

Ordinance Number 13.300. Amended by Resolution No. 99-407, dated December 28, 1999; Resolution No. 2005-361, dated September 16, 2005.

Original Date: January 16, 1993, Reso. No. 93-056
Subject: Garnishment Ordinance

SILETZ TRIBAL GARNISHMENT ORDINANCE

Siletz Tribal Code § 13.300

INTRODUCTION

PART I

§ 13.300 JURISDICTION

(a) This ordinance covers the garnishment of assets belonging to the Siletz Tribe or its members, or the assets of any person or legal entity doing business, or having assets, on the Reservation, or in the Tribal Service Area as defined by federal regulation

(b) The jurisdiction of the Siletz Indian Tribe to enforce and issue writs of garnishment shall be concurrent with the jurisdiction of the State of Oregon and the United States; except that no writ of garnishment issued under state law shall be enforced against the Siletz Indian Tribe unless the Tribe agrees to accept the writ under the procedure described in sections 13.303 thru 13.308.

§ 13.301 WRIT OF GARNISHMENT DESCRIBED

The Siletz Tribal Garnishment Ordinance establishes the procedure for collection of a

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debt. A judgment must first be obtained in a court, Tribal or off-reservation, against the person who owes the debt. With the judgment, the court can be petitioned for a writ of garnishment to obtain payment of the debt by seizing funds belonging to the person owing the debt. The funds must be held by a third person in order to garnish them; for example, money can be garnished from a savings or checking account at a bank, or wages earned and not yet paid by an employer, or money owed by a friend. Once a writ is issued, it can be served on the third party who holds the funds and the third party is required to give the funds to the person who asked for the writ. A writ of garnishment cannot be used for real property, for example, land and buildings, or for funds held by the person owing the debt; in those situations a writ of attachment must be obtained and the sheriff directed to seize the property.

§ 13.302 DEFINITIONS

(a) Person - Any individual, corporation, partnership, estate¹ trust, etc. residing, doing business or owning assets located, on the Reservation or within the Tribal Service Area, which may legally incur debt and against whom payment of a debt is sought, or which has in its possession the assets belonging to another.

(b) Reservation -

(1) For non tribal defendants: Any real property belonging to the Siletz Tribe of Indians or its members or any real property located within the geographic boundaries of; the tract of land described in the Siletz

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Reservation Act, or any real property granted to the Tribe by subsequent acts of Congress.

(2) For Tribal defendants: The Tribal Service Area is defined by Federal Regulation and in addition, the area described in subpart (1) above.

(c) Day - For the purpose of notice and due dates, the term "day" shall mean normal business days, excluding weekends and holidays.

(d) Evidence - Any form of testimony or physical representation which conforms to the rules of evidence of the Tribal Court and is offered for the purpose of establishing a fact supporting resolution of any issue related to the matter being tried in the Tribal Court.

(e) Execution - The enforcement of a writ of garnishment in accordance with the terms of the writ and in conformance with any applicable provisions of the Tribal Code.

(f) Tribe- The Confederated Tribes of the Siletz Indians of Oregon, and its governing body.

(g) Registration- To mark a writ of garnishment with the seal of the Tribal Court and to make a notation that the writ conforms to Tribal Law.

NON TRIBAL WRITS OF GARNISHMENT

PART II

§ 13.303 WRIT OF GARNISHMENT SERVED ON SILETZ TRIBE

(a) Upon receipt in the tribal offices of a writ of garnishment issued not by the Siletz

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Tribal Court but by a federal court, federal agency, state, county, parish, or municipal court, or attorney, or other entity legally empowered to issue writs of garnishment, the writ shall be delivered to the Clerk of Court for the Siletz Tribal Court for registration. The writ shall be examined by the Clerk of Court to determine if the debt is based on federal law or state law.

(b) If the debt for which payment is being sought is based on federal law, and is not a debt based on state law and being enforced by a federal court sitting in diversity or supplemental jurisdiction, the Clerk of Court shall issue an order on behalf of the Tribal Court directing the proper Tribal official to enforce the writ.

(c) If the debt for which payment is being sought is based on state law instead of federal statute, regulation or executive order, the writ shall be subject to the provisions of sections 13.304 thru 13.308 of this chapter.

§ 13.304 STATE WRIT OF GARNISHMENT NOTICE

(a) Upon receipt by the Tribal Court of a writ of garnishment served on the Siletz Tribe, the Clerk of Court shall give notice of the writ to the person against whom payment of a debt is being sought. The notice shall contain a copy of the writ and state:

- (1) The name of the entity issuing the writ, the name of the person seeking payment of the debt, the date the writ was issued and the title of the action from which judgment was entered.
- (2) The writ shall be enforced by the Tribal Court within fourteen days of

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when the notice was issued.

