

39.32

3/27/75

First Supplement to Memorandum 75-28

Subject: Study 39.32 - Wage Garnishment Procedure

Attached are two copies of the preliminary portion of the recommendation relating to wage garnishment procedure. As indicated in the basic memorandum, we should approve this for printing at the April 4-5 meeting. Accordingly, please mark your editorial revisions on one copy to turn in to the staff at the meeting.

This material was produced under considerable time pressure. We plan to check it very carefully before we send it to the printer.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

STATE OF CALIFORNIA

**CALIFORNIA LAW
REVISION COMMISSION**

RECOMMENDATION

relating to

Wage Garnishment Procedure

April 1975

CALIFORNIA LAW REVISION COMMISSION
Stanford Law School
Stanford, California 94305

CALIFORNIA LAW REVISION COMMISSION

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April 7, 1975

To: THE HONORABLE EDMUND G. BROWN, JR
Governor of California and
THE LEGISLATURE OF CALIFORNIA

The California Law Revision Commission was directed by Resolution Chapter 202 of the Statutes of 1957 to make a study to determine whether the law relating to attachment, garnishment, and property exempt from execution should be revised. The scope of this study was expanded by Resolution Chapter 45 of the Statutes of 1974 to include all aspects of the law relating to creditors' remedies. This recommendation deals with one aspect of the creditors' remedies study—wage garnishment procedure.

The Commission has submitted recommendations relating to wage garnishment procedure and related matters to prior sessions of the Legislature. See *Recommendation Relating to Attachment, Garnishment, and Exemptions From Execution: Employees' Earnings Protection Law*, 10 CAL. L. REVISION COMM'N REPORTS 701 (1971). (The recommended legislation—Senate Bill 88 of the 1972 Regular Session—was not enacted; upon recommendation of the Senate Judiciary Committee, the bill was referred to the Senate Committee on Rules to be assigned to a proper committee for interim study.) See also *Recommendation Relating to Wage Garnishment and Related Matters*, 11 CAL. L. REVISION COMM'N REPORTS 101 (1973). (The recommended legislation—Assembly Bill 101 of the 1973-74 Regular Session—was not enacted; the bill passed the Assembly, was reported favorably by the Senate Judiciary Committee, but died in the Senate Finance Committee during the final days of the 1974 session.) See also Recommendation

Relating to Wage Garnishment Exemptions (December 1974), to be reprinted in 12 Cal. L. Revision Comm'n Reports 901 (1974). (The recommended legislation--Assembly Bill 90 of the 1975-76 Regular Session--had passed the Assembly and was pending in the Senate at the time this recommendation was sent to the printer.)

In preparing this new recommendation, the Commission has considered the objections made to its earlier recommendations.

Respectfully submitted,

MARC SANDSTROM
Chairman

SUMMARY OF RECOMMENDATIONS

The changes recommended by the Commission would result in significant improvements in wage garnishment procedure. Some of the beneficial effects the recommended changes would have on the most directly affected groups--employers, employees, creditors--are summarized below.

Employers

A primary objective of the Commission's recommendations is to provide a wage garnishment procedure that minimizes the burden that such garnishments impose on employers.

Comprehensive statute. Three different procedures now used in California for wage garnishment will be superseded by one comprehensive statute. An employer will be able to refer to one statute that comprehensively covers wage garnishment, thus avoiding the need for concern with several different types of procedures.

Forms and instructions. Instructions prepared by the Judicial Council will explain the employer's duties under a wage garnishment order. Forms adopted by the Judicial Council will minimize the employer's burden in complying with the order.

Mail service. Mail service of earnings withholding orders will enable the employer to process garnishment orders to the appropriate department or person for action without disruption of normal business procedures.

Service charge. A one-dollar service charge the employer will be permitted to make each time he withholds earnings will lessen the employer's economic burden.

Withholding table. A withholding table supplied to the employer will make it relatively simple to determine the amount to be withheld. Withholding will be on the basis of the employee's gross earnings, and the need to compute "disposable earnings" will be eliminated.

