TAX COMMISSION ADMINISTRATIVE GARNISHMENT PROCESS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: ____________

LONG TITLE

Committee Note:

The Revenue and Taxation Interim Committee recommended this bill.

Legislative Vote: 18 voting for 0 voting against 1 absent

General Description:

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

Highlighted Provisions:

This bill:

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

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

S.B. 42

ENACTS:

59-1-1420, Utah Code Annotated 1953

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

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

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

(1) As used in this section:

(a) "Administrative garnishment order" includes a continuing administrative garnishment order issued under this section.

(b) "Disposable earnings" means the same as that term is defined in Section 70C-7-103.

(c) "Garnishee" means a person to whom the commission issues an administrative garnishment order under this section.

(d) "Nonexempt periodic payment" means any recurring payment that, under Title 78B, Chapter 5, Part 5, Utah Exemptions Act, is not exempt from the judicial process to collect an unsecured debt.

(2) (a) Subject to Subsection (3), if a taxpayer owes a liability, the commission may issue an administrative garnishment order against the taxpayer's personal property, including wages, in the possession or control of a person other than the taxpayer in the same manner and with the same effect as if the order were a writ of garnishment issued by a court with jurisdiction.

(b) In addition to the underlying liability, the commission may satisfy through an administrative garnishment any costs or fees incurred by the commission as a result of issuing the administrative garnishment order.

(3) The commission may issue an administrative garnishment order to a person described in Subsection (2) if:

(a) the commission has filed a warrant against the taxpayer for the underlying liability in accordance with Section 59-1-1414; and

(b) the commission's executive director or the executive director's designee signs the administrative garnishment order.

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

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

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

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

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

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

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

(a) identify the taxpayer, including:

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

(ii) if known:

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

(B) the taxpayer's date of birth;

(b) contain a statement that includes:

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

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

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

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

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

(3)(a);

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

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

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

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

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

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

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

(i) the nature;

(ii) the location; and

(iii) the estimated value;

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

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

(iii) the amount deducted, if any;

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

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

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

(i) the taxpayer's position;

(ii) the taxpayer's rate of pay;

(iii) the taxpayer's compensation method;

(iv) the taxpayer's pay period; and

(v) a computation of the taxpayer's disposable earnings.

(9) Within seven days after the day on which an administrative garnishment order is served, the garnishee shall:

(a) answer each interrogatory described in Subsection (8);

(b) serve the answers to the interrogatories on the commission;

(c) serve the taxpayer and any other person known to the garnishee to have an interest in the property a copy of:

(i) the administrative garnishment order; and

(ii) the answers to the interrogatories described in Subsection (9)(b); and

(d) inform the taxpayer of the taxpayer's right to reply to the answers described in Subsection (9)(b) and request a hearing as provided by Rule 64D, Utah Rules of Civil Procedure.

(10) (a) A garnishee who acts in accordance with this section and the administrative garnishment order is released from liability unless an answer to an interrogatory is successfully controverted.

(b) Except as provided in Subsection (10)(c), if a garnishee fails to comply with the administrative garnishment order without a court or final administrative order directing otherwise, the garnishee is liable for an amount including:

(i) the lesser of the value of the property or the balance owed under the warrant described in Subsection (3)(a);

(ii) reasonable costs and fees; and

(iii) attorney fees incurred by the parties as a result of the garnishee's failure.

(c) If a garnishee demonstrates that the garnishee took reasonable steps to secure the property, the commission may excuse the garnishee of liability in whole or in part.

(11) If the commission files a motion for an order to show cause to enforce an administrative garnishment order under this section, the commission shall attach to the motion a statement that the commission has in good faith conferred or attempted to confer with the garnishee in an effort to settle the issue without court action.

(12) A garnishee is not liable for drawing, accepting, making, or endorsing a negotiable instrument that is not in the possession or control of the garnishee at the time the administrative garnishment order is served.

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

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

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

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

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

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

(ii) ending on the earlier of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(17) This section is subject to Title 78B, Chapter 5, Part 5, Utah Exemptions Act.

Section 2. **Effective date.**

This bill takes effect July 1, 2021.