

TITLE 5. SPECIAL PROCEEDINGS

Chapter 5.10

GARNISHMENT

Sections:

5.10.1	Title.
5.10.2	Authorization.
5.10.3	Purposes.
5.10.4	Definitions.
5.10.5	No Waiver of Sovereign Immunity.
5.10.6	Distribution – No Right to Compel.
5.10.7	Procedures Regarding Payment of Distribution.
5.10.8	Permitted Claims.
5.10.9	Distributions Subject to Garnishment.
5.10.10	Garnishment Procedures.
5.10.11	Tribe as a Real Party in Interest.
5.10.12	Jurisdiction of Tribal Court.
5.10.13	Enforceable Judgments.
5.10.14	Amendments.
5.10.15	Severability.
5.10.16	Effective Date.

5.10.1. Title. This chapter shall be known as the “Suquamish Garnishment Ordinance.” (Res. 2012-085, passed Jul. 30, 2012)

5.10.2. Authorization. This chapter, governing the procedures related to distributions and garnishments, is authorized by Article III (f) and (i) of the Constitution and Bylaws of the Suquamish Tribe of the Port Madison Reservation. (Res. 2012-085, passed Jul. 30, 2012)

5.10.3. Purposes. This chapter establishes the policy and rules for garnishments of tribal member distributions and/or earnings. (Res. 2012-085, passed Jul. 30, 2012)

5.10.4. Definitions. For the purposes of this chapter, the following meanings are used.

(a) “Days” means calendar days. For purposes of computing the time period, exclude the day of the event that triggers the time period; count every day including Saturdays, Sundays, and legal holidays; and include the last day of the time period. However, if the last day of the time period is a Saturday, Sunday, or legal holiday, the time period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(b) "Distribution" means a distribution made by the Suquamish Tribe to all tribal members eighteen (18) years of age and older on an equal basis and does not include monthly payments made to elders or payments for other general welfare purposes.

(c) "Distribution date" means the specific date declared by the Suquamish Tribal Council as the date for an eligible distribution.

(d) "Effective date" means the date of enactment of this ordinance by the Suquamish Tribal Council.

(e) "Eligible distribution" means the distribution authorized by the Tribal Council pursuant to Suquamish Tribal Code (STC) §5.10.6.

(f) "Eligible member" means an enrolled member of the Suquamish Tribe, age eighteen (18) years or older on the distribution date.

(g) "Finance director" means the person in the position of finance director or if that position is currently vacant, the person designated by the executive director to fulfill the duties of the finance director temporarily.

(h) "Garnishment" means the administrative and judicial process set forth in STC Chapter 9.6, Child Support, and the judicial process set forth in this chapter pursuant to which the Suquamish Tribal Court may enter an order of garnishment authorizing the Tribe to attach earnings and eligible distributions for payment of a permitted claim.

(i) "Judgment" means any final judgment, decree, or order awarding damages, money, or restitution and/or imposing costs, fees, fines, or penalties.

(j) "Judgment creditor" means an individual or an agency of the Tribe who has sought and obtained a judgment for a permitted claim against a judgment debtor.

(k) "Judgment debtor" means a tribal member against whom a judgment for a permitted claim has been rendered and which remains unsatisfied.

(l) "Permitted claim" means those claims described in STC §5.10.8.

(m) "Tribal Council" means the Suquamish Tribal Council established pursuant to the Constitution and Bylaws of the Suquamish Tribe.

(n) "Tribal Court" means the Suquamish Tribal Court.

(o) "Tribe" means the Suquamish Indian Tribe of the Port Madison Reservation and any of its agencies, including but not limited to Port Madison Enterprises and PME Construction Company.