- (3) The person against whom payment of a debt is being sought shall have the right to a hearing in Tribal Court regardless of whether the writ is already in force or not.
- (4) The person against whom payment of a debt is being sought must petition the Tribal Court to request a hearing on the writ.

§ 13.305 STATE WRIT OF GARNISHMENT: PETITION FOR HEARING

(a) Any person against whom payment of a debt is sought by issuance of a writ of garnishment against the Tribe shall be entitled to a hearing in Tribal Court.

(b) The person requesting a hearing shall petition the Tribal Court to enjoin enforcement of the writ of garnishment. The petition shall provide, in writing, a statement of all objections to the writ and any evidence which would demonstrate to the Court the circumstances surrounding the debt and the issuance of the writ. The objections shall be specific enough to afford the person seeking payment of the debt the opportunity to know the basis for any objection and the evidence supporting the objection.

(c) If the person from whom payment of a debt is being sought notifies the Tribal Court that they would like a hearing on the writ, the Tribal Court Judge shall suspend enforcement of the writ except in the event that the writ is for the enforcement of support under a domestic relations order, or it is the opinion of the Tribal Judge that on the face of the Writ

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suspension of the Writ is unwarranted.

(d) The Clerk of Court shall issue notice' to the person who is seeking enforcement of the writ of garnishment that enforcement of the writ is being challenged in Tribal Court. The Clerk shall include copies of the petition and accompanying evidence with the notice. The notice shall state that the Siletz Tribe has exclusive jurisdiction for enforcement of writs of garnishment against the Tribe and that enforcement of the writ must follow Tribal law. The notice shall include a copy of the Tribal Garnishment Ordinance.

§ 13.306 STATE WRIT OF GARNISHMENT: RESPONSE

(a) After receipt of the notice of petition, the person seeking payment of the debt shall have fourteen days to notify the Court of the intention to participate at the hearing. The notice to participate shall state whether they wish to appear at the hearing in person, through representative¹ or by written submission. If no notice to participate is filed, the Tribal Court shall return the writ to the issuing entity with an explanation of the Tribe's refusal to execute the writ.

(b) If the person seeking payment of the debt files a notice to participate, they shall have ten days from the due date of the notice to prepare a written submission for the Court responding to the objections made in the petition. The response shall include an explanation of the facts which are subject of the objection, and the response may be supported by whatever evidence; witnesses, court order, transcript, exhibit, additional testimony, affidavit, bill of sale, contract, etc. is pertinent to the objections.

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(c) The person seeking payment of the debt shall provide copies of the response, and supporting evidence, to the court, which shall transmit the copies to the person against whom payment of the debt is being sought. The copies shall be provided at the time the response is submitted to the Court.

(d) Upon receipt of the response, the Clerk of Tribal Court shall set a date and time for the hearing and send out notice to all parties.

§ 13.307 STATE WRIT OF GARNISHMENT: SUBPOENA

(a) At the request of either party, or at the initiative of the Court the Court may issue a subpoena to have any evidence delivered to the Court which the Court believes may be relevant to deciding the issues raised by the parties.

(b) If a party, or any person aligned with a party to the proceedings refuses to comply with the terms of a subpoena that party shall be, as a matter of law, denied the relief they are seeking from the Tribal Court in regards to the writ.

§ 13.308 STATE WRIT OF GARNISHMENT: HEARING

(a) The purpose of the hearing will be to ascertain any objections to the writ to the extent:

- (1) The person who owes the debt is different from the person listed as debtor on the writ, or the person against whom garnishment is being sought does not owe a debt to the person seeking garnishment.

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- (2) The amount of the debt plus any applicable fees is less than the amount listed on the writ.
- (3) The debt and circumstances surrounding the origin of the debt are contrary to the public policy, laws or customs of the Tribe.
- (4) The debt upon which the writ of garnishment is based is unconscionable or morally offensive because it is based in part upon:
 - (A) a lie.
 - (B) a misrepresentation.
 - (C) knowledge withheld as to the terms of the debt.
 - (D) knowledge withheld as to the foreseeable consequences of the debt.
 - (E) an inordinate difference in bargaining power.
 - (F) The performance of an obligation that is owed to the person who incurred the debt. And performance of the obligation is owed by the person seeking payment of the debt, or by anyone from whom the person seeking payment of the debt received rights to collection of the debt through assignment, sale, gift, bequeath or similar transfer. And performance of the obligation has come due and has not been rendered; or is yet to come due, but full performance of the obligation is doubted.