Delay in effective date of order. A 10-day delay in the effective date of a withholding order will avoid the need to compute the amount to be withheld for only part of a pay period and will permit the employer to process the order in a business-like way rather than having to withhold on earnings due on the date the order is received.

Reduction in number of wage garnishments. ^{Greater} A protection afforded the earnings of low income employees will reduce the number of cases where withholding is required, and a \$5 minimum on the amount to be withheld will avoid the need to deduct small amounts where the cost to the employer may exceed the amount received by the creditor.

by the
levying
officer

Monthly payment. A provision for monthly payment of withheld earnings will avoid the necessity of preparing and sending a check for the withheld earnings after each payday.

by the employer

Protection from liability for good faith errors. Provisions are included that will protect the employer from civil or criminal liability for good faith errors.

Employees

The Commission's recommendations also provide significant benefits to employees.

Greater protection for low income employees. Substantial reductions will be made in the amount to be withheld from the earnings of low income employees with dependents.

with dependents.

Withholding table. Use of a withholding table will greatly simplify the computation of the proper amount to be withheld and will make it easier for the employee to discover any errors made by the employer in computing the amount to be withheld.

based on gross earnings

Avoidance of need to claim exemption. The adequacy of the protection afforded by the withholding table system will reduce the need to claim a hardship exemption.

Hardship exemption. A sensible "hardship exemption" will be provided that cannot be defeated on the ground that the underlying debt was incurred for a "common necessary." Where it is necessary for the employee to claim the hardship exemption, the streamlined procedure and information provided the employee will assist him in making his claim.

Mail service. Authorization to use mail service in the ordinary case will substantially reduce the cost of wage garnishment, a cost that ultimately is paid by the employee.

Tax delinquency withholding orders. The harsh effects of a withholding order for delinquent state taxes will be mitigated.

Wage assignments. The employee will be permitted to revoke a wage assignment (other than a wage assignment for support under Civil Code Section 4701) insofar as it relates to wages unearned at the time he revokes the assignment.

Creditors

The establishment of a simple, businesslike procedure for the collection of judgments through wage garnishment is the primary benefit creditors would receive under the recommended legislation. Clear answers to a large number of procedural questions will be provided. A series of forms will be available to permit easy compliance with statutory requirements. The Judicial Council and *levying officers* will be a ready source of reliable information concerning wage garnishment procedure. Other benefits to creditors are listed below. by the levying officer

Mail service. Use of mail service will be authorized. Not only will this reduce the cost of wage garnishments but it will also significantly reduce the fees that a creditor now has to advance to the levying officer. A flat \$6.50 fee will cover all

Earnings withholding tables. The earnings withholding tables will enable the creditor more easily to determine whether the correct amount has been withheld from the employee's earnings. Disputes between creditors and employers will be minimized by using gross income as the basis for withholding since this will avoid the possibility of the subtraction of improper items in computing the amount of "disposable earnings."

Minimizing hardship exemption hearings. Protecting more adequate amounts of a debtor's earnings without the requirement that he claim a hardship exemption

should significantly reduce the number of cases where a hardship exemption will be claimed, thus reducing the creditor's burden in attending court hearings. The requirement that the debtor submit a complete financial statement with his claim for the hardship exemption and that the creditor be provided a copy of the statement prior to the hearing on the claim should assist the creditor in determining which claims he will resist (thus avoiding his attending court hearings where the exemption is clearly justified) and also will assist the creditor in recovering the full amount he is allowed by law.

Garnishment of earnings of public employees. The uniform procedure will make the continuing levy and mail service procedure available for the garnishment of earnings of public employees, thus avoiding the need to resort to multiple levies.

Goodwill of employers.

The recommended legislation is carefully designed to make compliance with wage garnishment orders as easy as possible for employers.

The improved procedures should do much to minimize employer ill will created by wage garnishments and to combat the possible tendency of some employers to avoid the problems created by a wage garnishment by discharging the employee.

