

TAX COMMISSION LEVY PROCESS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

House Sponsor: Mike K. McKell

LONG TITLE

Committee Note:

The Revenue and Taxation Interim Committee recommended this bill.

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



- 28 relation to the depository institution data match system and levy process;
- 29 • addressing a reimbursement the State Tax Commission pays to a depository
- 30 institution;
- 31 • addressing an amount levied or released in error;
- 32 • addressing the confidentiality and disclosure of information;
- 33 • addressing limits on a depository institution's liability; and
- 34 • granting rulemaking authority to the State Tax Commission; and
- 35 ▶ makes technical and conforming changes.

36 **Money Appropriated in this Bill:**

37 None

38 **Other Special Clauses:**

39 This bill provides a special effective date.

40 **Utah Code Sections Affected:**

41 AMENDS:

42 7-1-1004, as last amended by Laws of Utah 2009, Chapter 381

43 59-1-1402, as last amended by Laws of Utah 2012, Chapter 357

44 ENACTS:

45 59-1-1701, Utah Code Annotated 1953

46 59-1-1702, Utah Code Annotated 1953

47 59-1-1703, Utah Code Annotated 1953

48 59-1-1704, Utah Code Annotated 1953

49 59-1-1705, Utah Code Annotated 1953

50 59-1-1706, Utah Code Annotated 1953

51 59-1-1707, Utah Code Annotated 1953

52 59-1-1708, Utah Code Annotated 1953

53 59-1-1709, Utah Code Annotated 1953

54 59-1-1710, Utah Code Annotated 1953

55 59-1-1711, Utah Code Annotated 1953

56 59-1-1712, Utah Code Annotated 1953

57 59-1-1713, Utah Code Annotated 1953

58 59-1-1714, Utah Code Annotated 1953

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

60

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

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

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

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

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

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

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

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

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

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

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

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

83 **59-1-1402. Definitions.**

84 As used in this part:

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

86 (a) the cost of filing;

87 (b) the cost of administering a garnishment; [or]

88 (c) the amount the commission pays to a depository institution in accordance with

89 Section **59-1-1711**; or

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

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

95 (a) an account;

96 (b) a book;

97 (c) an invoice;

98 (d) a memorandum;

99 (e) a paper;

100 (f) a record; or

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

103 (3) "Deficiency" means:

104 (a) the amount by which a tax, fee, or charge exceeds the difference between:

105 (i) the sum of:

106 (A) the amount shown as the tax, fee, or charge by a person on the person's return; and

107 (B) any amount previously assessed, or collected without assessment, as a deficiency;

108 and

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

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

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

114 and

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

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

119 (a) an asset of the person held by another person; or

120 (b) the earnings of the person.

- 121 (5) "Liability" means the following that a person is required to remit to the
122 commission:
- 123 (a) a tax, fee, or charge;
 - 124 (b) an addition to a tax, fee, or charge;
 - 125 (c) an administrative cost;
 - 126 (d) interest that accrues in accordance with Section 59-1-402; or
 - 127 (e) a penalty that accrues in accordance with Section 59-1-401.
- 128 (6) (a) Subject to Subsection (6)(b), "mathematical error" is as defined in Section
129 6213(g)(2), Internal Revenue Code.
- 130 (b) The reference to Section 6213(g)(2), Internal Revenue Code, in Subsection (6)(a)
131 means:
- 132 (i) the reference to Section 6213(g)(2), Internal Revenue Code, in effect for the taxable
133 year; or
 - 134 (ii) a corresponding or comparable provision of the Internal Revenue Code as
135 amended, redesignated, or reenacted.
- 136 (7) (a) Except as provided in Subsection (7)(b), "tax, fee, or charge" means:
- 137 (i) a tax, fee, or charge the commission administers under:
 - 138 (A) this title;
 - 139 (B) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
 - 140 (C) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;
 - 141 (D) Section 19-6-410.5;
 - 142 (E) Section 19-6-714;
 - 143 (F) Section 19-6-805;
 - 144 (G) Section 32B-2-304;
 - 145 (H) Section 34A-2-202;
 - 146 (I) Section 40-6-14;
 - 147 (J) Section 69-2-5;
 - 148 (K) Section 69-2-5.5; or
 - 149 (L) Section 69-2-5.6; or
 - 150 (ii) another amount that by statute is administered by the commission.
- 151 (b) "Tax, fee, or charge" does not include a tax, fee, or charge imposed under:

- 152 (i) Title 41, Chapter 1a, Motor Vehicle Act, except for Section [41-1a-301](#);
- 153 (ii) Title 41, Chapter 3, Motor Vehicle Business Regulation Act;
- 154 (iii) Chapter 2, Property Tax Act;
- 155 (iv) Chapter 3, Tax Equivalent Property Act;
- 156 (v) Chapter 4, Privilege Tax; or
- 157 (vi) Chapter 13, Part 5, Interstate Agreements.
- 158 (8) "Transferee" means:
- 159 (a) a devisee;
- 160 (b) a distributee;
- 161 (c) a donee;
- 162 (d) an heir;
- 163 (e) a legatee; or
- 164 (f) a person similar to Subsections (8)(a) through (e) as determined by the commission
- 165 by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

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

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

168 **59-1-1701. Title.**

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

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

171 **59-1-1702. Definitions.**

172 As used in this part:

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

175 (2) "Depository institution" is a depository institution described in Section [7-1-103](#) that
176 holds or receives deposits, savings, or share accounts.

