

39.32

3/25/75

Memorandum 75-28

Subject: Study 39.32 - Wage Garnishment Procedure

Attached are two copies of the revised statute and Comments relating to wage garnishment procedure. The staff would like to have this recommendation approved for printing at the April meeting. Accordingly, we request that you mark your editorial changes on one copy of the draft (and the preliminary portion when you receive that) and turn it in to the staff at the April meeting.

The decisions made at the last meeting have required extensive revision of the prior draft. Because of the shortness of time between meetings we have not had time to have a completely clean draft typed. Also, there may be a few minor editorial revisions required. We will forward the preliminary portion of the recommendation to you in a supplement to this memorandum.

Two omissions in the attached draft are noted for your attention:

(1) The prior draft included an exemption for paid earnings. We have not included that exemption in the attached draft. We found that the special rules concerning exemptions for amounts due for delinquent support payments and the complications caused by the new wage assignment for support provisions would have made the provision for an exemption for paid earnings very complex. We plan to take up this exemption when we consider exemptions generally. Until then the federal exemption will apply.

(2) The prior draft included a special exemption for retirement fund payments. We have not included that exemption in the attached draft for the same reason we did not include the exemption for paid earnings. The whole matter of retirement exemptions will be considered when we consider exemptions generally.

There is one change we recommend be made in the attached draft. Section 723.023 relates to the priority of orders generally. We suggest that in lieu of subdivision (b), the draft provide that the earnings withholding order indicate the time at which it is issued and that where two orders are served on the same day, the employer comply with the order **first** issued. This will avoid the need to indicate the date of the judgment on the order and would be a better rule in the opinion of the staff.

Respectfully submitted,

John H. DeMouly
Executive Secretary

Code of Civil Procedure

§ 682 (technical amendment)

SECTION 1. Section 682 of the Code of Civil Procedure is amended to read:

682. The writ of execution must be issued in the name of the people, sealed with the seal of the court, and subscribed by the clerk or judge, and be directed to the sheriff, constable, or marshal, and it must intelligibly refer to the judgment, stating the court, the county, and in municipal and justice courts, the judicial district, where the judgment is entered, and if it be for money, the amount thereof, and the amount actually due thereon, and if made payable in a specified kind of money or currency, as provided in Section 667, the execution must also state the kind of money or currency in which the judgment is payable, and must require the officer to whom it is directed to proceed substantially as follows:

1. If it be against the property of the judgment debtor, it must require such officer to satisfy the judgment, with interest, out of the personal property of such debtor, ~~or if it is against the earnings of such debtor, such levy shall be made in accordance with Section 682.3,~~ and if sufficient personal property cannot be found, then out of his real property; or if the judgment be a lien upon real property, then out of the real property belonging to him on the day when the abstract of judgment was filed as provided in Section 674 of this code, or at any time thereafter.

2. If it be against real or personal property in the hands of the personal representatives, heirs, devisees, legatees, tenants, or trustees, it must require such officer to satisfy the judgment, with interest, out of such property.

3. If it be issued on a judgment made payable in a specified kind of money or currency, as provided in Section 667, it must also require such officer to satisfy the same in the kind of money or currency in which the judgment is made payable, and such officer must refuse payment in any other kind of money or currency; and in case of levy and sale of the property of the judgment debtor, he must refuse payment from any purchaser at such sale in any other kind of money or currency than that specified in the execution. Any such officer collecting money or currency in the manner required by this

chapter, must pay to the plaintiff or party entitled to recover the same, the same kind of money or currency received by him, and in case of neglect or refusal to do so, he shall be liable on his official bond to the judgment creditor in three times the amount of the money so collected.

4. If it be for the delivery of the possession of real or personal property, it must require such officer to deliver the possession of the same, describing it, to the party entitled thereto, and may at the same time require such officer to satisfy any cost, damages, rents, or profits recovered by the same judgment, out of the personal property of the person against whom it was rendered, and the value of the property for which the judgment was rendered to be specified therein if a delivery thereof cannot be had; and if sufficient personal property cannot be found, then out of the real property, as provided in the first subdivision of this section.

Comment. Section 682 is amended to delete the reference to former Section 682.3.

§ 682.3 (repealed)

SEC. 2. Section 682.3 of the Code of Civil Procedure is repealed.

~~682.3. (a) Whenever the levy of execution is against the earnings of a judgment debtor, the employer served with the writ of execution shall withhold the amount specified in the writ from earnings then or thereafter due to the judgment debtor and not exempt under Section 690.6, and shall pay such amount, each time it is withheld, to the sheriff, constable or marshal who served the writ. If such person shall fail to pay such amount to the sheriff, constable or marshal, the judgment creditor may commence a proceeding against him for the amounts not paid. The execution shall terminate and the person served with the writ shall cease withholding sums thereunder when any one of the following events takes place:~~

~~(1) Such person receives a direction to release from the levying officer. Such release shall be issued by the levying officer in any of the following cases:~~

~~(a) Upon receipt of a written direction from the judgment creditor.~~

~~(b) Upon receipt of an order of the court in which the action is pending, or a certified copy of such order, discharging or recalling the execution or releasing the property. This subdivision shall apply only if no appeal is perfected and undertaking executed and filed as provided~~

in Section 917-B or a certificate to that effect has been issued by the clerk of the court.

(c) In all other cases provided by law.

(2) Such person has withheld the full amount specified in the writ of execution from the judgment debtor's earnings.

(3) The judgment debtor's employment is terminated by a resignation or dismissal at any time after service of the execution and he is not reinstated or reemployed within 90 days after such termination.

(4) A period of 90 days has passed since the time such person was served with the writ of execution.

(b) At any time after a levy on his earnings the judgment debtor may proceed to claim a full exemption of his earnings in accordance with the provisions of Sections 600.6 and 600.50. The exemption so claimed shall extend to any wages withheld pursuant to the levy of execution whether or not withheld after the claim of exemption is filed.

(c) Subject to the provisions of Section 600.50, the sheriff, constable, or marshal who serves the writ of execution and receives the amounts withheld from the judgment debtor's earnings, shall account for and pay to the person entitled thereto, all sums collected under the writ, less his lawful fees and expenses at least once every 30 days, and make return on collection thereof to the court.

Comment. Section 682.3 is superseded by Chapter 2.5 (commencing with Section 723.010).

§ 683 (amended). Return of writ of execution

SEC. 3. Section 683 of the Code of Civil Procedure, as amended by Chapter 1251 of the Statutes of 1974, is amended to read:

(a)

683. The execution may be made returnable, at any time not less than 10 nor more than 60 days after its receipt by the officer to whom it is directed, or, if the execution is upon the earnings of the judgment debtor, upon the termination of the levy of execution as provided in Section 682.3, to the court in which the judgment is entered. When the execution is returned, the clerk must attach it to the judgment roll, or the judge must make the proper entry in the docket.

(b)

If an execution is returned unsatisfied, another may be afterward issued within the time specified in this code.

(c)

If property either personal or real be levied upon under such writ of execution but the sale thereunder be postponed beyond or not held within the return date after it is received by the officer to whom it was delivered and which has been returned to the clerk of the court in which the judgment is entered, upon request of the person

in whose favor the writ runs the court may direct the clerk to redeliver said execution to the officer to whom it was directed in order to permit the officer to make an alias return of the proceedings of the sale or levy thereon as in the case of an original return of execution.

(d) Whenever a writ of execution issued against real property containing a dwelling house has been returned, proof that notice required by Section 682b has been served shall be indicated on the writ, or separately and attached to the writ.

(e) If an earnings withholding order has been issued and served upon the employer as provided in Chapter 2.5 (commencing with Section 723.010) prior to the time the writ of execution is made returnable under subdivision (a), the execution is returnable as provided in Section 723.026.

Comment. Subdivision (a) of Section 683 is amended to reflect the repeal of Section 682.3 and the enactment of Section 723.026. Subdivision (e) has been added to provide a reference to the rules governing the return when an earnings withholding order has been served.

§ 690.6 (repealed.) Exemption of earnings from attachment

SEC. 4. Section 690.6 of the Code of Civil Procedure, as amended by Chapter 1516 of the Statutes of 1974, is repealed.

~~690.6. (a) One-half or such greater portion as is allowed by statute of the United States, of the earnings of the debtor received for his personal services rendered at any time within 30 days next preceding the date of a withholding by the employer under Section 682.3, shall be exempt from execution without filing a claim for exemption as provided in Section 690.50.~~

(b) All earnings of the debtor received for his personal services rendered at any time within 30 days next preceding the date of a withholding by the employer under Section 682.3, if necessary for the use of the debtor's family residing in this state and supported in

All in
strikeout

~~whole or in part by the debtor, unless the debts are:~~
~~(1) Incurred by the debtor, his wife, or his family for the common necessities of life.~~

~~(2) Incurred for personal services rendered by any employee or former employee of the debtor.~~

~~(c) The court shall determine the priority and division of payment among all of the creditors of a debtor who have levied an execution upon nonexempt earnings upon such basis as is just and equitable.~~

~~(d) Any creditor, upon motion, shall be entitled to a hearing in the court in which the action is pending or from which the writ issued for the purpose of determining the priority and division of payment among all the creditors of the debtor who have levied an execution upon nonexempt earnings pursuant to this section.~~

All in
strikeout

Comment. Section 690.6 is superseded by the Employees' Earnings Protection Law, Chapter 2.5 (commencing with Section 723.010). Subdivision (a) is superseded by Sections 723.050 and 723.052. Subdivision (b) is superseded by Section 723.051. Subdivisions (c) and (d) are superseded by various other provisions. See, e.g., Sections 723.030 (priority of earnings withholding order issued to enforce judgment for delinquent amounts for support), 723.031 (priority of wage assignment for support), 723.077 (priority of earnings withholding order for taxes), 723.107 (limitation on serving subsequent earnings withholding order on earnings of same employee by same judgment creditor).

§ 690.50 (technical amendment)

SEC. 5 . Section 690.50 of the Code of Civil Procedure, as amended by Chapter 1251 of the Statutes of 1974, is amended to read:

690.50. (a) If the property mentioned in Section 690.1 to 690.29, inclusive, shall be levied upon under writ of attachment or execution, the defendant or judgment debtor (herein referred to as "the debtor"), in order to avail himself of his exemption rights as to such property, shall within 20 days, in the case of real property described in Section 690.235, and 10 days, in the case of all other property, from the date such property was levied upon deliver to the levying officer an affidavit of himself or his agent, together with a copy thereof, alleging that the property levied upon, identifying it, is exempt, specifying the section or sections of this code on which he relies for his claim to exemption, and all facts necessary to support his claim, and also stating therein his address within this state for the purpose of permitting service by mail upon him of the counteraffidavit and any notice of the motion herein provided. ~~For purposes of this section, if the property levied upon consists of the earnings of a~~

~~judgment debtor, each date that earnings are withheld from the judgment debtor shall be deemed to be the date such earnings were levied upon. A judgment debtor shall have the right to file a separate claim of exemption each time that a withholding of earnings occurs, provided, that if a prior claim of exemption has been adjudicated under the same levy, that each separate claim of exemption thereafter be supported by a statement under oath alleging the changed circumstances which support the new claim of exemption. If a claim of exemption be allowed, the judgment creditor shall have the right, at any time during the effective period of the claim of exemption, to move the court for consideration of the claim previously granted on the grounds of a material change of circumstances affecting the debtor's exemption rights. If the judgment creditor does make such a motion, he must support his motion by a statement under oath alleging the changed circumstances which support his motion for consideration.~~

All in
strikeout

(b) Forthwith upon receiving the affidavit of exemption, the levying officer shall serve upon the plaintiff or the person in whose favor the writ runs (herein referred to as "the creditor"), either personally or by mail, a copy of the affidavit of exemption, together with a writing, signed by the levying officer, stating that the claim to exemption has been received and that the officer will release the property unless he receives from the creditor a counteraffidavit within 10 days after service of such writing, in the case of real property described in Section 690.235, and within five days after service of such writing, in all other cases.

(c) If the creditor desires to contest the claim to exemption, he shall, within such period of 10 days, in the case of real property described in Section 690.235, and five days, in all other cases, file with the levying officer a counteraffidavit alleging that the property is not exempt within the meaning of the section or sections of this code relied upon, or if the claim to exemption be based on Sections 690.2, 690.3, 690.4, 690.5, alleging that the value of the property claimed to be exempt is in excess of the value stated in the applicable section or sections, together with proof of service of a copy of such counteraffidavit upon the debtor.

(d) If no such counteraffidavit, with such proof of service, is so filed with the levying officer within the time allowed, the officer shall forthwith release the property.

(e) If such counteraffidavit, with such proof of service, is so filed, either the creditor or the debtor shall be entitled to a hearing in the court in which the action is pending or from which the writ issued for the purpose of determining the claim to exemption, ~~the priority or division of payment between one or more creditors from nonexempt earnings under the provisions of Section 690.6 or the value of the property claimed to be exempt.~~ Such hearing shall be granted by the court upon motion of either party made within five days after the counteraffidavit is filed with the levying officer, and such hearing must be had within 15 days from the date of the making of such motion unless continued by the court for good cause. The party making the motion for hearing shall give not less than five days' notice in writing of such hearing to the levying officer and to the other party, and specify therein that the hearing is for the purpose of determining the claim to exemption. The notice may be of motion or of hearing and upon the filing of the notice with the clerk of the court, the motion is deemed made.

(f) If neither party makes such motion within the time allowed, or if the levying officer shall not have been served with a copy of the notice of hearing within 10 days after the filing of the counteraffidavit, the levying officer shall forthwith release the property to the debtor.

(g) At any time while the proceedings are pending, upon motion of either party or upon its own motion, the court may (1) order the

sale of any perishable property held by such officer and direct disposition of the proceeds of such sale, and (2) make such other orders as may be proper under the particular circumstances of the case. Any orders so made may be modified or vacated by the court or judge granting the same, or by the court in which the proceedings are pending, at any time during the pendency of the proceedings, upon such terms as may be just.

(h) The levying officer in all cases shall retain physical possession of the property levied upon if it is capable of physical possession, or in the case of property not capable of physical possession, the levy shall remain in full force and effect, pending the final determination of the claim to exemption. However, no sale under execution shall be had prior to such final determination unless an order of the court hearing the claim for exemption shall so provide.

(i) At such hearing, the party claiming the exemption shall have the burden of proof. The affidavits and counteraffidavits shall be filed by the levying officer with the court and shall constitute the pleadings, subject to the power of the court to permit an amendment in the interests of justice. The affidavit of exemption shall be deemed controverted by the counteraffidavit and both shall be received in evidence. Nothing herein shall be construed to deprive anyone of the right to a jury trial in any case where, by the Constitution, such right is given, but a jury trial may be waived in any such case in like manner as in the trial of an action. No findings shall be required in a proceeding under this section. When the hearing is before the court sitting without a jury, and no evidence other than the affidavit and counteraffidavit is offered, the court, if satisfied that sufficient facts are shown thereby, may make its determination thereon. Otherwise, it shall order the hearing continued for the production of other evidence, oral or documentary, or the filing of other affidavits and counteraffidavits. At the conclusion of the hearing, the court shall give judgment determining whether the claim to exemption shall be allowed or not, in whole or in part, ~~and may give judgment determining the priority or division of payment between one or more creditors from nonexempt earnings under the provisions of Section 690.6, which judgment shall be determinative as to the right of the creditor to have the property taken and held by the officer or to subject the property to payment or other satisfaction of his judgment. In such judgment the court shall make all proper orders for the disposition of such property or the proceeds thereof.~~

(j) A copy of any judgment entered in the trial court shall be forthwith transmitted by the clerk to the levying officer in order to permit such officer to either release the property attached or to continue to hold it to sell it, in accordance with the provisions of the writ previously delivered to him. Such officer, unless an appeal from the judgment is waived, or the judgment has otherwise become final, shall continue to hold such property under attachment or execution, continuing the sale of any property held under execution until such judgment becomes final. ~~However, if a claim to exemption under Section 690.6 is allowed by such judgment, the debtor shall be entitled to a release of the earnings so exempted at the expiration of three days, unless otherwise ordered by the court, or unless the levying officer shall have been served with a copy of a notice of appeal from the judgment.~~

(k) When any documents required hereunder are served by mail, the provisions of this code relating to service by mail shall be applicable thereto.

(l) Whenever the time allowed for an act to be done hereunder is extended by the court, written notice thereof shall be given promptly to the opposing party, unless such notice be waived, and to the levying officer.

(m) An appeal lies from any judgment under this section. Such appeal to be taken in the manner provided for appeals in the court in which the proceeding is had.

Comment. Section 690.50 is revised to delete references to Section 690.6 which is repealed. The last portion of subdivision (a) is deleted as unnecessary because it is superseded by provisions of the Employees' Earnings Protection Law. See Chapter 2.5 (commencing with Section 723.010). It should be noted that a separate procedure is provided in Chapter 2.5 (commencing with Section 723.010) for claiming exemptions under that chapter and that Section 690.50 is not applicable to those exemptions.

§ 710 (technical amendment)

SEC. 6. Section 710 of the Code of Civil Procedure is amended to read:

710. (a) Whenever a judgment for the payment of money is rendered by any court of this state against a defendant to whom money is owing and unpaid by this state or by any county, city and county, city or municipality; quasi-municipality, district or public corporation, the judgment creditor may file a duly authenticated abstract or transcript of such judgment together with an affidavit stating the exact amount then due, owing and unpaid thereon and that he desires to avail himself of the provisions of this section in the manner as follows:

1. If such money ; ~~wages or salary~~ is owing and unpaid by this state to such judgment debtor, said judgment creditor shall file said abstract or transcript and affidavit with the state department, board, office or commission owing such money ; ~~wages or salary~~ to said judgment debtor prior to the time such state department, board, office or commission presents the claim of such judgment debtor, therefor to the State Controller. Said state department, board, office or commission in presenting such claim of such judgment debtor to said State Controller shall note thereunder the fact of the filing of such abstract or transcript and affidavit and state the amount unpaid on said judgment as shown by said affidavit and shall also note any amounts advanced to the judgment debtor by, or which the judgment debtor owes to, the State of California by reason of advances for expenses or for any other purpose. Thereupon the State Controller, to discharge such claim of such judgment debtor, shall pay into the court which issued such abstract or transcript by his warrant or check payable to said court the whole or such portion of the amount due such judgment debtor on such claim, after deducting from such claim an amount

sufficient to reimburse the state department, board, office or commission for any amounts advanced to said judgment debtor or by him owed to the State of California, and after deducting therefrom an amount equal to one-half or such greater portion as is allowed by statute of the United States, of the earnings owing to the judgment debtor for his personal services to the state rendered at any time within 30 days next preceding the filing of such abstract or transcript, as will satisfy in full or to the greatest extent the amount unpaid on said judgment and the balance thereof; , if any, to the judgment debtor.

2. If such moneys wages or salary is owing and unpaid to such judgment debtor by any county, city and county, city or municipality, quasi-municipality, district or public corporation, said judgment creditor shall file said abstract or transcript and affidavit with the auditor of such county, city and county, city or municipality, quasi-municipality, district or public corporation (and in case there be no auditor then with the official whose duty corresponds to that of auditor). Thereupon said auditor (or other official) to discharge such claim of such judgment debtor shall pay into the court which issued such abstract or transcript by his warrant or check payable to said court the whole or such portion of the amount due on such claim of such judgment debtor; less an amount equal to one-half or such greater portion as is allowed by statute of the United States, of the earnings of the debtor owing by the county, city and county, city, municipality, quasi-municipality, district or public corporation to the judgment debtor for his personal services to such public body rendered at any time within 30 days next preceding the filing of such abstract or transcript, as will satisfy in full or to the greatest extent the amount unpaid on said judgment and the balance thereof, if any, to the judgment debtor.

(b) The judgment creditor upon filing such abstract or transcript and affidavit shall pay a fee of two dollars and fifty cents (\$2.50) to the person or agency with whom the same is filed.

(c) Whenever a court receives any money hereunder, it shall pay as much thereof as is not exempt from execution under this code to the judgment creditor and the balance thereof, if any, to the judgment debtor. The procedure for determining the claim of exemption shall be governed by the procedure set forth in Section 690.50 of this code, and the court rendering the judgment shall be considered the levying officer for the purpose of that section.

(d) In the event the moneys owing to a judgment debtor by any governmental agency mentioned in this section are owing by reason of an award made in a condemnation proceeding brought by the governmental agency, such governmental agency may pay the amount of

the award to the clerk of the court in which such condemnation proceeding was tried, and shall file therewith the abstract or transcript of judgment and the affidavit filed with it by the judgment creditor. Such payment into court shall constitute payment of the condemnation award within the meaning of Section 1251 of this code. Upon such payment into court and the filing with the county clerk of such abstract or transcript of judgment and affidavit the county clerk shall notify by mail, through their attorneys, if any, all parties interested in said award of the time and place at which the court which tried the condemnation proceeding will determine the conflicting claims to said award. At said time and place the court shall make such determination and order the distribution of the money held by the county clerk in accordance therewith.

(e) The judgment creditor may state in the affidavit any fact or facts tending to establish the identity of the judgment debtor. No public officer or employee shall be liable for failure to perform any duty imposed by this section unless sufficient information is furnished by the abstract or transcript together with the affidavit to enable him in the exercise of reasonable diligence to ascertain such identity therefrom and from the papers and records on file in the office in which he works. The word "office" as used herein does not include any branch or subordinate office located in a different city.

(f) Nothing in this section shall authorize the filing of any abstract or transcript and affidavit against: ~~(1) any wages, or salary owing to the Governor, Lieutenant Governor, Secretary of State, Controller, Treasurer, and Attorney General, or (2) any overpayment of tax, penalty or interest, or interest allowable with respect to such overpayment, under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code.~~

(g) Any fees received by a state agency under this section shall be deposited to the credit of the fund from which payments were, or would be, made on account of a garnishment under this section. ~~For the purpose of this paragraph, payments from the State Pay Roll Revolving Fund shall be deemed payments made from the fund out of which moneys to meet such payments were transferred to said revolving fund.~~

~~(h) (1) In the event the moneys owing to a judgment debtor by any governmental agency mentioned in this section are for wages or salary, the judgment creditor shall mail under a separate cover at the time of filing the affidavit with the governmental agency, in an envelope marked "Personal and Confidential", a copy of the affidavit and a Notice to Judgment Debtor as provided in~~

paragraph 42) of this subdivision, addressed to the judgment debtor at his place of employment.

42) The Notice to Judgment Debtor shall be in 10-point bold type, and in substantially the following form:

You may be entitled to file a claim exempting your salary or wages from execution. You may seek the advice of any attorney or may, within 10 days from the date your salary or wages were levied upon, deliver an affidavit to the court rendering the judgment to exempt such salary or wages as provided in Section 69.150 of the Code of Civil Procedure.

Except as provided in Section 4701 of the Civil Code, the

(b) This section does not authorize the withholding of earnings of a public officer or employee. A earnings of a public officer or employee may be withheld only pursuant to Chapter 2.5 (commencing with Section 723.010).

(for payment of a judgment.

Comment. Section 710 is amended to eliminate the use of the abstract of judgment procedure as a means of garnishing the wages or salary of a public officer or employee. The earnings of public officers and employees may be withheld pursuant to the Employees' Earnings Protection Law only. See Chapter 2.5 (commencing with Section 723.010). See also Civil Code § 4710 (wage assignment for support).

CHAPTER 2.5. EMPLOYEES' EARNINGS PROTECTION LAW

SEC. 7. Chapter 2.5 (commencing with Section 723.010) is added to Title 9 of Part 2 of the Code of Civil Procedure, to read:

CHAPTER 2.5. EMPLOYEES' EARNINGS PROTECTION LAW

Article 1. Short Title; Definitions

§ 723.010. Short title

723.010. This chapter shall be known and may be cited as the "Employees' Earnings Protection Law."

§ 723.011. Definitions

723.011. As used in this chapter:

(a) "Earnings" means compensation payable by an employer to an employee for personal services performed by such employee whether denominated as wages, salary, commission, bonus, or otherwise.

(b) "Employee" means a public officer and any individual who performs services subject to the control of

an employer as to both what shall be done and how it shall be done.

(c) "Employer" means a person for whom an individual performs services as an employee.

(d) "Judgment creditor,"

as applied to the state,

means the specific state agency seeking to collect a judgment or tax liability.

(e) "Judgment debtor,"

includes a person from whom the state is seeking to collect a tax liability.

(f) "Person" includes an individual, a corporation, a partnership or other unincorporated association, and a public entity.

Comment. Section 723.011 states definitions used in applying this chapter. This chapter deals only with the garnishment or withholding of earnings for services rendered in an employer-employee relationship. See Section 723.020. Subdivisions (b) and (c) are based on the common law requirements for such relationship. It should be noted that an employee may be given considerable discretion and still be an employee as long as his employer has the legal right to control both method and result. However, no attempt is made here to incorporate specific case law arising out of situations involving problems and issues unrelated to the purposes and procedures relevant in applying this chapter. "Employee" includes both private and public employees. See subdivisions (b), (c), and (f). See also Section 710.

"Earnings" embraces all remuneration "whether denominated as wages, salary, commission, bonus, or otherwise." The infinite variety of forms which such compensation can take precludes a more precise statutory definition. Accordingly, the Judicial Council will be required in some circumstances to provide by rule, consistent with the statutory definition, whether certain items are an employee's earnings and, if so, the earnings period to which such earnings are attributable. See Section 723.150. One such item will probably be vacation credits or pay. Different employers will treat this form of compensation differently. Generally speaking, however, vacation pay should be subject to withholding only when paid, *i.e.*, when the employee goes on vacation or terminates his employment in circumstances where he has the right to be paid his accrued benefits.

Unlike the definition of "earnings" used in Title III of the federal Consumer Credit Protection Act of 1968, the term used here does not include "periodic payments pursuant to a pension or retirement program." Exemptions applicable to such payments are provided by various sections of the California statutes. These statutes apply unless a greater exemption is available under the federal Consumer Credit Protection Act of 1968.

Article 2. General Provisions

§ 723.020. Exclusive procedure for withholding earnings

723.020. Except as provided in Section 4701 of the Civil Code, the earnings of an employee shall not be required to be withheld by an employer for payment of a debt by means of any judicial procedure other than pursuant to this chapter.

Comment. Section 723.020 makes clear that, with the exception of wage assignments for support, under Civil Code Section 4701, the Employees' Earnings Protection Law is the exclusive judicial method of compelling an employer to withhold earnings. Attachment of earnings before judgment is abolished by Section 487.020(c). For provisions relating to voluntary wage assignments, see Labor Code Section 300.

This chapter has no effect on judgment collection procedures that do not involve the withholding of an employee's earnings. See, e.g., Section 690.18 (retirement funds).

However, where an employee's earnings are sought to be garnished, the creditor must comply with the provisions of this chapter. This rule applies to public entities as well as private persons. This chapter, for example, imposes limitations on the state's ability to garnish wages for tax delinquencies pursuant to its warrant and notice procedures. See Article 4 (commencing with Section 723.070).

The Employees' Earnings Protection Law has no effect on matters that are preempted by the federal law, such as federal bankruptcy proceedings—including proceedings under Chapter XIII of the Bankruptcy Act—and federal tax collection procedures. *E.g.*, INT. REV. CODE of 1954, § 6334(c). Nor does this chapter apply to deductions which an employer is authorized by statute to make for such items as insurance premiums and payments to health, welfare, or pension plans. See, e.g., GOVT. CODE §§ 1158, 12420; LABOR CODE §§ 224, 300. Finally, this chapter does not affect the procedures for the examination of a debtor of the judgment debtor provided in Chapter 2 (Sections 717-723) of this part. See Comment to Section 723.154.

§ 723.021. Levy made by earnings withholding order

723.021. Notwithstanding Section 688, a levy of execution upon the earnings of an employee shall be made by service of an earnings withholding order upon his employer in accordance with this chapter.

§ 723.022. Employer's duty to withhold; withholding period

723.022. (a) As used in this section, "withholding period" means the period which commences on the tenth day after service of an earnings withholding order upon the employer and which continues until the earliest of the following dates:

(1) The 130th day after the order was served.

(2) The date the employer has withheld the full amount specified in the order.

(3) The date of termination specified in a court order served on the employer.

(4) The date of termination specified in a notice of termination served on the employer by the levying officer.

(b) Except as otherwise provided by statute, an employer shall withhold the amounts required by an earnings withholding order from all earnings of the employee payable for any pay period of such employee which ends during the withholding period.

(c) An employer is not liable for any amounts withheld and paid over to the levying officer pursuant to an earnings withholding order prior to service upon the employer pursuant to paragraph (3) or (4) of subdivision (a).

Comment. Section 723.022 states the basic rules governing the employer's duty to withhold pursuant to an earnings withholding order.

Subdivision (b) requires the employer to withhold from all earnings of an employee payable for any pay period of such employee which *ends* during the "withholding period." See Section 723.150 (Judicial Council authorized to adopt rules regarding the pay period to which commissions, bonuses, and the like are attributable). The "withholding period" is described in subdivision (a). It should be noted that *only* earnings for a pay period ending during the withholding period are subject to levy. Earnings for prior periods, even though still in the possession of the employer, are not subject to the order. An employer may not, however, defer or accelerate any payment of earnings to an employee with the intent to defeat or diminish the satisfaction of a judgment pursuant to this chapter. See Section 723.153.

The withholding period generally commences ~~10~~ calendar days (not working or business days) after service of an earnings withholding order is completed. See

Section 723.101. For example, if an order is served on Friday, the withholding period would commence on the following ~~Monday~~. See CODE CIV. PROC. § 12. The ~~10~~-day delay affords the employer time to process the order within his organization, i.e., deliver the order to the employer's bookkeeper, make bookkeeping adjustments, and so on. The introductory clause to subdivision (b) recognizes certain exceptions to this general rule. An employer is not generally required to withhold pursuant to two orders at the same time; thus, a subsequent order will not be given effect. See Section 723.023 (priority of orders) and Comment thereto. Moreover, withholding may be delayed beyond the normal ~~10~~-day period where a prior assignment of wages is in effect. However, this delay does not affect the date the withholding period terminates under subdivision (a) (1). See LABOR CODE § 300(c) and Comment thereto.

