

D17-07
Revision of Collections Statutes

Date: January 19, 2017
Proposed by: DWD
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ANALYSIS OF PROPOSED UI LAW CHANGE
Revision of Collections Statutes

1. Description of Proposed Change

The department proposes several changes to the collections statutes. Some of the changes are minor, such as amending the statutes to standardize similar provisions. Other changes are substantive, such as:

1. Providing an unrecorded lien against any person who owes the department a debt (currently only for employers). This will ensure that the department has a right to collect a debt without a warrant when property is liquidated and will improve the department's position with respect to the priority of creditors.
2. Creating a provision to confirm that the department's bankruptcy claims for benefit overpayments are treated as secured if a warrant has been filed. Currently, the department's bankruptcy claims for taxes are treated as secured when a warrant is filed.
3. Modifying an existing penalty for third parties who refuse to comply with a department levy in order to align the penalty with the Department of Revenue's penalty for levy non-compliance. The revised penalty will be 50% of the amount of the debt owed and will be deposited into the program integrity fund.
4. Amending the tax personal liability statute to remove the 20% owner requirement for a finding of personal liability, which would align the unemployment law more closely with the laws of the IRS, Wisconsin Department of Revenue, and the Department's Worker's Compensation Division and Equal Rights Division.

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5. Permitting the department to intercept state income tax refunds, lottery payments, state vendor payments, and unclaimed property of taxpayers (employers and individuals) who owe debts to the department. The department currently only intercepts such amounts for claimants who owe overpayments and penalties. Current law permits the department to intercept federal income tax refunds to satisfy tax and benefit debts.

The following chart details all of the proposed changes:

| Statute | Currently | Proposed change |
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| 108.22(1)(g) | Current s. 108.22(8)(b)3. provides that the department may recover its collection costs when collecting overpayments. Current 108.225(6) and 108.22(2)(b) permit the department to recover the costs of a levy or warrant. | Create s. 108.22(1)(g) to confirm that the department may recover its actual costs in collecting any amount due from any party that owes the department a debt. Examples include statutorily-required certified postage and court filing fees. |
| 108.22(1)(h) | No current provision. | Create s. 108.22(1)(h) to permit the department to charge debit and credit card bank fees to debtors. This will permit (<u>but not require</u>) claimants and employers to pay their debts owed to the department by credit or debit card. |
| 108.22(1m) | Currently provides an unrecorded lien against employers who owe delinquent taxes. | Amend to change “employer” to “person,” which will result in an unrecorded lien against any individual or entity that owes the department a debt under chapter 108 (including claimants). (Discussed in detail above.) |
| 108.22(2) 108.22(8)(b)1.b. 108.22(8)(b)2. 108.22(8)(bh) 108.223(1)(br) | Various statutes permit the department to record warrants (liens) against employers, claimants, and identity thieves. | Amend s. 108.22(2) and repeal/modify the other sections in order to consolidate the warrant provisions into one section and to confirm that the department may issue a warrant against any individual or entity that owes it a debt. |
| 108.22(3m) | Currently, the department may only sell seized assets at a sheriff’s sale. This adds costs and delays to the asset seizure process. | Create s. 108.22(3m) to permit the department to sell seized assets at an online auction in order to satisfy debts owed to the department. This aligns chapter 108 with WI-DOR provisions. |

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| 108.22(2)(a)3m. | No current provision. | Create s. 108.22(2)(a)3m. to confirm that the department’s warrants are statutory liens for the purposes of bankruptcy law. This should result in department receiving secured treatment of its bankruptcy claims for benefit overpayments if a warrant is filed. The department’s bankruptcy claims for taxes are already treated as secured if a warrant is filed. |
| 108.22(1r) 108.22(8)(b)1.d. | Permits the department to intercept federal income tax refunds to satisfy UI tax debts and benefit fraud overpayments (a federal requirement). | Amend s. 108.22(1r) and repeal s. 108.22(8)(b)1.b. to consolidate the federal income tax refund intercept provision into one section, 108.22(1r), for simplification. This change also tracks the federal definition of a covered unemployment compensation debt. |
| 108.22(1t) 108.22(8)(b)1.c. | Section s. 108.22(8)(b)1.c. permits the department to intercept WI state income tax refunds, lottery, unclaimed property and state vendor payments to satisfy benefit overpayments and claimant penalties. | Create (1t) and repeal s. 108.22(8)(b)1.c. to consolidate the state intercept provisions into (1t). This creates a new provision that permits the department to intercept state income tax refunds, lottery, vendor and unclaimed property payments in order to satisfy delinquent UI taxes. |
| 108.225(1)(b) | Defines what a “debt” is for the purposes of issuing a levy. | Amend to simplify the definition to be any amount due under chapter 108. |
| 108.225(4)(b) | Provides that a third party that fails to comply with a department levy (e.g. fails to turn over debtor’s property) owes 25% of the debt to the department. | Amend to remove the 25% provision and to create a new penalty of 50% of the debt owed as a penalty for failure to comply with a department levy. The penalty will be deposited into the program integrity fund. This is similar to an existing Department of Revenue penalty. ¹ |