Avoidance of debtor's bankruptcy. The more adequate protection given the earnings of the debtor should be sufficient to encourage the debtor who is pushed by a number of creditors to discharge the judgments against him over a period of time rather than resorting to bankruptcy.

duties of the levying officer in a wage garnishment, including service costs and receiving and paying over amounts received from the employer.

Priorities among creditors. A fair and equitable system for dealing with priorities among creditors will be provided. In addition, the judgment debtor will be prevented from giving one creditor preference over others by a wage assignment.

Enforcing employer compliance. Although the recommended statute would protect the employer from liability for good faith errors, it includes provisions that will preclude the employer and employee from deferring or accelerating the payment of earnings to defeat the creditor's rights and will authorize civil actions by creditors to obtain the amounts that employers are required to withhold but fail to withhold and pay over to the creditor.

INTRODUCTION

Judgment creditors¹ favor wage garnishment because it reaches the judgment debtor's earnings while still in the hands of his employer and because the possibility of a wage garnishment often compels the debtor to make payments on the judgment.² Code of Civil Procedure Section 682.3 provides the procedure for a wage garnishment:

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 each 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 917.2 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 690.6 and 690.50. 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 690.50, 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.

¹ Before judgment, all earnings are exempt from attachment. See CODE CIV. PROC. § 690.6(a) (existing law) and § 487.020(c) (Cal. Stats. 1974, Ch. 1516, § 49, effective January 1, 1976).

² See E. JACKSON, CALIFORNIA DEBT COLLECTION PRACTICE § 9.73 at 186 (Cal. Cont. Ed. Bar 1968).

Section 682.3 imposes a continuing duty on the debtor's employer for a 90-day period to withhold and pay over to the levying officer the required amounts and deals with other aspects of wage garnishment. The amount to be withheld by the employer pursuant to a wage garnishment is determined by Section 690.6⁵ which is the subject of a separately published recommendation submitted to the 1975 legislative session.⁴

3. Section 690.6, as amended by Cal. Stats. 1974, Ch. 1516, §17, which becomes operative on January 1, 1976, provides:

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 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.

4. See Recommendation Relating to Wage Garnishment Exemptions (December 1974), to be published in 12 Cal. L. Revision Comm'n Reports 901 (1974).

This recommendation covers the area of wage garnishment procedure and proposes enactment of a new comprehensive statute that the Commission believes will significantly reduce the cost of wage garnishments, greatly alleviate the hardship such garnishments cause employers, and make numerous other improvements in wage garnishment procedure.

UNIFORM WAGE GARNISHMENT PROCEDURE

Under existing law, there are three different procedures⁵ whereby the earnings of an employee may be garnished

(1) In the ordinary case, the judgment creditor obtains a writ of execution and a public officer executes the levy by personal service on the employer.⁶

(2) Numerous statutory provisions permit mail service of orders to withhold an employee's earnings to secure payment of a delinquent state tax liability.⁷

(3) The earnings of a public employee may be garnished by filing an abstract or transcript of judgment with the employing public entity.⁸

The Commission recommends the enactment of a comprehensive statute to provide a uniform procedure to cover wage garnishments. The details of the comprehensive statute are described below.

5. Civil Code Section 4701, which provides a compulsory wage assignment to enforce a support judgment, will not be affected by the Commission's recommendation.

6. Code Civ. Proc. § 631 et seq.

7. For a listing, see notes infra.

8. Code Civ. Proc. § 710.

SERVICE BY MAIL: FLAT FEE FOR SERVICES OF LEVYING OFFICER

personal
service by the

California law presently requires that writs of execution be levied by sheriff, constable, or marshal.⁹ However, the use of the sheriff or marshal as a high-priced messenger when a creditor is attempting to reach an asset like earnings is generally an extravagant waste of time and money.¹⁰ The United States Postal Service can perform the same task for a very modest cost. It is in the interest of creditors (who must advance the costs of personal service), debtors (who must ultimately bear the costs of personal service), and the public generally¹¹ that the function of service be performed in the most efficient and economical manner.

