

SB0120S01 compared with SB0120

~~{deleted text}~~ shows text that was in SB0120 but was deleted in SB0120S01.

Inserted text shows text that was not in SB0120 but was inserted into SB0120S01.

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Senator Lyle W. Hillyard proposes the following substitute bill:

ACCOUNTS RECEIVABLE COLLECTION REVISIONS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies accounts receivable collection provisions.

Highlighted Provisions:

This bill:

- ▶ provides and amends definitions;
- ▶ amends notification procedures for the state or a governmental entity to execute a lien for certain receivables;
- ▶ authorizes the Office of State Debt Collection to send notification of the execution of a lien for a governmental entity in certain circumstances;
- ▶ amends procedures for the state or another governmental entity to levy a tax overpayment or refund for the collection of a delinquent receivable;
- ▶ amends hearing procedures and requirements regarding the collection of a

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delinquent receivable;

- ▶ amends the types of receivables that constitute a lien against a state tax overpayment or refund;
- ▶ amends procedures for seeking agency and judicial review of a hearing decision regarding the collection of a delinquent receivable;
- ▶ repeals certain bond requirements for seeking judicial review;
- ▶ grants the Division of Finance, rather than the Board of Examiners, rulemaking authority to adopt rules regarding the collection of certain account receivables; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63A-3-301, as last amended by Laws of Utah 2011, Chapter 79

63A-3-302, as last amended by Laws of Utah 2016, Chapters 129 and 298

63A-3-303, as last amended by Laws of Utah 2011, Chapter 79

63A-3-304, as last amended by Laws of Utah 2011, Chapter 79

63A-3-305, as renumbered and amended by Laws of Utah 1993, Chapter 212

63A-3-306, as last amended by Laws of Utah 2008, Chapter 382

63A-3-307, as last amended by Laws of Utah 2011, Chapter 79

63A-3-308, as last amended by Laws of Utah 2011, Chapter 79

63A-3-310, as renumbered and amended by Laws of Utah 1993, Chapter 212

REPEALS:

63A-3-309, as renumbered and amended by Laws of Utah 1993, Chapter 212

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

Section 1. Section **63A-3-301** is amended to read:

63A-3-301. Definitions.

As used in this part[?]:

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(1) [~~account~~] "Account receivable" or "receivable" means any amount due the state or any other governmental entity within the state as a result of a [~~court~~] judgment, citation, or administrative order, or for which materials or services have been provided but for which payment has not been received by the servicing unit.

(2) "Debtor" means a party that owes, or is alleged to owe, an account receivable.

(3) "Mail" means United States Postal Service first class mail to the intended recipient's last known address.

Section 2. Section **63A-3-302** is amended to read:

63A-3-302. Unpaid accounts receivable due the state.

If any account receivable at any point has been unpaid for [~~more than~~] 90 days or more, any agency or other authority of [~~state government~~] the state, or any political subdivision, as defined in Section 63G-7-102, of the state responsible for collection of the account may proceed under this part to collect the delinquent amount.

Section 3. Section **63A-3-303** is amended to read:

63A-3-303. Notice to debtor -- Contents -- Joint filers.

(1) [~~Upon default in payment of any account receivable that is not due pursuant to final court or administrative order or judgment, the entity responsible for collecting the account~~] When the state or any governmental entity executes, or intends to execute, on a lien created by Section 63A-3-307, the state or entity to which the receivable is owed shall send a notice by mail to the debtor at the debtor's last-known address.

(2) The notice required by Subsection (1) shall [~~state~~] contain:

(a) the date and amount of the receivable;

(b) a demand for immediate payment of the amount;

(c) a statement of the right of the debtor to file a written response to the notice, to [~~have~~] request a hearing within 21 days of the date of the notice, to be represented at the hearing, and to appeal any decision of the hearing examiner;

(d) the time within which a written response must be [~~filed; and~~] received from the debtor;

(e) a statement notifying the debtor that the state may obtain an order [~~under this part~~] and execute upon income tax overpayments or refunds of the debtor if:

(i) the debtor fails to timely respond to the notice; or

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(ii) a hearing is held and the hearing officer decides against the debtor[-]; and

(f) the address to which the debtor may send a written request for a hearing.

(3) Notwithstanding Subsection (1), if the Office of State Debt Collection has agreed to collect a receivable, the Office of State Debt Collection may send the notice required by Subsection (1) instead of the entity to which the receivable is owed.

(4) ~~The~~ Unless otherwise prohibited by law, the notice required by this section shall also be sent to any individuals that are joint filers with a debtor of an affected tax filing, if the state agency or other governmental entity attempting to levy a debtor's tax overpayment or refund is aware of the joint filer.

