

PASS-THROUGH ENTITY WITHHOLDING AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: John Knotwell

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 terms;
- ▶ 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:

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

31 **59-10-529. Overpayment of tax -- Credits -- Refunds.**

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

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

35 (b) against:

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

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

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

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

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

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

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

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

57 (i) the amount of child support that is due or past due as of the date of the notice or

58 other specified date;

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

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

64 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
65 Office of Recovery Services shall establish rules to implement this Subsection (4), including
66 procedures, in accordance with the other provisions of this section, to ensure:

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

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

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

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

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

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

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

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

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

83 and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

142 (16) If an overpayment relates to a change in net income described in Subsection
143 [59-10-536\(2\)\(a\)](#), a credit may be allowed or a refund paid any time before the expiration of the
144 period within which a deficiency may be assessed.

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

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

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

151 **59-10-1403. Income tax treatment of a pass-through entity -- Returns --**
152 **Classification same as under Internal Revenue Code.**

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

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

158 (3) A pass-through entity is subject to the return filing requirements of Sections
159 [59-10-507](#) and [59-10-514](#).

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

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

164 **59-10-1403.3. Refund of amounts paid or withheld for a pass-through entity.**

165 (1) As used in this section:

166 (a) "Committee" means the Revenue and Taxation Interim Committee.

167 (b) "Qualifying excess withholding" means an amount that:

168 (i) is paid or withheld:

169 (A) by a pass-through entity that has a different taxable year than the pass-through

170 entity that requests a refund under this section; and

171 (B) on behalf of the pass-through entity that requests the refund, if the pass-through
172 entity that requests the refund also is a pass-through entity taxpayer; and

173 (ii) is equal to the difference between:

174 (A) the amount paid or withheld for the taxable year on behalf of the pass-through
175 entity that requests the refund; and

176 (B) the product of 5% and the income, described in Subsection [59-10-1403.2\(1\)\(a\)\(i\)](#),
177 of the pass-through entity that requests the refund.

178 (2) For a taxable year ending on or after July 1, 2017, a pass-through entity may claim
179 a refund of qualifying excess withholding, if the amount of the qualifying excess withholding is
180 equal to or greater than \$250,000.

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

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

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

187 (4) A pass-through entity shall claim a refund of qualifying excess withholding under
188 this section within 30 days after the earlier of the day on which:

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

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

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

196 (6) (a) On or before November 30, 2018, the committee shall review the \$250,000
197 threshold described in Subsection (2) for the purpose of assessing whether the threshold

198 amount should be maintained, increased, or decreased.

199 (b) To assist the committee in conducting the review described in Subsection (6)(a),
200 the commission shall provide the committee with:

201 (i) the total number of refund requests made under this section;

202 (ii) the total costs of any refunds issued under this section;

203 (iii) the costs of any audits conducted on refund requests made under this section; and

204 (iv) an estimation of:

205 (A) the number of refund requests the commission expects to receive if the Legislature
206 increases the threshold;

207 (B) the number of refund requests the commission expects to receive if the Legislature
208 decreases the threshold; and

209 (C) the costs of any audits the commission would conduct if the Legislature increases
210 or decreases the threshold.