

Civil procedure; garnishment and attachment; department of treasury to acknowledge receipt of writ of garnishment, and disclose to plaintiff that a tax return has been filed by the defendant; require.

CIVIL PROCEDURE: Garnishment and attachment; INCOME TAX: Other; INCOME TAX: Refunds; STATE AGENCIES (EXISTING): Treasury

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
by amending sections 4061 and 4061a (MCL 600.4061 and 600.4061a),
section 4061 as amended and section 4061a as added by 1994 PA
346.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4061. (1) ~~A plaintiff shall serve garnishment process~~
2 ~~issued from a court in Michigan against the state of Michigan~~
3 ~~upon the state treasurer or other state employee designated by~~
4 ~~the state treasurer to receive garnishment process.~~ The state
5 treasurer shall designate as many employees as he or she consid-
6 ers necessary to receive WRITS OF garnishment ~~process~~ ISSUED
7 AGAINST THIS STATE BY COURTS IN THIS STATE, at least 2 of whom
8 shall have offices in Lansing. ~~-(2)-~~ The state treasurer shall
9 designate the employees ~~under subsection (1)~~ in writing and

1 maintain a copy of the written designation in the state
2 treasurer's office. If the state treasurer revokes the designa-
3 tion, the revocation shall be made in the same manner as the
4 designation. If a designated employee ceases to be employed by
5 the state treasurer to receive ~~process under subsection (1)~~
6 WRITS OF GARNISHMENT, the designation of that person is revoked
7 immediately upon termination of his or her employment.

8 (2) ~~-(3)-~~ In a garnishment proceeding in which ~~the~~ THIS
9 state is the garnishee, a plaintiff shall do all of the
10 following:

11 (a) Serve upon the state treasurer or ~~designated~~ employee
12 DESIGNATED UNDER SUBSECTION (1) a writ of garnishment that
13 includes a verified statement signed by the plaintiff, or his or
14 her attorney or agent, identifying the full amount, including
15 interest and taxed costs, claimed by the plaintiff to be due upon
16 the judgment against the defendant.

17 (b) At the time of service of the writ of garnishment, pay
18 to the state treasurer or designated employee a fee of \$6.00.

19 (c) Within 7 days after service of the writ of garnishment
20 on the state treasurer or designated employee, do both of the
21 following:

22 (i) If the writ of garnishment is for a state tax refund or
23 credit, serve a copy of the writ of garnishment upon the
24 defendant in the manner prescribed by the Michigan court rules.

25 (ii) Serve upon the state treasurer any discovery request
26 THAT THE PLAINTIFF HAS for information related to the garnishment

1 proceeding that ~~may be~~ IS in the possession of the department
2 of treasury.

3 (3) ~~-(4)-~~ After receiving a discovery request ~~pursuant to~~
4 UNDER subsection ~~-(3)-(c)-~~ (2), the state treasurer shall provide
5 only that information in the possession of the department of
6 treasury that is not ~~otherwise~~ exempted by law from
7 disclosure. The plaintiff shall pay to the state treasurer the
8 reasonable costs incurred by the state treasurer in providing the
9 requested information.

10 (4) ~~-(5)-~~ After receiving service of a writ of garnishment
11 as provided in subsection ~~-(3)-~~ (2), the state treasurer or
12 ~~designated~~ employee DESIGNATED UNDER SUBSECTION (1) shall do 1
13 of the following:

14 (a) If the writ is not for the garnishment of a state tax
15 refund or credit, respond in the manner prescribed for garnish-
16 ment ~~procedures~~ PROCEEDINGS under the Michigan court rules.

17 (b) If the writ is for garnishment of a state tax refund,
18 SEND A WRITTEN ACKNOWLEDGMENT OF RECEIPT OF THE WRIT TO THE
19 PLAINTIFF AND respond in the manner prescribed by section 4061a.