Experience demonstrates that personal service is not a necessary element in wage garnishment procedure. Representatives of the Franchise Tax Board report that no significant problems have resulted from the use of mail service for orders to withhold earnings for delinquent state taxes. Accordingly, the Com-

mission recommends that the levying officers be authorized to make service of documents and notices in wage garnishment cases by registered or certified mail, return receipt requested, and that service by personal delivery be required only where the return receipt from the employer is not received within 15 days from the date of deposit of the document or notice in the mail.

The use of mail service in wage garnishments should result in substantial savings in the cost of service.¹² As a result of these savings, the Commission recommends that a flat fee of \$6.50 be authorized for all duties of the levying officer in a wage garnishment.¹³

⁹CODE CIV. PROC. §§ 682, 687.

¹⁰The fees charged by the levying officer may include a fee (\$5) for service of the writ (GOVT. CODE § 26722), an additional collection fee (not less than \$1) (GOVT. CODE § 26739), and charges for mileage one-way at 70 cents a mile (GOVT. CODE § 26746).

¹¹Despite the fact that the sheriffs and marshals charge a fee for each levy made, it has been estimated that the county—its taxpayers—pays 30 to 50 percent of the expenses of collection.

¹²Brunn, *Wage Garnishment in California—A Study and Recommendations*, 53 CAL.L. REV. 1214, 1222 (1965).

12. See n. 10 supra.

13. The Commission is advised by some levying officers that the \$6.50 fee will produce the same amount as is now produced by the existing fee schedule, taking into account the savings that will result from mail service. Section 682.3 also requires that the levying officer receive amounts withheld by the employer and pay these amounts over to the judgment creditor monthly. The cost of this duty will be minimized under the Commission recommended legislation by providing for a monthly--rather than a weekly or bi-weekly--payment by the employer to the levying officer. This will reduce the amount of work required of the levying officer under existing law in receiving, holding, and paying over funds to the judgment creditor.

CONTINUING LEVY PROCEDURE

Code of Civil Procedure Section 682.3 provides that the levy of a writ of execution upon the earnings of a debtor imposes a continuing duty on the debtor's employer for a specified period to withhold and pay over the required amounts to the levying officer.

A significant oversight in the legislation providing for the continuing levy was its failure to make the procedure applicable to garnishment of earnings of public employees. In the case of a public employee, the creditor can garnish only amounts owing to the employee at the time the abstract or transcript of judgment is served on the public entity.¹⁴ Typically, therefore, to satisfy his judgment, the creditor is required to levy on wages a number of times. Such multiple levies impose an unreasonable cost and nuisance burden on debtors, creditors, public entities, and the courts.

Hardships on employers are also caused by the existing continuing levy scheme. The employer must withhold on earnings due at the time of service of the order. In the case of a large business, this can create serious problems of compliance. Moreover, the employer must pay amounts withheld over to the levying officer each time earnings are withheld, requiring numerous bookkeeping transactions for what are frequently small amounts.

¹⁴ CODE CIV. PROC. § 710. Section 710 makes clear that the public employee is entitled to the benefit of state and federal restrictions on the amount of earnings that can be garnished.

Another drawback of the continuing levy is that it gives a preferred position to the creditor who first resorts to legal process to enforce his claim.¹⁵ If the levy is given effect indefinitely, the debt is large, and the debtor's earnings modest, subsequent creditors may be postponed for substantial periods of time. Some compromise between multiple levies and an unlimited continuing levy is necessary. Section 682.3 provides a basic 90-day period; however, subsequent creditors are given no priority when a prior levy expires. The prior creditor knows precisely when his prior levy will expire and accordingly when the next levy must be served to renew his priority. Thus, Section 682.3 may, in practice, be used to secure an unlimited preference.

The Commission recommends that a levy on the earnings of any employee, public or private, be made pursuant to an earnings withholding order and that an order generally be in effect for no longer than 120 days,¹⁶ at the end of which time the creditor who secured the order would be precluded for a short period (10 days) from serving on the same employer another order based on the same debt. This moratorium period would permit another creditor to intervene with an order based on his debt, which order would then continue in effect for a 120-day period. Likewise, the employer should not be required to withhold earnings for any pay period that ends before the expiration of five days from the date of service of the order, thus easing the problems of compliance and computation. The Commission also recommends that the employer pay over monthly any amounts withheld rather than at the time of each withholding. Written instructions and forms should be provided to the employer so that the operation of the continuing levy procedure will be clear.