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(5) The amount being sought for payment of the debt should be offset by any debt owed by the person seeking garnishment.

(6) The rate of payment under the writ of garnishment is excessive in comparison to the income or circumstances of the person owing the debt.

(7) If the person seeking payment of the debt chooses not to appear in person or to appear through counsel the Court shall give an opportunity for the person against whom payment of the debt is being sought to give whatever testimony or produce whatever evidence, conforming to the rules of the Tribal Court, is relevant for consideration.

(8) If both parties appear at the hearing, the Court shall allow both sides to present oral or written testimony and whatever evidence, including witnesses, that is relevant to the issues raised by the parties. Each party shall have an opportunity to cross examine the witnesses presented by the opposing party.

(9) The burden of proof shall be on the person from whom payment of a debt is being sought to prove any of the objections listed at (a) (1) (F) above.

(10) The writ of garnishment will create a rebuttal presumption that a debt is owed by the person being garnished.

(11) In examining the information, the Tribal Judge shall make note of several factors, among which are:

(A) Truthfulness of the parties.

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- (B) Consistency and completeness of the physical evidence.
- (C) Demeanor of the parties
- (D) motivation of the parties.
- (E) Reputation of the parties.
- (F) Past financial history of the parties.

(12) If after hearing all objections and evidence, it is the decision of the Tribal

Judge presiding at the hearing that:

- (A) the writ has been properly issued, the Tribal Judge shall give the writ of garnishment to the Clerk of Court for registration and issue an order directing the proper tribal official to execute the writ¹ if the writ is not already in effect. If the writ is defective based on any of the objections listed in part (a) (1) (F), the Tribal Judge shall issue an order modifying the terms of, or suspending or denying execution by any tribal official of the writ of garnishment.

TRIBAL WRITS OF GARNISHMENT

PART III

§ 13.309 TRIBAL WRITS OF GARNISHMENT

- (a) The provisions of this section, 13.309 thru 13.311, set forth the procedures for the

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issuing of writs of garnishment by the Siletz Tribal Court.

(b) To obtain a writ of garnishment the person seeking payment of a debt shall petition the Tribal Court to issue a writ of garnishment. The petition shall be accompanied by a copy of the judgment being executed upon and a description of the action and findings of the court, which entered the judgment. In addition, the person requesting the writ shall provide a description of the funds which are to be garnished, their location, and the name of the person in possession of the funds, and any information concerning fees involved in executing judgment.

(c) The Clerk of the Siletz Tribal Court shall verify the judgment and then issue a writ of garnishment stating the name of the person seeking satisfaction of judgment, the name of the person whose funds are being garnished, the name of the third party holding the funds, a description of the assets the address of the location of the funds and the third party holding the funds the title and location of the court action under which a judgment was issued, the amount of the judgment, and the amount of any applicable fees.

(d) In the event the judgment is against the Siletz Tribe, the Tribal Court shall inquire of the Tribal Attorney as to whether the Siletz Tribe had waived its sovereign immunity in the action from which the judgment arose. In the event that the Siletz Tribe had not waived its sovereign immunity, the Tribal Judge shall dismiss the petition for the writ of garnishment.

§ 13.310 **FEES**

Any reasonable expenses which were incurred in attempting to execute judgment are

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recoverable under this chapter. An itemized list of expenses shall be prepared by the person seeking to obtain a writ of garnishment and shall be given to the Clerk of Court of the Siletz Tribal Court who shall include such expense plus any fees assessed by the Tribal Court, in the amount to be recovered under the writ of garnishment.

§ 13.311 RATE OF GARNISHMENT

(a) The amount of money which may be withheld each week from all sources of income shall be determined by the Tribal Court. Factors which shall be considered in determining the amount of money to garnish shall include, but not be limited to:

- (1) Total income versus the amount of the debt.
- (2) The priority of the debt in relation to other obligations owed.
- (3) The type of debt.
- (4) The needs of the party seeking payment.
- (5) The needs of the party owing the debt.
- (6) The nature of the income.
- (7) Other sources of financial support for the party seeking payment and the party owing the debt.

In the case of garnishment for the payment of support under a domestic relations order, the minimum amount which may be garnished shall be the amount necessary to maintain the current residence, provide food for all dependents, provide for accustomed transportation, educational

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and all other needs incidental to the care and maintenance of the household of the person seeking garnishment.

