

1 **INDIVIDUAL INCOME TAX - OFFICE OF**
2 **STATE DEBT COLLECTION RULEMAKING**
3 **AUTHORITY**

4 2005 GENERAL SESSION

5 STATE OF UTAH

6 **Sponsor: Mike Dmitrich**

7
8 **LONG TITLE**

9 **General Description:**

10 This bill amends the Individual Income Tax Act and the Office of State Debt Collection
11 part relating to rulemaking authority.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ requires the Office of State Debt Collection to make rules relating to an
15 overpayment of individual income taxes that is applied against a judgment; and
16 ▶ makes technical changes.

17 **Monies Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 None

21 **Utah Code Sections Affected:**

22 **AMENDS:**

23 **59-10-529**, as last amended by Chapter 35, Laws of Utah 2002

24 **63A-8-204**, as enacted by Chapter 354, Laws of Utah 1995

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

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



28 **59-10-529. Overpayment of tax -- Credits -- Refunds.**

29 (1) In cases where there has been an overpayment of any tax imposed by this chapter,
30 the amount of overpayment is credited as follows:

31 (a) against any income tax then due from the taxpayer;

32 (b) against:

33 (i) the amount of any judgment against the taxpayer, including one ordering the
34 payment of a fine or of restitution to a victim under Title 77, Chapter 38a, Crime Victims
35 Restitution Act, obtained through due process of law by any entity of state government; or

36 (ii) any child support obligation which is due or past due, as determined by the Office
37 of Recovery Services in the Department of Human Services and after notice and an opportunity
38 for an adjudicative proceeding, as provided in Subsection (2); or

39 (c) as bail, to ensure the appearance of the taxpayer before the appropriate authority to
40 resolve an outstanding warrant against the taxpayer for which bail is due, if a court of
41 competent jurisdiction has not approved an alternative form of payment. This bail may be
42 applied to any fine or forfeiture which is due and related to a warrant which is outstanding on
43 or after February 16, 1984, and in accordance with Subsections [~~(3) and~~] (4) and (5).

44 (2) (a) Subsection (1)(b)(ii) may be exercised only if the Office of Recovery Services
45 has sent written notice to the taxpayer's last-known address or the address on file under Section
46 62A-11-304.4, stating:

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

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

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

54 (b) The Office of Recovery Services shall establish rules to implement this Subsection
55 (2), including procedures, in accordance with the other provisions of this section, to ensure
56 prompt reimbursement to the taxpayer of any amount of an overpayment of taxes which was
57 credited against a child support obligation in error, and to ensure prompt distribution of
58 properly credited funds to the obligee parent.

59 (3) The Office of State Debt Collection shall, in accordance with Title 63, Chapter 46a,
60 Utah Administrative Rulemaking Act, make rules establishing procedures and requirements:

61 (a) that are consistent with the other provisions of this section; and

62 (b) for:

63 (i) applying an overpayment against a judgment in accordance with Subsection
64 (1)(b)(i); and

65 (ii) ensuring prompt reimbursement to a taxpayer of any amount of an overpayment of
66 taxes that was credited against a judgment described in Subsection (1)(b)(i) in error.

67 ~~[(3)]~~ (4) Subsection (1)(c) may be exercised only if:

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

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

72 ~~[(4)]~~ (5) (a) The commission shall deliver the overpayment applied as bail to the court
73 that issued the warrant of arrest. The clerk of the court is authorized to endorse the check or
74 commission warrant of payment on behalf of the payees and deposit the monies in the court
75 treasury.

76 (b) The court receiving the overpayment applied as bail shall order withdrawal of the
77 warrant for arrest of the taxpayer if the case is one for which a personal appearance of the
78 taxpayer is not required and if the dollar amount of the overpayment represents the full dollar
79 amount of bail. In all other cases, the court receiving the overpayment applied as bail is not
80 required to order the withdrawal of the warrant of arrest of the taxpayer during the 40-day
81 period, and the taxpayer may be arrested on the warrant. However, the bail amount shall be
82 reduced by the amount of tax overpayment received by the court.

83 (c) If the taxpayer fails to respond to the notice described in Subsection ~~[(3)]~~ (4), or to
84 resolve the warrant within 40 days after the notice was sent under that subsection, the
85 overpayment applied as bail is forfeited and notice of the forfeiture shall be mailed to the
86 taxpayer at the current address on file with the commission. The court may then issue another
87 warrant or allow the original warrant to remain in force if:

88 (i) the taxpayer has not complied with an order of the court;

89 (ii) the taxpayer has failed to appear and respond to a criminal charge for which a

90 personal appearance is required; or

91 (iii) the taxpayer has paid partial but not full bail in a case for which a personal
92 appearance is not required.

93 ~~[(5)]~~ (6) If the alleged violations named in the warrant are later resolved in favor of the
94 taxpayer, the bail amount shall be remitted to the taxpayer.

95 ~~[(6)]~~ (7) Any balance shall be refunded immediately to the taxpayer.

96 ~~[(7)]~~ (8) (a) If a refund or credit is due because the amount of tax deducted and
97 withheld from wages exceeds the actual tax due, a refund or credit may not be made or allowed
98 unless the taxpayer or ~~his~~ the taxpayer's legal representative files with the commission a tax
99 return claiming the refund or credit:

100 (i) within three years from the due date of the return, plus the period of any extension
101 of time for filing the return provided for in Subsection ~~[(7)]~~ (8)(c); or

102 (ii) within two years from the date the tax was paid, whichever period is later.

