

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Amend the Garnishment Laws of the State

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 14 MRSA §3127-C is enacted to read:

§ 3127-C. Order for payment of tax refunds

1. Order. When it is shown upon ex parte motion and affidavit that the judgment debtor has either failed to timely make 2 or more payments required by an installment order under section 3126-A or when the judgment debtor has failed to appear, after having been subpoenaed for a hearing provided for in this chapter, the court may approve the service of an order to withhold and answer on the Treasurer of State for a judgment debtor's state income tax refund. The order must state the amount owed on the judgment debt, interest and costs. If the court has previously determined an installment payment amount under section 3126-A, the order must state that amount. The order must demand an answer under oath calculating the amount available from the judgment debtor's state income tax refund to satisfy the judgment debt. The order must be served on the Treasurer of State or the treasurer's designee and on the judgment debtor to the judgment debtor's last known address within 60 days of the date of the order. A form answer must be attached to the order when served on the Treasurer of State. The order may be served by a sheriff or other officer empowered to execute a process or by certified mail, return receipt requested.

2. Withhold and answer. The Treasurer of State or treasurer's designee served with the order shall calculate the maximum dollar amount of the judgment debtor's state income tax refund that may be applied to the debt under section 3126-A by using the form answer attached to the order. Within 20 days of service of the order, the Treasurer of State or treasurer's designee shall:

A. File the completed form answer with the court;

B. Serve copies of the answer on the judgment debtor and the judgment creditor in the manner provided in the Maine Rules of Civil Procedure, Rule 5; and

C. Withhold from the judgment debtor and pay to the judgment creditor the amount of the judgment debtor's state income tax refund that may be applied to the debt until the court orders otherwise or the debt is satisfied. The Treasurer of State or treasurer's designee may withhold the judgment debtor's state income tax refund for consecutive years until the debt is satisfied.

3. Hearing on motion. Within 20 days of the service of the answer of the Treasurer of State or treasurer's designee, the judgment debtor or the judgment creditor may request by motion a hearing to determine what amount, if any, of the judgment debtor's state income tax refund should be ordered payable by the Treasurer of State or treasurer's designee to the judgment creditor. If a hearing is held pursuant to this subsection, the court must issue an order to the Treasurer of State or treasurer's designee to hold the judgment debtor's state income tax refund in escrow pending the court's decision at the hearing. The motion must be served on the Treasurer of State or treasurer's designee as well as the other party. After

the hearing, if the court is satisfied as to the existence and amount of the judgment debtor's tax refund by the Treasurer of State or treasurer's designee, it may issue an order to the Treasurer of State or treasurer's designee to withhold an amount, subject to the requirements of section 3126-A, from the tax refund of the judgment debtor and pay the amount to the judgment creditor. If the court fails to find an applicable tax refund, it may terminate the withholding required under subsection 2. If the court terminates withholding or reduces the amount withheld, the court may order appropriate reimbursement of the judgment debtor by either the Treasurer of State or the judgment creditor.

4. Withholding charge. The Treasurer of State or treasurer's designee subject to an order under this section may charge a fee for the necessary costs of administering the withholding of a state income tax refund pursuant to this section. This fee must be deducted from the state income tax refund withheld prior to its remittance to the judgment creditor.

5. Enlargement of time limits. The time limits in this section may be enlarged as provided in the Maine Rules of Civil Procedure, Rule 6.

SUMMARY

This bill establishes a process for the garnishment of state income tax refunds for the satisfaction of money judgments.