

COQUILLE INDIAN TRIBAL CODE

Chapter 647

Part 6 – Public Safety and Justice

Garnishment Ordinance

COQUILLE INDIAN TRIBE
Chapter 647
GARNISHMENT ORDINANCE

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647.010 – General

1. Purpose – Pursuant to the Coquille Indian Tribal Constitution, Article VI, Section 1, the Tribal Council has legislative authority to establish Tribal codes. In order to protect the health and welfare of the Tribe, its members, employees, residents and visitors, the Council has established policies and procedures by which Judgments may be collected through garnishment.
2. Background and intent – The Coquille Indian Tribe recognizes the need for the Tribe, its members and other Persons doing business with the Tribe, its members, and its employees to have procedures in place that facilitate the collection of judgments and debts.
3. Definitions –
 - (a) “Debtor” means a Person who owes a money judgment debt and whose property is being garnished by a Creditor.
 - (b) “Creditor” means a Person entitled to collect a debt arising from a money judgment and is garnishing property of a Debtor.
 - (c) “Garnishee” means a Person other than a Debtor or Creditor who is in possession of property of a Debtor and who has been garnished in accordance with this Code.
 - (d) “Judgment” includes a Judgment of the Coquille Tribal Court and any Judgments of other jurisdictions given full faith and credit by the Coquille Tribal Court under CITC 610.200 (4).
 - (e) “Person” means any individual, corporation, partnership, estate, 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 or a debt is sought, or which has in its possession the assets belonging to another.
 - (f) “Reservation” means any real property belonging to the Coquille Tribe of Indians or its members or any real property located within the geographic boundaries of the tract of land described in the Coquille Restoration Act, or any real property granted to the Tribe by subsequent acts of Congress.
 - (g) “Tribe” means the Coquille Indian Tribe and its governing body.
 - (h) “Writ” means the legal document used to garnish property or funds of a debtor as described in 647.100.
 - (i) “Tribal Court” or “Court” means the Coquille Indian Tribal Court as established by the Constitution of the Coquille Indian Tribe, Article VII.

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647.020 – JURISDICTION

1. This Ordinance covers the garnishment of assets belonging to the members of the Coquille Indian Tribe, or the assets of any Person or entity doing business, or having assets, within the jurisdiction described in CIT 610.200(1)(b)(2-4).
2. The Coquille Indian Tribal Court may issue a writ of garnishment within its jurisdiction, as provided in CITC 610.200, except that writs of garnishment shall not issue under CIT 610.200(1)(b)(1).
3. This Ordinance does not apply to the debts owed by or obligations required to be performed by the Coquille Indian Tribe, the Coquille Economic Development Corporation, the Coquille Indian Housing Authority, the Nasomah Health Group or any other entity chartered under Tribal law. This Ordinance does permit garnishment of wages earned by a Debtor employed by the Tribe or any Tribally-chartered entity.

647.100 – Garnishment described

Garnishment is a procedure by which a money Judgment is satisfied. The Creditor must first obtain a Judgment against the Debtor. The Tribal Court may then be petitioned for a writ of garnishment which will allow the Creditor to collect the debt by seizing funds or property of the Debtor held by a third Person, called a Garnishee. Examples of funds or property that may be garnished include, but are not limited to, savings or checking accounts at a bank, wages earned and not yet paid by an employer, or money or property owed by a debtor. The writ of garnishment is served on the Garnishee, who is required to give the funds or property to the Person who asked for the writ.

647.110 – Persons by and for whom writ of garnishment issued

This section establishes who may issue writs of garnishment and who may ask that writs of garnishment be issued. Such writs may be issued only by and for the following Persons:

1. The Clerk of the Court may issue writs of garnishment upon application and payment of applicable fees. If a Judgment is from another jurisdiction, it must first be registered with the Coquille Indian Tribal Court and given full faith and credit by the Coquille Indian Tribal Court pursuant to CIT 610.200 before the Clerk may issue any writ.
2. Writs may be issued for Persons: (a) who have complied with the procedures established in this section; and (b) who have a Judgment on their behalf requiring the payment of money which has been registered with the Coquille Indian Tribal Court.

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647.120 – Writs issued by Court Clerk; procedure; payments; release of property

1. A Person seeking payment of a money Judgment may petition the Coquille Indian 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. If the judgment being executed upon was entered by a Court other than the Coquille Indian Tribal Court, a certified copy of the original judgment must be attached to the petition. In addition, the Person requesting the writ shall provide, if possible, a description of the funds or property sought to be garnished, the location of such funds or property, and the name of the Person in possession of the funds or property, and any information concerning fees incurred in executing the Judgment through a writ of garnishment.
2. The Clerk of the Coquille Indian Tribal Court shall issue a writ of garnishment upon hearing in the Coquille Indian Tribal Court. The writ of garnishment shall state the following:
 - (a) The name of the Person seeking satisfaction of Judgment;
 - (b) The name of the Person whose funds or property are being garnished;
 - (c) The name of the third party holding the funds or property;
 - (d) A description of the assets;
 - (e) The address of the location of the funds or property and the third party holding the funds or property;
 - (f) The title and location of the Court action under which a Judgment was issued;
 - (g) The amount of the Judgment, including any applicable interest; and
 - (h) The amount of any applicable fees.
3. A writ of garnishment shall be valid until it is satisfied, but the Court may review each garnishment at least every 90 days. The Court shall have discretion to determine the scope and manner of such review. But, in developing the scope of each individual review, the Court may balance the inconvenience to the parties against the need or desire for an in-person, contested hearing. For example, when a Debtor or Garnishee cannot be located, the interest in having an in-person hearing could be relatively low, and the Court could merely request an updated report from all parties on a pre-approved form.
4. Fees – Any reasonable expenses which were incurred in attempting to execute Judgment through a writ of garnishment are 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 the Court who shall include such expenses, plus any fees assessed by the Coquille Indian Tribal Court, in the amount to be recovered under the writ of garnishment.

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647.130 – Rate of garnishment; claims of exemption; procedure –

1. The amount of money which may be withheld each week from all sources of income shall be determined by the Coquille Tribal Court. **The Debtor may claim as exempt certain property or funds as described in 647.240.** Factors that should be considered in determining the amount of money to garnish shall include, but are not limited to:
 - (a) Total income versus the amount of the debt.
 - (b) The priority of the debt in relation to other obligations owed.
 - (c) The type of debt.
 - (d) The needs of the Creditor.
 - (e) The needs of the Debtor.
 - (f) The nature of any assets which could be garnished.
 - (g) Other sources of financial support for the Creditor and the Debtor.

2. Notwithstanding subsection (1) of this section, in the case of garnishment for the payment of support under a domestic relations order under Chapter 743 or a foreign domestic relations order registered in the Coquille Tribal Court under 740.030, the amount of money that may be garnished shall be the amount defined under the Coquille Domestic Relations Code.

647.140 – Form for writ issued by Court Clerk. This section establishes a form for a writ of garnishment issued by the Clerk of the Court. A writ of garnishment issued by the Clerk of the Court shall be in substantially the following form:

IN THE COQUILLE INDIAN TRIBAL COURT

Plaintiff,)	
)	
vs.)	
)	
)	
)	
)	Case No. _____
)	
Defendant.		

IN THE NAME OF THE COQUILLE INDIAN TRIBE, TO:

You are now a Garnishee.
AS A GARNISHEE, YOU NEED TO KNOW THE FOLLOWING (the following information is to be filled in by the Creditor):

On the ____ day of _____, 20__, (cross out one)
plaintiff/defendant _____

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named above and called "Creditor," has (check one):

_____ filed an action

_____ obtained a judgment (a Court order for the payment of money) against the (cross one out) plaintiff/defendant _____ named above and called "Debtor." The Debtor's Social Security Number or Employer Identification Number is _____ (insert if known). The following amount is necessary to satisfy the Creditor's claim or judgment:

- +Claim or Judgment Debt \$ _____
- +Prejudgment Interest \$ _____
- +Attorney Fees \$ _____
- +Cost Bill \$ _____
- +Post-Judgment Interest \$ _____
- +Delivery Fee for this Writ \$ _____
- +Issuance Fee for this Writ \$ _____
- +Tribal Police fees other than Delivery Fees \$ _____

+Other (Explain. Attach additional sheets if necessary. NOTE: INSERTING ITEMS AND AMOUNTS NOT LAWFULLY SUBJECT TO COLLECTION BY GARNISHMENT MAY RESULT IN LIABILITY FOR WRONGFUL EXECUTION.)