(when service completed).

second

The withholding period does not end until the first of the events described in paragraphs (1) through (5) of subdivision (a) occurs; thus, the employer has a *continuing* duty to withhold.

Paragraph (1) provides a general expiration date ~~130~~ days after the date of service—thus, the employer will usually be required to withhold for 120 days.

Paragraph (2) requires the employer to stop withholding when he has withheld the full amount specified in the order.

Paragraph (3) reflects the fact that the court may order the termination of the earnings withholding order. See Section 723.105(g). Of course, in some situations, the court will only modify the prior order, and the employer then must comply with the order as modified.

Paragraph (4) requires the employer to stop withholding when he is served with a notice of termination. See Section 723.101 (manner of service). A notice of termination is served when the levying officer is notified of the satisfaction of the judgment or when the judgment creditor fails to file a notice of opposition to the judgment debtor's claim of exemption where the judgment debtor has claimed an exemption for the entire amount withholdable. See Sections 723.027 and 723.105(e). The judgment creditor has an affirmative duty to inform the levying officer of the satisfaction of the judgment. See Section 723.027.

Service of an order for the collection of state taxes suspends the duty of an employer to withhold pursuant to a prior order (other than an order for support). See Section 723.077 (tax orders). However, this is only a suspension. After the tax order is satisfied, if the withholding period for the prior order has not ended,

~~the employer must again withhold pursuant to the prior order.~~ Similarly, the duty to withhold is not terminated by the layoff, discharge, or suspension of an employee and, if the employee is rehired or returns to work during the withholding period, the employer must resume withholding pursuant to the order. Finally, the termination of certain types of orders—orders for the collection of state taxes and support orders—are governed by separate rules. See Sections 723.030 (support orders); 723.078 (tax orders).

Sometimes an order will be terminated ~~without~~ without the employer's prior knowledge. Subdivision (c) makes clear that an employer will not be subject to liability for having withheld and paid over amounts pursuant to an order prior to service of a written termination of the order. ~~See Section 723.078 (tax orders).~~ Cf. Section 723.078 (tax orders). The employee must look to the creditor for the recovery of amounts previously paid out. See Section 723.154 (employer entitled to rely on documents actually served). See also Section 723.105 (recovery from creditor of amounts received after order terminated).

An earnings withholding order may also be affected by federal bankruptcy proceedings.

§ 723.023. Priority of orders generally

723.023. Except as otherwise provided in this chapter:

(a) An employer shall comply with the first earnings withholding order served upon him.

(b) If the employer is served with two or more orders pursuant to the judgment first entered. If two or more orders served on the same day are based on judgments entered upon the same day, the employer shall comply with whichever one of such orders he selects.

(c) If an earnings withholding order is served during the period that an employer is required to comply with another earnings withholding order for the same judgment debtor, the subsequent order is ineffective and the employer shall not withhold earnings pursuant to the subsequent order.

earnings
withholding

Comment. Section 723.023 establishes the general rules governing priority of earnings withholding orders. Generally speaking, the first order served is given priority. Occasionally, two or more orders will be served on the same day. In this situation, the employer must comply with the order which was issued pursuant to the judgment first entered. The date of entry of judgment will be indicated on the face of the order. See Section 723.125. In rare instances, orders served the same day will also be based on judgments entered the same day. In this situation, the employer has complete discretion to choose the order with which he will comply. He must, of course, comply with one of these orders. For exceptions to these basic priority rules, see Sections 723.067 (support orders) and 723.077 (state taxes) and the Comments thereto. Unless the subsequent earnings withholding order is for state taxes or for support, an order is ineffective if the employer receives the order while he is required to comply with another. In such a case, the employer does *not* hold such an order and give it effect when the prior order expires but returns it. See Section 723.104. However, the levying officer may later serve the same order if the writ of execution upon which the order is based has not yet been returned. See Section 723.103(c).

earnings withholding

It should be noted that, in some circumstances, the operation of an order may be suspended, but the duty to withhold is not terminated nor does the 130-day period provided by Section 723.022(a)(1) cease to run.

See, e.g., Section 723.077 (tax order suspends operation of prior order); Labor Code Section 300 (suspension where prior assignment in effect). See also Comment to Section 723.022. In such cases, as well as in cases where the subsequent order is not given effect, the employer is required to advise the levying officer who has served the order that is suspended or not given effect of the reason for the employer's action. See Sections 723.077 and 723.104.

An employer is generally entitled to rely upon what is served upon him. See Section 723.154 and Comment thereto.

§ 723.024. Employer's service charge for withholding

723.024. Each time an employer makes a deduction from an employee's earnings pursuant to an earnings withholding order, he may make an additional deduction of one dollar (\$1) and retain it as a charge for his services in complying with the earnings withholding order.

Comment. Section 723.024 authorizes, but does not require, an employer to deduct an additional dollar as a service charge each time he is required to withhold a portion of his employee's earnings pursuant to an earnings withholding order. For example, if the employee is paid weekly and an amount is withheld each week pursuant to the earnings withholding

order, the employer may deduct an additional service charge of one dollar each week. A similar one-dollar charge ~~was formerly~~ is authorized under Civil Code Section 4701. A charge of \$2.50 was authorized under Code of Civil Procedure Section 710 when earnings of a public employee were levied on under that section. However, there was no provision authorizing an employer to make a service charge in connection with wage garnishments generally.

§ 723.025. Payment to levying officer

723.025. The amount required to be withheld pursuant to an earnings withholding order shall be paid to the levying officer ~~within 15 days after~~ ~~each payment of earnings is made to the employee unless~~ ~~the employer elects to pay in regular monthly payments~~ ~~not later than the 15th day of each month.~~ ~~In the~~ ~~latter case,~~ The initial monthly payment shall include all amounts required to be withheld from the earnings of the employee during the preceding calendar month up to the close of the employee's pay period ending closest to the last day of that month, and thereafter each monthly payment shall include amounts withheld from the employee's earnings for services rendered in the interim up to the close of the employee's pay period ending closest to the last day of the preceding calendar month.

Comment. Section 723.025 specifies when the amounts withheld pursuant to an order must be paid over to the levying officer. Regardless whether payment is required, the employer is required to send an employer's return to the levying officer. See Sections 723.104 and 723.126.

§ 723.026. Levying officer's duty to pay over amounts received and make return on writ

723.026. (a) The levying officer shall receive and account for all amounts received pursuant to Section 723.025. He shall pay each amount so received over to the person entitled thereto within 15 days after its receipt.

(b) Notwithstanding Section 683, where an earnings withholding order has been served prior to the time the writ of execution is made returnable

under subdivision (a) of Section 683, the levying officer may, in his discretion, make his return on the writ of execution at either of the following times:

(1) The return on the writ of execution may be made after the earnings withholding order terminates and the amount withheld by the employer has been paid over to the levying officer.

(2) The return on the writ of execution may be made at a time earlier than the time specified in paragraph (1). In such case, the issuance of the earnings withholding order and the date of its service on the employer shall be indicated on the writ, or separately and attached thereto, and a supplemental return on the earnings withholding order shall be made at the time provided in paragraph (1) in the same manner as the writ was returned.

(c) Nothing in subdivision (b) extends the time within which a levy may be made on the writ of execution pursuant to which the earnings withholding order was issued.

Comment. Subdivision (a) of Section 723.026 continues a requirement of subdivision (c) of former Section 682.3. Subdivision (b) permits the levying officer either to return the writ of execution at the time provided in paragraph (2) or after the earnings withholding order expires. See also Section 683. Ordinarily, the levying officer will delay making his return of the writ of execution until the earnings withholding order expires so he can avoid the need to make a supplemental return. However, the judgment creditor may desire to secure another writ so he can levy on property other than earnings after the time for levy of the writ of execution under which the earnings withholding order was issued has expired. In such a case, the levying officer can return the writ of execution and make a supplemental return on the earnings withholding order later, thus permitting the creditor to obtain another writ of

execution so the levy on the other property can be made. Subdivision (c) makes clear that subdivision (b) does not extend the time within which a levy may be made on the writ of execution. A levy on the earnings of the employee or on other property must be made within the time otherwise prescribed by law. See Section 723.103(c).

§ 723.027. Creditor required to notify levying officer when judgment satisfied; notice of termination

723.027. If the judgment pursuant to which the earnings withholding order is issued is satisfied before the order otherwise terminates pursuant to Section 723.022, the judgment creditor shall promptly notify the levying officer who shall promptly terminate the order by serving a notice of termination on the employer.

Comment. Section 723.027 requires the judgment creditor to give notice of satisfaction of the judgment to the levying officer if the earnings withholding order has not yet terminated. See Section 723.022.

In some cases, the employer will be aware of the satisfaction by virtue of having himself withheld the amount necessary to satisfy the judgment. See Section 723.022(a) (2). In this case, Section 723.027 does not apply. However, the judgment may be satisfied by additional payments from the debtor or through other debt collection procedures instituted by the creditor. If this is the case, Section 723.027 applies, and the creditor has the duty to notify the levying officer promptly of the satisfaction so that the levying officer may serve a notice of termination on the employer. Service of the notice of termination is to be made on the person, and at the address, indicated in the employer's return. See Sections 723.101(c) and 723.126(b)(5). As ~~the~~^{to} the general duty of a creditor to furnish a debtor a satisfaction of judgment, see Section 675.

§ 723.028. Withholding order for costs and interest

723.028. Subject to Section 723.107, after the amount stated as owing in the earnings withholding order is paid, the judgment creditor may apply for issuance of another earnings withholding order covering costs and interest that may have accrued since application for the prior order.

Comment. Section 723.028 makes clear that a judgment creditor must apply for another earnings withholding order to recover costs and interest that accrue following the application for a prior order. To illustrate: A creditor obtains a judgment which his debtor does not pay. The creditor applies for and secures an earnings withholding order directed to the debtor's employer. The application and order require payment of only those amounts owing at the time of the application for this order. See Sections 723.121 (application for issuance of earnings withholding order) and 723.125 (content of earnings withholding order). After the application for this order, further costs may, and interest on the judgment will, accrue. If the creditor wishes to recover these amounts by wage garnishment, he must apply for another earnings withholding order, following the same procedure as before. This later application and order are subject to the same general requirements as any other withholding order. Of course, the earnings withholding order for costs and interest may only be issued if a writ of execution is outstanding. See Section 723.102. It is not entitled to any priority over the

orders of other creditors, and the creditor is required to comply with the waiting period prescribed by Section 723.107.

§ 723.029. Lien created by service of earnings withholding order

723.029. Service of an earnings withholding order creates a lien upon the earnings required to be withheld pursuant to such order. Such lien shall continue for a period of one year from the date such earnings became payable.

Comment. Section 723.029 provides a special rule for the commencement of a lien of execution on earnings. Compare subdivisions (c) and (d) of Section 688 which provide that the levy under a writ of execution creates a lien on the property levied upon for a period of one year from the date of the issuance of the execution. Service of an earnings withholding order is a form of levy of execution. See Section 723.021. However, the lien on each instalment runs for a year from the date the earnings became payable. This rule is comparable to that provided for judgment liens for alimony and child support payments by Section 674.5 of the Code of Civil Procedure.

The purpose of Section 723.029 is to protect the employer against stale claims and to give the levying creditor priority over competing claims by third parties where the priority questions are not already regulated by other provisions of this chapter. See Section 723.023; see also Labor Code Section 300. For example, if installments are not promptly paid, competing claims may arise under conflict-of-laws rules (see *Sanders v. Armour Fertilizer Works*, 292 U.S. 190 (1934)) or in supervening proceedings under the Bankruptcy Act (§ 67(a)).

Although the lien is limited to one year, it will not expire if, before the end of the one-year period, the levying creditor brings suit against the employer for the payment of the sums the creditor claims should have been paid to him. See *Boyle v. Hawkins*, 71 Cal.2d 229, 455 P.2d 97, 78 Cal. Rptr. 161 (1969).

§ 723.030. Withholding order for support

723.030. (a) A "withholding order for support" is an earnings withholding order on a writ of execution issued upon a judgment for delinquent amounts payable upon a judgment for the support of a child, or spouse or former spouse, of the judgment debtor, including reasonable attorney's fees allowed in connection with the obtaining of such judgment. A withholding order for support shall be denoted as such on its fact.

(b) Notwithstanding any other provision of this chapter:

(1) An employer shall continue to withhold pursuant to a withholding order for support until the earliest of the dates specified in paragraphs (2), (3), or (4) of subdivision (a) of Section 723.022, except that an withholding order for support shall automatically terminate one year after the employee is no longer employed by the employer.

(2) A withholding order for support shall be given priority over any other earnings withholding order. An employer upon whom a withholding order for support is served shall withhold and pay over earnings of the employee pursuant to such order even though he is already required to comply with another earnings withholding order.

(3) Subject to paragraph (2) and to Article 3 (commencing with Section 723.050), an employer shall withhold earnings pursuant to both a withholding order for support and another earnings withholding order simultaneously.

Comment. Section 723.030 provides special rules for an earnings withholding order to enforce a judgment for delinquent support payments for a child or spouse or former spouse of the judgment debtor. An earnings withholding order for support is given a different effect than other withholding orders: It is effective until the employer has withheld the full amount specified in the order or he is served with a notice of termination, in which case the date of termination will be specified in the notice. See subdivision (b)(1). Thus, the withholding order for support does not terminate 130 days after service (it may, of course, be modified). The withholding order for support is subject to special exemption rules (See Section 723.052). ~~It~~ Even when in effect, it does not necessarily preclude withholding on either a prior or subsequent order. If not earlier terminated, the order automatically terminates one year after the employee is no longer employed by the employer. Thus, for example, if the employee is laid off but returns to work for the same employer within one year from the date of the layoff, the employer must withhold pursuant to the withholding order for support. On the other hand, if the employee does not return to work until more than one year from the date he was laid off, the order expires at the end of the year, and nothing is withheld pursuant to the order when the employee returns to work.

The earnings withholding order for support is given priority over any other earnings withholding order. But see Section 723.031(wage assignment for support given priority). However, a prior earnings withholding order remains in effect, and a judgment creditor may still obtain an earnings withholding order even

Earnings withholding

where there is already in effect a prior earnings withholding order for support. Thus, where there are two orders in effect—one for support and one for another obligation—the amount withheld for support is deducted from the employee's earnings first. The amount, if any, that may be withheld pursuant to the other order is determined by subtracting the amount withheld pursuant to the withholding order for support from the amount that otherwise could be withheld pursuant to the other order. See Sections 723.077 and 723.050 and the Comments thereto.

Earnings withholding

§ 723.034. Effect of wage assignment for support

723.034. (a) Nothing in this chapter affects an order made pursuant to Section 4701 of the Civil Code.