MISCELLANEOUS PROVISIONS

PART IV

§ 13.312 COLLECTION OF FUNDS

Any funds recovered under the writ of garnishment shall be delivered directly to the person seeking recovery under the writ, unless, at the election of the person seeking recovery, the person desires to have the funds delivered to the Clerk of Court of the Siletz Tribal Court. Upon receipt of the funds the Clerk of Court shall at the election of the person seeking recovery, either forward the funds by whatever means is appropriate, or inform the person seeking recovery that the funds are in the custody of the Siletz Tribe and will be made available for pickup at a reasonable time. In this event the Clerk may upon order of the Court deduct an appropriate amount, not to exceed \$5.00 per month to cover administrative costs.

§ 13.313 PRIORITY OF MULTIPLE WRITS OF GARNISHMENT

(a) A writ of garnishment for the payment of support under a domestic relations order shall take priority over any other writ of garnishment.

(b) The priority of any other writ of garnishment shall be determined in accordance with the time it is issued. Between any two writs, the one issued first shall have priority. Except that a writ of garnishment that is issued to satisfy a previously existing lien, other than a

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judgment lien, shall have priority over any other writ, except a writ for enforcement of a domestic relations order, as to the proceeds which were subject of the lien.

§ 13.314 PETITION FOR RECONSIDERATION

(a) Upon petition by any party, and at any time, the Tribal Court may reexamine its decision to issue or certify a writ of garnishment.

(b) The petition must allege an error in the findings of the Tribal Court that were determinative in its decision, or that circumstances or new evidence compels a result different than the one originally reached by the Tribal Court.

(c) The petition for reconsideration shall detail the specific alleged errors or change in circumstances of the writ and contain any supporting evidence.

(d) At the time the petition is delivered to the Clerk of Tribal Court, the party petitioning for reconsideration shall deliver copies of the petition and all supporting evidence to the Clerk of the Tribal Court for delivery to all other parties.

(e) Responding parties, at their option may elect to respond in writing and or to appear at the hearing in person or through counsel.

(f) Upon a finding of error or changed circumstances, the Tribal Court shall at its election, modify the writ, or upon a finding of substantial prejudice to the person whose funds are being garnished, revoke the writ or its certification and remand the proceedings to the court or other issuing entity.

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§ 13.315 AUTHORITY OF TRIBE TO COLLECT ON DEBTS

(a) Nothing in this ordinance shall be construed as limiting the Tribe's right to offset any amounts owed to it by a person when funds belonging to that person are in the possession of the Tribe; Provided, collections by the Tribe shall conform, when required, to the provisions of the Indian Civil Rights Act, 25 USC 1301 et seq. or any other federal statute applying to the circumstances.

(b) Notice of the debt, and the intent to offset, shall be sent to the person owing the money.

(c) The person owing the money shall have fourteen days in which to respond. If the person owing the money disagrees with the existence of the debt, or the amount owed; the person shall request the Tribal official who authorized the offset to petition the Tribal Court for a hearing. A date for the hearing shall be set within ten days of receipt of the request.

(d) In the hearing the Tribal Court shall review the circumstances of the debt and determine the amount owing to the Tribe; the hearing shall be in the form described in part 13.308 of this ordinance. A representative of the Tribe shall be present at the hearing and offer to the Court a statement of the amount of the debt and the circumstances by which the debt was incurred. The Tribal representative shall have the right to examine the person challenging the debt and any witnesses. The Tribal representative and any Tribal official who had immediate responsibility over the circumstances surrounding the debt shall submit to examination in

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Tribal Court by the Tribal Court Judge or the party owing the debt. Upon a finding by the Tribal Court as to the amount of the debt, an order shall be entered directing the payment of such sums as may be due either party and such order shall be binding on all parties.

§ 13.316 WRIT OF ATTACHMENT FOR ABANDONED HOUSING

The Tribal Court may, upon a petition from the Tribal Housing authority, issue a writ of attachment for any Tribally owned or administered housing for which payment of rent or mortgage is in arrears and the housing has been abandoned. The writ of attachment shall only issue after a showing by the Tribal Housing Authority that notice was sent to the legally entitled occupants more than fourteen days prior to the date when the Tribal court issues the writ.

§ 13.317 EXPEDITED PROCEDURES

(a) Procedures - The Tribal Court is, hereby, authorized and directed to take the following actions relating to establishment of paternity or to the establishment, modification, or enforcement of support orders, without the necessity of obtaining an order from any other judicial or administrative tribunal, and to recognize and enforce the authority of agencies of the states or other Tribes to take the following actions:

- (1) Genetic Testing -To order genetic testing for the purpose of establishment of the paternity of a child at any time before the child attains 18 years of age, as of August 16, 1984, this section shall also apply to a child for whom paternity has not been established or for whom a paternity action

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was brought but dismissed because a statute of limitations of less than 18 years was then in effect under applicable law. The court may require one or more of the parties to the paternity action to pay the costs for genetic testing required under this section.

