

PASS-THROUGH ENTITY AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

LONG TITLE

General Description:

This bill creates a process for a pass-through entity to obtain a refund of qualifying excess withholding.

Highlighted Provisions:

This bill:

- ▶ defines qualifying excess withholding;
- ▶ creates a process for a pass-through entity to obtain a refund of qualifying excess withholding, if the qualifying excess withholding exceeds tax liability by a certain threshold; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

59-10-529, as last amended by Laws of Utah 2013, Chapter 74

59-10-1403, as last amended by Laws of Utah 2016, Chapter 87

ENACTS:

59-10-1403.3, Utah Code Annotated 1953

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

Section 1. Section **59-10-529** is amended to read:

59-10-529. Overpayment of tax -- Credits -- Refunds.

(1) If there has been an overpayment of any tax imposed by this chapter, the amount of overpayment is credited as follows:

- (a) against an income tax due from a taxpayer;

33 (b) against:

34 (i) the amount of a judgment against a taxpayer, including a final judgment or order
35 requiring payment of a fine or of restitution to a victim under Title 77, Chapter 38a, Crime
36 Victims Restitution Act, obtained through due process of law by an entity of state or local
37 government; or

38 (ii) subject to Subsection (4)(a)(i), a child support obligation that is due or past due, as
39 determined by the Office of Recovery Services in the Department of Human Services and after
40 notice and an opportunity for an adjudicative proceeding, as provided in Subsection [~~(2)~~]
41 (4)(a)(iii); or

42 (c) subject to [~~Subsection~~] Subsections (3), (5), (6), [~~or~~] and (7), as bail[;] to ensure the
43 appearance of a taxpayer before the appropriate authority to resolve an outstanding warrant
44 against the taxpayer for which bail is due, if a court of competent jurisdiction has not approved
45 an alternative form of payment.

46 (2) If a balance remains after an overpayment is credited in accordance with Subsection
47 (1), the balance shall be refunded to the taxpayer.

48 (3) Bail described in Subsection (1)(c) may be applied to any fine or forfeiture:

49 (a) that is due and related to a warrant that is outstanding on or after February 16, 1984;
50 and

51 (b) in accordance with Subsections (5) and (6).

52 (4) (a) The amount of an overpayment may be credited against an obligation described
53 in Subsection (1)(b)(ii) if the Office of Recovery Services has sent written notice to the
54 taxpayer's last-known address or the address on file under Section 62A-11-304.4, stating:

55 (i) the amount of child support that is due or past due as of the date of the notice or
56 other specified date;

57 (ii) that any overpayment shall be applied to reduce the amount of due or past-due child
58 support specified in the notice; and

59 (iii) that the taxpayer may contest the amount of past-due child support specified in the
60 notice by filing a written request for an adjudicative proceeding with the office within 15 days
61 of the notice being sent.

62 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
63 Office of Recovery Services shall establish rules to implement this Subsection (4), including

64 procedures, in accordance with the other provisions of this section, to ensure:

65 (i) prompt reimbursement to a taxpayer of any amount of an overpayment that was
66 credited against a child support obligation in error; and

67 (ii) prompt distribution of properly credited funds to the obligee parent.

68 (5) The amount of an overpayment may be credited against bail described in
69 Subsection (1)(c) if:

70 (a) a court has issued a warrant for the arrest of the taxpayer for failure to post bail,
71 appear, or otherwise satisfy the terms of a citation, summons, or court order; and

72 (b) a notice of intent to apply the overpayment as bail on the issued warrant has been
73 sent to the taxpayer's current address on file with the commission.

74 (6) (a) (i) The commission shall deliver an overpayment applied as bail to the court that
75 issued the warrant of arrest.

76 (ii) The clerk of the court is authorized to endorse the check or commission warrant of
77 payment on behalf of the payees and deposit the money in the court treasury.