103 (b) Except as provided in Subsection ~~[(7)]~~ (8)(d), in other instances where a refund or
104 credit of tax which has not been deducted and withheld from income is due, a credit or refund
105 may not be allowed or made after three years from the time the tax was paid, unless, before the
106 expiration of the period, a claim is filed by the taxpayer or ~~his~~ the taxpayer's legal
107 representative.

108 (c) Beginning on July 1, 1998, the commission shall extend the period for a taxpayer to
109 file a claim under Subsection ~~[(7)]~~ (8)(a)(i) if:

110 (i) the time period for filing a claim under Subsection ~~[(7)]~~ (8)(a) has not expired; and

111 (ii) the commission and the taxpayer sign a written agreement:

112 (A) authorizing the extension; and

113 (B) providing for the length of the extension.

114 (d) Notwithstanding Subsection ~~[(7)]~~ (8)(b), beginning on July 1, 1998, the
115 commission shall extend the period for a taxpayer to file a claim under Subsection ~~[(7)]~~ (8)(b)
116 if:

117 (i) the three-year period under Subsection ~~[(7)]~~ (8)(b) has not expired; and

118 (ii) the commission and the taxpayer sign a written agreement:

119 (A) authorizing the extension; and

120 (B) providing for the length of the extension.

121 ~~[(8)]~~ (9) The fine and bail forfeiture provisions of this section apply to all warrants and
122 fines issued in cases charging the taxpayer with a felony, a misdemeanor, or an infraction
123 described in this section which are outstanding on or after February 16, 1984.

124 ~~[(9)]~~ (10) If the amount allowable as a credit for tax withheld from the taxpayer
125 exceeds the tax to which the credit relates, the excess is considered an overpayment.

126 ~~[(10)]~~ (11) A claim for credit or refund of an overpayment which is attributable to the
127 application to the taxpayer of a net operating loss carryback shall be filed within three years
128 from the time the return was due for the taxable year of the loss.

129 ~~[(11)]~~ (12) If there has been an overpayment of the tax which is required to be
130 deducted and withheld under Section 59-10-402, a refund shall be made to the employer only
131 to the extent that the amount of overpayment was not deducted and withheld by the employer.

132 ~~[(12)]~~ (13) If there is no tax liability for a period in which an amount is paid as income
133 tax, the amount is an overpayment.

134 ~~[(13)]~~ (14) If an income tax is assessed or collected after the expiration of the
135 applicable period of limitation, that amount is an overpayment.

136 ~~[(14)]~~ (15) (a) If a taxpayer is required to report a change or correction in federal
137 taxable income reported on ~~[his]~~ the taxpayer's federal income tax return, or to report a change
138 or correction which is treated in the same manner as if it were an overpayment for federal
139 income tax purposes, or to file an amended return with the commission, a claim for credit or
140 refund of any resulting overpayment of tax shall be filed by the taxpayer within two years from
141 the date the notice of the change, correction, or amended return was required to be filed with
142 the commission.

143 (b) If the report or amended return is not filed within 90 days, interest on any resulting
144 refund or credit ceases to accrue after the 90-day period.

145 (c) The amount of the credit or refund may not exceed the amount of the reduction in
146 tax attributable to the federal change, correction, or items amended on the taxpayer's amended
147 federal income tax return.

148 (d) Except as specifically provided, this section does not affect the amount or the time
149 within which a claim for credit or refund may be filed.

150 ~~[(15)]~~ (16) No credit or refund may be allowed or made if the overpayment is less than
151 \$1.

152 ~~[(16)]~~ (17) The amount of the credit or refund may not exceed the tax paid during the
153 three years immediately preceding the filing of the claim, or if no claim is filed, then during the
154 three years immediately preceding the allowance of the credit or refund.

155 ~~[(17)]~~ (18) In the case of an overpayment of tax by the employer under the withholding
156 provisions of this chapter, a refund or credit shall be made to the employer only to the extent
157 that the amount of the overpayment was not deducted and withheld from wages under the
158 provisions of this chapter.

159 ~~[(18)]~~ (19) If a taxpayer who is entitled to a refund under this chapter dies, the
160 commission may make payment to the duly appointed executor or administrator of the
161 taxpayer's estate. If there is no executor or administrator, payment may be made to those
162 persons who establish entitlement to inherit the property of the decedent in the proportions set
163 out in Title 75, Utah Uniform Probate Code.

164 ~~[(19)]~~ (20) Where an overpayment relates to adjustments to net income referred to in
165 Subsection 59-10-536(3)(c), credit may be allowed or a refund paid any time before the
166 expiration of the period within which a deficiency may be assessed.

167 ~~[(20)]~~ (21) An overpayment of a tax imposed by this chapter shall accrue interest at the
168 rate and in the manner prescribed in Section 59-1-402.

169 Section 2. Section **63A-8-204** is amended to read:

170 **63A-8-204. Rulemaking authority -- Collection techniques.**

171 The office shall establish rules:

172 (1) to govern collection techniques, which may include the use of:

173 ~~[(1)]~~ (a) credit reporting bureaus;

174 ~~[(2)]~~ (b) collection agencies;

175 ~~[(3)]~~ (c) garnishments;

176 ~~[(4)]~~ (d) liens;

177 ~~[(5)]~~ (e) judgments; and

178 ~~[(6)]~~ (f) administrative offsets~~[-]; and~~

179 (2) as required by Section 59-10-529.

Legislative Review Note

as of 2-15-05 8:50 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number SB0205

**Individual Income Tax - Office of State Debt Collection Rulemaking
Authority**

18-Feb-05
12:15 PM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst