

TITLE 5. SPECIAL PROCEEDINGS

Chapter 5.10

GARNISHMENT

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5.10.1. Title. This chapter is 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 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, 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, and the administrative process set forth in this chapter authorizing the Tribe to attach wages, contract earnings, and eligible distributions.

(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; amended by Res. 2019-179, passed Sep. 16, 2019)

5.10.5. No Waiver of Sovereign Immunity. Nothing in this chapter will 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 may 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 will 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, is entitled to compel the making of any distribution. The timing and amount of any distribution at all times prior to the actual distribution is 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, will 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 must 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) §1.1.8(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/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 §1.1.8. 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 §1.1.8(a) or upon disenrollment in accordance with STC §1.1.8(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)

5.10.8. Permitted Claims. (a) The following claims may be recognized and enforced by the Tribe through garnishment of wages, contract 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 will be withheld upon any delinquency, default, or other similar event, or by voluntary agreement; and

(3) Tribal governmental garnishments pursuant to STC §5.10.11.

(b) The following claims may be recognized and enforced by the Tribe through garnishment of wages, contract earnings, and/or eligible distributions:

(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;

(3) Unpaid fish taxes under STC Chapter 12.1, Fishing Tax; and

(4) Any other debts owed to the Tribe. (Res. 2012-085, passed Jul. 30, 2012; amended by Res. 2019-179, passed Sep. 16, 2019)

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 administrative 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 will 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 will:

(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 must 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 will issue an order of garnishment against the respondent's earnings and/or eligible distributions. With respect to earnings, the order of garnishment will apply to all earnings which the respondent is due to receive following ~~fourteen (14)~~ fifteen (15) 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)~~ fifteen (15) days prior to the scheduled date of the eligible distribution.

(2) The order of garnishment will:

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

(d) Objection to Order of Garnishment.

(1) A respondent's objection challenging an order of garnishment will 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 will not contest the validity of the judgment and will 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 will 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 will 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 will be maintained as part of each case file. When the petitioner and the finance director have been served personally, an affidavit of service will be returned to the court clerk and filed in the court records. When service is obtained by mail, the return receipt will be made a part of the court record.

(e) Withholding of Eligible Distributions.

(1) Beginning the ~~twenty-first (21st)~~ fifteenth (15th) day from the date ~~the~~ of service of the order of garnishment, the finance director will 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 will 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 will 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 the 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, will be superior to all other orders of garnishment, regardless of the priority of receipt.

(2) Other Suquamish tribal government garnishments will have next priority.

(3) All other orders of garnishment will be paid according to the order in which they are received by the finance director.

(4) Any other voluntary assignment of distributions or earnings by individuals will have final priority and will always be limited to distributions or earnings that are not subject to a court or administrative ordered garnishment.

(g) The Tribe, its agencies, and enterprises will honor Suquamish Tribal Court garnishment orders.

(h) The Tribe, its agencies, and enterprises will honor any foreign wage garnishment order, so long as it has been domesticated in Suquamish Tribal Court. (Res. 2012-085, passed Jul. 30, 2012; amended by Res. 2012-126, passed Oct. 8, 2012; amended by Res. 2019-179, passed Sep. 16, 2019)

5.10.11. Tribal Government Garnishment. The Tribe, its agencies, court administrator, and enterprises may instigate administrative garnishment proceedings on eligible distributions, earnings from tribal wages, and/or tribal contracts, through the following procedures:

(a) For eligible distributions ~~not more than sixty (60) and no fewer than forty five (45) calendar days prior to an eligible distribution~~, the finance department, at the request of the tribal program, agency, court administrator, or enterprise to whom a person is indebted, will cause a notice to be sent out to the debtor which will be substantially in the following form:

“Suquamish Tribe records show that you owe the (*name of tribal agency/court/enterprise*) the sum of \$___ as of (*date*). Unless this debt is paid in full, immediately, it up to three-fourths (3/4) of your next distribution payment scheduled more than fifteen (15) calendar days after the date of this notice will be withheld ~~from your next distribution payment~~. The amount withheld will then be credited towards your debt. Withholding will continue indefinitely for each subsequent distribution payment until the amount due is paid in full. If you believe the amount of the debt shown is incorrect or if you have any other reason to question the debt, you must file an action in Tribal Court to contest this matter within fifteen (15) calendar days after the date of this notice. If you do not bring such an action, the amount of the debt will be withheld from your distribution.”

(b) For wages, salaries, and stipends, no less than fifteen (15) calendar days before wage, salary, and stipend checks are distributed, the finance department, at the request of the tribal program, agency, court administrator, or enterprise to whom a person is indebted will cause notice to be sent out to the debtor which will be substantially in the following form:

“Suquamish Tribe records show that you owe the (*name of tribal agency/court/enterprise*) the sum of \$___ as of (*date*). Unless this amount is paid in full immediately, (1) the amount agreed to in the attached writing, or (2) the amount of the debt, or 25% of your gross salary, wages, or payment, whichever is less, will be deducted from your next paycheck and all subsequent

paychecks until your debt is repaid. The amount withheld will then be credited towards your debt. If you believe the amount of the debt shown is incorrect or if you have any other reason to question the debt, you must file an action in Tribal Court within fifteen (15) calendar days of the date of this notice. If you do not bring such an action, the amount specified above will be withheld from your next paycheck.”

(c) For money earned through a contract with the Tribe, its agencies, and enterprises, no less than fifteen (15) days before payment pursuant to the contract is distributed the finance department, at the request of indebted tribal program, agency, court administrator, or enterprise will cause notice to be sent out to the debtor which will be substantially in the following form:

“Suquamish Tribe records show that you owe the (*name of tribal agency/court/enterprise*) the sum of \$___ as of (*date*). Unless this amount is paid in full immediately, the amount of the debt will be deducted from any payment under your contract with the Tribe. The amount withheld will then be credited towards your debt. If you believe the amount of the debt shown is incorrect or if you have any other reason to question the debt, you must file an action in Tribal Court within fifteen (15) days of the date of this notice. If you do not bring such an action, the amount specified above will be withheld from payment under your contract with the Tribe.”

(d) If an action is commenced in Tribal Court within the time period set out in the notice in §§ 5.10.11(a), (b), and/or (c), the Tribal Court must hold a hearing within twenty one (21) calendar days after the filing of the action to determine whether the debtor has shown by a preponderance of evidence that the garnishment is not justified. The decision of the Tribal Court will be final. In the event a Tribal Court action is filed, the alleged amount of the debt will be held in escrow until the Court resolves the matter.

(e) The finance director or designee will withhold from the next payment the proper amount as determined in accordance with the above notice. The finance director or designee has the duty of notifying the respective Tribal agencies and/or enterprises of the matching amount to be credited to each debtor after the funds are withheld from payment. The finance director or designee will then cause all withheld funds to be credited to the respective Tribal agencies and/or enterprises.

(f) All notices required by §5.10.11 must be served via certified and regular mail, and will be considered received three (3) days after mailing.

(g) Independent of the rights herein, for any debt or monetary obligation due and owing by a tribal member to a Tribal Program or enterprise and evidenced by a written agreement signed by the tribal member whereby the tribal member agrees the debt or monetary obligation to the Tribal Program or enterprise may be recovered from his or her distribution payment(s), the Tribal Program or enterprise will have a perfected lien and security interest attaching to all future distribution payments, if any, to which such

member may be entitled. (Res. 2012-085, passed Jul. 30, 2012; amended by Res. 2019-179, passed Sep. 16, 2019)

5.10.12. Jurisdiction of Tribal Court. The Tribal Court has 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 will 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 has 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 will not be affected and will 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)