(b) An order made pursuant to Section 4701 of the Civil Code shall be given priority over any earnings withholding order as provided in that section. An employer upon whom an order made pursuant to Section 4701 is served shall withhold and pay over the earnings of the employee pursuant to such order even though the employer is already required to comply with an earnings withholding order.

(c) Subject to subdivisions (b), (d), and (e), an employer shall withhold earnings of an employee pursuant to both an order made under Section 4701 of the Civil Code and an earnings withholding order.

(d) The employer shall withhold pursuant to an earnings withholding order only to the extent that the sum of the amount withheld pursuant to the order made under Section 4701 of the Civil Code and the amount withheld pursuant to the earnings withholding order does not exceed the amount that may be withheld under Article 3 (commencing with Section 723.050).

(e) The employer shall withhold pursuant to an earnings withholding order for taxes only to the extent that the sum of the amount withheld pursuant to the order made under Section 4701 of the Civil Code and the amount withheld pursuant to the earnings withholding order for taxes does not exceed the amount that may be withheld under Article 4 (commencing with Section 723.070).

Comment. Section 723.034 states the effect of a wage assignment for support made pursuant to Section 4701 of the Civil Code on an earnings withholding order.

Subdivision (a) makes clear that nothing in this chapter affects the wage assignment for support, and subdivision (b) makes clear that the wage

assignment has priority over any earnings withholding order as provided in Section 4701, including a withholding order for support under Section 723.030.

Subdivisions (b) and (d) of section 723.031 make clear that, where a wage assignment for support under Section 4701 of the Civil Code is in effect, the amount withheld from the debtor's earnings pursuant to such wage assignment is deducted from the amount that otherwise would be withheld pursuant to the withholding table prepared by the Judicial Council on an earnings withholding order to enforce an ordinary money judgment. Suppose, for example, that a wage assignment for support under Section 4701 is in effect which requires that \$40 per week be withheld. Assume that the table prepared pursuant to Section 723.050 limits the amount that may be withheld on \$400 gross weekly earnings to \$56. To determine the maximum amount that may be withheld pursuant to the earnings withholding order, the \$40 withheld pursuant to the wage assignment for support is subtracted from the \$56, leaving \$16 as the maximum amount that may be withheld pursuant to the earnings withholding order. For a special rule applicable when the earnings withholding order is on a judgment for delinquent amounts payable for child or spousal support, see Sections ^{723.050 and} ~~723.052~~. The rule stated in subdivision (d) of Section 723.031 is required to avoid conflict with the federal Consumer Creditor Protection Act. That act requires that the amount withheld pursuant to a wage assignment under Section 4701 of the Civil Code be included in determining whether any amount may be withheld pursuant to an earnings withholding order on an ordinary judgment. See subdivision (c) of Section 302 of the act ("The term 'garnishment' means any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt."). See Letter from Ben P. Robertson, Deputy Administrator, U.S. Department of Labor, dated August 2, 1972, on file in office of California Law Revision Commission, and Wage and Hour Division opinion letters WH-100, WH-104, and WH-112.

Under subdivision (e), the amount that could be withheld pursuant to an earnings withholding order for taxes would be computed in the same manner as for an ordinary earnings withholding order using the table prepared pursuant to Section 723.074 unless the earnings withholding order for taxes is obtained under Section 723.076.

Article 3. Restrictions on Earnings Withholding

§ 723.050. Standard exemption

723.050. (a) As used in this section, "available earnings" for any workweek means the earnings of the judgment debtor for that workweek less the sum of all the following:

(1) The amount that would be withheld for federal personal income taxes from the same amount of earnings of a single person who claims no exemptions.

(2) The amount that would be withheld for federal social security taxes from the same amount of earnings if earned during the first week of a calendar year by a person subject to withholding for that tax.

(3) The amount that would be withheld for worker contributions to the Unemployment Compensation Disability Fund under Sections 984 and 985 of the Unemployment Insurance Code from the same amount of earnings if earned during the first week of a calendar year by a person subject to withholding for that purpose.

(4) The amount that would be withheld for state personal income taxes from the same amount of earnings of a single person who claims no exemptions.

(5) An amount equal to 30 times the federal minimum hourly wage prescribed by Section 6(a) (1) of the Fair Labor Standards Act of 1938 in effect at the time the earnings are payable.

(b) Except as otherwise provided in Sections 723.030, 723.074, 723.075, and 723.076, the maximum amount of the earnings of a judgment debtor in any workweek which may be withheld pursuant to this chapter shall be computed as provided in this subdivision.

723.031,

723.051, 723.052,

Where the available earnings of the judgment debtor for the workweek are less than ten dollars (\$10), nothing shall be withheld. If the available earnings of the judgment debtor for the workweek are at least ten dollars (\$10) but not more than forty-five dollars (\$45), 50 percent of the available earnings shall be withheld. Where the available earnings of the judgment debtor for the workweek are greater than forty-five dollars (\$45), twenty-three dollars (\$23) plus 25 percent of the available earnings in excess of forty-five dollars (\$45) shall be withheld. Where the available earnings of the judgment debtor for the workweek are ten dollars ()

(\$10) or more, if the amount computed under this subdivision is not a multiple of one dollar (\$1), fractional amounts less than one-half dollar (\$0.50) shall be disregarded and fractional amounts of one-half dollar (\$0.50) or more shall be rounded upward to the next higher whole dollar.

(c) The Judicial Council shall prescribe by rule the method of computing the amount to be withheld in the case of earnings for any pay period other than a week, which method shall be substantially equivalent in effect to that prescribed in subdivision (b).

(d) The Judicial Council shall prepare withholding tables for determining the amount to be withheld from the earnings of employees for representative pay periods. The tables may prescribe the amounts to be withheld according to reasonable earnings brackets. The tables prepared by the Judicial Council pursuant to this subdivision shall be used to determine the amount to be withheld in all cases where the tables permit computation of the amount to be withheld.

Comment. Section 723.050 provides the standard exemption applicable to all earnings withholding orders other than orders issued on a judgment for delinquent amounts payable on a judgment for child or spousal support (Sections ^{723.030 and} 723.052) or certain orders for taxes (Section 723.076). See also Sections 723.031 (wage assignments for support), 723.074 and 723.076 (taxes). See also Section 723.051 (exemption obtained by special hardship showing).

Section 723.050 reflects policies similar to

(those underlying Sections 302 and 303 of the federal Consumer Credit Protection Act, 15 U.S.C. §§ 1672-1673 (1970)). Thus, in determining the amount of the debtor's earnings subject to garnishment, under both this section and the federal law, certain basic amounts withheld pursuant to law are first deducted. However, federal law requires the deduction of all amounts actually "required by law to be withheld." For example, the amount actually withheld for federal income tax purposes from the debtor's earnings is deducted in determining his earnings subject to garnishment ("available earnings"). Thus, a debtor claiming a greater number of exemptions will have less income withheld and therefore more subject to garnishment. This produces the anomalous situation that a debtor with a large family and greater needs may have more earnings garnished than a single debtor with the same gross income and with more limited needs. Moreover, the federal statute does not elaborate upon what are considered to be "amounts required by law to be withheld." To alleviate these problems, Section 723.050 specifies

the amounts to be deducted in determining the portion of the debtor's earnings which are subject to garnishment ("available earnings"). These items are related to the types of deductions made under federal law; i.e., they are based on the amounts withheld for federal and state income taxes, social security, and state disability insurance. See paragraphs (1)-(4) of subdivision (a). Currently, the social security tax rate is 5.85% (INT. REV. CODE OF 1954, § 3191); the state disability insurance rate is 1% (UNEMP. INS. CODE § 984). The amount deducted to determine available earnings is fixed according to a formula and is not necessarily the amount actually deducted from the debtor's earnings. One of the major benefits of this scheme is that it permits tables to be prepared which indicate the exact amount to be withheld from any given amount of gross earnings. Subdivision (d) directs the Judicial Council to prepare tables which

will be distributed to employers required to withhold earnings. See Section 723.103(b). An employer therefore generally need not make any computations but will simply withhold pursuant to an earnings withholding order the amount listed in the tables provided him.

¶ Both the federal scheme and Section 723.050 make some provi-

sions for the effect of inflation. The federal statute, however, merely provides a floor based on the federal minimum wage. That is, the federal statute does not permit the creditor to reduce the debtor's weekly disposable earnings below an amount equal to 30 times the federal minimum wage. As the federal minimum wage is increased, this floor is increased accordingly. (Under the federal law in effect on January 1, 1976, if a debtor's disposable earnings are less than \$69 per week, no garnishment is permitted; if his disposable earnings are between \$69 and \$92, all his disposable earnings above \$69 are subject to garnishment; if his disposable earnings are more than \$92 a week, 25 percent of his disposable earnings are subject to garnishment.) This floor is not an exemption excluded from

every debtor's earnings. In contrast, paragraph (5) of subdivision (a) provides a basic minimum exemption that is always deducted in determining available earnings. Moreover, subdivision (b) provides a formula that precludes withholding less than \$5. From \$10 to \$45 available earnings, a 50-percent rule is applicable and, above \$45 available earnings, 25 percent of the available earnings may be withheld. Cf. Section 723.074 (state taxes).

Where a wage assignment for support under Section 4701 of the Civil Code is in effect, the amount withheld from the debtor's earnings pursuant to such wage assignment is deducted from the amount that otherwise would be withheld pursuant to the withholding table prepared by the Judicial Council on an earnings withholding order on an ordinary money

judgment. See Section 723.03] and Comment thereto. The amount that may be withheld pursuant to an administratively issued earnings withholding order for taxes when a wage assignment under Section 4701 of the Civil Code is in effect is computed in the same manner using the table prepared pursuant to Section 723.074. See Section 723.03] and the Comment thereto.

§ 723.051. Additional amounts necessary for support exempt

723.051. Except as provided in Section 723.052 and in Article 4 (commencing with Section 723.070), the portion of his earnings which a judgment debtor proves is necessary for the support of the debtor or the debtor's family supported in whole or in part by the debtor is exempt from levy under this chapter unless the debt is incurred for personal services rendered by any employee or former employee of the judgment debtor. Neither the judgment debtor's accustomed standard of living nor a standard of living "appropriate to his station in life" is a criterion for measuring the judgment debtor's claim for exemption under this section.

Comment. Section 723.051 is based on the hardship exemption formerly provided by subdivision (b) of former Section 690.6. However, Section 723.051 makes clear that this exemption is not intended to be used for the maintenance of a life style appropriate to the judgment debtor's station in life or for an accustomed standard of living while the judgment debtor owes money on unsatisfied judgments. Both the judgment debtor with a family and one without a family may claim the exemption under Section 723.051. For a special provision applicable where the earnings withholding order is on a judgment for delinquent support payments, see Section 723.052.

Subdivision (b) of former Section 690.6 prevented the judgment debtor from claiming the hardship exemption if the debt sought to be collected was incurred "by the debtor, his wife, or his family for the common necessities of life." This exception to the hardship exemption has been eliminated. Likewise, the limitation of the hardship exemption under former

Section 690.6 to earnings received "within 30 days next preceding the date of a withholding by the employer under Section 682.3" has been eliminated. Section 723.051 continues the former exception to the hardship exemption under Section 690.6 where the garnishment is on a judgment for a debt incurred for personal services rendered by any employee or former employee of the judgment debtor.

§ 723.052. Exemption when judgment is for delinquent support payments

723.052. (a) Except as provided in subdivision (b), only one-half of the earnings of the judgment debtor plus any amount withheld from the judgment debtor's earnings pursuant to a wage assignment under Section 4701 of the Civil Code is exempt from levy under this chapter where the earnings withholding order is a withholding order for support under Section 723.030.

(b) Upon motion of any interested party, the court shall make an equitable division of the judgment debtor's earnings that takes into account the needs of all the persons the judgment debtor is required to support and shall effectuate such division by an order determining the amount to be withheld from the judgment debtor's earnings pursuant to the withholding order for support.

Comment. Section 723.052 retains the substance of the former law applicable to a wage garnishment on a judgment for delinquent amounts payable for child or spousal support. Since the federal limitations do not apply to such a garnishment (subdivision (b) of Section 303 of the federal Consumer Credit Protection Act), this case was covered by the exemption of one-half of the judgment debtor's earnings provided by subdivision (a) of former Section 690.6. Section 723.052 makes clear that, in applying the 50-percent-of-earnings exemption, the amount withheld from the earnings of the judgment debtor pursuant to a wage assignment for support under Section 4701 of the Civil Code is included in computing the 50 percent of the judgment debtor's earnings that may be withheld. For example, if 30 percent of the judgment debtor's earnings are withheld pursuant

to a wage assignment for support, an additional 20 percent may be withheld pursuant to the earnings withholding order on the writ issued on the judgment for delinquent amounts payable for child or spousal support.

Subdivision (b) makes the 50-percent-of-earnings standard provided by subdivision (a) subject to the power of the court to make an order that more or less of the earnings of the judgment debtor be withheld where the earnings withholding order is on a writ issued on a judgment for delinquent amounts payable for child or spousal support. Upon the motion of any interested party, the court shall make an equitable division of the judgment debtor's earnings between, for example, his first wife and children and himself and his second family. This continues the substance of prior law. See Rankins v. Rankins, 52 Cal. App.2d 231, 126 P.2d 125 (1942).

For rules relating to the priority to be given a withholding order for support, see Section 723.030.

Article 4. Earnings Withholding Orders for Taxes

§ 723.070. Definitions

723.070. As used in this article:

(a) "State" means the State of California and includes any officer, department, board, or agency thereof.

(b) "State tax liability" means a liability, including any penalties and accrued interest and costs, for which the state would be authorized to issue (1) a warrant pursuant to Section 1785 of the Unemployment Insurance Code or Section 6776, 7881, 9001, 16071, 18906, 26191, 30341, or 32365 of the Revenue and Taxation Code or (2) a notice of levy pursuant to Section 1755 of the Unemployment Insurance Code or (3) a notice or order to withhold pursuant to Section 6702, 7851, 8952, 11451, 16101, 18817, 26132, 30311, or 32381 of the Revenue and Taxation Code.

Comment. Section 723.070 provides definitions for terms used in this article.

"State" means the state or any agency thereof. Where the term "state" is used in this article, it refers to the particular state agency that administers the particular tax law under which recovery of the delinquent tax is sought. See Section 723.011(d).

The definition of "state tax liability" makes this article apply to those tax liabilities for which a warrant may be issued pursuant to Section 1785 of the Unemployment Insurance Code (unemployment compensation contribution) or Section 6776 (sales and use taxes), 7881 (vehicle fuel license tax), 9001 (use fuel tax), 16071 (gift tax), 18906 (personal income tax), 26191 (bank and corporation

taxes), 30341 (cigarette tax), or 32365 (alcoholic beverage tax) of the Revenue and Taxation Code or for which a notice of levy may be given pursuant to Section 1755 of the Unemployment Insurance Code (unemployment compensation contributions) or for which a notice or order to withhold may be given pursuant to Section 6702 (sales and use tax), 7851 (vehicle fuel license tax), 8952 (use fuel tax), [REDACTED] 11451 (private car tax), 16101 (gift tax), 18817 (personal income tax), 26132 (bank and corporation taxes), 30311 (cigarette tax), or 32381 (alcoholic beverage tax) of the Revenue and Taxation Code.

