

1                   **TAX COMMISSION ADMINISTRATIVE GARNISHMENT**

2                                   **PROCESS**

3   2021 GENERAL SESSION

4   STATE OF UTAH

5                                   **Chief Sponsor: Curtis S. Bramble**

6                                   House Sponsor: Steve Eliason

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8                   **LONG TITLE**

9                   **Committee Note:**

10                   The Revenue and Taxation Interim Committee recommended this bill.

11                   Legislative Vote: 18 voting for 0 voting against 1 absent

12                   **General Description:**

13                   This bill enacts provisions related to the State Tax Commission's authority to issue  
14 administrative garnishment orders.

15                   **Highlighted Provisions:**

16                   This bill:

- 17                   ▶ defines terms;
- 18                   ▶ if a taxpayer owes a liability to the State Tax Commission, authorizes the State Tax  
19 Commission to issue an administrative garnishment order against the taxpayer's  
20 personal property that is in possession of another person; and
- 21                   ▶ addresses the procedural and substantive requirements of an administrative  
22 garnishment order.

23                   **Money Appropriated in this Bill:**

24                   None

25                   **Other Special Clauses:**

26                   This bill provides a special effective date.

27                   **Utah Code Sections Affected:**



28 ENACTS:

29 [59-1-1420](#), Utah Code Annotated 1953

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

32 Section 1. Section **59-1-1420** is enacted to read:

33 **59-1-1420. Administrative garnishment order for liability.**

34 (1) As used in this section:

35 (a) "Administrative garnishment order" includes a continuing administrative

36 garnishment order issued under this section.

37 (b) "Disposable earnings" means the same as that term is defined in Section

38 [70C-7-103](#).

39 (c) "Garnishee" means a person to whom the commission issues an administrative

40 garnishment order under this section.

41 (d) "Nonexempt periodic payment" means any recurring payment that, under Title 78B,

42 Chapter 5, Part 5, Utah Exemptions Act, is not exempt from the judicial process to collect an

43 unsecured debt.

44 (2) (a) Subject to Subsection (3), if a taxpayer owes a liability, the commission may

45 issue an administrative garnishment order against the taxpayer's personal property, including

46 wages, in the possession or control of a person other than the taxpayer in the same manner and

47 with the same effect as if the order were a writ of garnishment issued by a court with

48 jurisdiction.

49 (b) In addition to the underlying liability, the commission may satisfy through an

50 administrative garnishment any costs or fees incurred by the commission as a result of issuing

51 the administrative garnishment order.

52 (3) The commission may issue an administrative garnishment order to a person

53 described in Subsection (2) if:

54 (a) the commission has filed a warrant against the taxpayer for the underlying liability

55 in accordance with Section [59-1-1414](#); and

56 (b) the commission's executive director or the executive director's designee signs the

57 administrative garnishment order.

58 (4) An administrative garnishment order issued in accordance with this section is

59 subject to the procedures and due process protections provided by Rule 64D, Utah Rules of  
60 Civil Procedure.

61 (5) The maximum portion of a taxpayer's disposable earnings subject to garnishment  
62 under this section is the lesser of:

63 (a) 25% of the taxpayer's disposable earnings; or

64 (b) the amount by which the taxpayer's disposable earnings for a pay period exceeds  
65 the number of weeks in that pay period multiplied by 30 times the federal minimum wage as  
66 provided in 29 U.S.C. Sec. 201 et seq., Fair Labor Standards Act of 1938.

67 (6) Upon agreement by the garnishee, the parties to an administrative garnishment  
68 order may accept and transmit documents relating to the administrative garnishment order by  
69 electronic means, including service of process, proof of service, interrogatories, answers, and  
70 any other information shared between the garnishee and the commission.

71 (7) In an administrative garnishment order issued under this section, the commission  
72 shall:

73 (a) identify the taxpayer, including:

74 (i) the taxpayer's name and address; and

75 (ii) if known:

76 (A) the last four digits of the taxpayer's social security number, or the taxpayer's full  
77 social security number, if the taxpayer's full social security number is required by federal law;  
78 and

79 (B) the taxpayer's date of birth;

80 (b) contain a statement that includes:

81 (i) if known, the nature, location, account number, and estimated value of the property  
82 subject to administrative garnishment;

83 (ii) if known, the name, address, and phone number of the person holding the property  
84 subject to administrative garnishment; and

85 (iii) the name, address, and phone number of any person claiming an interest in the  
86 property described in Subsection (7)(b)(i) or (ii);

87 (c) state whether any of the property subject to administrative garnishment consists of  
88 earnings;

89 (d) state the outstanding amount owed under the warrant described in Subsection

90 (3)(a):

91 (e) state the amount of any applicable costs or fees included in the administrative  
92 garnishment;

93 (f) state the manner in which the garnishee shall deliver the property to the  
94 commission; and

95 (g) state that the commission shall pay the garnishee the fee described in Subsection  
96 78A-2-216.

