

PASS-THROUGH ENTITY WITHHOLDING AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: _____

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:

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

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

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

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

(b) against:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(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;

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

(iii) file an amended return with the commission.

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

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

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

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

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

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

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

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

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

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

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

59-10-1403. Income tax treatment of a pass-through entity -- Returns --

Classification same as under Internal Revenue Code.

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

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

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

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

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

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

(1) As used in this section:

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

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

(i) is paid or withheld:

(A) by a pass-through entity that has a different taxable year than the pass-through entity that requests a refund under this section; and

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

(ii) is equal to the difference between:

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

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

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

(3) A pass-through entity that requests a refund of qualifying excess withholding under 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.