution:

428 (a) provides or has provided information to the commission in relation to a particular

429 account holder or account holder's account in accordance with this part; or

430 (b) takes or has taken an action in relation to a particular account holder or account

431 holder's account in accordance with this part.

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

433 **59-1-1714. Limits on depository institution liability.**

434 A depository institution is not liable to a person for the following if the depository

435 institution acts in good faith:

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

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

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

439           **59-1-1715. Confidentiality of information.**

440           Except for the exchange of information between the commission and a depository  
441 institution that is necessary to meet the requirements of this part, information the commission  
442 obtains from a depository institution is subject to Section 59-1-403 as if the information had  
443 been gained from a return filed with the commission.

444           Section 18. **Effective date.**

445           This bill takes effect on January 1, 2017.