20 Sec. 4061a. (1) The state treasurer shall intercept a state
21 tax refund or credit that is subject to a writ of garnishment
22 served upon the state treasurer pursuant to section 4061. Upon
23 intercepting a state tax refund or credit pursuant to a writ of
24 garnishment, the state treasurer shall do all of the following:

25 (a) Calculate the amount available from the interception to
26 ~~satisfy all or part of~~ BE APPLIED TO the garnishment ~~—~~, and,
27 within 90 days after ~~establishing~~ IDENTIFYING other liability

1 for which the state tax refund or credit may be applied under
2 section 30a of ~~Act No. 122 of the Public Acts of 1941, being~~
3 ~~section 205.30a of the Michigan Compiled Laws~~ 1941 PA 122, MCL
4 205.30A, do both of the following:

5 (i) File with the court a verified disclosure that identi-
6 fies the intercepted amount ~~—, less~~ AND THE AMOUNT OF any
7 setoff, counterclaim, or other demand of ~~the~~ THIS state against
8 the defendant. THE DISCLOSURE NEED NOT BE MADE UNDER OATH.

9 (ii) Serve upon the plaintiff and defendant a copy of the
10 disclosure described in subparagraph (i).

11 (b) Unless notified by the court that objections to the writ
12 of garnishment have been filed, deposit the amount available for
13 the garnishment with either of the following pursuant to the
14 terms of the writ not less than 28 days after filing the disclo-
15 sure ~~pursuant to~~ UNDER subdivision (a):

16 (i) The clerk of the court.

17 (ii) The plaintiff's attorney of record in the garnishment
18 action ~~—~~ or, if the plaintiff is not represented by counsel,
19 the plaintiff or the plaintiff's designee.

20 (2) Objections to ~~the~~ A writ of garnishment of a tax
21 refund shall be filed with the court within 14 days after the
22 date of service of the disclosure on the defendant.

23 (3) If an interception of a state tax refund or credit does
24 not occur before October 31 of the year during which a writ of
25 garnishment for a state tax refund or credit is to be processed,
26 both of the following apply:

1 (a) The state treasurer is not required to provide A
2 DISCLOSURE to the defendant or file A DISCLOSURE with the court.
3 ~~a disclosure.~~

4 (b) ~~The~~ EXCEPT AS PROVIDED IN SUBSECTION (4), THE state
5 treasurer is not required to provide A DISCLOSURE to the plain-
6 tiff ~~a disclosure~~ unless the plaintiff ~~provides~~ GIVES the
7 state treasurer ~~with~~ a written request for a disclosure between
8 November 1 and December 31 of the ~~tax~~ year. ~~following the tax~~
9 ~~year for which a writ of garnishment of a state tax refund or~~
10 ~~credit was filed.~~

11 (4) ~~A disclosure described in subsection (1) is not~~
12 ~~required to be made under oath.~~ IF A TAX RETURN IS FILED BY OR
13 ON BEHALF OF A DEFENDANT WHOSE STATE TAX REFUND OR CREDIT IS THE
14 SUBJECT OF A WRIT OF GARNISHMENT UNDER THIS SECTION BUT A STATE
15 TAX REFUND OR CREDIT OF THE DEFENDANT IS NOT INTERCEPTED, THE
16 STATE TREASURER SHALL DISCLOSE THAT TO THE PLAINTIFF.

17 (5) ~~The~~ THIS state's liability to the plaintiff under a
18 writ of garnishment issued under this section is limited to the
19 amount of the tax refund or credit due to the defendant for the
20 period the writ is in effect, less any setoff, counterclaim, or
21 other demand of ~~the~~ THIS state against the defendant. As used
22 in this subsection, "state" includes the state treasurer.

23 (6) If all or a portion of an intercepted state tax refund
24 or credit is deposited with the clerk of the court under subsec-
25 tion (1), the court shall convey the deposited amount to the
26 plaintiff's attorney of record in the garnishment action or, if
27 the plaintiff is not represented by counsel, to the plaintiff.

1 (7) Michigan court rules that do not conflict with this
2 section or section 4061 govern a garnishment PROCEEDING in which
3 ~~the~~ THIS state is a garnishee.

4 (8) As used in this section, "state treasurer" includes an
5 employee designated by the state treasurer to act on his or her
6 behalf.