

**STATE TAX COMMISSION LEVY PROCESS USING
DEPOSITORY INSTITUTION DATA MATCH SYSTEM**

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Wayne A. Harper

LONG TITLE

Committee Note:

The Revenue and Taxation Interim Committee recommended this bill.

General Description:

This bill amends the Financial Information Privacy part and the Revenue and Taxation title to enact a depository institution data match system and a State Tax Commission levy process to collect certain amounts owed by a delinquent taxpayer through the depository institution data match system.

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;



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

39 **Money Appropriated in this Bill:**

40 None

41 **Other Special Clauses:**

42 This bill takes effect on January 1, 2012.

43 **Utah Code Sections Affected:**

44 AMENDS:

45 **7-1-1004**, as last amended by Laws of Utah 2009, Chapter 381

46 **59-1-1402**, as last amended by Laws of Utah 2010, Chapter 233

47 ENACTS:

48 **59-1-1501**, Utah Code Annotated 1953

49 **59-1-1502**, Utah Code Annotated 1953

50 **59-1-1503**, Utah Code Annotated 1953

51 **59-1-1504**, Utah Code Annotated 1953

52 **59-1-1505**, Utah Code Annotated 1953

53 **59-1-1506**, Utah Code Annotated 1953

54 **59-1-1507**, Utah Code Annotated 1953

55 **59-1-1508**, Utah Code Annotated 1953

56 **59-1-1509**, Utah Code Annotated 1953

57 **59-1-1510**, Utah Code Annotated 1953

58 **59-1-1511**, Utah Code Annotated 1953

- 59 **59-1-1512**, Utah Code Annotated 1953
- 60 **59-1-1513**, Utah Code Annotated 1953
- 61 **59-1-1514**, Utah Code Annotated 1953
- 62 **59-1-1515**, Utah Code Annotated 1953



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

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

66 **7-1-1004. Reimbursement of financial institution for costs of obtaining**
67 **information.**

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

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

- 74 (i) Subsection 7-1-1001(2)(a); or
- 75 (ii) Subsection 7-1-1006(2)(b)(iii);

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

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

79 (2) A depository institution is not allowed reimbursement under this section by the
80 State Tax Commission for information the depository institution provides or action the
81 depository institution takes in accordance with Title 59, Chapter 1, Part 15, Depository
82 Institution Data Match System and Levy Act.

83 [~~2~~] (3) The commissioner shall by rule establish the rates and conditions under which
84 a governmental entity shall reimburse a financial institution.

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

86 **59-1-1402. Definitions.**

87 As used in this part:

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

- 89 (a) the cost of filing;

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

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

92 Section 59-1-1511; or

93 [~~(c)~~] (d) a cost similar to [~~Subsection~~] Subsections (1)(a) [or (b)] through (c) as

94 determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah

95 Administrative Rulemaking Act.

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

98 (a) an account;

99 (b) a book;

100 (c) an invoice;

101 (d) a memorandum;

102 (e) a paper;

103 (f) a record; or

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

106 (3) "Deficiency" means:

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

108 (i) the sum of:

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

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

111 and

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

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

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

117 and

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

120 (4) "Garnishment" means any legal or equitable procedure through which one or more

121 of the following are required to be withheld for payment of an amount a person owes:

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

123 (b) the earnings of the person.

124 (5) "Liability" means the following that a person is required to remit to the

125 commission:

126 (a) a tax, fee, or charge;

127 (b) an addition to a tax, fee, or charge;

128 (c) an administrative cost;

129 (d) interest that accrues in accordance with Section 59-1-402; or

130 (e) a penalty that accrues in accordance with Section 59-1-401.

131 (6) (a) Subject to Subsection (6)(b), "mathematical error" is as defined in Section

132 6213(g)(2), Internal Revenue Code.

133 (b) The reference to Section 6213(g)(2), Internal Revenue Code, in Subsection (6)(a)

134 means:

135 (i) the reference to Section 6213(g)(2), Internal Revenue Code, in effect for the taxable

136 year; or

137 (ii) a corresponding or comparable provision of the Internal Revenue Code as

138 amended, redesignated, or reenacted.