- (2) Financial or other information - To subpoena any financial or other information needed to establish, modify, or enforce a support order, and to impose penalties for failure to respond to such a subpoena.
- (3) Response to Tribal agency request - To require any entity (including for profit, non profit, and governmental employers) to provide promptly, in response to a request by any Tribal or State agency which is administering a child support collection under Tribal or State law, information on the employment, compensation, and benefits of any individual employed by such entity as an employee or contractor, and to sanction failure to respond to any such request.
- (4) Access to information contained in certain records - To obtain access, subject to safeguards on privacy and information security, and subject to the non liability of entities that afford such access under this subparagraph, to information contained in the following records (including automated access, in the case of records maintained in automated data bases):

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- (5) Records of other Tribal, State and local government agencies, including:
 - (A) vital statistics (including records of marriage, birth and divorce);
 - (B) Tribal, State and local tax and revenue records (including information on residence address, employer, income and assets);
 - (C) Records concerning real and titled personal property;
 - (D) Records of occupational and professional licenses, and records concerning the ownership and control of corporations, partnerships, and other business entities;
 - (E) Employment security records;
 - (F) Records of agencies administering public assistance programs;
 - (G) Records of the motor vehicle department; and
 - (H) Correction records.

- (6) Certain records held by private entities with respect to individuals who owed support (or against or with respect to whom a support obligation is sought), consisting of:
 - (A) the names and addresses of such individuals and the names and addresses of the employers of such individuals, as appearing in customer records of public utilities and cable television companies, pursuant to a subpoena as authorized by subsection (B); and

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- (B) information (including information on assets and liabilities) on such individuals held by financial institutions.
- (7) Change in payee. In cases in which support is subject to an assignment in order to comply with a requirement imposed pursuant to the United States Code title 42 Chapter 7, subchapter IV, part A or E or 42 U.S. C § 1396 (k), or to a requirement to pay through a State disbursement unit established pursuant to 42 U.S.C. §654b of this title, upon providing notice to obligor and obligee, to direct the obligor or other payor to change the payee to the appropriate government entity.
- (8) Income withholding. To order income withholding in the same manner and subject to the same requirements and limitations as a State entity as provided by 42 U.S.C. § 666(a)(1)(A) and (b).
- (9) Securing Assets. In cases in which there is a support arrearage, to secure assets to satisfy any current support obligation and the arrearage by: intercepting or seizing periodic lump-sum payments from: a Tribal, State or local agency, including unemployment compensation, workers' compensation, and other benefits; and judgements, settlements, and lotteries attaching and seizing assets of the obligor held in financial institutions; attaching public and private retirement funds; and

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imposing liens in accordance with the following procedures, and, in the appropriate cases to force sale of property and distribution of proceeds: liens shall apply against real and personal property for amounts of overdue support owed by a non custodial parent who resides or owns property within the jurisdiction of the Court; and the Tribal Court accords full faith and credit to liens described in subsection (1) arising in another Tribe or a State, when the Tribal or Stated agency, party or other entity seeking to enforce such a lien complies with the procedural rules relating to recording or serving liens that arise within such Tribe or State, except that such rules may not require judicial notice or hearing prior to the enforcement of such a lien.

- (10) Increase monthly payments. For the purpose of securing overdue support, to increase the amount of monthly support payments to include amounts for arrearages, subject to such conditions or limitations as the Court may provide. Such procedures shall be subject to due process safeguards, including (as appropriate) requirements for notice, opportunity to contest the action, and opportunity for an appeal on the record to an independent administrative or judicial tribunal.
- (11) Locator Information/Notice. The expedited procedures required under

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this section shall include the following rules and authority, applicable with respect to all proceedings to establish paternity or to establish, modify, or enforce support orders; Locator Information; presumptions concerning notice each party to any paternity or child support proceeding is required (subject to privacy safeguards) to file with the Tribal Court upon entry of an order, and to update as appropriate, information on location and identity of the party, including Social Security number, residential and mailing addresses, telephone number, drivers license number, and name address, and telephone number of employer; and in any subsequent child support enforcement action between the parties, upon sufficient showing that diligent effort has been made to ascertain the location of such a party, the court shall deem Tribal due process requirements for notice and service of process to be met with respect to the party, upon delivery of written notice to the most recent residential or employer address filed with the Tribal Court pursuant to clause (I).