§ 723.071. Exclusive procedure for withholding earnings for state tax liability

723.071. This chapter does not limit the state's right to collect a state tax liability except that (a) no levy upon earnings of an employee held by an employer is effective unless such levy is made in accordance with the provisions of this chapter and (b) the methods of collection referred to in subdivision (b) of Section 723.070 may not be used to require an employer to withhold earnings of an employee in payment of a state tax liability.

Comment. Section 723.071 makes clear that the levy procedure for withholding *earnings* of an employee for the collection of state tax liability provided in the Employees' Earnings Protection Law is exclusive. The authorization, for example, to direct orders to third persons who owe the taxpayer money found in Section 18817 (personal income tax) and Section 26132 (bank and corporation tax) of the Revenue and Taxation Code is limited by Section 723.071. This article deals, however, only with levy on earnings to collect certain state taxes. The collection of federal taxes is accomplished pursuant to federal law and cannot be limited by state law. See INT. REV. CODE of 1954, § 6334(c). As to other taxes not within the scope of this article, the tax obligation must be reduced to judgment, and the taxing authority may then obtain an earnings withholding order like any other creditor; such order is treated the same as any other earnings withholding order, and this article does not apply.

§ 723.072. Withholding order for taxes; notice and opportunity for review of liability before order issued

723.072. (a) A "withholding order for taxes" is an earnings withholding order issued pursuant to this article to collect a state tax liability and shall be denoted as a withholding order for taxes on its face.

(b) A withholding order for taxes may only be issued where:

(1) The existence of the state tax liability appears on the face of the taxpayer's return, including a case where

such tax liability is disclosed from the taxpayer's return after errors in mathematical computations in the return have been corrected; or

(2) The state tax liability has been assessed or determined, as provided in the Revenue and Taxation Code or Unemployment Insurance Code, and the taxpayer had notice of the proposed assessment or determination and had available an opportunity to have the proposed assessment or determination reviewed by appropriate administrative procedures, whether or not he took advantage of that opportunity.

(c) In any case where a state tax liability has been assessed or determined prior to ~~January 1, 1971~~ ^{January 1,} 1977, and the state determines that the requirements of subdivision (b) may not have been satisfied, the state may send a "Notice of Proposed Issuance of Withholding Order for Taxes" to the taxpayer at his last known address by first-class mail, postage prepaid. The notice shall advise the taxpayer that he may have the assessment or determination reviewed by appropriate administrative procedures and how he may obtain such a review. If the taxpayer is sent such a notice and requests such a review within 30 days from the date the notice was mailed to him, the state shall provide appropriate administrative procedures for review of the assessment or determination and shall not issue the withholding order for taxes until the administrative review procedure is completed. If the taxpayer is sent such a notice and does not request such a review within 30 days from the date the notice was mailed to him, the state may issue the withholding order for taxes.

(d) A withholding order for taxes may be issued whether or not the state tax liability has been reduced to judgment.

Comment. Section 723.072 provides that no withholding order for taxes may be issued unless the state tax liability either appears on the face of the taxpayer's tax return or has been determined in an administrative proceeding in which the taxpayer had notice and an opportunity for administrative review. See *Greene v. Franchise Tax Board*, 27 Cal. App.3d 38, 103 Cal. Rptr. 483 (1972). However, no review of the taxpayer's tax liability is permitted in court proceedings under this chapter. See Section 723.082.

Few state tax liabilities are reduced to judgment. Subdivision (d) recognizes this.

§ 723.073. Provisions governing tax withholding orders

723.073. Except as otherwise provided in this article, the provisions of this chapter govern the procedures and proceedings concerning a withholding order for taxes.

For the purposes of this article, a reference in this chapter to a "levying officer" shall be deemed to mean the specific state agency seeking to collect a state tax liability under this article.

Comment. Section 723.073 makes clear that the provisions of this chapter governing earnings withholding orders are applicable to withholding orders for taxes except to the extent that this article contains special provisions applicable to such orders.

§ 723.074. Agency issued withholding order for taxes

723.074. (a) The state may itself issue a withholding order for taxes under this section to collect a state tax liability. The order shall specify the maximum amount that may be withheld pursuant to the order (unpaid tax liability including any penalties, accrued interest, and costs).

(b) The amount to be withheld by the employer pursuant to an order issued under this section shall be the amount required to be withheld pursuant to subdivision (c) or such lesser amount as is specified in the order.

(c) Unless a lesser amount is specified in the order, the amount to be withheld pursuant to an order issued under this section is two times the maximum amount that may be withheld under Section 723.050, except that the state may require that ten dollars (\$10) be withheld if

the amount of the taxpayer's earnings is sufficient that a portion of his earnings would be withheld pursuant to Section 18806 of the Revenue and Taxation Code if such earnings were subject to withholding under that section but the amount of his earnings is not sufficient to permit withholding under Section 723.050. In determining whether the earnings are sufficient so that a portion of the earnings would be withheld pursuant to Section 18806 of the Revenue and Taxation Code, the table issued under that section applicable to a single person without allowance for additional exemptions shall be used. The state shall prepare withholding tables for determining the amount to be withheld from the earnings of employees for representative pay periods pursuant to orders issued under this section. The tables may prescribe the amounts to be withheld according to reasonable earnings brackets. The tables shall be used to determine the amount to be withheld in all cases where the tables permit computation of the amount to be withheld.

Comment. Section 723.074 specifies the procedure to be followed when the state taxing agency itself issues the withholding order for taxes. In such case, no application to a court for the order is required. Under an order issued pursuant to Section 723.074, the employer may be required to withhold not more than twice the amount permitted to be withheld pursuant to Section 723.050 (except that \$10 is required to be withheld in certain instances where the amount of earnings would not be sufficient to require withholding under Section 723.050). The state taxing agency provides the employer with withholding tables prescribing the amount to be withheld pursuant to orders issued under this section. The amount

determined according to the applicable table must be withheld by the employer unless the order itself specifies a lesser amount or the amount to be withheld is reduced pursuant to subdivision (c) or (d) of Section 723.075. As to the effect of a wage assignment for support under Section 4701 of the Civil Code, see subdivision (e) of Section 723.031 and the Comment thereto.

§ 723.075. Notice to taxpayer; reduction in amount withheld
723.075. (a) This section applies to any withholding order for taxes issued under this article.

(b) Together with the withholding order for taxes, the state shall serve upon the employer an additional copy of the order and a notice informing the taxpayer of the effect of the order and of his right to hearings and remedies provided in this chapter. Within ~~ten~~ ^{ten} days from the date of service, the employer shall deliver to the taxpayer a copy of the order and the notice, except that immediate delivery shall be made where a jeopardy withholding order for taxes has been served. If the taxpayer is no longer employed by the employer and the employer does not owe him any earnings, the employer is not required to make such delivery.

(c) The state shall provide for an administrative hearing to reconsider or modify the amount to be withheld pursuant to the withholding order for taxes, and the taxpayer may request such a hearing at any time after service of the order. If the taxpayer requests a hearing, the hearing shall be provided, and the matter shall be determined, within 15 days after the request is received by the state.

(d) After the state has made its determination under subdivision (c), the taxpayer may file a claim of exemption to claim the exemption provided by Section 723.051, in the manner provided in Section 723.105, with a court of record in his county of residence. No fee shall be charged for filing such claim of exemption. After hearing, the court may modify the withholding order for taxes previously issued, but in no event shall the amount required to be withheld be less than that permitted to be withheld under Section 723.050.

(e) The employer is not subject to any civil liability for failure to comply with subdivision (b). Nothing in this subdivision limits the power of a court ^{to} ~~to~~ hold ~~the~~ the employer in contempt of court for failure to comply with subdivision (b).

Comment. Section 723.075 requires service of a copy of the order and a notice informing the employee of the effect of the order and his right to hearings and other remedies. These papers are served on the employer who is required to deliver them to the employee. *CF* Section 723.104 (ordinary earnings withholding orders). Section 723.075 requires that the

taxpayer first seek administrative relief before he can claim the exemption provided by Section 723.051 (hardship exemption) in a court proceeding. Notwithstanding the hardship exemption provided by Section 723.051, the state taxing agency is entitled to a withholding order in an amount not less than the amount permitted to be withheld under Section 723.050 even though there is a court hearing on the employee's claim that his earnings are ~~not~~ necessary for support of the taxpayer or his family.

Necessary

Subdivision (e) is the same in substance as the last sentence of subdivision (a) of Section 723.104. See the Comment to that section for a discussion of the comparable provision.

§ 723.076. Court-issued withholding order for taxes

723.076. (a) A withholding order for taxes may be issued pursuant to this section requiring the employer of the taxpayer to withhold an amount in excess of the amount that may be required to be withheld pursuant to an order issued under Section 723.074.

(b) The state may, at any time, apply to a court of record in the county where the taxpayer was last known to reside for the issuance of a withholding order for taxes under this section to collect a state tax liability.

(c) The application for the order shall include an affidavit stating that the state has served upon the taxpayer both of the following:

- (1) A copy of the application.
- (2) A notice informing the taxpayer of the purpose of the application and his right to appear in regard to the application.

(d) Upon the filing of the application, the court shall immediately set the matter for hearing and the court clerk shall send a notice of the time and place of the hearing by first-class mail, postage prepaid, to the state and the taxpayer. The notice shall be deposited in the mail at least 10 days before the day set for the hearing.

(e) After hearing, the court shall issue a withholding order for taxes which shall require the taxpayer's employer to withhold and pay over all earnings of the taxpayer other than that amount which the taxpayer proves is exempt under Section 723.051, but in no event shall the amount to be withheld be less than that permitted to be withheld under Section 723.050.

(f) The state may issue a temporary earnings holding order, which shall be denoted as such on its face, in any case where the state intends to apply for a withholding order for taxes under this section and has determined that the collection of the state tax liability will be jeopardized in whole or in part if the temporary earnings holding order is not issued. The temporary earnings holding order shall be directed to the taxpayer's employer and shall require him to retain in his possession or under his control all or such portion of the earnings of the taxpayer then or thereafter due as is specified in the order. Together with the temporary earnings holding

order, the state shall serve upon the employer an additional copy of the order and a notice informing the taxpayer of the effect of the order and of his right to remedies provided in this chapter. Upon receipt of the order, the employer shall deliver to the taxpayer a copy of the order and notice. If the taxpayer is no longer employed by the employer and the employer does not owe him any earnings, the employer is not required to make such delivery. The temporary earnings holding order expires 15 days from the date it is served on the employer unless it is extended by the court on ex parte application for good cause shown. If a temporary earnings holding order is served on an employer, the state may not thereafter, for a period of six months, serve on the same employer another temporary earnings holding order for the same employee unless the court for good cause shown otherwise orders. Sections 723.153 and 723.154 apply to temporary earnings holding orders issued under this section.

Comment. Section 723.076 provides a procedure whereby the taxing agency can obtain an order, after court hearing, that requires the employer to withhold all of the employee's earnings in excess of the amount essential for the support of the taxpayer and his family. An order may be obtained under Section 723.076 that requires the withholding of more than the amount that the state taxing agency could require the employer to withhold pursuant to an order issued by the agency itself under Section 723.074. This grant of authority is not intended as a directive that such authority be used generally. This extreme remedy could be harsh in its application and should be used sparingly. The state taxing agency is always entitled to a withholding order in an amount not less than the amount permitted to be withheld under Section 723.050 even though there is a court hearing on the employee's claim that all of his earnings are ~~essential~~ necessary for the support of the taxpayer ~~and his~~ family. Provision is made in subdivision (f) of Section 723.076 for a temporary order directing the employer to hold any earnings of the employee then or thereafter due. Such orders should be used only in rare and unusual cases.

necessary

or

§ 723.077. Priority of orders

723.077. (a) Subject to subdivision (b), an employer upon whom a withholding order for taxes is served shall withhold and pay over earnings of the employee pursuant to such order and shall cease to withhold earnings pursuant to any prior order except that a withholding order for support shall be given priority as provided in Section 723.030. When an employer is required to cease withholding earnings pursuant to a prior order, he shall notify the judgment creditor who obtained the prior order that a supervening withholding order for taxes is in effect.

earnings withholding

earnings withholding

(b) An employer shall not withhold earnings of an employee pursuant to a withholding order for taxes if a prior withholding order for taxes is in effect, and, in such case, the subsequent withholding order for taxes is ineffective.

Comment. Section 723.077 deals with the priority a tax withholding order is to be given with respect to other earnings withholding orders. A withholding order for taxes takes priority over any prior order except one for support or another withholding order for taxes. As indicated in the Comment to Section 723.030, a support order always takes priority over any other order. Thus, where a support order is in effect and a subsequent tax order is received, the employer will continue to withhold support, and the amount withheld pursuant to the tax order will be reduced by the amount withheld pursuant to the withholding order for support. Similarly, where a tax order is in effect and a support order is served, the support order again takes priority. See the Comments to Sections 723.030 and 723.050. However, where the prior order is for the collection of a debt other than for taxes or support, the tax order displaces the prior order, and the employer must withhold only pursuant to the tax order until the tax debt is completely paid. If the earnings withholding order for taxes is satisfied during the withholding period of the prior order (Section 723.022), the employer must then again withhold pursuant to the prior order. Where there is a prior tax order in effect, the second tax order is ineffective; the employer may not withhold pursuant to the second order and must promptly notify the agency which issued or obtained the second order of the reason for his action. See Section 723.104(b).

As to the effect of a wage assignment for support under Section 4701 of the Civil Code, see Section 723.031(e). As indicated in the Comment to Section 723.031, a wage assignment for support under Civil Code Section 4701 takes priority over any earnings withholding order. Thus, where a wage assignment for support is in effect and a subsequent tax order is received, the employer will continue to withhold pursuant to the wage assignment, and the amount withheld pursuant to the tax order will be reduced by the amount withheld pursuant to the wage assignment for support. Similarly, where a tax order is in effect and a wage assignment for support is served, the wage assignment takes priority. See the Comments to Sections 723.031 and 723.050.

earnings withholding

earnings withholding

pursuant to the withholding order for

earnings withholding

withholding order for

earnings withholding

delinquent

earnings withholding

§ 723.078. Withholding period; notice terminating order

723.078. (a) Except as provided in subdivision (b), the employer shall not withhold pursuant to a withholding order for taxes from earnings of the employee payable for any pay period of such employee that ends prior to the tenth day after service of the order.

(b) A "jeopardy withholding order for taxes," which shall be denoted as such on its face, is a withholding order for taxes that requires that the employer withhold pursuant to the order from earnings due to the employee at the time of service of the order on the employer and from earnings thereafter due. A jeopardy withholding order for taxes may be issued only where the state has determined that the collection of a state tax liability will be jeopardized in whole or in part by delaying the time when withholding from earnings commences.