139 (7) (a) Except as provided in Subsection (7)(b), "tax, fee, or charge" means:

140 (i) a tax, fee, or charge the commission administers under:

141 (A) this title;

142 (B) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

143 (C) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;

144 (D) Section 19-6-410.5;

145 (E) Section 19-6-714;

146 (F) Section 19-6-805;

147 (G) Section 34A-2-202;

148 (H) Section 40-6-14;

149 (I) Section 69-2-5;

150 (J) Section 69-2-5.5; or

151 (K) Section 69-2-5.6; or

- 152 (ii) another amount that by statute is administered by the commission.
- 153 (b) "Tax, fee, or charge" does not include a tax, fee, or charge imposed under:
- 154 (i) Title 41, Chapter 1a, Motor Vehicle Act, except for Section 41-1a-301;
- 155 (ii) Title 41, Chapter 3, Motor Vehicle Business Regulation Act;
- 156 (iii) Chapter 2, Property Tax Act;
- 157 (iv) Chapter 3, Tax Equivalent Property Act;
- 158 (v) Chapter 4, Privilege Tax; or
- 159 (vi) Chapter 13, Part 5, Interstate Agreements.
- 160 (8) "Transferee" means:
- 161 (a) a devisee;
- 162 (b) a distributee;
- 163 (c) a donee;
- 164 (d) an heir;
- 165 (e) a legatee; or
- 166 (f) a person similar to Subsections (8)(a) through (e) as determined by the commission
- 167 by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Section 3. Section **59-1-1501** is enacted to read:

Part 15. Depository Institution Data Match System and Levy Act

59-1-1501. Title.

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

Section 4. Section **59-1-1502** is enacted to read:

59-1-1502. Definitions.

As used in this part:

- 175 (1) "Delinquent taxpayer" means a person against whom the commission is considered
- 176 to have obtained a judgment for a liability under Section 59-1-1414.
- 177 (2) "Depository institution" is a depository institution:
- 178 (a) as defined in Section 7-1-103; and
- 179 (b) that holds or receives deposits, savings, or share accounts.
- 180 (3) "Depository institution data match system" means the database the commission
- 181 develops, maintains, and operates in accordance with Section 59-1-1503.
- 182 (4) "Identifying information" means the following that a depository institution provides

183 to the commission in relation to an account holder under this part:

184 (a) the name of the account holder;

185 (b) the Social Security number of the account holder; or

186 (c) other identifying information.

187 (5) "Liability" is as defined in Section 59-1-1402.

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

190 Section 5. Section **59-1-1503** is enacted to read:

191 **59-1-1503. Depository institution data match system -- Agreements between**
192 **commission and depository institutions.**

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

195 (a) uses automated data exchanges;

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

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

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

200 (e) the commission updates on at least a quarterly basis.

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

203 (a) coordinate with the commission in the development and operation of the depository
204 institution data match system;

205 (b) participate in using the depository institution data match system as provided in this
206 part; and

207 (c) address reimbursement to the depository institution in accordance with Section
208 59-1-1511 for complying with the requirements of this part.

209 Section 6. Section **59-1-1504** is enacted to read:

210 **59-1-1504. Depository institution to access depository institution data match**
211 **system.**

212 (1) A depository institution that enters into an agreement with the commission in
213 accordance with Section 59-1-1503 shall access the depository institution data match system on

214 or before the 15th day of each calendar quarter to determine whether a delinquent taxpayer
215 identified in the depository institution data match system has the same identifying information
216 as that of an account holder at the depository institution.

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

223 (a) the name of the account holder;

224 (b) the address of the account holder;

225 (c) the account number of the account holder;

226 (d) the account balance of the account holder as of the date the depository institution
227 provides the commission the information;

228 (e) the type of account of the account holder;

229 (f) the Social Security number of the account holder;

230 (g) other information that identifies the account holder; and

231 (h) the name of and contact information for other account holders that have access to
232 the account.