¹ Wis. Stat. § 71.91(6)(d)2.

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| 108.22(9) | The requirements for an assessment of personal liability for employer tax are: (1) 20% ownership interest in the business; (2) responsibility of the individual to ensure that the taxes are paid; (3) willful failure to pay the tax; and (4) attempted collection of the tax from the employer. | Amend to remove the 20% ownership requirement , which is similar to IRS, WI-DOR, Worker’s Compensation, and Employment Regulation personal liability statutes. ² |
| 108.22(9) | Personal liability for unpaid taxes, interest, tardy payment fees, costs and other fees. | Amend to confirm the department’s view of current law: an appeal of a personal liability determination excludes a review of the underlying tax owed. This change is recommended in order to prevent an erroneous decision. |

2. Proposed Statute Changes

See attached.

3. Effects of Proposed Change

- a. Policy. This proposal will simplify the department’s collections statutes and facilitate collections. The new penalty should increase compliance with the department’s levies. The personal liability provisions should increase the department’s ability to hold responsible persons personally liable for employer taxes.
- b. Administrative. The collections staff will need to be trained on the proposed changes.
- c. Fiscal. A fiscal estimate is attached.

4. State and Federal Issues

There are no known federal conformity issues with this proposal. The Department recommends that any changes to the unemployment insurance law be sent to the U.S. Department of Labor for conformity review.

² 26 USC § 6672(a) (IRS); Wis. Stat. § 77.60(9) (WI-DOR); Wis. Stat. § 102.83(8) (Worker’s Compensation); Wis. Stat. § 103.01(1)(a) (Employment Regulations).

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5. Proposed Effective/Applicability Date

This proposal would be effective with other changes made as part of the agreed bill cycle.

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Section 108.22 (1) (g) of the statutes is created to read:

The department may recover its actual costs, disbursements, expenses, and fees incurred in recovering any amount due under this chapter.

Section 108.22 (1) (h) of the statutes is created to read:

The department may charge and recover the costs related to payments made to the department by debit card, credit card or other payment method.

Section 108.22 (1m) of the statutes is amended to read:

If ~~an employer~~ a person owes the department any amount ~~contributions, reimbursements, or assessments under s. 108.15, 108.151, 108.155, or 108.19 (1m), interest, fees, or payments for forfeitures or other penalties to the department~~ under this chapter and fails to pay the amount owed, the department has a perfected lien upon the ~~employer's~~ person's right, title, and interest in all of ~~its~~ the person's real and personal property located in this state in the amount finally determined to be owed, plus costs. Except where creation of a lien is barred or stayed by bankruptcy or other insolvency law, the lien is effective when the department issues a determination of the amount owed under s. ~~108.10 (1)~~ this chapter and shall continue until the amount owed, plus costs and interest to the date of payment, is paid. If a lien is initially barred or stayed by bankruptcy or other insolvency law, it shall become effective immediately upon expiration or removal of such bar or stay. The perfected lien does not give the department priority over lienholders, mortgagees, purchasers for value, judgment creditors, and pledges whose interests have been recorded before the department's lien is recorded.

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Section 108.22 (1r) of the statutes is amended to read:

If any person ~~employing unit or any individual who is found personally liable under sub. (9)~~ fails to pay to the department a covered unemployment compensation debt, as defined in 26 USC 6402 (f) (4),³ ~~any amount found to be due it in proceedings pursuant to s. 108.10,~~ provided that no appeal or review permitted under this chapter ~~s. 108.10~~ is pending and that the time for taking an appeal or review has expired, the department or any authorized representative may ~~offset~~ set off the amount against a federal overpayment tax refund ~~as provided in~~ under 26 USC 6402 (f).