97 (8) As part of the administrative garnishment order, the commission shall serve on the  
98 garnishee the following interrogatories:

99 (a) whether the garnishee is indebted to the taxpayer and, if so, the nature of the  
100 indebtedness;

101 (b) whether the garnishee possesses or controls any property of the taxpayer, and, if so,  
102 the nature, location, and estimated value of the property;

103 (c) whether the garnishee knows of any property of the taxpayer in the possession or  
104 control of another person, and if so, the following information about the property:

105 (i) the nature;

106 (ii) the location; and

107 (iii) the estimated value;

108 (d) (i) whether the garnishee intends to deduct from the property a liquidated claim  
109 against the taxpayer;

110 (ii) a description of any claim described in Subsection (8)(d)(i); and

111 (iii) the amount deducted, if any;

112 (e) the date and manner of the garnishee's service of the documents described in  
113 Subsection (9)(c) on the taxpayer and any third party;

114 (f) the date on which the taxpayer was previously served with any continuing  
115 administrative garnishment order;

116 (g) any other relevant information the commission requests, including:

117 (i) the taxpayer's position;

118 (ii) the taxpayer's rate of pay;

119 (iii) the taxpayer's compensation method;

120 (iv) the taxpayer's pay period; and

- 121 (v) a computation of the taxpayer's disposable earnings.
- 122 (9) Within seven days after the day on which an administrative garnishment order is  
123 served, the garnishee shall:
- 124 (a) answer each interrogatory described in Subsection (8);
- 125 (b) serve the answers to the interrogatories on the commission;
- 126 (c) serve the taxpayer and any other person known to the garnishee to have an interest  
127 in the property a copy of:
- 128 (i) the administrative garnishment order; and
- 129 (ii) the answers to the interrogatories described in Subsection (9)(b); and
- 130 (d) inform the taxpayer of the taxpayer's right to reply to the answers described in  
131 Subsection (9)(b) and request a hearing as provided by Rule 64D, Utah Rules of Civil  
132 Procedure.
- 133 (10) (a) A garnishee who acts in accordance with this section and the administrative  
134 garnishment order is released from liability unless an answer to an interrogatory is successfully  
135 controverted.
- 136 (b) Except as provided in Subsection (10)(c), if a garnishee fails to comply with the  
137 administrative garnishment order without a court or final administrative order directing  
138 otherwise, the garnishee is liable for an amount including:
- 139 (i) the lesser of the value of the property or the balance owed under the warrant  
140 described in Subsection (3)(a);
- 141 (ii) reasonable costs and fees; and
- 142 (iii) attorney fees incurred by the parties as a result of the garnishee's failure.
- 143 (c) If a garnishee demonstrates that the garnishee took reasonable steps to secure the  
144 property, the commission may excuse the garnishee of liability in whole or in part.
- 145 (11) If the commission files a motion for an order to show cause to enforce an  
146 administrative garnishment order under this section, the commission shall attach to the motion  
147 a statement that the commission has in good faith conferred or attempted to confer with the  
148 garnishee in an effort to settle the issue without court action.
- 149 (12) A garnishee is not liable for drawing, accepting, making, or endorsing a negotiable  
150 instrument that is not in the possession or control of the garnishee at the time the administrative  
151 garnishment order is served.

152 (13) A garnishee may deduct from the property any liquidated claim against the  
153 taxpayer.

154 (14) (a) If a debt owed by the taxpayer to the garnishee is secured by the property  
155 subject to the administrative garnishment order, the commission may apply the property to the  
156 debt.

157 (b) An administrative garnishment order described in Subsection (14)(a) remains in  
158 effect regardless of whether the commission applies the property to the debt.

159 (15) (a) The commission may issue a continuing administrative garnishment order  
160 against any nonexempt periodic payment.

161 (b) A continuing administrative garnishment order applies to payments to the taxpayer:

162 (i) beginning on the day on which the continuing administrative garnishment order is  
163 served; and

164 (ii) ending on the earlier of:

165 (A) subject to Subsection (15)(c), one year after the day on which the continuing  
166 administrative garnishment order is served;

167 (B) 120 days after the day on which a second or subsequent continuing administrative  
168 garnishment against the taxpayer is served;

169 (C) the day on which the last nonexempt periodic payment subject to the continuing  
170 administrative garnishment order occurs;

171 (D) the day on which the warrant described in Subsection (3)(a) is stayed, vacated, or  
172 satisfied in full; or

173 (E) the day on which the commission releases the continuing administrative  
174 garnishment order.

175 (c) If the commission issues a continuing administrative garnishment order during the  
176 term of another continuing administrative garnishment order against the same taxpayer, the  
177 period described in Subsection (15)(b)(i) is tolled if the other continuing administrative  
178 garnishment order:

179 (i) is in effect at the time the commission serves the subsequent continuing  
180 administrative garnishment order; and

181 (ii) requires payments greater than or equal to the maximum portion of disposable  
182 earnings described in Subsection (5).

183           (d) For each periodic payment period, no later than seven days after the day on which  
184 the periodic payment period ends, the garnishee shall:

185           (i) answer each interrogatory described in Subsection (8);

186           (ii) serve the answers to the interrogatories on the commission, the taxpayer, and any  
187 other person known to the garnishee to have an interest in the property; and

188           (iii) deliver the property to the commission in the manner specified in the continuing  
189 administrative garnishment order.

190           (16) (a) The commission may not name more than one garnishee in an administrative  
191 garnishment order.

192           (b) Priority among garnishments is according to the order of service on the garnishee.

193           (c) An administrative garnishment order applies to earnings accruing during the pay  
194 period in which the order is effective.

195           (17) This section is subject to Title 78B, Chapter 5, Part 5, Utah Exemptions Act.  
196 **Section 2. Effective date.**

197           This bill takes effect July 1, 2021.