233 Section 7. Section **59-1-1505** is enacted to read:

234 **59-1-1505. Commission requirement to provide notice of levy to depository**
235 **institution -- Duration of levy.**

236 (1) The commission shall, within three business days after a depository institution
237 provides the commission information described in Subsection 59-1-1504(2), provide a notice
238 of levy to the depository institution:

239 (a) by electronic means;

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

242 (c) identifying the account subject to levy.

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

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

245 (b) the date the delinquent taxpayer satisfies the liability; or
246 (c) the date the depository institution makes the final subsequent release in accordance
247 with Section 59-1-1509 of amounts deposited into the account of the delinquent taxpayer
248 before the expiration of a 60-day period that begins on the date the commission provides the
249 notice of levy described in Subsection (1) to the depository institution.

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

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

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

256 Section 8. Section **59-1-1506** is enacted to read:

257 **59-1-1506. Depository institution requirement to secure amount subject to levy in**
258 **account holder's account.**

259 (1) Subject to Subsection (3), no later than one business day after the date a depository
260 institution receives a notice of levy described in Section 59-1-1505 from the commission, the
261 depository institution shall secure the amount subject to levy in a delinquent taxpayer's account
262 by prohibiting:

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

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

266 (2) Subject to Subsection (3), if, on the date a depository institution secures an amount
267 under Subsection (1), the balance of the delinquent taxpayer's account is less than the amount
268 subject to levy stated on the notice of levy described in Section 59-1-1505, the depository
269 institution shall secure deposits into the account holder's account:

270 (a) made after the date the depository institution secures the amount under Subsection
271 (1);

272 (b) in an amount that in total does not exceed the amount of the liability stated on the
273 notice of levy described in Section 59-1-1505; and

274 (c) until the earlier of:

275 (i) the date the commission provides notice to the depository institution in accordance

276 with Section 59-1-1505 that the commission has released the levy;

277 (ii) the date the commission provides notice to the depository institution in accordance
278 with Section 59-1-1505 that the delinquent taxpayer has satisfied the liability; or

279 (iii) the date the depository institution makes the final subsequent release in accordance
280 with Section 59-1-1509 of amounts deposited into the account of the delinquent taxpayer
281 before the expiration of a 60-day period that begins on the date the commission provides the
282 notice of levy described in Section 59-1-1505 to the depository institution.

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

286 Section 9. Section **59-1-1507** is enacted to read:

287 **59-1-1507. Commission to send notice to delinquent taxpayer.**

288 (1) The commission shall, within three business days after the date the commission
289 provides a notice of levy described in Section 59-1-1505 to a depository institution, notify a
290 delinquent taxpayer that the commission has issued the notice of levy to the depository
291 institution.

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

293 (a) state the amount subject to levy on the notice of levy described in Section
294 59-1-1505;

295 (b) notify the delinquent taxpayer that the depository institution is required to secure
296 the amount subject to levy in accordance with Section 59-1-1506;

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

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

299 (i) satisfy the liability; or

300 (ii) resolve an issue as to whether the commission has the authority to receive from a
301 depository institution a portion of an amount subject to levy at the depository institution.

302 Section 10. Section **59-1-1508** is enacted to read:

303 **59-1-1508. Commission to determine portion of an amount subject to levy that the**
304 **commission may receive from a depository institution -- Process for resolution of dispute**
305 **-- Extension of certain time periods -- District court action -- Rulemaking authority.**

306 (1) In accordance with this section, the commission shall determine the portion of the

307 amount subject to a levy under this part that the commission may receive from a depository
308 institution.

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

310 (a) begins on the date the commission provides a notice of levy described in Section
311 59-1-1505 to a depository institution; and

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

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

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

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

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

322 (c) the balance of the delinquent taxpayer's account that a depository institution has
323 secured or will secure in accordance with Section 59-1-1506.

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

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

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

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

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

335 (a) during which a levy is valid;

336 (b) during which a depository institution is required to secure an amount in accordance
337 with Section 59-1-1506;

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

339 (d) for requiring a depository institution to release a portion of an amount to the
340 commission in accordance with Section 59-1-1509.