(p) “Voluntary agreement” means a written agreement of a debtor which authorizes the Tribe to withhold a specified amount from a debtor’s future earnings or eligible distributions on a voluntary basis. (Res. 2012-085, passed Jul. 30, 2012)

5.10.5. No Waiver of Sovereign Immunity. Nothing in this chapter shall be construed to provide a waiver of the sovereign immunity of the Tribe, its agencies, or any of its governmental officers, representatives, employees, or agents. (Res. 2012-085, passed Jul. 30, 2012)

5.10.6. Distribution – No Right to Compel. Distributions shall be made only when and as determined or declared through the budget resolution enacted by the Tribal Council out of assets and earnings of the Tribe but not from revenues from gaming unless and until the Bureau of Indian Affairs approves a Gaming Revenue Allocation Plan providing for gaming per capita distributions. Such assets and earnings shall retain their character as property of the Tribe until payment of a distribution is actually made therefrom. No tribal member or any person claiming any right derived from a tribal member, including judgment creditors, shall be entitled to compel the making of any distribution. The timing and amount of any distribution at all times prior to the actual distribution shall be subject to elimination or modification by subsequent action of the Tribal Council. No tribal member nor any person claiming any right derived from a tribal member, including judgment creditors, shall have any right, title, interest, or entitlement to any distribution unless and until the actual payment of a distribution to which it relates occurs. Any right, title, interest, or entitlement accruing at payment is subject to STC §5.10.7. (Res. 2012-085, passed Jul. 30, 2012)

5.10.7. Procedures Regarding Payment of Distribution. Ten (10) days prior to the date declared by Tribal Council as the distribution date, the enrollment office will prepare a list of eligible members and submit same to the finance department. Specific payment procedures apply to the following circumstances.

(a) **Eligible Member under Legal Guardianship.** If an eligible member has been determined by a court of competent jurisdiction to be an adult needing assistance with his or her affairs and for whom the court has appointed a legal guardian, the distribution shall be paid to the eligible member in care of the legal guardian. Guardians are encouraged to submit the declaration of guardianship or similar document to the finance department as soon after the appointment of the guardian as is practical.

(b) **Members who Relinquish Membership.** Upon receipt of a voluntary relinquishment request in accordance with Suquamish Tribal Code (STC) §1.1.10(a), the enrollment office will immediately notify the finance department that the member is in the process of relinquishing enrollment in the Suquamish Tribe. The finance department will hold all eligible distributions until such time as the enrollment office notifies the finance department that the individual has withdrawn his or her request for relinquishment or that the individual has formally relinquished membership. If the request is withdrawn, any eligible distributions held for the individual will be released.

Upon notice that the individual has formally relinquished, funds held in the name of the individual will be returned to the Tribe's membership distribution fund.

(c) **Members Subject to Disenrollment.** Upon an initial determination by the enrollment office that an individual enrolled in the Suquamish Tribe may also be enrolled in another federally-recognized tribe or may have been erroneously enrolled in the Suquamish Tribe, the enrollment office will notify the finance department that such individual may not be an eligible member. The finance department will hold all eligible distributions until such time as the finance department is notified that the individual has been disenrolled or a determination by the Tribal Council has been made to affirm enrollment in accordance with STC §1.1.10. If the individual is disenrolled, the funds held in the name of the individual will be returned to the Tribe's membership distribution fund. Upon receipt of a tribal resolution affirming enrollment, all eligible distributions held for the individual will be released.

(d) **Former Member's Repayment Obligation.** If a member is enrolled in more than one tribe at the time of any eligible distribution, upon relinquishment in accordance with STC §1.1.10(a) or upon disenrollment in accordance with STC §1.1.10(b)-(c), the former member will receive notice that all distributions received prior to relinquishment or disenrollment must be paid back to the Tribe. Any department of the Tribe may pursue a judgment against the former member as a third party in interest.

(e) **Death of Eligible Member.** If an eligible member dies any time within ninety (90) days before the distribution date or on the distribution date, the distribution becomes part of the decedent's estate, subject to probate in Tribal Court or any other court of competent jurisdiction. (Res. 2012-085, passed Jul. 30, 2012; cross references to chapter 1.1 updated Oct. 3, 2016)

5.10.8. Permitted Claims. (a) The following claims may be recognized and enforced by the Tribe through garnishment of earnings and/or eligible distributions:

(1) Child support payments ordered by the Tribal Court, the Suquamish Child Support Enforcement Office, and the Suquamish Child Support Administrative Hearings Office, including foreign orders registered with the Suquamish Child Support Enforcement Office and the Suquamish Child Support Administrative Hearings Office; and

(2) Any debt owed the Tribe which is either established by a judgment of the Tribal Court or is made by written statement of the tribal member agreeing that earnings and eligible distributions shall be withheld upon any delinquency, default, or other similar event, or by voluntary agreement.