¹⁵The statement in the text assumes that the first creditor to levy thereby achieves a priority over other creditors. Section 682.3 fails to deal with the question of priority of creditors. Subdivision (d) of Section 690.6, however, provides that "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." This latter provision may be interpreted to simply mean "first in time, first in right." On the other hand, if subdivision (d) requires apportionment between each of several creditors who have served a continuing levy, it could impose intolerable administrative burdens on both the judicial system and employers subject to levy. The Commission recommends that the statute make clear that an earnings withholding order in effect precludes subsequent garnishments during its term of effectiveness except in the case of support or tax orders. See discussion in the text, *infra*, under "Orders for Support or for the Collection of State Taxes."

¹⁶The period of 120 days was selected because the Commission was advised it would be adequate to permit complete satisfaction of the majority of consumer debts. The 120-day rule should not apply to orders for support or for the collection of taxes. Such orders should, until satisfied, have a continuing priority over all other obligations. See discussion in the text, *infra*, under "Orders for Support or for the Collection of State Taxes."

EXEMPTIONS

A previously published ^{Commission} report recommends changes in the rules that determine the amount to be withheld by the employer when an employee's earnings are garnished by a judgment creditor.¹⁷ That report proposed changes in both the basic exemption from wage garnishment (which is automatic) and in the hardship exemption (which the employee must claim). The Commission recommends that the substance of its prior recommendation be continued in the comprehensive statute proposed in this new recommendation. In addition, the Commission recommends that a special exemption provision be enacted to deal with the amount that is exempt when the garnishment is on a judgment for delinquent amounts payable on a judgment for child or spousal support. The Commission's recommendations are summarized below. For a more detailed discussion, see Recommendation Relating to Wage Garnishment Exemptions, 12 Cal. L. Revision Comm'n Reports 901 (1974).

Basic Exemption

The wage garnishment provisions of federal law determine the maximum amount that may be withheld from an employee's wages pursuant to a garnishment in California. Under federal law, the debtor with a large family—and, consequently, greater needs—has more earnings withheld than a single debtor with the same gross earnings but with more limited needs. For example, if the employee whose wages are garnished has gross weekly earnings of \$100, approximately \$6.25 is withheld if he is single, \$15.79 if he is married and has two children, and \$20.69 if he is married and has six children. The employee's take-home pay after garnishment will be \$69 for the week, whether he is single or is married with two or with six children. This strange result occurs because garnishment under federal law is calculated on disposable earnings, and disposable earnings increase as the number of income tax exemptions for dependents increases.

17. Recommendation Relating to Wage Garnishment Exemptions, 12 Cal. L. Revision Comm'n Reports 901 (1974).

An additional deficiency in the Federal law is that it provides inadequate protection for low income debtors. In fact, at low income levels, a California debtor with dependents whose earnings are garnished may have significantly less spendable income than he would have if his family were on welfare.

The Commission recommends that the amount withheld pursuant to a garnishment be based on the judgment debtor's gross earnings, regardless of the number of his dependents. This will leave the debtor having dependents (who has less deducted for state and federal income taxes) with more take-home pay than a debtor with the same amount of gross earnings but fewer dependents.

The Commission further recommends that the employer be provided tables,

showing the amount to be withheld on gross earnings for weekly, monthly, and other common pay periods. These tables, which would be prepared by the Judicial Council using a formula contained in the recommended statute, will make it simple for the employer to determine the amount to be withheld.

In the following table, amounts that would be withheld pursuant to a garnishment under the recommended legislation are compared to amounts that would be withheld under existing law.

