

Sec. 2. 32 V.S.A. §3207 is added to read:

§ 3207. Administrative attachment

(a) Notwithstanding other statutes which provide for levy of execution, trustee process, and attachment, the Commissioner, pursuant to this section, may attach tangible and intangible property of a taxpayer, to satisfy amounts collectible by the Commissioner under Title 32 by transmitting a notice of attachment to a financial institution or person holding property belonging to or owed to a taxpayer.

(b) The Commissioner may contact a financial institution to obtain verification of the account number, the names and social security numbers listed for an account, and account balances of accounts held by a taxpayer. A financial institution is immune from any liability for release of this information to the Commissioner.

(c) At least 30 days prior to attaching a taxpayer's property, the Commissioner must demand payment from the taxpayer together with notice that the taxpayer is subject to attachment of property under this section. This notice must be sent by first class mail to the taxpayer's last known address. The mailing of the notice shall be presumptive evidence of its receipt.

(d) A notice of attachment shall direct the financial institution or person to transmit all or a portion of the property in the taxpayer's accounts or owed to the taxpayer to the Commissioner up to the amount owed to the Commissioner. The notice shall identify the taxpayer by social security number or federal employer identification number. Upon receipt of the notice, the financial institution or person forthwith shall remit the amount stated in the notice or the amount held or owned by such financial institution or person, whichever is less, to the Commissioner. Notwithstanding the foregoing, any bank (as defined in Internal Revenue Code section 408(n)) shall surrender any deposits in such bank only after 21 days after service of attachment. During the 21-day hold period, the bank shall not release the attached funds to the taxpayer unless the Commissioner releases the attachment.

(e) A copy of the notice of attachment to be transmitted to the financial institution or person holding property due to the taxpayer shall be sent by certified mail to the taxpayer ~~at the time~~ at least 30 days before it is transmitted to the financial institution or person. The taxpayer may, within 15 days of mailing, petition the Commissioner in writing for a hearing under this section ~~determination of whether the notice of attachment has identified the wrong taxpayer or whether property that would be exempt from attachment and levy under 12 V.S.A. §2740 in a judicial attachment has been attached.~~ The Commissioner shall grant a hearing on the matter as provided in 32 V.S.A. § 5885(a) at which the taxpayer bears the burden of proof. The Commissioner shall notify the taxpayer in writing of his or her decision concerning the attachment and the taxpayer may appeal in the manner provided in 32 V.S.A. § 5885(b). This shall be the taxpayer's exclusive remedy with respect to an attachment under this section.

(f) At a hearing under this section, the taxpayer may raise any relevant issue relating to the unpaid tax or the proposed attachment, including –

(1) whether the notice of attachment has identified the wrong taxpayer;

(2) whether the proposed attachment includes property that would be exempt from attachment and levy under 12 V.S.A. § 2740 in a judicial attachment;

(3) offers of collection alternatives, which may include the posting of a bond, the substitution of other assets, an installment agreement, or an offer in compromise; and

(4) in the case of income tax, challenges to the existence or amount of the underlying liability under 32 V.S.A. § 5888.

(g) The hearing under this section shall be conducted by an officer or employee who has had no prior involvement with respect to the unpaid tax at issue, and who reports directly to the Commissioner. The hearing officer shall not be an employee of the Compliance Division of the Department of Taxes.

(h) If a hearing is timely requested under this section, the attachment which is the subject of the requested hearing shall be suspended for the period during which such hearing is pending.

(if) Attachment under this section and other collection measures provided by law are cumulative.

(jg) For purposes of this section:

(1) "Intangible property" means property that has no intrinsic value, but is merely the representative of value such as cash, accounts, rents, stocks, bonds, promissory notes or other instruments that creates a payment obligation;

(2) "Financial institution" has the same meaning as in 8 V.S.A. § 11101(32); and

(3) "Person" has the same meaning as in 32 V.S.A. §3001.

Sec. 3. 32 V.S.A. §3208 is added to read:

§ 3208. Administrative garnishment

(a) Notwithstanding other statutes which provide for levy or execution, trustee process, or attachment, the Commissioner may garnish a taxpayer's earnings up to twenty-five percent of the disposable earnings of a taxpayer pursuant to this section to satisfy amounts collectible by the Commissioner under Title 32, subject to the exemptions provided in 12 V.S.A. § 3170.

(b) The Commissioner may contact an employer to obtain verification of a taxpayer's employment, earnings, deductions and payment frequency as necessary to determine disposable earnings. The employer shall be immune from any liability for release of this information to the Commissioner.

(c) At least 30 days prior to initiating wage garnishment, the Commissioner must demand payment from the taxpayer and notify the taxpayer that he or she is subject to garnishment under this section. This notice must be sent by first class mail to the taxpayer's last known address. The mailing of notice shall be presumptive evidence of receipt.

(d) A notice of garnishment shall direct an employer to transmit a specified portion, ~~up to twenty-five percent,~~ of the taxpayer's disposable earnings to the Commissioner from each periodic payment that is due to the taxpayer until the taxpayer's obligation is paid in full. The notice shall identify the taxpayer by social security number.

(e) A copy of the notice of garnishment shall be sent by certified mail to the taxpayer ~~at the time~~ at least 30 days before it is transmitted to the employer. The taxpayer may, within 15 days of mailing, petition the Commissioner in writing for a hearing under this section ~~determination of whether the notice of garnishment has identified the wrong taxpayer or whether the garnishment exceeds twenty-five percent of the taxpayer's disposable earnings.~~ The Commissioner shall grant a hearing on the matter as provided in 32 V.S.A. § 5885(a) at which the taxpayer bears the burden of proof. The Commissioner shall notify the taxpayer in writing of his or her decision concerning the garnishment and the taxpayer may appeal in the manner provided in 32 V.S.A. § 5885(b). This shall be the taxpayer's exclusive remedy with respect to a garnishment under this section.