_____ \$ _____

_____ \$ _____

_____ \$ _____

_____ \$ _____

Total other from additional sheet (if used) \$ _____

+Past Writ Issuance Fees \$ _____

+Past Delivery Fees \$ _____

=Subtotal \$ _____

LESS Payments Made \$ _____

=TOTAL Amount Required to satisfy in Full this Claim or Judgment \$ _____

THE CLERK OF THE COURT HAS NOT CALCULATED ANY AMOUNTS ON THE WRIT AND IS NOT LIABLE FOR ERRORS MADE IN THE WRIT BY THE CREDITOR.

Witness the hand and seal of the Court on this _____ day of 20____.

CLERK OF THE COURT

By _____

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you received this writ, including wages and debts that existed but were not yet due when you received this writ. You file these forms by following Step 2 below.

If you have questions, you should contact an attorney. The Clerk of Court cannot give you legal advice.

If when the writ was delivered to you, you did not receive the original writ or a true copy thereof and one additional copy of the writ, the garnishment is not effective to garnish any property, you are not required to respond by filing the garnishee's certificate and you may deal with any property of the Debtor as though the garnishment had not been issued.

If the writ does not comply with Tribal law or if you cannot tell from the writ whether you hold any property of or owe a debt to the Debtor, the writ does not garnish anything, but you must fill out the certificate anyway and follow Step 2. Keep a copy for your records.

If the writ does comply with Tribal law and you can tell that you may hold property of or owe a debt to the Debtor but you are not sure what or how much, you must fill out the certificate anyway and explain why. You must then follow Step 2. When you find out whether or what you do owe the Debtor, you should amend the certificate, even if you find out you do not owe the Debtor anything. Follow Step 2 again and file the amended certificate.

If you discover before you send your certificate under Step 2 that a voluntary or involuntary bankruptcy petition has been filed by or on behalf of the Debtor under section 301, 302 or 303 of the United States Bankruptcy Code (11 U.S.C. §§ 101 to 1330), you must describe in your certificate any garnished property or debts that you know that you have in your possession, and note on the certificate that a bankruptcy petition has been filed.

After filing the certificate under Step 2, move on to Step 3 if you owe anything to the Debtor or hold property that belongs to the Debtor.

STEP 2. FILE THE CERTIFICATE AND SCHEDULE.

Within five days of receiving the writ, you must send all of the following (information to be filled in by Creditor):

The original certificate and schedule form to the Clerk of the Coquille Indian Tribal Court:

3050 Tremont Avenue
North Bend, OR 97459

A copy of the certificate and schedule form to the Debtor at (last-known address):

Name _____
Street address _____
City _____ State _____
Zip Code _____
Telephone number (if known) _____

A copy of the certificate and schedule form to the Creditor at:

Name _____
Street address _____

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City _____ State _____
Zip Code _____
Telephone number _____

A copy of the certificate to the Tribal Police:
3050 Tremont Avenue

North Bend, OR 97459

You are required to send a copy to the Tribal Police only if you hold personal property of the Debtor.

STEP 3. DELIVER THE FUNDS OR OTHER PROPERTY.

Unless you have discovered that a bankruptcy petition has been filed by or on behalf of the Debtor and your certificate contains a statement to that effect, you must do (a) or (b) below, or both, after you file the certificate under Step 2, depending on what you owe or hold:

(a) **MONEY OR OTHER OBLIGATION.** If you owe or hold a debt or other obligation payable in money, do the following:

Unless you receive a notice of claim of exemption or other direction from the Court (a document or other notice from the Clerk of the Court telling you what to do with the money or informing you that the Debtor is claiming that all or some of the money cannot be garnished) when you send your certificate or when the debt or other obligation becomes due, whichever is later, make your check or other draft payable to the Creditor and send the payment to the Coquille Indian Tribal Court at the address shown in Step 2.

In making payments under this writ you need to prorate any wages or periodic payments, so that you pay only the amount you owe the Debtor on the date you receive this writ.

If you receive a notice of claim of exemption from the Court or direction from the Court to deliver the money to the Court and have not yet forwarded the money, send or deliver the payment directly to the Clerk of the Court. You must send the payment promptly with the Certificate of Garnishee if it is now due; otherwise, send it when it becomes due and send the Certificate of Garnishee as required under Step 2. If you make payment by check or other draft, make it payable to the Creditor. Because you may be liable for money that does not reach the Court, it is better not to send cash by mail.

AND/OR

(b) **OTHER PROPERTY.** If you filed your certificate with the Tribal Police under Step 2, do the following even if you receive a notice of claim of exemption from the Court:

Hold subject to this garnishment the property now in your possession, control or custody until you receive written notice from the Tribal Police. The Tribal Police's notice should tell you what to do with the property. If the property is not convenient for you to deliver to the Tribal Police and you want the Tribal Police to come get the property, you must explain this fact on the certificate.