(c) An employer shall continue to withhold pursuant to a withholding order for taxes until the amount specified in the order has been paid in full or the order is withdrawn, except that the order shall automatically terminate one year after the employee is no longer employed by the employer. The state shall promptly serve on the employer a notice terminating the withholding order for taxes if the state tax liability for which the withholding order for taxes was issued is satisfied before the employer has withheld the full amount specified in the order, and the employer shall discontinue withholding in compliance with such notice.

Comment. Subdivision (a) of Section 723.078 requires the employer to withhold commencing at the same time as with any other order. *CC* Section 723.022. Subdivision (b) provides for a jeopardy withholding order that requires immediate withholding. Such an order should be used only in rare and unusual cases. Subdivision (c) requires the employer to withhold earnings pursuant to a withholding order for taxes until the amount specified in the order has been paid in full and provides for a notice if the tax liability is satisfied before the full amount specified in the order has been withheld. The notice required by Section 723.078 is in lieu of the notice provided by Section 723.027.

If not earlier terminated by the court, the order automatically terminates one year after the employee is no longer employed by the employer. Thus, for example, if the employee is laid off but returns to work for the same employer within one year from the date of the layoff, the employer must withhold pursuant to the support order. On the other hand, if the employee does not return to work until more than one year from the date he was laid off, the order expires at the end of the year, and nothing is withheld pursuant to the order when the employee returns to work.

§ 723.079. When receipt required

723.079. No receipt need be sent to the taxpayer for amounts paid over to the state pursuant to a withholding order for taxes unless the taxpayer has requested in writing that he be sent receipts for such amounts.

§ 723.080. Service

723.080. Service of a withholding order for taxes or of any other notice or document required under this chapter in connection with a withholding order for taxes may be made by first-class mail, postage prepaid, or by any authorized state employee. Service of a withholding order for taxes is complete when it is received by the employer. Service of, or the providing of, any other notice or document required to be served or provided under this chapter in connection with a withholding order for taxes is complete when the notice or document is deposited in the mail addressed to the last known address of the person on whom it is served or to whom it is to be provided.

by the state

Comment. Section 723.080 provides special provisions for service of notices, documents, and orders under this article. This special service provision is in lieu of the one prescribed by Section 723.101.

§ 723.081. Forms

723.081. Except for the forms referred to in Section 723.076, the state shall prescribe the form of any order, notice, or other document required by this chapter in connection with a withholding order for taxes notwithstanding Sections 723.100 and 723.120, and any form so prescribed is deemed to comply with this chapter.

Comment. Section 723.081 requires that forms used in connection with this article be prescribed by the state taxing agency administering the particular tax law except that the Judicial Council prescribes the forms used in connection with court issued orders under Section 723.076.

§ 723.082. Review of tax liability

723.082. No review of the taxpayer's tax liability shall be permitted in any court proceedings under this chapter.

Comment. Section 723.082 makes clear that the court, in a proceeding to determine whether a withholding order for taxes should be modified or terminated because of hardship, may not review the taxpayer's tax liability.

§ 723.083. Refund of employer's service charge

723.083. If the state determines that a withholding order for taxes has been issued in error or that there is no tax liability, the state may refund to the employee any amounts deducted by his employer pursuant to Section 723.024.

Comment. Section 723.083 authorizes the state to refund the employer's service charge to the employee if the withholding order for taxes is issued in error or there is no tax liability.

§ 723.084. Warrant or notice deemed withholding order for taxes

723.084. Where a warrant, notice of levy, or notice or order to withhold (referred to in subdivision (b) of Section 723.070) is served on the employer, it shall be deemed to be a withholding order for taxes if the form provides notice on its face that it is to be treated as a withholding order for taxes as to any earnings that are subject to the provisions of this chapter.

Comment. Section 723.084 deals with the situation where it is not clear whether an employer-employee relationship exists. The warrant, notice of levy, or notice or order to withhold may be issued on the assumption the taxpayer is an independent contractor. However, so that the taxpayer cannot avoid the withholding by claiming that he is an employee and that his earnings may be withheld only pursuant to an earnings withholding order, Section 723.084 provides that the warrant, notice, or order may require that it be treated as an earnings withholding order if the taxpayer is an employee.

Article 5. Procedure for Issuance of
Earnings Withholding Orders

§ 723.100. Judicial Council authorized to prescribe practice and procedure

723.100. Notwithstanding any other provision of law, the Judicial Council may provide by rule for the practice and procedure in proceedings under this chapter except for the state's administrative hearings provided by Article 4 (commencing with Section 723.070).

Comment. Article 5 outlines generally the procedure for issuance and review of an earnings withholding order; however, Section 723.100 authorizes the Judicial Council to provide by rule for the practice and procedure in proceedings under this chapter. The state tax agency prescribes the rules of procedure for administrative hearings under Article 4 (withholding orders for taxes).

§ 723.101. Service

723.101. (a) An earnings withholding order shall be served upon the employer by delivery of the order to any of the following:

(1) The managing agent or person in charge of the branch or office where the employee works or the office from which he is paid.

(2) Any person to whom a copy of the summons and of the complaint may be delivered to make service on the employer under Article 4 (commencing with Section 416.10) of Chapter 4 of Title 5 of Part 2.

(b) Service of an earnings withholding order shall be made by personal delivery as provided in Section 415.10 or 415.20 or by delivery by registered or certified mail, postage prepaid, with return receipt requested. When service is made by mail, service is completed at the time the return receipt is executed by or on behalf of the recipient. If the levying officer attempts service by mail under this subdivision and he does not receive a return receipt within 15 days from the date of deposit in the mail of the earnings withholding order, he shall make service as provided in Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2.

(c) Service of any notice or document under this chapter may be made in the same manner as an earnings withholding order. If service is made on the employer after his employer's return has been received by the levying officer, the service shall be made by registered or certified mail, postage prepaid, with return receipt requested, on the person designated in the employer's return to receive notices and at the address indicated in the employer's return, whether or not such address is within the county. Nothing in this ^{subdivision} precludes service by personal delivery on the person designated in the employer's return.

Comment. Section 723.101 specifies the manner of service under this chapter. Although personal delivery is authorized, it is anticipated that convenience and economy of service by mail will result in the general use of this method. Subdivision (b) requires personal delivery by the levying officer where mail service is apparently ineffective because a return receipt has not been received by the levying officer within 15 days after the order is mailed. As to service of withholding orders for taxes, see Section 723.080. Subdivision (c) makes clear that, after the levying officer has received the employer's return, service of any notice or document under this chapter is to be made on the person, and at the address, indicated in the employer's return. See Sections 723.101(c) and 723.126(b)(5). See also, for example, the Comment to Section 723.027.

§ 723.102. Application for issuance of earnings withholding order

723.102. (a) If a writ of execution has been issued to the county where the judgment debtor's employer is to be served and the time for the return of the writ under subdivision (a) of Section 683 has not expired, a judgment creditor may apply for the issuance of an earnings withholding order by filing an application, in the form prescribed by the Judicial Council, with a levying officer in such county who shall promptly issue an earnings withholding order in the form prescribed pursuant to Sections 723.120 and 723.125.

(b) This section does not apply where the earnings withholding order is a withholding order for taxes.

Comment. Subdivision (a) of Section 723.102 requires a judgment creditor to apply for an earnings withholding order to the levying officer in the county where the order is to be served. As a prerequisite

to applying for the earnings withholding order, the judgment creditor must have obtained the issuance of a writ of execution to the county where the order is to be served. See Section 723.101 (place where service may be made). For the required content of the application, see Section 723.121. An earnings withholding order shall be promptly issued on the ex parte application of a judgment creditor. The debtor may claim an exemption pursuant to Section 723.105, have such order modified or terminated, and even recover from the creditor amounts withheld and paid over pursuant to such order; but this does not affect the initial issuance of the order. The earnings withholding order will be effective only if served before the time for the return of the writ under subdivision (a) of Section 683 has expired. See Section 723.103(c).

For special provisions regarding the issuance of a withholding order for taxes, see Article 4 (commencing with Section 723.070).

§ 723.103. Service of order and information on employer

723.103. (a) The levying officer shall serve upon the designated employer all of the following:

- (1) The original and one copy of the earnings withholding order.
- (2) The form for the employer's return.
- (3) The notice to employee of earnings withholding order in the

form prescribed pursuant to Sections 723.120 and 723.122.

(b) At the time he makes service pursuant to subdivision (a), the levying officer shall provide the employer with a copy of the employer's instructions and withholding tables referred to in Section 723.127. The Judicial Council may adopt rules prescribing the circumstances when compliance with this subdivision is not required.

(c) No earnings withholding order shall be served upon the employer after the time specified in subdivision (a) of Section 683 for the return of the writ of execution under which the order was issued has expired.

Comment. Section 723.103 prescribes what must be served upon the employer by the levying officer and when such service must be accomplished to be effective. Service of the earnings withholding order must be completed before the writ is returnable. See Section 683 (writ may be made returnable not less than ^{10 nor} more than 60 days after its receipt by the levying officer).- See also Section 723.026(c).

Section 723.103 requires that the employer be supplied with a copy of the earnings withholding order and with a notice advising the employee of the effect of the earnings withholding order and his rights with respect to the order. The employer is required to deliver these papers to the employee within ten days of service. See Section 723.104. The person to be served and the manner of service of the earnings withholding order and related documents is specified in Section 723.101.

§ 723.104. Delivery of papers to employee; employer's return

723.104. Any employer who is served with an earnings withholding order shall:

(a) Deliver to the judgment debtor a copy of the earnings withholding order and the notice to employee of earnings withholding order within ten days from the date of service. If the judgment debtor is no longer employed by the employer and the employer does not owe him any earnings, the employer is not required to make such delivery. The employer is not subject to any civil liability for failure to comply with this subdivision. Nothing in this subdivision limits the power of a court to hold the employer in contempt of court for failure to comply with this subdivision.

(b) Complete the employer's return on the form provided by the levying officer and mail it by first-class mail, postage prepaid, to the levying officer within 15 days from the date of service. If the earnings withholding order is ineffective, the employer shall state in his employer's return that he is not complying with the order for this reason and shall return the order to the levying officer with the employer's return.

Comment. Section 723.104 requires the employer to deliver to the employee a copy of the order and a notice advising the employee of his rights.

Section 723.104 also requires the employer to fill out and mail an employer's return to the levying officer who serves an earnings withholding order. Such a return must be made even though the order is not given effect. See Comment to Section 723.023. If the order is not given effect, the employer must indicate the reason and return the order. For the form of the return, see Section 723.126.

The last two sentences of subdivision (a) make clear that an employer is not liable for civil damages if he fails to give the employee the notice advising the employee of his rights. The section does not preclude the Labor Commissioner from taking action under the Labor Code if the employer consistently fails to give his employees the notice he is required to deliver under subdivision (a). Moreover, although the employer is not civilly liable, he may be subject to punishment for contempt. This would be appropriate where the employer fails to give the employee notice out of malice or willful neglect but would not be appropriate where the employer merely inadvertently fails to give the notice.

§ 723.105. Judgment debtor's claim of exemption

723.105. (a) A judgment debtor may claim an exemption under Section 723.051 if:

(1) No prior hearing has been held with respect to the earnings withholding order; or

(2) There has been a material change in circumstances since the time of the last prior hearing on the earnings withholding order.

(b) A claim of exemption shall be made by filing with the levying officer an original and one copy of (1) the judgment debtor's claim of exemption and (2) the judgment debtor's financial statement.

(c) Upon the filing of the claim of exemption, the levying officer shall promptly send to the judgment,

creditor by first-class mail, postage prepaid, all of the following:

(1) A copy of the claim of exemption.

(2) A copy of the financial statement.

(3) A notice of claim of exemption, stating that the claim of exemption has been filed and that the earnings withholding order will be terminated, or modified to reflect the amount of earnings claimed to be exempt in

the claim of exemption, unless a notice of opposition to the claim of exemption is filed with the ~~levying officer~~ by ~~the~~ judgment creditor within 10 days after the date of the mailing of the notice of claim of exemption.

(d) A judgment creditor who desires to contest a claim of exemption shall, within 10 days after the date of the mailing of the notice of claim of exemption, file with the ~~levying officer~~ a notice of opposition to the claim of exemption.

(e) If the ~~levying officer~~ does not receive a notice of opposition within the 10-day period, he shall ~~the~~ ~~employer~~ ~~one of the~~ ~~following:~~ ~~serve on~~

(1) A notice that the earnings withholding order has been terminated if all of the judgment debtor's earnings was claimed to be exempt.

(2) A modified earnings withholding order which reflects the amount of earnings claimed to be exempt in the claim of exemption if only a portion of the judgment debtor's earnings was claimed to be exempt.

(f) If a notice of opposition to the claim of exemption is filed with the levying officer within the 10-day period, the levying officer shall promptly file the judgment debtor's claim of exemption and financial statement and the notice of opposition to the claim of exemption with the court clerk and the court clerk shall set the matter for hearing, which hearing shall be held within 15 days after the date the documents are filed with the court clerk by the levying officer. The court clerk shall send

a notice of the time and place of the hearing to the judgment debtor and judgment creditor by first-class mail, postage prepaid. The notice shall be deposited in the mail at least 10 days before the day set for hearing.

(g) If, after hearing, the court orders that the earnings withholding order be modified or terminated, the clerk shall promptly transmit a certified copy of the order to the levying officer who shall promptly ~~serve on~~

the employer of the judgment debtor (1) a copy of the modified earnings withholding order or (2) a notice that the earnings withholding order has been terminated. The court may order that the earnings withholding order be terminated as of a date which precedes the date of hearing.

If the court determines that any amount withheld pursuant to the earnings withholding order shall be paid to the judgment debtor, the court may make an order directing the person who holds such amount to pay it to the judgment debtor.

(h) If the earnings withholding order is terminated by the court, unless the court otherwise orders or unless there is a material change of circumstances since the time of the last prior hearing on the earnings withholding order, the judgment creditor may not apply for another earnings withholding order directed to the same employer with respect to the same judgment debtor for a period of 130 days following the date of service of the earnings withholding order or 60 days after the date of the termination of the order, whichever is later.

(i) If an employer has withheld and paid over amounts pursuant to an earnings withholding order after the date of termination of such order but prior to the receipt of notice of its termination, the judgment debtor may recover such amounts only from the levying officer if he still holds such amounts or, if such amounts have been paid over to the judgment creditor, from the judgment creditor.

promptly - If the employer has withheld amounts pursuant to an earnings withholding order after termination of the order but has not paid over such amounts to the levying officer, the employer shall pay over such amounts to the judgment debtor.

(j) An appeal lies from any court order under this section modifying or terminating an earnings withholding order. Such appeal shall be taken in the manner provided for appeals in the court in which the proceeding is had. An appeal by the judgment creditor from an order modifying or terminating the earnings withholding order does not stay the order from which the appeal is taken. Notwithstanding the appeal, until such time as the order ~~is~~ *modifying or terminating the earnings withholding order* is set aside or modified, the order ~~shall be given the same effect~~ *allowing the claim of exemption in whole or in part* shall be given the same effect as if the appeal had not been taken.