Section 4. Section **63A-3-304** is amended to read:

63A-3-304. Effect of nonpayment or failure to respond.

If a written [~~response~~] request for a hearing, or payment of delinquent receivable, is not received by the state or other governmental entity within [~~15~~] 21 days from the date of [~~receipt of~~] the notice [~~by the debtor~~] required by Section 63A-3-303, the debtor is in default and the state [~~may determine the balance due~~] or other governmental entity may:

(1) levy the debtor's income tax overpayment or refund up to the amount of the receivable, plus interest, penalties, and collection costs allowed by law; and

(2) collect the balance, including as provided in Section 63A-3-307.

Section 5. Section **63A-3-305** is amended to read:

63A-3-305. Hearing requested -- Notice to debtor.

(1) If a written response is received by the state or other governmental entity within 21 days from the date of the notice required by Section 63A-3-303 and a hearing is requested in the written response, the state or other governmental entity shall:

~~(1)~~ (a) set a hearing date within [~~30~~] 28 days of the receipt of the response; and

~~(2)~~ (b) mail written notice of the hearing to the debtor at least [~~15~~] 14 days before the date of the hearing.

(2) Notwithstanding Subsection (1), the state or other governmental entity is not required to set a hearing if the state or governmental entity releases its lien.

Section 6. Section **63A-3-306** is amended to read:

63A-3-306. Hearing examiner -- Procedures -- Adjudicative proceedings.

(1) (a) [~~The~~] A hearing requested under this part shall be held before a hearing

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examiner designated by the state or other governmental entity setting the hearing.

(b) The hearing examiner may not be an officer or employee of the entity in state government responsible for collecting or administering the account.

(2) The state or other governmental entity shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in its adjudicative proceedings.

(3) If a hearing examiner determines a receivable is owed, in whole or in part:

(a) the state or other governmental entity may levy the debtor's income tax overpayment or refund up to the amount of the receivable determined to be owed, plus interest, penalties, and collection costs allowed by law and collect the balance, including as provided in Section 63A-3-307; and

(b) the state or other governmental entity may charge the debtor reasonable, actual collection costs for amounts charged by the hearing examiner for the debtor's hearing.

Section 7. Section **63A-3-307** is amended to read:

63A-3-307. Liens.

(1) The following shall constitute a lien in the amount of the receivable plus interest, penalties, and collection costs allowed by law against any state income tax [~~refund or overpayment~~] overpayment or refund due or to become due the debtor:

(a) [~~an abstract of an~~] a judgment, citation, or administrative order issued by any agency, court, or other authority of the state, or by any political subdivision, as defined in Section 63G-7-102; or

~~[(b) nonpayment or failure to respond as provided under Section 63A-3-304.]~~

(b) an amount, that has at any point been unpaid for 90 days or more, due the state or other governmental entity for which materials or services have been provided but for which payment has not been received by the servicing unit.

(2) The lien created by this section shall, for the purposes of Section 59-10-529 only, be considered a judgment[~~, but no credit of a tax refund or overpayment may be made on account of this lien until 20 days after the date of the administrative order].~~

~~[(3) The lien created by this section shall remain effective for eight years.]~~

Section 8. Section **63A-3-308** is amended to read:

63A-3-308. Judicial review -- Effect on lien.

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(1) ~~[A] Agency and judicial review [of a lien created under Section 63A-3-307 may be obtained by any party within one year of the creation of the lien by filing a complaint with the district court] of decisions from hearings conducted under this part are subject to review in accordance with Title 63G, Chapter 4, Administrative Procedures Act.~~

~~[(2)(a) A notice of the filing of a complaint may be filed with the State Tax Commission.]~~

~~[(b) If notice is filed, the tax commission may take no action with respect to the lien created by Section 63A-3-307 until the matter is finally disposed of by the courts, except as provided in this part.]~~

(2) The state or other governmental entity may retain in its possession a debtor's tax overpayment or refund while a decision from a hearing conducted under this part is being reviewed by an agency, court, or other authority of the state pursuant to Title 63G, Chapter 4, Administrative Procedures Act.

Section 9. Section **63A-3-310** is amended to read:

63A-3-310. Rules for implementing part.

The ~~[Board of Examiners]~~ Division of Finance may adopt rules for the implementation of this part, including rules for the conduct of hearings, injured spouse claims, and appointment of hearing examiners.

Section 10. **Repealer.**

This bill repeals:

Section **63A-3-309, Bond required -- Terms -- Expenses of debtor.**