If you have followed all of the steps in this writ and you receive no notice from the Tribal Police within 30 days after this writ was delivered to you, you may treat this garnishment as being of no further force or effect.

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As long as this writ is in effect, you may be liable to the Creditor if you pay any debt or turn over any property to Debtor, except the exempt portion of any wages you owe to the Debtor unless you are otherwise directed by the Court or unless the claim or judgment for which this writ of garnishment was given is satisfied in full.

EARNINGS EXEMPTION COMPUTATION SCHEDULE

The Garnishee must complete the following form and fill in the correct amounts only if the Garnishee is an employer of the Debtor.

- | | |
|---|----------|
| 1. Debtor's gross weekly "earning" | \$ _____ |
| 2. Amounts required to be withheld by law (Federal and state withholding, social security, etc.) | \$ _____ |
| 3. Debtor's "disposable earnings" for biweekly: | |
| Subtract line 2 from line 1 | \$ _____ |
| 4. Minimum Exemption | \$435 |
| 5. Maximum Exemption | |
| Enter 75 percent of line 3 | \$ _____ |
| 6. Earnings exempt from garnishment | |
| Line 4 or 5, whichever is greater | \$ _____ |
| 7. Nonexempt earnings | |
| Subtract line 6 from line 3 | \$ _____ |
| 8. Amounts withheld pursuant to a support order under support withholding process available under prior law or CITC Chapters 743 and 745. | \$ _____ |
| 9. Earnings subject to garnishment | |
| Subtract line 8 from line 7 | \$ _____ |

(Case caption to be completed by Creditor)
IN THE COQUILLE INDIAN TRIBAL COURT

_____)	
Plaintiff)	CERTIFICATE OF
)	GARNISHEE
)	Case No.
)	
vs.)	
)	
)	
_____)	
Defendant.)	

TO: The Clerk of Court, Debtor, Creditor/Creditor's Attorney and (if applicable) Tribal Police

(Following to be completed by Garnishee)

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I hereby certify that at the time of delivery to me of the foregoing Writ of Garnishment on the ____ day of _____, 20____, I had in my possession, control or custody only the following property, money, debts, rights, dues or credits due or to become due, belonging or owing to the Debtor named in said Writ of Garnishment (include due date if not yet due):

I have placed a check in front of all the following statements that apply (more than one may apply):

- I do not owe money to or hold personal property of the Debtor.
 - The Writ of Garnishment does not comply on its face with Tribal garnishment law or I am unable to determine from the information in the writ whether I hold any property of the Debtor. (Explain)
-

- I have discovered that a voluntary or involuntary bankruptcy petition has been filed by or on behalf of the Debtor.
 - The writ does comply with Tribal law and I am able to determine that I may owe money to or hold property of the Debtor, but I am not sure what or how much it might be. I will file an amended certificate when I find out. (Explain)
-
-
-

I owe a debt or other obligation to the Debtor, which is not now due but will become due within 45 days. I will forward the money when the debt or other obligation becomes due.

I am holding personal property of or owe a debt or obligation to the Debtor other than a debt or obligation due within 45 days. I am sending this certificate to the Tribal Police and if I receive instructions from the Tribal Police within 30 days I will follow those instructions even if I receive a notice of claim of exemption.

I owe a debt or other obligation to the Debtor which is now due and I am forwarding the money owed or enough of it to satisfy the garnishment to the Creditor.

I owe a debt or other obligation to the Debtor, and the Debtor owes Creditor a debt or other obligation to the holder of an underlying, lien on my property. Pursuant to _____, I have offset the sum of \$_____ and paid that amount to the underlying lienholder, and I am forwarding the balance of the money I owe the Debtor, or enough of it to satisfy the garnishment, to the Creditor.

I am holding personal property other than money, but it is inconvenient to deliver the property to the Tribal Police. I will hold the property until the Tribal Police picks it up. (Explain)

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___ I have received a notice of claim of exemption or other direction from the Clerk of Court and am forwarding funds to the Clerk of Court.

___ The Defendant owes me a debt in the amount of \$ _____. I will forward the funds upon direction from the Court of the amount that I may first setoff.

