

Department of Finance and Administration

Legislative Impact Statement

Bill: HB1236

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 :

Sponsors: Rep. Womack and Sen. Crowell

HB1236 amends § 16-110-413 concerning garnishment against the state or a subdivision of the state to allow for Arkansas income tax refunds to be subject to garnishment by a judgment creditor.

Revenue Impact :

No net revenue impact, but the Department of Finance and Administration (DFA) will incur costs to implement and respond to a garnishment.

Taxpayer Impact :

An Arkansas income tax refund would be subject to garnishment for a taxpayer with an unsatisfied civil judgment.

Resources Required :

Currently, DFA employees one attorney who responds to writs of garnishment served on DFA due to a debt owed to a judgment creditor by an employee of DFA. DFA would require approximately five additional Attorney Specialists, two Legal Services Specialists, two Fiscal Support Analysts, and one Supervisor to respond to the writs of garnishment at an additional approximate salary cost of \$550,000. Programming changes within the Arkansas Integrated Revenue System (AIRS) system will be required at an estimated cost of \$64,000.

Time Required :

Six months will be needed for implementation by AIRS.

Procedural Changes :

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, with the exception of income tax refunds. Refunds for

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overpayment of state income tax are not currently subject to the garnishment process.

HB1236 would make a taxpayer's state income tax refund subject to the garnishment process. For a 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 Secretary of the Department of Finance and Administration (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 the defendant was entitled for overpayment of state income taxes. Once DFA has surrendered the amount of the defendant's overpayment to the plaintiff, or funds in an amount sufficient to satisfy the judgment, DFA would be discharged.

HB1236 would be difficult for DFA to administer for several reasons:

- The amount by which a taxpayer may be entitled to a refund can be in dispute. Resolution of those disputes is governed by the Arkansas Tax Procedure Act. If the parties disagree about how much is owed to a taxpayer, it is unclear whether the dispute would be resolved by the court through the normal garnishment process or through the Arkansas Tax Procedure Act;
- HB1236 is unclear at which point in time DFA would be considered to have monies belonging to the defendant in its possession;
- HB1236 is silent on whether the judgment creditor would be required to return the funds to DFA if the amount of the taxpayer's refund was adjusted;
- HB1236 is unclear as to the priority of the set-off program for debts owed to DFA, debts owed to claimant agencies, debts owed to the Internal Revenue Service (IRS), and debts owed to a judgment creditor;
- Federal law is unclear on the issue of whether the 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; and
- DFA administers the existing income tax set-off program for certain debts owed to claimant agencies and the IRS 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.