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

344 (a) within 10 days after the date a conference described in Subsection (6) adjourns; and

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

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

350 (i) during which a levy is valid;

351 (ii) during which a depository institution is required to secure an amount in accordance
352 with Section 59-1-1506;

353 (iii) for making the determination required by Subsection (1); or

354 (iv) for requiring a depository institution to release a portion of an amount to the
355 commission in accordance with Section 59-1-1509.

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

358 Section 11. Section **59-1-1509** is enacted to read:

359 **59-1-1509. Depository institution to release portion of amount subject to levy.**

360 (1) Subject to the other provisions of this section, a depository institution shall release
361 the portion of the amount subject to a levy under this part that the commission determines the
362 commission may receive in accordance with Section 59-1-1508 from the depository institution.

363 (2) A depository institution shall make an initial release of the lesser of the following
364 on the first business day after the date the commission provides the notice described in
365 Subsection 59-1-1508(3) to the depository institution:

366 (a) the portion of the amount the commission determines the commission may receive
367 in accordance with Section 59-1-1508 from the depository institution; or

368 (b) the balance of the delinquent taxpayer's account as of the first business day after the

369 date the commission provides the notice described in Subsection 59-1-1508(3) to the
370 depository institution.

371 (3) (a) Subject to Subsections (3)(b) and (c), if, as of the first business day after the
372 date the commission provides the notice described in Subsection 59-1-1508(3) to a depository
373 institution, the balance of the delinquent taxpayer's account is less than the portion of the
374 amount the commission determines the commission may receive in accordance with Section
375 59-1-1508 from the depository institution, the depository institution shall make one or more
376 subsequent releases to the commission of deposits made into the delinquent taxpayer's account:

377 (i) after the first business day after the date the commission provides the notice
378 described in Subsection 59-1-1508(3) to the depository institution; and

379 (ii) in an amount not to exceed the portion of the amount the commission determines
380 the commission may receive in accordance with Section 59-1-1508 from the depository
381 institution.

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

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

387 (i) after the date the commission provides notice to the depository institution in
388 accordance with Section 59-1-1505 that the commission has released the levy;

389 (ii) after the date the commission provides notice to the depository institution in
390 accordance with Section 59-1-1505 that the delinquent taxpayer has satisfied the liability; or

391 (iii) more than 60 days after the date the commission provides the notice of levy
392 described in Section 59-1-1505 to the depository institution.

393 Section 12. Section **59-1-1510** is enacted to read:

394 **59-1-1510. Limitations on commission authority to levy.**

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

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

400 Section 13. Section **59-1-1511** is enacted to read:

401 **59-1-1511. Commission requirement to pay a reimbursement to a depository**
402 **institution.**

403 The commission shall, in accordance with the agreement required by Section
404 59-1-1503, pay a reasonable reimbursement to a depository institution:

405 (1) as determined by the commission;

406 (2) to comply with the requirements of this part;

407 (3) that does not exceed the costs a depository institution incurs to comply with this
408 part; and

409 (4) if the depository institution secures an amount subject to levy in accordance with
410 Section 59-1-1506, provides for a payment of \$10 to secure the amount.

411 Section 14. Section **59-1-1512** is enacted to read:

412 **59-1-1512. Amount levied or released in error -- Rulemaking authority.**

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

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

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

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

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

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

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

424 Section 15. Section **59-1-1513** is enacted to read:

425 **59-1-1513. Limits on a depository institution's authority to disclose or provide**
426 **notice -- Depository institution authority to provide information.**

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

429 (a) provided information to the commission or the commission provided information to
430 the depository institution in relation to the account holder or the account holder's account in

431 accordance with this part; or

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

434 (2) A depository institution may provide information to an account holder describing
435 the depository institution's duties under this part if the information the depository institution
436 provides does not identify that the depository institution:

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

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

441 Section 16. Section **59-1-1514** is enacted to read:

442 **59-1-1514. Limits on depository institution liability.**

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

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

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

447 Section 17. Section **59-1-1515** is enacted to read:

448 **59-1-1515. Confidentiality of information.**

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

453 Section 18. **Effective date.**

454 This bill takes effect on January 1, 2012.

Legislative Review Note
as of 11-17-10 1:57 PM

Office of Legislative Research and General Counsel