___ Other (Explain).

Dated _____, 20_____

Name of Garnishee

Signature

Address

647.200 – Delivery of writ; insurance of deliverer; fee

To be valid, a writ of garnishment must be delivered to the Garnishee as follows:

1. Notwithstanding any other provision of Tribal law relating to service of documents, all Creditors must first attempt service of writs of garnishment by certified mail, return receipt requested. If the postal service cannot complete service by certified mail, for whatever reason, and returns the undelivered writ, the Creditor may attempt service under subsection (2) of this section. If the Creditor attempts service under subsection (2) of this section the Creditor must have a new writ issued only if the Creditor claims additional delivery fees.

2. In Person. The following apply when a writ is delivered under this subsection:

(a) The writ may be delivered by any of the following: (A) The Tribal Police or any other duly authorized law enforcement agency; (B) Any competent Person 18 years of age or older who is a resident of the State of Oregon and is not a party or attorney in the action. The provisions of the Coquille Indian Tribal Code relating to personal service apply to service of writs under this subsection. These rules are located at CITC 620.120(2)(c) and state that: The summons and complaint shall be served by any person 18 years of age or older and not a party to the either the original suit (where the original judgment was obtained) or the garnishment. The summons and complaint shall be served together. Service shall be made by delivering true copies of the summons and complaint to the debtor personally or by leaving copies thereof at the individual's dwelling house or usual place of residency with a person 14 years of age or older residing therein or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process. If service must be made off of tribal land, and service cannot be accomplished as provided for herein, service shall be made in

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accordance with the laws of the tribe or the state within whose jurisdiction the debtor is to be served.

(b) Notwithstanding paragraph (a) of this subsection, no Person other than the Tribal Police or any other duly authorized law enforcement agency shall deliver a writ of garnishment unless the Person has errors and omissions insurance with limits of not less than \$100,000 per occurrence from a company authorized to do business in this jurisdiction.

(c) The fee for delivery of a writ of garnishment by a Person other than a Tribal Police shall be in an amount agreed to between the Person making the delivery and the Person requesting delivery; the fee for delivery by the Tribal Police shall be set by internal regulation and must be paid prior to delivery of the writ. The Tribal Police shall deliver writs of garnishment on the Reservation and may deliver writs of garnishment off-Reservation, if the fees established in this section are paid.

647.220 – Effect of delivery of writ on property of Debtor; property to which garnishment does not apply

1. Delivery of a writ of garnishment in accordance with this Ordinance shall be effective to garnish all non-exempt property of the Debtor which is in the Garnishee's possession, control or custody at the time of delivery of the writ of garnishment to the Garnishee.
2. Notwithstanding subsection (1) of this section, property which may not be taken by garnishment shall include but is not limited to equitable interests, property in the custody of the law, property in the possession of a conservator, property in the possession of a personal representative constituting the subject matter of a trust contained in a duly probated will of a decedent, and items of cultural or spiritual significance. The determination that an item is culturally or spiritually significant shall be by a person certified by the Tribal Council as a Tribal Cultural Expert or Tribal Oral Historian.

647.230 – Copy to Debtor; method of delivery; duty of Creditor; civil penalty

1. Following delivery of a writ of garnishment to a Garnishee, the Person who mailed or delivered the writ of garnishment shall promptly mail or deliver a copy of the writ of garnishment, together with the Notice of Exemptions and claim form described in 647.240, to each Debtor whose property is being garnished by said writ. The following apply to this subsection:

(a) The Person may meet the requirements of this subsection by mailing the documents to the address of the Debtor provided by the Creditor.

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- (b) The Creditor shall provide to the Person or Tribal Police the last address of the Debtor known to the Creditor.
 - (c) The Person or Tribal Police may delay service and garnishment until the Creditor either provides such address or a statement that the Creditor has no knowledge of the Debtor's address.
 - (d) The Person or Tribal Police shall have no duty under this subsection if the Creditor provides a statement that the Creditor has no knowledge of the Debtor's address.
2. If the Creditor fails to provide either the Debtor's address or a statement that the Creditor has no knowledge of the Debtor's address to the Person or Tribal Police who delivered the writ of garnishment, the Court may order the Creditor to return any property which was exempt from garnishment and garnished, and, in any case, may order the Creditor to pay a civil penalty of up to \$500 to the Debtor, in addition to all reasonable costs and reasonable attorney fees incurred by the Debtor in recovering such property and penalty.