(b) The following claims may be recognized and enforced by the Tribe through garnishment of eligible distributions only:

(1) Tribal member against tribal member judgment issued by the Tribal Court;

(2) Fines issued for violations of STC Chapter 14.1, Fishing, or Chapter 14.3, Hunting; and

(3) Unpaid fish taxes under STC Chapter 12.1, Fishing Tax. (Res. 2012-085, passed Jul. 30, 2012)

5.10.9. Distributions Subject to Garnishment. Unless amended by subsequent action of the Tribal Council, three-fourths (3/4) of each eligible distribution is subject to garnishment under this chapter or through the administrative process under STC Chapter 9.6. Up to one hundred percent (100%) of each eligible distribution is subject to garnishment by voluntary agreement. (Res. 2012-085, passed Jul. 30, 2012)

5.10.10. Garnishment Procedures. (a) **Administrative Order of Garnishment.** An administration order of garnishment issued by the Suquamish Child Support Enforcement Office or the Suquamish Child Support Administrative Hearings Office and filed with the Tribe's finance department shall authorize the Tribe's finance department to withhold eligible distributions in the same manner prescribed by STC Chapter 9.6 for withholding income and wages.

(b) **Judicial Petition for Order of Garnishment.**

(1) Except for a judicial order of child support entered pursuant to and governed by STC Chapter 9.6, if a judgment has been entered by the Tribal Court and a tribal member has failed to pay the total amount of judgment outstanding within thirty (30) calendar days of either the recognition or entry of judgment by the Tribal Court, the judgment creditor may petition the Tribal Court for an order of garnishment to withhold earnings and/or distributions of the tribal member against whom a judgment has been entered.

(2) The judicial petition for order of garnishment shall:

(A) Be entitled "Petition for Order of Garnishment;"

(B) Identify the judgment creditor as the "petitioner;"

(C) Identify the judgment debtor as the "respondent;"

(D) State the address of the "respondent;"

(E) State the date of the judgment, the amount of the judgment, and any post-judgment interest accrued to date; post-judgment payments made to date; and the total amount of judgment outstanding;

(F) Request that the Tribal Court enter an order of garnishment authorizing the finance director to redirect respondent's earnings and/or eligible distributions up to the amount allowed by tribal law to satisfy the total amount of judgment outstanding until paid in full; and

(G) Contain a signed and dated declaration that the statements contained in the petition are true to the best of the petitioner's information, knowledge, and belief.

(3) A copy of the judgment and proof of post-judgment costs shall be attached to the petition for order of garnishment.

(c) Order of Garnishment.

(1) If a petition for order of garnishment pursuant to STC §5.10.10(b) is filed, the Tribal Court shall issue an order of garnishment against the respondent's earnings and/or eligible distributions. With respect to earnings, the order of garnishment shall apply to all earnings which the respondent is due to receive following fourteen (14) days of the date the order of garnishment is served upon the respondent and the finance director. With respect to eligible distributions, the order of garnishment will be effective if served upon the respondent and the finance director at least twenty-one (21) days prior to the scheduled date of the eligible distribution.

(2) The order of garnishment shall:

(A) State the name of the respondent;

(B) State the address of the respondent;

(C) State the total amount of judgment outstanding;

(D) State the rate of interest applicable to the judgment;

(E) State that the total amount of judgment outstanding shall continue to accrue interest at the interest rate applicable to the judgment until the judgment is paid in full;

(F) Authorize the finance director to redirect the respondent's earnings and/or eligible distributions to satisfy the total amount of judgment outstanding until paid in full; and

(G) Inform the respondent that he or she has fourteen (14) days after the order of garnishment is served to file an objection to order of garnishment with the Tribal Court and that failure to do so will result in the

finance director redirecting his or her earnings and/or eligible distributions to satisfy the total amount of judgment outstanding until paid in full.

(3) Immediately upon issuance of the order of garnishment, the petitioner shall cause the order of garnishment and a copy of the petition for an order of garnishment to be served upon the respondent and the finance director by either personal service by an officer of the Suquamish Tribal Police Department; by the court clerk sending the order of garnishment and petition for garnishment to the respondent by certified mail, return receipt requested; or by publication at least one (1) time in any tribally published newspaper of general circulation to tribal members.