78 (b) (i) The court receiving an overpayment applied as bail shall order withdrawal of the
79 warrant for arrest of the taxpayer if:

80 (A) the case is a case for which a personal appearance of the taxpayer is not required;
81 and

82 (B) the dollar amount of the overpayment represents the full dollar amount of bail.

83 (ii) In a case except for a case described in Subsection (6)(b)(i):

84 (A) the court receiving the overpayment applied as bail is not required to order the
85 withdrawal of the warrant of arrest of the taxpayer during the 40-day period; and

86 (B) the taxpayer may be arrested on the warrant.

87 (c) (i) If a taxpayer fails to respond to the notice required by Subsection (5)(b), or to
88 resolve the warrant within 40 days after the notice is sent under Subsection (5)(b), the
89 overpayment applied as bail is forfeited.

90 (ii) A court may issue another warrant or allow the original warrant to remain in force
91 if:

92 (A) the taxpayer has not complied with an order of the court;

93 (B) the taxpayer has failed to appear and respond to a criminal charge for which a
94 personal appearance is required; or

95 (C) the taxpayer has paid partial but not full bail in a case for which a personal
96 appearance is not required.

97 (d) If the alleged violations named in a warrant are later resolved in favor of the
98 taxpayer, the bail amount shall be remitted to the taxpayer.

99 (7) The fine and bail forfeiture provisions of this section apply to all warrants, fines,
100 fees, and surcharges issued in cases charging a taxpayer with a felony, a misdemeanor, or an
101 infraction described in this section, which are outstanding on or after February 16, 1984.

102 (8) If the amount [~~allowable~~] allowed as a credit for tax withheld from a taxpayer
103 exceeds the tax to which the credit relates, the excess is considered an overpayment.

104 (9) (a) Subject to Subsection (9)(b), a taxpayer shall claim [~~for~~] a credit or refund of an
105 overpayment that is attributable to a net operating loss carry back or carry forward [~~shall be~~
106 ~~filed~~] within three years [~~from the due date of~~] after the day on which the return for the taxable
107 year of the net operating loss is due.

108 (b) The three-year period described in Subsection (9)(a) shall be extended by any
109 extension of time provided in statute for filing the return described in Subsection (9)(a).

110 (10) If there is no tax liability for a period in which an amount is paid under this
111 chapter, the amount is an overpayment.

112 (11) If a tax under this chapter is assessed or collected after the expiration of the
113 applicable period of limitation, that amount is an overpayment.

114 (12) (a) A taxpayer may file a claim for a credit or refund of an overpayment within
115 two years [~~from the date~~] after the day on which a notice of change, notice of correction, or
116 amended return is required to be filed with the commission if the taxpayer is required to:

117 (i) report a change or correction in income reported on the taxpayer's federal income
118 tax return;

119 (ii) report a change or correction that is treated in the same manner as if the change or
120 correction were an overpayment for federal income tax purposes; or

121 (iii) file an amended return with the commission.

122 (b) If a report or amended return is not filed within 90 days after the day on which the
123 report or amended return is due, interest on any resulting refund or credit ceases to accrue after
124 the 90-day period.

125 (c) The amount of the credit or refund may not exceed the amount of the reduction in

126 tax attributable to the federal change, correction, or items amended on the taxpayer's amended
127 federal income tax return.

128 (d) Except as provided in Subsection (12)(a), this Subsection (12) does not affect the
129 amount or the time within which a claim for credit or refund may be filed.

130 (13) A credit or refund may not be allowed or made if an overpayment is less than \$1.

131 (14) In the case of an overpayment of tax by an employer under Part 4, Withholding of
132 Tax, an employer shall receive a refund or credit [~~shall be made to the employer~~] only to the
133 extent that the amount of the overpayment is not deducted and withheld from wages under this
134 chapter.

135 (15) (a) If a taxpayer that is allowed a refund under this chapter dies, the commission
136 may make payment to the personal representative of the taxpayer's estate.