647.240 – Form of notice of exemptions or exclusions

The notice of exemptions referred to in 647.230 shall be in substantially the form set forth in this subsection. Nothing in the notice form described under this subsection is intended either to expand or restrict the law relating to exempt property. The description of exempt property contained in this notice shall not affect any factors taken into account by the Coquille Domestic Relations Code to determine the appropriate rate or amount of any child support obligation.

NOTICE OF EXEMPT PROPERTY

Property belonging to you may have been taken or held in order to satisfy a claim or Judgment which has been asserted or entered against you. Important legal papers are enclosed.

YOU MAY BE ABLE TO GET YOUR PROPERTY BACK, SO READ THIS NOTICE CAREFULLY.

Tribal, federal and state law states that certain property lawfully in your possession may not be taken. Some of the property which may not be taken is listed below.

- (1) 75 percent of your wages or a salary.
- (2) Social security (including SSI) and Tribal Elders' Benefit.
- (3) Public assistance (welfare).
- (4) Unemployment benefits.
- (5) Disability benefits.

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- (6) Workers' compensation benefits.
- (7) Exempt wages, social security, welfare, unemployment benefits and disability benefits when placed in a checking or savings account (up to \$7500).
- (8) Spousal support, child support, or separate maintenance to the extent reasonably necessary for your support or the support of any of your dependents.
- (9) A homestead.
- (10) Household goods, furniture, radios, a television set and utensils to \$3,000.
- (11) Automobile, truck, trailer, or other vehicle up to \$1,700.
- (12) Tools, implements, apparatus, team, harness or library necessary to carry on your occupation to \$3,000.
- (13) Books, pictures and musical instruments to \$600.
- (14) Wearing apparel, jewelry and other Personal items to \$1,800.
- (15) Domestic animals and poultry for family use to \$1,000 and their food for 60 days.
- (16) Provisions (food) and fuel for your family for 60 days.
- (17) One rifle or shotgun and one pistol. The combined value of all firearms claimed as exempt may not exceed \$1,000.
- (18) Public or private pensions.
- (19) Veterans benefits and loans.
- (20) Medical assistance benefits.
- (21) Health insurance proceeds and disability proceeds of life insurance policies.
- (22) Cash surrender value of life insurance policies not payable to your estate.
- (23) Federal annuities.
- (24) Other annuities to \$250 per month, excess over \$250 per month subject to same exemption as wage.
- (25) Professionally prescribed health aids for you and any of your dependents.
- (26) Elderly rental assistance.
- (27) Your right to receive, or property traceable to:
 - (a) An award under any crime victim reparation law.
 - (b) A payment or payments, not exceeding a total of \$10,000, on account of Personal bodily injury suffered by you or an individual of whom you are a dependent.
 - (c) A payment in compensation of loss of future earnings for you or an individual of whom you are or were a dependent, to the extent reasonably necessary for your support and the support of any of your dependents.
- (28) Interest in Personal property to the value of \$400, but this cannot be used to increase the amount of any other exemption.

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- (29) The difference between what you actually owe the Creditor and the total amount due listed in the writ of garnishment, if the amount listed in the writ is larger.

You must act promptly if you want to get your money or property back. You may seek to reclaim your exempt property by doing the following:

- (1) Fill out the form for claim of exemption that you received with this notice.
- (2) Mail or deliver the form for claim of exemption to the Clerk of the Court at the address shown on the writ of garnishment. You must mail or deliver the form within 30 days after you receive this notice.
- (3) Although (2) above allows you to claim an exemption, the law only requires the property to be held for 10 days before it is applied to the Creditor's use. You may be able to keep the property from being used by the Creditor before being allowed a hearing by promptly following (1) and (2) above.

You should be prepared to explain your exemption in Court. If you have any questions, you should see an attorney.

IF YOU CLAIM AN EXEMPTION IN BAD FAITH, YOU MAY BE SUBJECT TO PENALTIES IMPOSED BY THE COURT THAT COULD INCLUDE A FINE. When you file this claim of exemption, the Garnishee and Creditor will be required to pay any debt or obligation they hold into Court. They are subject to penalties if they do not.