Comment. Section 723.105 outlines generally the procedure for the hearing of a debtor's claims for the exemption under Section 723.051. Section 690.50 is not applicable.

A debtor is not limited as to the time within which he must claim an exemption. However, unless there has been a material change in either his income or his needs, he may claim an exemption only once during the period the order is in effect. See subdivision (a). A similar limitation applies to a judgment creditor; if a withholding order is terminated by the court, the judgment creditor may not apply for the issuance of an earnings withholding order directed to the same employer for the same debtor for 130 days following the date of service of a prior

terminated order or 60 days after the date of termination, whichever is later, unless the court orders otherwise or there is a material change in circumstances. See subdivision (h).

A claim of exemption is made by the debtor by filing an original and one copy of his claim of exemption and ~~his~~ his financial statement. Subdivision (b). For the form of these documents, see Sections 723.123 and 723.124. Upon receipt of these documents, the ~~debtor~~ is required to send the copies of the application and financial statement to the creditor, together with a notice of the claim of exemption which advises the creditor of the effect of the claim. See subdivision (c).

levying officer

The judgment creditor who contests the claim of exemption must file a notice of opposition within 10 days. Subdivision (d).

If no notice of opposition is filed, the levying officer serves on the employer a notice terminating the order or, if the claim of exemption lists an amount the judgment debtor believes should

be withheld pursuant to the order (see Section 723.123), the levying officer ^{serves on} the employer a modified order in the amount indicated in

the claim of exemption. Subdivision (e). Service of the notice of termination or modified order is to be made on the person, and at the address, indicated in the employer's return. See Sections 723.101(c)

and 723.126(b)(5). If the judgment creditor's notice of opposition is filed within 10 days, the levying officer files the documents with

the court clerk who sets the matter for hearing and notifies both parties. Subdivision (f).

After hearing, the court may order that the earnings withholding order be modified or even terminated. The date fixed for termination of the order may precede the date of the hearing. See subdivision (g). The court may order amounts withheld in excess of the amount determined to be proper to be paid to the judgment debtor. See subdivision (h). Where the date of termination is

made retroactive, an employer may have already withheld and paid over pursuant to the earnings withholding order prior to receipt of notice of termination. Subdivision (c) of Section 723.022 makes clear that the employer is not liable to the debtor for such amounts, and subdivision (i) of Section 723.105 authorizes the debtor to recover such amounts from ~~the~~ creditor. Where amounts have been withheld but not yet paid over to the ~~creditor~~, the employer is required to pay those amounts to the employee-judgment debtor. See subdivision (i).

levying officer

the levying officer or if paid to the creditor, from the

The procedure for claiming the exemption provided by Section 723.052 is specified in that section.

Subdivision (j) continues the rule that an appeal may be taken from the court's order allowing or denying the claim of exemption in whole or in part. See Section 690.50(m). However, the rule formerly provided by the last sentence of subdivision (j) of Section 690.50 that an appeal by the judgment creditor prevented the release of the withheld earnings of the judgment debtor is not continued. Under subdivision (j) of Section 723.105, until such time as the order, ~~preventing the release of the withheld earnings~~ ^{modifying or terminating the earnings withholding order} is set aside or modified, the order ^{allowing the claim of exemption in whole or in part} shall be given the same effect as if the appeal had not been taken.

§ 723.106. Findings not required

723.106. No findings shall be required in court proceedings under this chapter.

Comment. Section 723.106 is comparable to a provision found in subdivision (i) of Section 690.50 (claims for exemption).

§ 723.107. Limitation on obtaining additional earnings withholding orders

723.107. If an employer withholds earnings pursuant to an earnings withholding order, the judgment creditor who obtained the order may not cause another earnings withholding order to be served on the same employer requiring him to withhold earnings of the same employee during the 10 days following the expiration of the prior earnings withholding order.

causing ——— ~~obtained an earnings withholding order which has gone into effect from another order during the 10-day period following the expiration of his prior order.~~ ^{to be served} The purpose of this limitation is to give other creditors a 10-day period during which their earnings withholding orders can be served while the original creditor is precluded from competing with them. The original creditor may apply for the second earnings withholding order either before or after his prior order expires. But service of the second order on the same employer while the original order is in effect will be ineffective under Section 723.023, and service during the 10-day period following expiration of the original order is prohibited by Section 723.107. Even though

the 10-day moratorium period is violated, the employer may act pursuant to what has been served upon him. See Section 723.154. Of course, after the expiration of the 10-day period, the original creditor is treated like any other creditor.

It should be noted that each agency of the state is considered a separate entity for the purposes of this chapter. See Section 723.011 (A). Hence, even though one agency has been making collection, a second agency may serve an earnings withholding order within the 10-day period provided in this section.

Article 6. Forms, Employer's Instructions; Withholding Tables

§ 723.120. Judicial Council to prescribe forms

723.120. The Judicial Council shall prescribe the form of the applications, notices, claims of exemption, orders, and other documents required by this chapter and only such forms may be used to implement this chapter. Any such form prescribed by the Judicial Council is deemed to comply with this chapter.

Comment. Section 723.120 requires the Judicial Council to prescribe the forms necessary for the purposes of this chapter. Various sections prescribe information to be contained in the forms; but the Judicial Council has complete authority to adopt and revise the forms as necessary and may require additional information in the forms or may omit information from the forms that it determines is unnecessary.

§ 723.121. Application for earnings withholding order

723.121. The "application for issuance of earnings withholding order" shall be executed under oath and shall include all of the following:

(a) The name and last known address of the judgment debtor and, if known, his social security number.

(b) The name and address of the judgment creditor.

(c) The court where the judgment was entered and the date the judgment was entered.

(d) The date of issuance of a writ of execution to the county where the earnings withholding order is sought and the date the writ is returnable *under subdivision (a) of Section 683.*

(e) The amount sought to be collected, indicating the amount of the judgment, plus additional accrued items, less partial satisfactions, if any.

(f) The name and address of the employer to whom the order will be directed.

(g) The name and address of the person to whom the withheld money is to be paid by the levying officer.

Comment. Although Section 723.121 requires the application to be executed "under oath," this may generally be done by a statement signed under penalty of perjury. See Section 2015.5. The actual form for the application is prescribed by the Judicial Council. See Section 723.120.

§ 723.122. Notice of application

723.122. The "notice to employee of earnings withholding order" shall inform the judgment debtor of all of the following:

(a) The named employer has been ordered to withhold from the earnings of the judgment debtor the maximum amounts allowed by law, or such other amounts as are specified in the order, and to pay these amounts over to the levying officer for transmittal to the person specified in the order in payment of the judgment described in the order.

(earnings withholding)

(b) The maximum amounts allowed by law to be withheld pursuant to Section 723.030 on illustrative amounts of earnings.

(c) No amount can be withheld from the earnings of a judgment debtor which he can prove is necessary for the support of the debtor or the debtor's family supported in whole or in part by the debtor.

(d) If a judgment debtor wishes a court hearing to prove that amounts should not be withheld from his earnings because they are necessary for the support of the debtor or the debtor's family supported in whole or in part by the debtor, he shall file with the levying officer an original and one copy of

the "judgment debtor's claim of exemption" and an original and one copy

of the "judgment debtor's financial statement." The notice shall also advise the judgment debtor that the claim of exemption form and the financial statement form may be obtained at the office of the levying officer who shall have the forms available at his office.

(e) Under Section 300 of the Labor Code, the judgment debtor may revoke an assignment of wages or salary to be earned after the time of the revocation unless the assignment is made pursuant to Section 4701 of the Civil Code.

Comment. The actual form for the notice of application is prescribed by the Judicial Council. See Section 723.120.

§ 723.123. Form of claim of exemption

723.123. The "judgment debtor's claim of exemption" shall be executed under oath.

The claim of exemption shall indicate how much the judgment debtor believes should be withheld from his earnings each pay period by his employer pursuant to the earnings withholding order.

Comment. Although Section 723.123 requires that the claim of exemption be executed "under oath," this may generally be done by a statement signed under penalty of perjury. See Section 2015.5. The actual form for the claim of exemption is prescribed by the Judicial Council. See Section 723.120.

§ 723.124. Judgment debtor's financial statement

723.124. The "judgment debtor's financial statement" shall be executed under oath and shall include all of the following information:

(a) Name, age, and relationship of all persons dependent upon judgment debtor's income.

(b) All sources of the judgment debtor's earnings and other income and the amounts of such earnings and other income.

(c) All sources and the amounts of earnings and other income of the persons listed in subdivision (a).

(d) A listing of all assets of the judgment debtor and of the persons listed in subdivision (a) and the value of such assets.

(e) All outstanding obligations of the judgment debtor.

(f) Whether any earnings withholding orders are in effect for the judgment debtor or the persons listed in subdivision (a).

(g) Whether any orders made under Section 4701 of the Civil Code are in effect for the judgment debtor or the persons listed in subdivision (a).

Comment. Although Section 723.124 requires the financial statement to be executed "under oath," this may generally be done by a statement signed under penalty of perjury. See Section 2015.5. The actual form for the financial statement is prescribed by the Judicial Council. See Section 723.120.

§ 723.125. Earnings withholding order

723.125. The "earnings withholding order" shall include all of the following:

(a) The name and address of the judgment debtor and, if known, his social security number.

(b) The name and address of the employer to whom the order is directed.

(c) The court where the judgment was entered, the date the judgment was entered, and the name of the judgment creditor.

(d) The date of issuance of the writ of execution to the county where the earnings withholding order is sought and the date the writ is returnable under subdivision (a) of Section 633.

(e) The

maximum amount that may be withheld pursuant to the order (the amount of the judgment, plus additional accrued items, less partial satisfactions, if any).

(f) A description of the withholding period and an order to the employer to withhold from the earnings of the judgment debtor the amount required by law to be withheld or the amount specified in the order, as the case may be, during such period.

(g) An order to the employer to pay over to the levying officer at a specified address the amount required to be withheld pursuant to the order in the manner and within the times provided by law.

(h) An order that the employer fill out the "employer's return" and return it by first class mail, postage prepaid, to the levying officer at a specified address within 15 days after service of the earnings withholding order.

(i) An order that the employer deliver to the judgment debtor a copy of the earnings withholding order and the "notice to employee of earnings withholding order" within 10 days after service of the earnings withholding order; but, if the judgment debtor is no longer employed by the employer and the employer does not owe him any earnings, the employer is not required to make such delivery.

(j) The name and address of the levying officer.

Comment. Section 723.125 specifies the information to be included in the earnings withholding order. The form of the order is prescribed by the Judicial Council. See Section 723.120. Special forms are prescribed for earnings withholding orders for taxes. See Section 723.081.

§ 723.126. Employer's return

723.126. (a) The "employer's return" shall be executed under oath. The form for the return provided to the employer shall state all of the following information:

(1) The name and address of the ^{levying} officer to whom the form is to be returned.

(2) A direction that the form be mailed to the levying officer by first-class mail, postage prepaid, no later than 15 days after the date of service of the earnings withholding order.

(3) The name and address of the judgment debtor and, if known, his social security number.

(b) In addition, the employer's return form shall require the employer to supply all of the following information:

(1) Whether the judgment debtor is now employed by the employer or whether the employer otherwise owes him earnings.

(2) If the judgment debtor is employed by the employer or the employer otherwise owes him earnings, the amount of his earnings for the last pay period and the length of this pay period.

(3) Whether the employer is presently required to comply with a prior earnings withholding order and, if so, the name of the judgment creditor who secured the prior order, the ~~number~~ issued such order, the date it was issued, the date it was served, and the expiration date of such order.

levying officer
who

(4) Whether the employer is presently required to comply with an order made pursuant to Section 4701 of the Civil Code and, if so, the court which issued such order and the date it was issued and any other information the Judicial Council determines is needed to identify the order.

(5) The name and address of the person to whom notices to the employer are to be sent.

Comment. Section 723.126 specifies the information to be included in the employer's return. The form for the return is prescribed by the Judicial Council. See Section 723.120. Although Section 723.126 requires the employer's return to be executed "under oath," this may generally be done by a statement signed under penalty of perjury. See Section 2015.5.

§ 723.127. Employer's instructions and withholding tables

723.127. (a) The Judicial Council shall prepare "employer's instructions" for employers and revise or supplement these instructions to reflect changes in the law or rules regulating the withholding of earnings.

(b) Except to the extent that they are included in the forms required to be provided to the employer by the levying officer, the Judicial Council shall publish

and provide to the levying officers copies of the employer's instructions and the withholding tables adopted pursuant to Section 723.050..

Comment: Section 723.127 requires the preparation of employer's instructions that provide the employer with the information he needs to comply with the law. The ~~levying officer~~ provides the employer with a copy of the employer's instructions with the earnings withholding order. See Section 723.103.

levying
officer

§ 723.128. Judgment creditor's notice of opposition

723.128. The "judgment creditor's notice of opposition to the claim of exemption" shall be executed under oath and shall include all of the following:

- (a) The name and last known address of the judgment debtor and, if known, his social security number.
- (b) The name and address of the judgment creditor.
- (c) The date of mailing of the notice of claim of exemption.
- (d) The amount of the judgment debtor's claim of exemption which the judgment creditor claims is not exempt.
- (e) The factual and legal grounds for the judgment creditor's opposition to the claim of exemption.

Comment. Section 723.128 specifies the information to be included in the judgment creditor's notice of opposition to the claim of exemption. The form is prescribed by the Judicial Council. See Section 723.120. Although Section 723.128 requires the notice to be executed "under oath," this may generally be done by a statement signed under penalty of perjury. See Section 2015.5.

Article 7. Administration and Enforcement

§ 723.150. Rules

723.150. The Judicial Council shall adopt rules for the administration of this chapter, including rules prescribing the pay period or periods to which various forms of prepaid or deferred earnings are to be allocated and the method of computing the amount to be withheld from such forms of earnings under Section 723.050.

Comment. Section 723.150 requires that rules be adopted for the administration of this chapter. Such rules include specific requirements regarding the treatment of various forms of prepaid and deferred earnings such as, but not limited to, commissions, bonuses, retroactive pay increases, vacation benefits, prepaid earnings, advances, and draw account payments.

§ 723.151. Liaison with federal administrator

723.151. The Judicial Council may perform all acts required by the Administrator of the Wage and Hour Division of the United States Department of Labor as conditions to exemption of this state from the earnings garnishment provisions of the Consumer Credit Protection Act of 1968 (15 U.S.C. Secs. 1671-1677), including, but not limited to:

(a) Representing and acting on behalf of the state in relation to the Administrator of the Wage and Hour Division and his representatives with regard to any matter relating to, or arising out of, the application, interpretation, and enforcement of the laws of this state regulating withholding of earnings.

(b) Submitting to the Administrator of the Wage and Hour Division in duplicate and on a current basis, a certified copy of every statute of this state affecting earnings withholding, and a certified copy of any decision in any case involving any of those statutes, made by the Supreme Court of this state.

(c) Submitting to the Administrator of the Wage and Hour Division any information relating to the enforcement of earnings withholding laws of this state which he may request.