177 (3) "Depository institution data match system" means the database the commission
178 develops, maintains, and operates in accordance with Section [59-1-1703](#).

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

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

185 (6) "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 -- Agreements between**
189 **commission and depository institutions.**

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

192 (a) uses automated data exchanges;

193 (b) identifies a delinquent taxpayer by identifying information;

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

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

197 (e) is updated by the commission on at least a quarterly basis.

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

200 (a) coordinate the development and operation of the depository institution data match
201 system;

202 (b) participate in using the depository institution data match system as provided in this
203 part;

204 (c) address reimbursement to the depository institution in accordance with Section
205 [59-1-1711](#) for complying with the requirements of this part; and

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

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

209 **59-1-1704. Depository institution to access depository institution data match**
210 **system.**

211 (1) A depository institution that enters into an agreement with the commission in
212 accordance with Section [59-1-1703](#) shall access the depository institution data match system on
213 or before the 15th day of each calendar quarter to determine whether a delinquent taxpayer

214 identified in the depository institution data match system has the same identifying information
215 as that of an account holder at the depository institution.

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

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

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

233 **59-1-1705. Commission requirement to provide notice of levy to depository**
234 **institution -- Duration of levy.**

235 (1) The commission shall provide, within three business days after a depository
236 institution provides the commission information described in Subsection [59-1-1704\(2\)](#), a
237 notice of levy to the depository institution by electronic means:

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

240 (b) identifying the account subject to levy.

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

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

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

244 (c) the date the depository institution makes the final subsequent release in accordance

245 with Section 59-1-1709 of amounts deposited into the account of the delinquent taxpayer.

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

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

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

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

253 **59-1-1706. Depository institution requirement to secure amount subject to levy in**
254 **account holder's account.**

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

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

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

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

266 (a) made after the date the depository institution secures the amount under Subsection
267 (1);

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

270 (c) until the earlier of:

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

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

275 (iii) the date the depository institution makes the final subsequent release in accordance

276 with Section 59-1-1709 of amounts deposited into the account of the delinquent taxpayer.

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

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

281 **59-1-1707. Commission to send notice to delinquent taxpayer.**

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

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

287 (a) state the amount subject to levy as stated in the notice of levy described in Section
288 59-1-1705;

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

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

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

293 (i) satisfy the liability; or

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

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

297 **59-1-1708. Commission to determine portion of an amount subject to levy that the**
298 **commission may receive from a depository institution -- Process for resolution of dispute**
299 **-- Extension of certain time periods -- District court action -- Rulemaking authority.**

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

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

304 (a) begins on the date the commission provides a notice of levy described in Section
305 59-1-1705 to a depository institution; and

306 (b) ends on the first business day after a 21-day period beginning on the date described

307 in Subsection (2)(a).

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

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

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

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

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

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

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

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

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

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

329 (a) during which a levy is valid;

330 (b) during which a depository institution is required to secure an amount in accordance
331 with Section [59-1-1706](#);

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

333 (d) for requiring a depository institution to release a portion of an amount to the
334 commission in accordance with Section [59-1-1709](#).

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

338 (a) within 14 days after the date a conference described in Subsection (6) 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 date a delinquent
342 taxpayer files an action in accordance with Subsection (8) and ending on the date the action
343 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 59-1-1706;

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 59-1-1709.

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

353 **59-1-1709. 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 determines the
356 commission may receive in accordance with Section 59-1-1708 from the depository institution.

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

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

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

365 (3) (a) Subject to Subsections (3)(b) and (c), if, as of the first business day after the
366 date the commission provides the notice described in Subsection 59-1-1708(3) to a depository
367 institution, the balance of the delinquent taxpayer's account is less than the portion of the
368 amount the commission determines the commission may receive in accordance with Section

369 59-1-1708 from the depository institution, the depository institution shall make one or more
370 subsequent releases to the commission of deposits made into the delinquent taxpayer's account:

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

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

376 (b) A depository institution required by Subsection (3)(a) to make a subsequent release
377 of a deposit shall make the release no later than seven days after the date the deposit is made
378 into the delinquent taxpayer's account.

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

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

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

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

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

388 **59-1-1710. Limitations on commission authority to levy.**

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

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

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

395 **59-1-1711. Commission requirement to pay a reimbursement to a depository**
396 **institution.**

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

399 (a) as determined by the commission;

400 (b) to comply with the requirements of this part; and
401 (c) that does not exceed the costs a depository institution incurs to comply with this
402 part.

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

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

407 **59-1-1712. Amount levied or released in error -- Rulemaking authority.**

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

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

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

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

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

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

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

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

420 **59-1-1713. Limits on a depository institution's authority to disclose or provide**
421 **notice -- Depository institution authority to provide information.**

422 (1) Except as provided in Subsection (2), a depository institution may not disclose or
423 provide notice to an account holder at the depository institution that the depository institution:

424 (a) provided information to the commission or the commission provided information to
425 the depository institution in relation to the account holder or the account holder's account in
426 accordance with this part; or

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

429 (2) A depository institution may provide information to an account holder describing
430 the depository institution's duties under this part if the information the depository institution

431 provides does not identify that the depository institution:

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

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

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

437 **59-1-1714. Limits on depository institution liability.**

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

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

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

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

443 **59-1-1715. Confidentiality of information.**

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

448 Section 18. **Effective date.**

449 This bill takes effect on January 1, 2017.

Legislative Review Note
Office of Legislative Research and General Counsel