The claim of exemption form referred to in this section shall be in substantially the following form:

Creditor)	
)	CLAIM OF EXEMPTION
vs.)	Case No. _____
)	
Debtor)	

I/We claim the following described property or money as exempt from execution:

I/We believe this property is exempt because:

Name _____	Name _____
Signature _____	Signature _____
Address _____	Address _____

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GARNISHMENT ORDINANCE

Telephone_____ Telephone_____

ITEMS OF CULTURAL OR SPIRITUAL SIGNIFICANCE

Tribal law states that writs of garnishment do not apply to items of cultural or spiritual significance. If the Creditor has attempted to garnish an item that you feel is of cultural or spiritual significance, fill out the exclusionary form contained below and send a copy to the Clerk of Court. The Clerk will instruct the Garnishee and Creditor that the property is not to be garnished. If the identification of the items as culturally or spiritually significant is disputed, a Tribal Cultural Expert or Tribal Oral Historian will be appointed to decide the issue. **IF YOU CLAIM THAT AN ITEM IS OF CULTURAL OR SPIRITUAL SIGNIFICANCE IN BAD FAITH, YOU MAY BE SUBJECT TO PENALTIES IMPOSED BY THE COURT THAT COULD INCLUDE A FINE.**

The exclusionary form referred to in this section shall be in substantially the following form:

_____)	
Creditor)	CLAIM OF EXCLUSION
)	FOR ITEMS OF CULTURAL
)	OR SPIRITUAL SIGNIFICANCE
)	
vs.)	Case No. _____
)	
_____)	
Debtor)	

I/We claim the following described property or money as excluded from garnishment because it is culturally or spiritually significant:

Name_____	Name_____
Signature_____	Signature_____
Address_____	Address_____
Telephone_____	Telephone_____

647.300 –Duty of Garnishee

1. The Garnishee shall examine the writ of garnishment to determine whether the writ complies on its face with this ordinance. The Garnishee shall have no duty to determine whether the Creditor or Tribal Police or other Person has complied with these requirements or to otherwise determine the effectiveness of the garnishment.

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2. In searching its records for the property of the Debtor, the Garnishee shall use all of the information contained in the writ of garnishment pertaining to the identity of the Debtor.
3. The Garnishee may, in the Certificate of Garnishee, notify the Court and the other parties of any debt that the Debtor owes to the Garnishee as provided in 647.310 and 647.340 (2).
4. The Garnishee shall send the funds to the Creditor. In the case of property, the Garnishee will send the property to the Tribal Police only upon direction by the Tribal Police to do so pursuant to 647.410.

647.310 – Certificate of Garnishee

1. Within five days from the date the writ of garnishment is delivered to the Garnishee, the Garnishee shall prepare a certificate and deliver the certificate to the Clerk of the Court, the Creditor and the Debtor. In the case of garnishment of property, the certificate shall also be sent to the Tribal Police. Delivery of the Certificate of Garnishee is deemed to have occurred if the Garnishee mails the certificate using first-class mail to the last known address of the Creditor and Debtor.
2. The certificate shall state whether the Garnishee has any property of the Debtor in the possession, control or custody of the Garnishee at the time of delivery of the writ of garnishment, or an amount of such property sufficient to satisfy the Creditor's claim or Judgment, whichever is less.
3. The certificate shall also state the amount of any debt owed by the Debtor to the Garnishee.
4. If a Garnishee discovers that the Debtor is in voluntary or involuntary bankruptcy proceedings, he or she shall note that fact on the certificate. In the case of bankruptcy proceedings, the Garnishee is not obligated to send any funds or property, and the writ is treated as if it had not been issued.

647.320 – Liability of Garnishee who fails to file certificate or deliver property

1. Unless the Garnishee shall file a certificate and deliver the property required to be delivered to the Tribal Police or the Clerk of the Court within the time provided by law, the Garnishee shall be liable to the Creditor in an amount equal to the lesser of:
 - (a) The amount required to satisfy Creditor's claim or Judgment; or
 - (b) The value of the Debtor's property held by the Garnishee at the time of the Garnishee's receipt of the writ of garnishment.

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2. Delivery of the property by the Garnishee to the Tribal Police or the Clerk of the Court, as the case may be, shall discharge the Garnishee from liability to the Creditor for the value of the property delivered. The Tribal Police or the Clerk of the Court shall, when requested, provide the Garnishee with a receipt for any property received.

647.330 – When Garnishee punishable for contempt

If a Garnishee fails to provide a certificate within the time stated, or if a certificate, when given is not satisfactory to the Court, or if the Garnishee fails to deliver the property within the time stated, the Garnishee or an officer of the Garnishee may be ordered by the Court to appear and be examined on oath concerning the same, and disobedience of such order may be punished as contempt.