Section 108.22 (1t) of the statutes is created to read:

If any person fails to pay to the department any amount under this chapter, provided that no appeal or review permitted under this chapter is pending and that the time for taking an appeal or review has expired, the department or any authorized representative may set off the amount against a refund, overpayment, or disbursement under s. 71.93.

³ 26 USC 6402(f)(4) defines a “covered unemployment compensation debt” as:

(A) a past-due debt for erroneous payment of unemployment compensation due to fraud or the person’s failure to report earnings which has become final under the law of a State certified by the Secretary of Labor pursuant to section 3304 and which remains uncollected;

(B) contributions due to the unemployment fund of a State for which the State has determined the person to be liable and which remain uncollected; and

(C) any penalties and interest assessed on such debt.

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Section 108.22 (2) (a) 1. to 3. of the statutes are amended to read:

1. If any person ~~employing unit or any individual who is found personally liable under sub. (9)~~ fails to pay to the department any amount ~~found to be due it~~ under this chapter ~~in proceedings pursuant to s. 108.10~~, provided that no appeal or review permitted under ~~this chapters. 108.10~~ is pending and that the time for taking an appeal or review has expired, the department or any authorized representative may issue a warrant directed to the clerk of circuit court for any county of the state.
2. The clerk of circuit court shall enter in the judgment and lien docket the name of the person ~~employing unit or individual~~ mentioned in the warrant, ~~and~~ the amount owed ~~of the contributions, interest, costs and other fees for which the warrant is issued~~ and the date when such copy is entered.
3. A warrant entered under subd. 2. shall be considered in all respects as a final judgment constituting a perfected lien upon the person's ~~employing unit's or individual's~~ right, title and interest in all real and personal property located in the county where the warrant is entered.

Section 108.22 (2) (a) 3m. of the statutes is created to read:

Notwithstanding subd. 3., a warrant entered under subd. 2. shall be considered as a statutory lien under 11 USC 101(53).

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Section 108.22 (2) (a) 4. of the statutes is amended to read:

The department or any authorized representative may thereafter file an execution with the clerk of circuit court for filing by the clerk of circuit court with the sheriff of any county where real or personal property of the person ~~employing unit or individual~~ is found, commanding the sheriff to levy upon and sell sufficient real and personal property of the person ~~employing unit or individual~~ to pay the amount stated in the warrant in the same manner as upon an execution against property issued upon the judgment of a court of record, and to return the warrant to the department and pay to it the money collected by virtue thereof within 60 days after receipt of the warrant.

Section 108.22 (2) (b) of the statutes is amended to read:

The clerk of circuit court shall accept, file and enter each warrant under par. (a) and each satisfaction, release, or withdrawal under subs. (5), (6), and (8m) in the judgment and lien docket without prepayment of any fee, but the clerk of circuit court shall submit a statement of the proper fee semiannually to the department covering the periods from January 1 to June 30 and July 1 to December 31 unless a different billing period is agreed to between the clerk of circuit court and the department. The fees shall then be paid by the department, but the fees provided by s. 814.61 (5) for entering the warrants shall be added to the amount of the warrant and collected from the ~~employing unit or individual~~ person when satisfaction or release is presented for entry.

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Section 108.22 (3) of the statutes is amended to read:

The department may issue a warrant of like terms, force and effect to any employee or other agent of the department, who may file a copy of such warrant with the clerk of circuit court of any county in the state, and thereupon such clerk shall enter the warrant in the judgment and lien docket and the warrant shall become a lien in the same manner, and with the same force and effect, as provided in sub. (2). In the execution of the warrant, the employee or other agent shall have all the powers conferred by law upon a sheriff, but shall not be entitled to collect from the ~~employer~~ person any fee or charge for the execution of the warrant in excess of the actual expenses paid in the performance of his or her duty.

Section 108.22 (3m) of the statutes is created to read:

In executing a warrant as described in sub. (3), the employee or agent may conduct, or may engage a 3rd party to conduct, an execution sale of property in any county of this state and may sell, or may engage a 3rd party to sell, the property in any manner that in the discretion of the department will bring the highest net bid or price, including Internet-based auctions or sales. The cost of conducting each auction or sale shall be reimbursed to the department out of the proceeds of the auction or sale.