137 (b) If there is no personal representative of the taxpayer's estate, the commission may
138 make payment [~~may be made~~] to those persons [~~who~~] that establish entitlement to inherit the
139 property of the decedent in the proportions established in Title 75, Utah Uniform Probate Code.

140 (16) If an overpayment relates to a change in net income described in Subsection
141 59-10-536(2)(a), a credit may be allowed or a refund paid any time before the expiration of the
142 period within which a deficiency may be assessed.

143 (17) An overpayment of a tax imposed by this chapter shall accrue interest at the rate
144 and in the manner prescribed in Section 59-1-402.

145 (18) A pass-through entity may claim a refund of qualifying excess withholding in
146 accordance with Section 59-10-1403.3 in lieu of a pass-through entity taxpayer claiming a tax
147 credit under Section 59-7-614.4 or Section 59-10-1103.

148 Section 2. Section **59-10-1403** is amended to read:

149 **59-10-1403. Income tax treatment of a pass-through entity -- Returns --**
150 **Classification same as under Internal Revenue Code.**

151 (1) Subject to Subsection (3), a pass-through entity is not subject to a tax imposed by
152 this chapter.

153 (2) [~~The~~] Except as provided in Section 59-10-1403.3, the income, gain, loss,
154 deduction, or credit of a pass-through entity shall be passed through to one or more
155 pass-through entity taxpayers as provided in this part.

156 (3) A pass-through entity is subject to the return filing requirements of Sections

157 59-10-507 and 59-10-514.

158 (4) ~~[A]~~ For purposes of taxation under this title, a pass-through entity that transacts
159 business in the state shall be classified [for purposes of taxation under this title] in the same
160 manner as the pass-through entity is classified for federal income tax purposes.

161 Section 3. Section **59-10-1403.3** is enacted to read:

162 **59-10-1403.3. Refund of amounts paid or withheld for a pass-through entity.**

163 (1) As used in this section, "qualifying excess withholding" means an amount that:

164 (a) is paid or withheld:

165 (i) by a pass-through entity that has a different taxable year than the pass-through entity
166 that requests a refund under this section; and

167 (ii) on behalf of the pass-through entity that requests a refund, if the pass-through entity
168 that requests the refund also is a pass-through entity taxpayer; and

169 (b) is equal to the difference between:

170 (i) the amount paid or withheld for the taxable year on behalf of the pass-through entity
171 that requests the refund; and

172 (ii) the product of 5% and the income described in Subsection 59-10-1403.2(1)(a)(i) of
173 the pass-through entity that requests the refund.

174 (2) A pass-through entity may claim a refund of qualifying excess withholding:

175 (a) for a taxable year ending on or after July 1, 2017, if the amount of the qualifying
176 excess withholding is equal to or greater than \$250,000; or

177 (b) for a claim filed between July 1, 2017, and July 31, 2017, for the time period for
178 filing a claim for a credit or refund under Section 59-1-1410, if the amount of the qualifying
179 excess withholding is equal to or greater than \$250,000.

180 (3) A pass-through entity that requests a refund of qualifying excess withholding under
181 this section shall:

182 (a) apply to the commission for a refund on or, subject to Subsection (4), after the day
183 on which the pass-through entity files the pass-through entity's income tax return; and

184 (b) provide any information that the commission may require to determine that the
185 pass-through entity is eligible to receive the refund.

186 (4) (a) Except as provided in Subsection (4)(b), a pass-through entity shall claim a
187 refund of qualifying excess withholding under this section within 30 days after the earlier of

188 the day on which:

189 (i) the pass-through entity files an income tax return; or

190 (ii) the pass-through entity's income tax return is due, including any extension of due
191 date authorized in statute.

192 (b) The time period described in this Subsection (4) does not apply to a claim for a
193 refund filed under Subsection (2)(b).

194 (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
195 commission may make rules establishing the information a pass-through entity shall provide to
196 the commission to obtain a refund of qualifying excess withholding under this section.