COMPARISON OF AMOUNTS WITHHELD UNDER A WAGE GARNISHMENT				
GROSS EARNINGS (weekly/annual)	AMOUNT WITHHELD UNDER A WAGE GARNISHMENT			
	PROPOSED STATUTE (all persons)	Single person having 0 tax exemptions	Married and 2 children (0 tax exemptions)	Married and 6 children (8 tax exemptions)
\$100/\$5,200	—	\$6.25	\$15.79	\$20.69
150/ 7,812	5.00	10.64	20.28	24.75
120/ 6,240	10.00	19.98	24.81	26.83
150/ 7,800	20.00	27.21	29.72	32.42
250/13,000	37.00	44.00	47.01	49.78

(Note. These examples are based on the \$2.30 federal minimum wage effective January 1, 1976.)

Hardship Exemption

The Commission recommends that the hardship exemption now provided by Section 690.4(c) be continued. This will enable the debtor to retain an additional amount of his earnings if he proves the additional amount is necessary for the support of the debtor or the debtor's family supported in whole or in part by the debtor.¹⁸ The Commission further recommends that a provision be added to make clear that neither the debtor's accustomed standard of living nor a standard of living appropriate to his station in life is a criterion for determining his claim of exemption.

18. The requirement of existing law that the debtor's family reside in this state has not been continued. This requirement would defeat one of the basic purposes of the Uniform Reciprocal Enforcement of Support Act.

The hardship exemption is not allowed under existing law if the debt was incurred for "the common necessities of life." Thus, the effect of the "common necessities" exception is to permit a creditor to take earnings that are essential for the support of the debtor's family. In actual operation, the effect of the "common necessities" exception has been to decide the claims of competing creditors for earnings on the technical, and usually irrelevant, issue of what is a "common necessary of life."

The Commission recommends the elimination of this exception to the hardship exemption.¹⁹

Exemption for Judgment for Delinquent Support Payments

The federal law does not limit the amount that may be withheld from the judgment debtor's earnings when the garnishment is on a judgment for delinquent support payments.²⁰ In this case, the exemption of one-half of the debtor's earnings provided by subdivision (a) of Section 690.6 applies. The Commission recommends that the existing law be continued insofar as it applies to a judgment for delinquent amounts payable for child or spousal support. Also, as under existing law,²¹ the court should have power to make an order that more or less of the earnings of the debtor be withheld where the garnishment is on a judgment for delinquent amounts payable for child or spousal support. Upon the motion

19. The Commission has considered limiting the "common necessities" exception to the hardship exemption to judgments on debts incurred for food or for delinquent rental payments. However, the Commission has determined not to so limit the "common necessities" exception because other items would probably be added to the exception and the result would be that, in many cases, the debtor would be deprived of earnings that the court had determined were necessary for the support of the debtor or his family.

20. See subdivision (b) of Section 303 of the federal Consumer Credit Protection Act, set out in the text at note 22 infra.

21. See Rankins v. Rankins, 52 Cal. App.2d 231, 126 P.2d 125 (1942).

of any interested party, the court should make an equitable division of the debtor's earnings between, for example, his first wife and children and himself and his second family.

Exemption Claim Procedure

Although the order requiring withholding of earnings under a wage garnishment should be issued ex parte, provision should be made for an expeditious judicial hearing as to whether the judgment debtor is entitled to an exemption of all or a portion of his earnings on the grounds of hardship. The debtor should be given adequate notice of the effect of the wage garnishment and of his right to claim the hardship exemption.

EMPLOYER'S SERVICE CHARGE

The provisions recommended above for monthly payments by employers and for a 10-day delay in the effective date of withholding to permit processing by the employer should reduce the burden a wage garnishment imposes on the employer. To further alleviate the burden, the Commission recommends that an employer be authorized to deduct a one-dollar service charge from the debtor's earnings each time the employer is required to withhold on behalf of the creditor pursuant to a garnishment withholding order. There is no general provision under existing law to provide compensation to the employer for his services in a wage garnishment.^{21a}

^{21a}. See Civil Code § 4701 (employer authorized to deduct the one-dollar service charge for each payment made pursuant to child support order); Code Civ. Proc. § 710 (authorizes public employer to deduct \$2.50 service charge where required to comply with levy made pursuant to that section).