Section 108.22 (4) of the statutes is amended to read:

If a warrant ~~be~~ is returned not satisfied in full, the department shall have the same remedies to enforce the amount due ~~for contributions, interest, and costs and other fees~~ as if the department had recovered judgment against the person ~~employing unit~~ for the same and an execution is returned wholly or partially not satisfied.

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Section 108.22 (5) of the statutes is amended to read:

When the ~~contributions~~ amounts set forth in a warrant together with interest and other fees to date of payment and all costs due the department have been paid to it, the department shall issue a satisfaction of the warrant and file it with the clerk of circuit court. The clerk of circuit court shall immediately enter a satisfaction of the judgment on the judgment and lien docket. The department shall send a copy of the satisfaction to the person ~~employer~~.

Section 108.22 (8) (b) 1. of the statutes is amended to read:

1. To recover any overpayment to an individual which is not otherwise repaid or recovery of which has not been waived, the department may recoup the amount of the overpayment by: in addition to its other remedies in this chapter, deducting the amount of the overpayment from benefits the individual would otherwise be eligible to receive. Any recovery under this paragraph is limited to the actual amount of the overpayment, without interest.

~~a. Deducting the amount of the overpayment from benefits the individual would otherwise be eligible to receive;~~

~~b. Filing a warrant against the liable individual in the same manner as is provided in this section for collecting delinquent payments from employers;~~

~~c. Setting off the amount of the overpayment against a refund or disbursement due pursuant to s. 71.93; or~~

~~d. If the overpayment results from fraud or failure to report earnings, offsetting the amount of the overpayment against a federal tax refund as provided in 26 USC 6402 (f).~~

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Section 108.22 (8) (b) 2. of the statutes is repealed:

~~To recover any assessment under s. 108.04 (11) (cm), the department may file a warrant against the liable individual in the same manner as is provided in this section for collecting delinquent payments from employers.~~

Section 108.22 (8) (b) 3. of the statutes is repealed:

~~Any recovery under this paragraph is limited to the actual amount of the overpayment or assessment and any costs and disbursements, without interest.~~

Section 108.22 (8) (bh) of the statutes is repealed:

~~To recover any penalty under s. 108.04 (11) (bh), the department may recoup the amount of the penalty by filing a warrant against a liable individual in the same manner as is provided in this section for collecting delinquent payments from employers.~~

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Section 108.22 (9) of the statutes is amended to read:

Any ~~An individual person~~ who is an officer, employee, member, manager, partner, or other responsible person ~~holding at least 20 percent of the ownership interest of an employer corporation, limited liability company, or other business association subject to this chapter, and who has control or supervision of or responsibility for filing any required contribution reports or making payment of amounts due under this chapter, contributions,~~ and who willfully fails to file such reports or to make such payments to the department, or to ensure that such reports are filed or that such payments are made, may be found personally liable for such amounts, ~~including interest, tardy payment or filing fees, costs and other fees,~~ in the event that after proper proceedings for the collection of such amounts, as provided in this chapter, the employer corporation, limited liability company, or other business association is unable to pay such amounts to the department. ~~Ownership interest of a corporation, limited liability company, or other business association includes ownership or control, directly or indirectly, by legally enforceable means or otherwise, by the individual, by the individual's spouse or child, by the individual's parent if the individual is under age 18, or by a combination of 2 or more of them, and such ownership interest of a parent corporation, limited liability company, or other business association of which the corporation, limited liability company, or other business association unable to pay such amounts is a wholly owned subsidiary. The p~~

Personal liability of such officer, employee, member, manager, partner, or other responsible person as provided in this subsection survives dissolution, reorganization, bankruptcy, receivership, assignment for the benefit of creditors, judicially confirmed extension or composition, or any analogous situation of the employer corporation, limited liability company, or other business association and shall be set forth in a determination or decision issued under s. 108.10. An appeal or review of a determination under this subsection shall not include an appeal or review of determinations of amounts owed by the employer.

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Section 108.223 (1) (br) of the statutes is amended to read:

“Debtor” means a debtor, as defined in s. 108.225 (1) (c), whose debt has been finally determined under this chapter and is not subject to further appeal and for whom, with respect to a debt, a warrant has been issued under s. 108.22 (2); or (3) or (8).