Comment. Section 723.151 authorizes the Judicial Council to do whatever is required by the federal administrator to obtain and maintain a state exemption from the earnings garnishment provisions of the Consumer Credit Protection Act. A similarly broad grant of power as that contained in the first paragraph of Section 723.151 is found in Government Code Section 25210 (county participation in Economic Opportunity Act of 1964). Subdivisions (a), (b), and (c) are based on the language of 29 Code of Federal Regulations Section 870.55(a), requiring the state administrator to act as liaison with the federal administrator.

§ 723.152. Fraudulent withholding by employer

723.152. If an employer withholds earnings pursuant to this chapter and, with the intent to defraud either the judgment creditor or the judgment debtor, fails to pay such withheld earnings over to the levying officer, the employer is guilty of a misdemeanor.

Comment. Section 723.152 is based on Labor Code Section 227 (failure to make agreed payments to health, welfare, or similar fund).

§ 723.153. Employer not to defer or accelerate payment of earnings

723.153. (a) No employer shall defer or accelerate any payment of earnings to an employee with the intent to defeat or diminish the ~~creditor's rights under an earnings withholding order issued pursuant to the procedures provided by this chapter.~~ judgment

(b) If an employer violates this section, the judgment creditor may bring a civil action against the employer to recover the amount that would have been withheld and paid over pursuant to this chapter had the employer not violated this section. The remedy provided by this subdivision is not exclusive.

Comment. Section 723.153 makes clear that an employer may neither defer nor accelerate payment of earnings to an employee in an attempt to avoid compliance with an earnings withholding order and specifies the measure of damages in case of a violation.

§ 723.154. Remedies of judgment creditor; limitation of employer's liability

723.154. (a) If an employer fails to withhold or to pay over the amount he is required to withhold and pay over pursuant to this chapter, the judgment creditor may bring a civil action against such employer to recover such amount. The remedy provided by this subdivision is not exclusive.

(b) Notwithstanding subdivision (a), an employer who complies with any written order or written notice which purports to be given or served in accordance with the provisions of this chapter is not subject to any civil or criminal liability for such compliance unless he has actively participated in a fraud.

Comment. Section 723.104 authorizes suit by a creditor against an employer both where the employer fails to withhold properly and where he fails to pay over amounts withheld. This remedy is independent of the procedure provided in Chapter 2 (Sections 717-723) of this part, and Section 723.134 makes clear that supplemental proceedings under Chapter 2 are not a prerequisite to suit by the creditor against the employer. Whether or not the court can order the employer to withhold and pay over in a Chapter 2 proceeding is a matter not dealt with in the Employees' Earnings Protection Law.

Subdivision (b), makes clear that an employer is protected from liability where he complies with an order or written notice which appears proper on its face. Occasionally, through mistake, inadvertence, or even deliberate misconduct, an employer may be sent an order or notice which appears valid but which has been improperly obtained or served. For example, a creditor may ~~obtain~~ the ~~10~~-day moratorium on service of a second earnings withholding order. See Section 723.107 and Comment thereto. The employer is not required in such circumstances to go beyond the document itself and is not subject to liability where he complies with its directions and is not actively participating in a fraud. The remedy of the injured party in such a case is to proceed against the person who falsified the document or who improperly obtained ~~the~~ the document *or caused it to be prematurely to be served.*

fail to observe

This section also makes clear that, where an employer is complying with a prior order, he is not liable for failing to comply with a subsequent valid order—even though the prior order is in fact invalid—unless he is actively participating in a fraud.

GOVERNMENT CODE

§ 26750 (added). Fee under Employees' Earnings Protection Law

SEC. 8. Section 26750 is added to the Government Code, to read:

26750. (a) The fee for serving an earnings withholding order under the Employees' Earnings Protection Law, Chapter 2.5 (commencing with Section 723.010) of Title 9 of Part 2 of the Code of Civil Procedure,

including but not limited to the costs of postage or traveling and for performing all other duties of the levying officer under that law with respect to such levy is six dollars and fifty cents (\$6.50).

(b) No additional fees, costs, or expenses may be charged by the levying officer for performing his duties under the Employees' Earnings Protection Law, Chapter 2.5 (commencing with Section 723.010) of Title 9 of Part 2 of the Code of Civil Procedure.

Comment. Section 26750 provides for a one-time fee of \$6.50 for performance of the levying officer's duties under the Employees' Earnings Protection Law, Code of Civil Procedure Sections 723.010-723.154.

Labor Code

§ 300 (amended). Wage assignments

SEC. 9. Section 300 of the Labor Code, as amended by Chapter 1516 of the Statutes of 1974, is amended to read:

300. (a) *As used in this section, the phrase "assignment of wages" includes the sale or assignment of, or giving of an order for, wages or salary,*

but does not include an order or assignment made pursuant to Section 4701 of the Civil Code.

(b) ~~No assignment of; or order for wages or salary,~~ earned or to be earned, ~~shall be~~ *is* valid unless *all of the following conditions are satisfied:*

~~(a) Such~~ (1) *The assignment is contained in a separate written instrument, signed by the person by whom the said wages or salary have been earned or are to be earned, and identifying specifically the transaction to which the assignment relates; and.*

~~(b) (2) Where such the assignment of; or order for wages or salary is made by a married person, the written consent of the husband or wife spouse of the person making such the assignment or order is attached to such the assignment or order; and.~~ *No such consent is required of any married person (i) after entry of a judgment decreeing his legal separation from his spouse or (ii) if the married person and his spouse are living separate and apart after entry of an interlocutory judgment of dissolution of their marriage, if a written statement by the person making the assignment, setting forth such facts, is attached to or included in the assignment.*

~~(c) (3) Where such the assignment or order for wages or salary is made by a minor, the written consent of a parent or guardian of such the minor is attached to such order or the assignment; and.~~

~~(d)~~ (4) Where ~~such~~ *the* assignment of ~~or order~~ for wages or salary is made by a person who is unmarried or who is an adult or who is both unmarried and adult, a written statement by the person making ~~such the~~ assignment or ~~order~~, setting forth such facts, is attached to or included in ~~such the~~ assignment or ~~order~~.

~~(4)~~ (5) No other assignment or ~~order~~ exists in connection with the same transaction or series of transactions and a written statement by the person making ~~such the~~ assignment or ~~order~~ to that effect; is attached ~~thereto~~ to or included ~~therein~~; and ~~in the~~ assignment.

~~(4)~~ (6) A copy of ~~such an~~ the assignment or ~~order~~ and of the written statement provided for in ~~subdivision (d)~~ ~~hereof~~ paragraphs (2), (4), and (5), authenticated by a notary public, shall ~~have been~~ *is* filed with the employer, accompanied by an itemized statement of the amount then due to the assignee;

(7) ~~provided~~; that at ~~such time~~ *At the time the assignment is filed with the employer*, no other assignment or ~~order~~ for the payment of any wages or salary of the employee is subject to payment; and no ~~levy on execution earnings withholding order~~ against ~~said his~~ wages or salary is in force. Any valid assignment, when filed in accordance with the provisions contained herein, shall have priority with respect to any subsequently filed assignment or ~~order~~ or subsequent ~~levy on execution~~. Any power of attorney to assign or collect wages or salary shall be revocable at any time by the maker thereof.

(c) A valid assignment of wages in effect at the time an earnings withholding order is served suspends the operation of the earnings withholding order until after the end of the pay period during which the earnings withholding order is served. Thereafter the employer shall withhold from the employee's wages or salary pursuant to the earnings withholding order without regard to whether the assignment remains in effect.

No assignment of, or order for wages or salary shall be valid unless at the time of the making thereof, such wages or salary have been earned, except for the necessities of life and then only to the person or persons furnishing such necessities of life directly and then only for the amount needed to furnish such necessities.

(d) Under any assignment of, or order for wages or salary to be earned, a sum not to exceed 50 per centum of the assignor's wages or salary; and not to exceed 25 per centum of the assignor's wages or salary, upon the showing that such wages or salary are necessary for the support of his mother, father, spouse, children or other members of his family, residing in this State and supported in whole or in part by his labor, shall be withheld by, and be collectible

from the assignor's employer at the time of each payment of such wages or salary.

(e) The employer ~~shall be~~ is entitled to rely upon the statements of fact in the written statement provided for in ~~subdivisions (d) and (e) hereof~~ paragraphs (2), (4), and (5) of subdivision (b), without the necessity of inquiring into the truth thereof, and the employer shall incur no liability whatsoever by reason of any payments made by him to an assignee under any assignment ~~or order~~, in reliance upon the facts so stated.

(f) An assignment of wages to be earned is revocable at any time by the maker thereof. Any power of attorney to assign or collect wages or salary is revocable at any time by the maker thereof. No revocation of such an assignment or power of attorney is effective as to the employer until he receives written notice of revocation from the maker.

(g) No assignment of ~~or order for~~ wages or salary, earned or to be earned, ~~shall be~~ is valid under any circumstances; if the wages or salary earned or to be earned are paid under a plan for payment at a central place or places established under the provisions of Section 204a of this code.

(h) This section ~~shall~~ does not apply to deductions which the employer may be requested by the employee to make for the payment of life, retirement, disability or unemployment insurance premiums, for the payment of taxes owing from the employee, for contribution to funds, plans or systems providing for death, retirement, disability, unemployment, or other benefits, for the payment for goods or services furnished by the employer to the employee or his family at the request of the employee, or for charitable, educational, patriotic or similar purposes.

(i) No assignment of wages or salary shall be valid unless at the time of the making thereof, such wages or salary have been earned, except for necessities of life and then only to the person or persons furnishing such necessities of life directly and then only for the amount needed to furnish such necessities.

Comment. Section 300 is amended to make the section consistent with the Employees' Earnings Protection Law (CODE CIV. PROC. § 723.010 et seq.).

Subdivision (a). Subdivision (a) makes clear that the shortened phrase "assignment of wages" continues prior law as to the kind of instrument dealt with in this section,

and clarifies the relationship between Section 300 and Civil Code Section 4701 (wage assignment for support).

Subdivision (b). Paragraphs (1) through (6) of subdivision (b) continue generally without substantive change provisions formerly contained in Section 300. A sentence has been added to paragraph (2) to provide a limited exception from the requirement of spousal consent. Paragraph (7) continues without substantive change a provision formerly contained in Section 300 except that the former reference to the attachment or levy on execution against wages or salary is replaced by a reference to an earnings withholding order to conform to the procedure provided by the Employees' Earnings Protection Law, and the former reference to priority of wage assignments has been superseded by paragraph (7) and subdivision (c).

Subdivision (c). Subdivision (c) clarifies the relationship between a valid wage assignment and a subsequently served earnings withholding order. Where a wage assignment is in effect and an earnings withholding order is served, the employer shall not withhold pursuant to the order until after the end of the pay period during which the order was served. Thus, the wage assignment is, in effect, given an exclusive preference for that pay period and the debtor is given an opportunity to put his affairs in order. Such action may include revoking the wage assignment as to unearned wages pursuant to subdivision (f). Even where the debtor revokes the wage assignment prior to the end of the pay period (but after receipt of an earnings withholding order), the operation of the order is suspended until after the current pay period. Hence, the debtor is afforded an opportunity to retain his unearned wages for the current pay period only. After such moratorium, the earnings withholding order has a priority over the assignment if the latter remains in effect. The unlimited preference formerly given to an assignment of unearned wages or salary is not continued because this preference would permit a judgment debtor to give preference to one creditor and to defeat the claims of other creditors who seek to collect on their judgments under the Employees' Earnings Protection Law.

Subdivision (d). See the Comment to subdivision (f).

Subdivision (e). Subdivision (e) continues the substance of a provision formerly found in Section 300 and extends the scope of the former provision to cover the statement provided for in paragraph (2) of subdivision (b).

Subdivision (f). The first sentence of subdivision (f), which makes an assignment of unearned wages or salary revocable at any time by the maker thereof, replaces a portion of the former provision of Section 300 which restricted

the amount of unearned wages or salary that could be assigned. The former 50-percent limitation on the amount of wages or salary that can be assigned has been continued in subdivision (d). The former 25-percent "hardship" limitation has not been continued because subdivision (f) permits the person making the assignment of wages or salary to be earned to revoke the assignment at any time. Thus, where an assignment becomes

too onerous, especially after service of an earnings withholding order, the assignment may be revoked. The delayed preference given the earnings withholding order under subdivision (c) will generally require persons having judgments, including support orders, to use the procedure provided in the Employees' Earnings Protection Law--rather than Section 300--to enforce their judgments; but it avoids conflict between wage assignments and orders issued pursuant to the Employees' Earnings Protection Law.

A Subdivisions (p), (h), and (i). Subdivisions (g), (h), and (i) continue

without substantive change provisions formerly contained in Section 300. It should be noted that the inapplicability of Section 300 to the deductions referred to in subdivision (h) means not only that compliance with the formalities and limitations provided in Section 300 is not required but also that Section 300 provides no special preferences for such deductions.

Welfare and Institutions Code

§ 11489 (technical amendment)

SEC. 10. Section 11489 of the Welfare and Institutions Code is amended to read:

11489. After judgment in any court action brought to enforce the support obligation of an absent parent pursuant to the provisions of this chapter, a writ of execution may be issued against ~~one-half of the earnings of the absent parent due or owing for his personal services and no claim for exemption shall be effective against the enforcement of such writ of execution.~~ *the court may*

order an assignment of wages pursuant to Section 4701 of the Civil Code .

Comment. Section 11489 has been amended to conform to changes made by Chapter 25 (commencing with Section 723.010) of the Code of Civil Procedure and Civil Code Section 4701. See Code of Civil Procedure Section 723.031 and the Comment thereto.

Transitional Provisions

SEC. 11. Any levy of a writ of execution against the earnings of an employee pursuant to Section 682.3 of the Code of Civil Procedure that has been served on the employer prior to January, 1977, shall be given effect after the operative date of this act to the same extent as it would have been given effect had this act not been enacted, and the law in effect prior to the operative date of this act shall govern such levy. No earnings

withholding order served pursuant to this act *on or after January 1,* 1977, shall be given any effect during the period that a levy made pursuant to a writ of execution against the earnings of an employee has been given effect, and any earnings withholding order served on an employer during the period such a levy is in effect shall be ineffective.

Operative Date

SEC. 12. This act shall become operative on *January 1,* 1977, but the Judicial Council,

and levying officers the state agencies concerned with Article 4 (commencing with Section 723.070) of the Employees' Earnings Protection Law, and the court clerks, shall, prior to that date, do whatever is necessary so that this act may *become operative on January 1, 1977.*

Comment. The operative date of this act is delayed until *January 1, 1977,* to allow sufficient time for state and local public officials and the public to become familiar with the new law and to develop the necessary forms and procedures.

Mandated Local Costs Provision

SEC. 13. Notwithstanding Section 2231 of the Revenue and Taxation Code, there shall be no reimbursement pursuant to that section nor shall there be an appropriation made by this act because self-financing authority is provided in this act to cover such costs.

Partial Invalidity

SEC 14. If any provision of this act, or the application thereof to any person or circumstance, is held invalid, the remainder of the act or the application of such provision to other persons or circumstances, shall not be affected thereby.