

Department of Finance and Administration

Legislative Impact Statement

Bill: HB1732

Bill Subtitle: TO AMEND THE LAW CONCERNING GARNISHMENT AGAINST THE STATE OR A SUBDIVISION OF THE STATE; AND TO ALLOW FOR INCOME TAX REFUNDS TO BE SUBJECT TO GARNISHMENT BY JUDGMENT CREDITORS.

Basic Change :

Sponsor: Rep. Womack

HB1732 amends the law concerning garnishment against the state or a subdivision of the state to allow for income tax refunds to be subject to garnishment by judgment creditors.

Revenue Impact :

No net revenue impact, but the Department of Finance and Administration (DFA) will incur costs to implement and respond to the garnishment. Those costs cannot be determined since the number of garnishments that would be served upon for civil judgments DFA is unknown.

Taxpayer Impact :

An income tax refund would be subject to garnishment for taxpayers with civil judgments.

Resources Required :

Computer programs will need to be updated.

Time Required :

Adequate time is provided for implementation.

Procedural Changes :

Staffing will need to be increased to handle the additional refunds. Computer programs will need to be updated as well as training manuals. Department employees will need to be educated as well as the tax community.

Other Comments :

None.

Legal Analysis :

In general, when a court awards a judgment to a plaintiff and the plaintiff has reason to believe that any other person is indebted to the defendant or possesses property belonging to the defendant, the plaintiff may petition the court for a writ of garnishment. Under current law, a plaintiff may petition a court for a writ of garnishment against the State of Arkansas. However, refunds for overpayment of Arkansas state income tax are not currently subject to the garnishment process.

HB1732 would change this by making income tax refunds subject to the garnishment process. For a

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plaintiff to garnish a state income-tax refund, the plaintiff would have to file a petition for writ of garnishment and serve the writ upon the Director of DFA. DFA would then be required to file under oath, and prior to the deadline set in the writ, the amount of the refund to which that the defendant was entitled for overpayment of state income taxes. Once the DFA has surrendered the amount of the defendant's overpayment to the plaintiff, or to such an extent that the plaintiff's judgment against the defendant, the DFA would be discharged.

HB1732 would be difficult for the DFA to administer because the amount by which a taxpayer may be entitled to a refund can be in dispute and resolution of such disputes is governed by the Arkansas Tax Procedure Act. In the event that the parties disagree about how much is owed to a taxpayer, HB1732 is not clear whether the dispute would be resolved by the court through the normal garnishment process or through the Arkansas Tax Procedure Act. Further, once it is determined that a taxpayer has overpaid the state of Arkansas and is entitled to a refund, federal law is unclear whether that refund would be treated as the taxpayer's earnings. Federal law limits the amount that a plaintiff can garnish a defendant's earnings to 25% of a person's disposable earnings for a week.

Additionally, DFA administers the existing Income Tax set off program for certain debts owed to claimant agencies and the Internal Revenue Service under § 26-36-301, et seq. and would require additional training and staff to facilitate a new method of garnishing income tax refunds separate from the set off process that is already in place.