(f) At a hearing under this section, the taxpayer may raise any relevant issue relating to the unpaid tax or the proposed attachment, including –

(1) whether the notice of garnishment has identified the wrong taxpayer;

(2) whether the garnishment exceeds the amount permissible under 12 V.S.A. § 3170;

(3) offers of collection alternatives, which may include the posting of a bond, the substitution of other assets, an installment agreement, or an offer in compromise; and

(4) in the case of income tax, challenges to the existence or amount of the underlying liability under 32 V.S.A. § 5888.

(g) The hearing under this section shall be conducted by an officer or employee who has had no prior involvement with respect to the unpaid tax at issue, and who reports directly to the Commissioner. The hearing officer shall not be an employee of the Compliance Division of the Department of Taxes.

(h) If a hearing is timely requested under this section, the attachment which is the subject of the requested hearing shall be suspended for the period during which such hearing is pending.

(if) An employer's obligation to transmit garnished wages to the Commissioner shall begin with the first periodic payment of earnings following receipt of the notice of garnishment unless the notice is withdrawn by the Commissioner. An employer who fails to withhold and transmit the garnished earnings to the Commissioner shall be liable for such amounts and may be assessed in the same manner

as withholding taxes are assessed under Chapter 151 of Title 32. As soon as reasonably practicable, the employer shall notify the Commissioner of the termination of the taxpayer's employment. No taxpayer may be discharged from employment on account of garnishment under this section against the taxpayer's wages.

(jg) Upon full payment of the amounts collectible by the Commissioner, the Commissioner forthwith shall notify the employer in writing and the employer shall cease withholding from the earnings of the taxpayer.

(kh) Wage garnishment under this section and other collection measures provided by law are cumulative.

(li) For purposes of this section:

(1) "Disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld and the amount of any wage garnishment payable to the Office of Child Support.

(2) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus or otherwise, and includes periodic payments pursuant to a pension or retirement program and proceeds from the sale of milk with respect to an individual engaged in the occupation of farming, but does not include payments from sources which by law are exempt from attachment.

Sec. 4. 32 V.S.A. §3209 is added to read:

§ 3209. Authority to release levy and return property

(a) Release of levy and notice of release

(1) In general. Under regulations prescribed by the Commissioner, the Commissioner shall release the levy upon all, or part of, the property or rights to property levied upon and shall promptly notify the person upon whom such levy was made (if any) that such levy has been released if—

(A) the liability for which such levy was made is satisfied or becomes unenforceable by reason of lapse of time,

(B) release of such levy will facilitate the collection of such liability,

(C) the taxpayer has entered into an agreement with the Commissioner to satisfy such liability by means of installment payments, unless such agreement provides otherwise,

(D) the Commissioner has determined that such levy is creating an economic hardship due to the financial condition of the taxpayer, or

(E) the fair market value of the property exceeds such liability and release of the levy on a part of such property could be made without hindering the collection of such liability.

For purposes of subparagraph (C), the Commissioner is not required to release such levy if such release would jeopardize the secured creditor status of the Commissioner.

(2) Expedited determination on certain business property. In the case of any tangible personal property essential in carrying on the trade or business of the taxpayer, the Commissioner shall provide for an expedited determination under paragraph (1) if levy on such tangible personal property would prevent the taxpayer from carrying on such trade or business.

(3) Subsequent levy. The release of levy on any property under paragraph (1) shall not prevent any subsequent levy on such property.

(b) Return of property. If the Commissioner determines that property has been wrongfully levied upon, it shall be lawful for the Commissioner to return—

(1) the specific property levied upon,

(2) an amount of money equal to the amount of money levied upon, or

(3) an amount of money equal to the amount of money received by the United States from a sale of such property.

Property may be returned at any time. An amount equal to the amount of money levied upon or received from such sale may be returned at any time before the expiration of 9 months from the date of such levy. For purposes of paragraph (3), if property is declared purchased by the United States at a sale pursuant to section 6335 (e) (relating to manner and conditions of sale), the United States shall be treated as having received an amount of money equal to the minimum price determined pursuant to such section or (if larger) the amount received by the United States from the resale of such property.

(c) Interest. Interest shall be allowed and paid at the overpayment rate established under section 3108—

(1) in a case described in subsection (b)(2), from the date the Commissioner receives the money to a date (to be determined by the Commissioner) preceding the date of return by not more than 30 days, or

(2) in a case described in subsection (b)(3), from the date of the sale of the property to a date (to be determined by the Commissioner) preceding the date of return by not more than 30 days.

(d) Return of property in certain cases. If—

(1) any property has been levied upon, and

(2) the Commissioner determines that—

(A) the levy on such property was premature or otherwise not in accordance with administrative procedures of the Commissioner,

(B) the taxpayer has entered into an agreement with the Commissioner to satisfy the tax liability for which the levy was imposed by means of installment payments, unless such agreement provides otherwise,

(C) the return of such property will facilitate the collection of the tax liability, or

(D) with the consent of the taxpayer or the Vermont Taxpayer Advocate, the return of such property would be in the best interests of the taxpayer (as determined by the Vermont Taxpayer Advocate) and the State of Vermont,

the provisions of subsection (b) shall apply in the same manner as if such property had been wrongly levied upon, except that no interest shall be allowed under subsection (c).

(e) Release of levy upon agreement that amount is not collectible. In the case of a levy on the salary or wages payable to or received by the taxpayer, upon agreement with the taxpayer that the tax is not collectible, the Commissioner shall release such levy as soon as practicable.

(f) For the purposes of this section, the term "levy" includes administrative attachments under section 3207 and wage garnishments under section 3208.