(4) Proof of service shall be maintained as part of each case file. When the respondent has been served personally, an affidavit of service shall be returned to the court clerk and filed in the court records. When service is obtained by mail, the return receipt shall be made a part of the court record. When service is made by publication, the published order and petition for an order shall be made a part of the court record.

(d) Objection to Order of Garnishment.

(1) A respondent's objection challenging an order of garnishment shall be filed with a request for a hearing within fourteen (14) calendar days of the date of service of the order upon the respondent.

(2) An objection to an order of garnishment shall not contest the validity of the judgment and shall only be based on one of the following:

(A) The garnishment was not properly issued or is otherwise invalid; or

(B) The total amount of the obligation has been paid in full.

(3) The Tribal Court shall hold a hearing on the objection to the order of garnishment within twenty-one (21) days of the date of the filing of the objection.

(4) The respondent shall cause the objection to the order of garnishment and the notice of hearing to be served on the petitioner and the finance director by either personal service by an officer of the Suquamish Tribal Police Department or by the court clerk sending the objection to the order of garnishment and notice of hearing to the petitioner by certified mail, return receipt requested.

(5) Proof of service shall be maintained as part of each case file. When the petitioner and the finance director have been served personally, an affidavit of service shall be returned to the court clerk and filed in the court records.

When service is obtained by mail, the return receipt shall be made a part of the court record.

(e) Withholding of Eligible Distributions.

(1) Beginning the twenty-first (21st) day from the date of service of the order of garnishment, the finance director shall redirect up to three-fourths (3/4) of the respondent's eligible distribution to satisfy the total amount of judgment outstanding and all post-petition interest until paid in full unless:

(A) The respondent timely filed an objection to the order of garnishment; or

(B) The respondent's eligible distribution is subject to garnishment of a higher priority which has not been satisfied.

(2) If a timely objection has been filed and properly served, the finance director shall place up to three-fourths (3/4) of the eligible distribution in escrow until further order of the Tribal Court is served.

(3) The finance director shall make a report to the Tribal Court within fifteen (15) days of the date of the eligible distribution stating the date and amount withheld and the remaining balance of the judgment outstanding.

(4) The respondent is responsible for advising the Tribal Court of any and all payments made by respondent to satisfy the permitted claim using funds other than the garnished distributions.

(f) Priority of Garnishment.

(1) Orders of garnishment for child support authorized by STC Chapter 9.6, Child Support, shall be superior to all other orders of garnishment, regardless of the priority of receipt.

(2) All other orders of garnishment shall be paid according to the order in which they are received by the finance director. (Res. 2012-085, passed Jul. 30, 2012; amended by Res. 2012-126, passed Oct. 8, 2012)

5.10.11. Tribe as a Real Party in Interest. It shall be appropriate for any department of the tribal government to file a complaint on behalf of the real party in interest when such party is the Suquamish Tribe in order to collect on a debt or seek enforcement of a contractual obligation owed for a permitted claim. (Res. 2012-085, passed Jul. 30, 2012)

5.10.12. Jurisdiction of Tribal Court. The Tribal Court shall have original subject matter jurisdiction over all judicial proceedings arising under this chapter. The Suquamish Child

Support Enforcement Office and the Suquamish Child Support Administrative Hearings Office shall have original jurisdiction over all administrative proceedings arising under this chapter for child support obligations enforced pursuant to STC §9.6.27. (Res. 2012-085, passed Jul. 30, 2012)

5.10.13. Enforceable Judgments. The Tribal Court shall have jurisdiction to recognize and enforce or to refuse to recognize and enforce the judgments of any foreign court. (Res. 2012-085, passed Jul. 30, 2012)

5.10.14. Amendments. All provisions of this chapter are subject to subsequent amendment by the Suquamish Tribal Council. (Res. 2012-085, passed Jul. 30, 2012)

5.10.15. Severability. If any phrase, clause, part, sentence, provision, or section of this chapter is found to be invalid by a court of competent jurisdiction, the remainder of this chapter shall not be affected and shall remain in full force and effect and continue in effect as if the invalid provision(s) were not part hereof. (Res. 2012-085, passed Jul. 30, 2012)

5.10.16. Effective Date. This chapter became effective on adoption on July 30, 2012, by the Suquamish Tribal Council in accordance with the provisions of the Constitution and Bylaws of the Suquamish Tribe. (Res. 2012-085, passed Jul. 30, 2012)