ORDERS FOR SUPPORT OR FOR THE COLLECTION OF STATE TAXES

Introduction

Subdivision (b) of Section 303 of the federal Consumer Credit Protection Act specifically exempts (1) "any order of any court for the support of any person" and (2) "any debt due for any State or Federal tax" from the restrictions imposed on the amounts permitted to be withheld from earnings.²² The legislation recommended by the Commission recognizes the special nature of these two types of debts.

Orders for Support

Enforcement of orders for support is accomplished in a variety of ways under existing law. Perhaps most commonly, compliance is achieved under the threat of the exercise of the court's contempt power; however, execution may be levied for unpaid, accrued amounts.²³ In addition, under Civil Code Section 4701, a court may enforce an order for child support by ordering a parent to assign future earnings to cover support payments as they become due. Where the order requires payment to a public officer, the order may be made whether or not the support obligor is delinquent in payments. Section 4701 further provides, as a result of 1974 amendments to the section, that the court must order a wage assignment for support where the support obligor is delinquent in the payment of child support in a sum equal to the amount of two months of such payments, and such order may direct that the payments be made to either the person to whom support has been ordered to be paid or to a public officer designated by the court. Upon petition of the support obligor, the court shall terminate the court ordered wage assignment if there have been 18 months of continuous and uninterrupted payments of the full amounts currently due. The wage assignment is binding upon any existing or future employer. Section 4701 contains various other provisions to cover the procedural aspects of the wage assignment.

In prior recommendations,²⁴ the Commission recommended the enactment of legislation generally along the lines of the 1974 amendments to Civil Code Section 4701. The Commission's earlier proposals would have included

22. See 15 U.S.C. § 1673(b)(1), (3).

23. See, e.g., *Rankins v. Rankins*, 52 Cal. App.2d 231, 126 P.2d 125 (1942).

24. Recommendation Relating to Wage Garnishment and Related Matters, 11 Cal. L. Revision Comm'n Reports 101, 121-122 (1973); Recommendation Relating to Attachment, Garnishment, and Exemptions From Execution: Employees' Earnings Protection Law, 10 Cal. L. Revision Comm'n Reports 701, 719-720 (1971).

the garnishment for support provisions in its comprehensive wage garnishment statute. However, in view of the 1974 amendments to Civil Code Section 4701, the Commission has concluded that there is no need to include provisions for continuing withholding by employers for current support payments in its comprehensive wage garnishment statute.

Section 4701 has one deficiency: It does not permit a court ordered wage assignment to include an amount to cover the delinquent support payments. Thus, the person to whom the support is payable must use other means to collect the delinquent amounts. For this reason, the Commission recommends that provision be made in the comprehensive wage garnishment statute for earnings withholding orders for support to collect these delinquent amounts, that such withholding orders for support continue in effect until the delinquent amount has been paid, and that they be given priority over all other earnings withholding orders. A withholding order for support should not, however, preclude simultaneous withholding under another earnings withholding order if the debtor's income is sufficiently large to enable withholding under both.

Tax Orders

Under existing law, there are a number of procedures for the collection of unpaid, delinquent state taxes:

(1) The tax liability can be reduced to *judgment*; and, subject to the various exemptions from execution, the judgment can be collected in the same way any other judgment is collected.

(2) A *warrant*,²⁵ which has the same effect as a writ of execution, can be issued by the taxing agency. Collection under such a warrant also is subject to the same exemptions as a levy of execution.²⁶

(3) A *notice or order to withhold*²⁷ may be given by mail to any person who has in his possession or control any credit or other personal property or thing of value belonging to the person alleged to be liable for the tax, and such person may not dispose of the property without the consent of the taxing agency unless the tax is paid in full. This is a type of attachment procedure. The person notified is required to make a report to the taxing agency of the credit or other personal property being

²⁵ Provisions that authorize issuance of such warrants are: UNEMP. INS. CODE § 1785 (unemployment compensation contributions); REV. & TAX. CODE §§ 6776 (sales and use taxes), 7881 (vehicle fuel license tax), 9001 (use fuel tax), [REDACTED], 16071 (gift tax), 18906 (personal income tax), 26191 (bank and corporation taxes), 30341 (cigarette tax), 32365 (alcoholic beverage tax). See also REV. & TAX. CODE § 14321 (inheritance tax).

