

First Supplement to Memorandum 71-23

Subject: Study 39.30 - Attachment, Garnishment, Exemptions From Execution
(Earnings Protection Law)

After the preparation of Memorandum 71-23, the staff was advised of an additional procedure for the collection of certain state taxes. Sections 16101, 18807, and 26132 of the Revenue and Taxation Code authorize the Controller or the Franchise Tax Board to collect amounts owing for gift taxes, personal income taxes, and bank and corporation taxes by serving a notice of withholding on third persons holding things of value belonging to the delinquent taxpayer. Issuance of the notice does not apparently require any hearing and the amounts withheld are not presently subject to any restrictions. (Note: Even the restrictions under the federal Consumer Credit Protection Act do not apply to amounts withheld from earnings for the collection of any state or federal tax.)

The staff believes that the notice to withhold should be treated in the same manner as a warrant, hence, subject to the same restrictions and procedures as an earnings withholding order. This change will, we believe, be somewhat controversial, and we strongly recommend that, if the idea has any merit, we include an appropriate provision in the tentative recommendation so that comment on the proposal can be obtained at the earliest time. Specifically, we suggest that a new subdivision (b) be added to Section 723.27 providing as follows:

(b) In cases in which a warrant is issued by the State of California, or a department or agency thereof, pursuant to Section 1785 of the Unemployment Insurance Code, or Section 6776, 7881, 9001, 10111, 18906, 26191, 30341, or 32365 of the Revenue and Taxation Code, or a notice to withhold is issued pursuant to Section 16101, 18807, or 26132 of the

Revenue and Taxation Code, for the collection of tax liability owed to the state, a department, or agency thereof, such warrant or notice shall be deemed to be a judgment for the purposes of issuance of an earnings withholding order pursuant to this chapter. An application for the issuance of a withholding order for taxes based on such a warrant or notice shall be made to a court of record with jurisdiction to render a judgment in the amount of the warrant or notice in the county where the taxpayer was last known to reside. Such application shall be accompanied by a certified copy of the warrant or notice.

The Comment to Section 723.27 would have to be revised to explain the new procedure and should also be revised to make clear that the collection of taxes from earnings is restricted to this procedure.

Respectfully submitted,

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