Section 108.225 (1) (b) of the statutes is amended to read:

“Debt” means any amount due under this chapter. ~~delinquent contribution or repayment of a benefit overpayment, a delinquent assessment under s. 108.04 (11) (em) or 108.19 (1m), a liability incurred under s. 108.04 (11) (bh), an erroneous payment from the fund recovered under s. 108.245, or any liability of a 3rd party for failure to surrender to the department property or rights to property subject to levy after proceedings under sub. (4) (b) and s. 108.10 to determine that liability.~~

Section 108.225 (4) (b) of the statutes is amended to read:

~~Any 3rd party~~ The department may assess a person who fails to comply with sub. (3) surrender ~~any property or rights to property subject to levy, upon demand of the department, is subject to proceedings to enforce the levy. The 3rd party is not liable to the department under this paragraph for more than 25% a penalty in the amount of 50% of the debt owed by a debtor. The department shall serve a final demand as provided under sub. (13) on any 3rd party person who fails to comply with sub. (3). surrender property. Proceedings shall not be initiated by the department until 5 days after service of the final demand. The department shall issue a determination under s. 108.10 to the person 3rd party for the amount of the assessment under this subsection at least 7 days after service of the final demand. liability. Assessments under this subsection shall be deposited in the program integrity fund.~~

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Section 108.19 (1s) (a) 5. of the statutes is created to read:

Assessments under s. 108.225 (4) (b).

Section 815.29 (1) of the statutes is amended to read:

No execution sale of personal property shall be made unless 20 days previous notice of such sale has been given by posting a notice thereof in one public place of the town or municipality where such sale is to be had and, if the county where such sale is to be had maintains a Web site, by posting a notice on the Web site. If the town or municipality where such sale is to be had maintains a Web site, the town or municipality may also post a notice on its Web site. The notice shall specify the time and place of sale but when any property seized is likely to perish or depreciate in value before the expiration of the 20 days the court or a judge may order the same to be sold in such manner and upon such terms as the best interests of the parties demand. Every such sale shall be made at auction between the hours of 9 a.m. and 5 p.m. and no property shall be sold unless it is in view of those attending the sale, except as provided in ss. 71.91 (5) (c) 2. and 108.22 (3m) and in the case of the sale of the interest of the judgment debtor in property in the possession of a secured party. It shall be offered for sale in such lots and parcels as is calculated to bring the highest price.

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Prepared by: Technical Services Section

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

UI Trust Fund Impact: This law change proposal is expected to save the UI Trust Fund approximately \$2.3M annually in additional debt collections.

IT and Administrative Impact: This law change proposal will require approximately 3,520 hours of IT changes at a one-time cost of \$306,240. The administrative cost is estimated at approximately 30% the IT cost, or \$91,872. Therefore the total one-time cost is estimated at \$398,112.

Summary of Proposal, Trust Fund Impact and IT/Administrative Impact:

The department proposes several changes to the collections statutes. Some of the changes are minor and technical in nature, such as rearranging the statutes to standardize similar provisions.

Other changes are substantive. The changes include:

1. Providing an unrecorded lien against any person who owes the department a debt (currently only for employers). This will ensure that the department has a right to collect a debt without a warrant when property is liquidated and will improve the department's standing with respect to the priority of creditors.

Trust Fund Impact: This proposal would have a negligible but positive impact on the Trust Fund. This proposal adds claimants and individual owners of business as individuals that the

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department can provide an unrecorded lien against, which makes collections more equitable. However, unrecorded liens are fairly rare.

IT and Administrative Impact: There would be no IT or administrative impact. An ad-hoc manual letter is sent out at this time, which would not change.

2. Creating a provision to confirm that the department's bankruptcy claims for benefit overpayments are treated as secured if a warrant has been filed. Currently, the department's bankruptcy claims for taxes are treated as secured when a warrant is filed.

Trust Fund Impact: This proposal would have a negligible but positive impact on the Trust Fund. This proposal adds claimants and benefit overpayments to bankruptcy claims if a warrant has been filed. This would make the law more equitable. The Department expects to recover a greater percentage of its benefit overpayment claims in bankruptcy cases.