²⁶ See CODE CIV. PROC. § 690.51.

²⁷ Provisions that authorize the giving of a notice to withhold are: UNEMP. INS. CODE § 1755 (unemployment compensation contributions); REV. & TAX. CODE §§ 6702 (sales and use taxes), 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), 32381 (alcoholic beverage tax).

withheld within a few days after receipt of the notice. The personal income tax law and bank and corporation tax law contain a significant additional feature: They require the person holding the property to deliver it to the Franchise Tax Board up to the amount of the delinquent taxes. In contrast with the warrant procedure, there are no exemptions applicable to property required to be withheld and delivered to the Franchise Tax Board pursuant to these two provisions.²³ Accordingly, the board is encouraged to use this third alternative whenever it is available. The Commission has been advised that, in some cases, an employee's entire paycheck has been withheld and paid over to the Franchise Tax Board for delinquent personal income taxes, leaving the employee with nothing from his current earnings to cover the basic needs of his family.

These tax collection procedures should be integrated with the procedures provided generally for levy upon an employee's earnings. While the protection of the public fisc justifies the preferential treatment of tax orders, it does not justify summarily depriving a tax debtor of the means for the current support of his family. The Commission recommends that taxing agencies which are authorized to issue warrants or notices to withhold be authorized to issue directly (without application to the court) withholding orders for the collection of state tax liabilities. The amount withheld under such orders should be limited generally to not more than twice the amount that would be withheld under an ordinary earnings withholding order. In addition, the tax debtor should be permitted to claim an additional amount as is necessary for the support of the taxpayer or his family." The taxing

agency should also be authorized as an alternative to apply to the court for an order requiring the debtor's employer to pay all earnings other than that amount which the taxpayer proves is necessary for the support of the taxpayer or his family. Orders issued

under either procedure should have priority over all other earnings withholding orders except orders for support. However, regardless which procedure is followed, the tax liability should be required either to be shown on the face of the debtor's tax return or to have been determined in an administrative or judicial proceeding at which the tax debtor had notice and an opportunity to be heard.

²³ Greene v. Franchise Tax Board, 27 Cal. App.3d 38, 103 Cal. Rptr. 483 (1972).

ADMINISTRATION AND ENFORCEMENT

To achieve statewide uniformity, the Judicial Council should be authorized to prescribe forms necessary to carry out the prescribed procedures under the comprehensive wage garnishment statute and to adopt any rules necessary for the efficient administration of the statute. The Judicial Council also should be designated to act on behalf of the state as a liaison with the federal administrator in wage garnishment matters.²⁹

Wage Assignments

Section 300 of the Labor Code presently grants a valid prior voluntary wage assignment preference over subsequent assignments and levies of execution. Continuation of such a 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 proposed earnings withholding procedure. To integrate wage assignments with the operation of the latter procedure, the Commission recommends that a prior wage assignment be granted priority only until the end of the pay period during which an earnings withholding order is served. The operation of the earnings withholding order should be suspended during this period, thus permitting the debtor an opportunity to put his affairs in order. Such action may include revocation of the prior assignment. In this regard, wage assignments should be made revocable at will as to *unearned* wages. Thus, where an assignment becomes too onerous—for example, after service of an earnings withholding order—such an assignment may be revoked.)

The revisions proposed by the Commission would have no effect on a wage assignment for support under Civil Code Section 4701.

29. The federal Consumer Credit Protection Act invites each state to enact its own restrictions on garnishment of earnings and to undertake its own enforcement of these provisions. See Section 305 of the act (15 U.S.C. § 1675). See also 29 C.F.R. § 870.51 (1970).