647.340 – Receipt and disbursement of funds

1. Any funds recovered under the writ of garnishment shall be delivered directly to the Creditor. Upon receipt of the funds the Clerk of the 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 Coquille 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 to cover reasonable administrative costs. The Tribal Court shall prepare a schedule of general administrative costs which shall be approved by the Tribal Council. Personal property which is to be garnished shall be handled in accordance with 647.400-420.
2. Notwithstanding the previous subsection, if a Certificate of Garnishee indicates that the Debtor owes the garnishee a debt, the Court shall review the Creditor's and Garnishee's respective claims. In such a case the Court shall enter an order that reflects the equitable recoupment interests of the Creditor and the Garnishee.

647.400 – Garnishment of property of Debtor held by another Person

1. Property of the Debtor in the possession of a Person other than the Debtor or Creditor shall be garnished by delivery of the writ of garnishment or a true copy, plus one additional copy of the writ of garnishment to the Person in possession of the property.
2. If any of the items described in subsection (1) of this section are not delivered to the Garnishee, the garnishment shall not be effective to garnish any property of the Debtor, and the Garnishee shall not be required to respond to the garnishment and may proceed to deal with any property of the Debtor as if the writ had not been issued.

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647.410 – Receipt of certificate of Garnishee by Tribal Police; duties

The Tribal Police shall accept a Garnishee's certificate that is mailed or delivered to the Tribal Police after five days from the date the writ of garnishment was delivered to the Garnishee. Upon receipt, the Tribal Police shall:

1. Send or deliver a copy of the certificate to the Creditor or Creditor's attorney, together with a notice setting forth the Tribal Police's fees for taking possession of and selling the property and advising the Creditor that the Tribal Police will direct the Garnishee to deliver the property described in the certificate only if, within [20] days after the date on which the writ of garnishment was delivered to the Garnishee, the Tribal Police receives the fees set forth in the notice. The Tribal Police will then proceed as provided in this section and 647.420.
2. If the Creditor pays the Tribal Police's fees within the time provided in subsection (1) of this section, the Tribal Police shall promptly mail or deliver a written notice to the Garnishee directing the Garnishee to mail or deliver the garnished property, or an amount sufficient to satisfy the garnishment, to the Clerk of the Court .
3. If the Creditor fails to pay the Tribal Police's fees within the time provided in subsection (1), the garnishment of the property described in the Garnishee's certificate shall be of no further force or effect, although any garnishment of funds shall remain in effect, and the Tribal Police shall promptly give the Garnishee notice in writing of the termination of the garnishment of property.

647.420 – Disposition of property delivered to Court Clerk or Tribal Police; payment of expenses; claim of exemption

1. Property delivered to the Clerk of the Court should be disposed of as follows: (a) 15 days after receipt of the property, unless a claim of exemption is filed and is pending, the Tribal Police shall sell the property in the same manner in which property is sold on execution. (b) If the Clerk of the Court receives a notice of claim of exemption or of a debt owed by the Debtor to the Garnishee, it shall hold the property pending a Court order and shall dispose of the property as ordered by the Court. (c) If the garnished property is perishable, or livestock and/or the cost of keeping the garnished property is great, the Tribal Police shall sell the property in the same manner in which property is sold on execution. (d) If the Tribal Police deem it impractical to keep and/or maintain such property, it may request the Court to exempt such property.
2. The Creditor shall be liable for the Tribal Police's reasonable expenses in taking and keeping property tendered pursuant to this section. Such expenses shall be allowed as disbursements, and recovered through the garnishment.

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3. If the Creditor notifies the Clerk of the Court or the Tribal Police that the money or property should be released to the Debtor, the Clerk of the Court or the Tribal Police shall promptly release it.

647.500 – [RESERVED]

647.600 – Multiple writs; priority

1. A writ of garnishment for the payment of support under a domestic relations order shall take priority over any other writ of garnishment.
2. Except as provided in 647.600(1), the priority of any other writ of garnishment shall be determined in accordance with the time it issued. Between any two writs, the one issued first shall have priority.

647.700 – Sovereign immunity intact

Nothing in this ordinance is to be construed as a waiver of the sovereign immunity of the Coquille Indian Tribe.

647.800 – Severability

If any provision of this ordinance is held invalid by a Court of competent jurisdiction, the invalid portion shall be severed and the remaining provisions shall continue in full force and effect.

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History of Amendments to Chapter 647 Garnishment Ordinance:

Adopted 5/22/1999

Approved 12/16/2010, CY10123

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