IT and Administrative Impact: There would be no IT or administrative impact. The current functionality of insolvency in SUITES will remain the same.

3. Modifying an existing penalty for 3rd parties who refuse to comply with a department levy in order to align the penalty with the Department of Revenue's penalty for levy non-compliance. The new penalty will be 50% of the amount of the debt owed and will be deposited into the UI Program Integrity Fund.

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Trust Fund Impact: This proposal is expected to save the UI Trust Fund approximately \$1.0M annually in additional UI delinquent tax and benefit overpayment collections, as this proposal would incentivize compliance. Any penalties recouped would go to the UI Program Integrity Fund, though this proposal is not expected to result in a large source of revenue.

Currently, approximately 14% of levies are ignored by the 3rd party. The balance on accounts that are levied and ignored is approximately \$12.5M annually, of which \$2.1M (17%) is collected by other collections means. There is a net ignored levy debt of approximately \$10.4M annually. It is assumed that these levy tools to enforce compliance could result in 10% more collections. This rate is used because it is the same *additional* collections rate determined for expanding the Treasury Offset Program (TOP) to unpaid employer tax debt. Collecting an additional 10% of \$10.4M in debts would result in a UI Trust Fund savings of approximately \$1.0M annually.

IT and Administrative Impact: This law change proposal will require approximately 520 hours of IT changes at a one-time cost of \$45,240. It assumes 400 SUITES hours and 120 CEDARS hours to make the necessary changes. The administrative cost is estimated at approximately 30% the IT cost or \$13,572. The total one-time cost is estimated at \$58,812.

4. Amending the tax personal liability statute to remove the 20% owner requirement for a finding of personal liability, which would make the unemployment law more closely align with the laws of the IRS, Wisconsin Department of Revenue, and the Department's Worker's Compensation Division and Equal Rights Division.

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Trust Fund Impact: This proposal would have a negligible but positive impact on the Trust Fund. Without the 20% threshold, this change would streamline investigations into assigning the debt. Some nonprofits do not have a clear owner, so this may make assigning personal liability in cases involving nonprofits easier. However, in general, individuals the department is trying to assign personal liability to already meets the 20% threshold and thus would not result in a significant impact to collections.

IT and Administrative Impact: There would be no IT or administrative impact. The investigations into personal liability are done by staff. There may be some administrative work to update forms/documents, manuals, training guides, but it would be minimal.

5. Permitting the department to intercept state income tax refunds, lottery payments, state vendor payments, and unclaimed property of taxpayers.

Trust Fund Impact: This law change proposal is expected to save the UI Trust Fund approximately \$1.3M annually in additional employer debt collections.

The department already intercepts WI-DOR income tax refunds, lottery payments, unclaimed property, and state vendor payments in order to satisfy fraud and non-fraud debts owed to DWD by claimants. The claimant DOR offset collects approximately 30% of the total IRS Federal Tax intercept (TOP for claimants).

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The department is currently implementing IRS Federal Tax intercept (TOP) for employer debt. The TOP fiscal indicated that TOP could save the Trust Fund approximately \$4.3M in additional tax collections.

Assuming the relationship between collections for claimants will be predictive of the debt collected for employers, the DOR offset collections would be approximately \$1.3M annually, or 30% of the total TOP estimate for employer debt. However, since the estimate is based upon claimant experience and not employer experience, and the employer portion of the TOP program has yet to be implemented, this estimate has a high degree of variance.

IT and Administrative Impact: This law change proposal will require approximately 3,000 hours of IT changes at a one-time cost of \$261,000. It assumes 1,800 SUITES hours, 900 CEDARS hours and 300 BITS project managements hours to make the necessary changes. The administrative cost is estimated at approximately 30% the IT cost, or \$78,300.

6. Technical changes include confirming the department's ability to recover costs and fees; to clarify that any seized property could be sold at an online auction and not solely as a sheriff sale; consolidate the federal income tax refund intercept provision into one section and consolidate the state intercept provisions into one section; simplify the definition of "debt" for the purposes of issuing a levy; and to codify current law that an appeal of a personal liability determination excludes a review of the underlying tax owed.

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Trust Fund Impact: Since these changes are technical in nature there is no impact to the UI Trust Fund.

IT and Administrative Impact: These technical proposals would not have an IT or administrative impact.