

Memorandum 75-66

Subject: Study 39.32 - Wage Garnishment Procedure

You will recall that the Commission has approved two recommendations relating to wage garnishment. One relating to wage garnishment exemptions has been printed and legislation to effectuate this recommendation was submitted as Assembly Bill 90 to the 1975 session of the Legislature. This bill passed the Assembly but was held in the Senate Judiciary Committee. The vote was two members for, three members against, and the remaining members either absent or not voting. This represents the third attempt to revise the wage garnishment exemptions.

The other recommendation approved for printing relates to wage garnishment procedure. We are hopeful that we will have our printed report in time for the October meeting. The legislation to effectuate this recommendation was introduced as Senate Preprint Bill No. 3 (copy attached).

The staff believes that the wage garnishment procedure bill (Senate Preprint Bill No. 3) should be revised to continue the substance of the existing exemption scheme: Generally, exemptions are determined by the federal law; a hardship exemption is provided, but the hardship exemption does not apply where the debt is for common necessities or is for services of an employee or former employee of the judgment debtor. We also would eliminate the special provisions relating to garnishment for support; this should be covered by the wage assignment procedure for support (which has priority over wage garnishment), and a provision should be added to that statute to permit the wage assignment for support to include an amount for delinquent support. A bill was introduced by Assemblyman McAlister to allow the wage assignment for support to include an amount for delinquent support in addition to the amount for current support payments; if that bill does not pass, we would include its substance in the Commission recommendation. The staff proposed revisions would

greatly simplify the proposed legislation and should eliminate the objections that would be made if the proposed legislation attempted to revise the exemptions.

The staff makes the above recommendation because we believe that the Commission has done all it should to change the wage garnishment exemptions. Other interested groups can continue this effort if they wish. However, it is important to reform the wage garnishment procedure. For that reason, we recommend that the proposed legislation be revised to make the needed procedural reforms.

Exhibit I (attached) shows the necessary revisions to accomplish the staff recommendation. The reason for most of the revisions should be obvious. The following comments are made concerning the other revisions.

Section 723.024

This revision is needed because to withhold \$1 in addition to the amount provided by federal law would violate federal law. Hence, the \$1 must come from the amount withheld pursuant to federal law.

Section 723.074

The amounts withheld pursuant to federal law should be adequate for the ordinary tax withholding order. The proposed legislation permits the taxing agency to obtain a court order for a greater amount.

Section 723.075

We have eliminated the court hearing on denial of a hardship exemption by the taxing agency. This hearing is considered unnecessary since the taxing agency will only take the amount an ordinary creditor can take under federal law.

Staff Recommendation

The staff recommends that Senate Preprint Bill No. 3 be revised as indicated in Exhibit I (attached) and submitted for enactment at the 1976 legislative session. The enactment of the revised bill would have the following major benefits:

(1) Mail service by the levying officer would be authorized with a flat \$6.50 fee for all services of the levying officer in place of the present fees which include amounts for travel.

(2) A continuing levy on the earnings of state and local public employees would be authorized.

(3) The employer would be permitted a one-dollar service charge for each withholding.

(4) A series of state-wide uniform forms would be developed to make the wage garnishment procedure more efficient and businesslike.

(5) A 10-day delay in the effective date of a withholding order will permit the employer to process the order in a businesslike way rather than having to withhold on earnings due on the date the order is received.

(6) A provision for monthly payment by the employer will avoid the necessity of his preparing and sending a check for withheld earnings after each payday. This will minimize the burden of both the employer and the levying officer.

(7) The harsh effects of a withholding order for delinquent state taxes will be mitigated.

(8) 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.

(9) Information will be provided to the debtor concerning his right to claim the hardship exemption and the effect of the wage garnishment. The debtor will be required to submit a complete financial statement in connection with his claim for a hardship exemption.

(10) A more 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.

(11) Although employers would be protected against liability for good faith errors, provisions are included that will preclude the employer and employee from deferring or accelerating the payment of earnings to defeat the creditor's rights and to 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.

(12) Provisions prescribing manner of service and who may be served to make good service on the employer should make mail service a useful and effective procedure.

(13) The bill contains other provisions (such as time of return on levy) which the levying officers have advised us will improve the wage garnishment procedure.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

STAFF PROPOSED REVISIONS OF SENATE PREPRINT BILL No. 3

Section 723.024 (pages 16 and 17)

723.024. Each Notwithstanding any other provision of this chapter,
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~~
retain one dollar (\$1) and retain it from the amount required to be withheld
as a charge for his services in complying with the earnings withholding
order.

Section 723.030 (pages 18 and 19)

Delete entire section.

Section 723.030 (page 19)

Renumber as Section 723.030.

Sections 723.050 - 723.052 (pages 19-22)

Delete all of Sections 723.050, 723.051, and 723.052, and insert
the following:

723.050. Except as otherwise provided in Sections 723.030, 723.051,
723.074, 723.075, and 723.076, the amount of the earnings of a judgment
debtor to be withheld pursuant to this chapter is the maximum amount
allowed by statute of the United States to be withheld from the earnings
of an employee on a garnishment of the earnings of the employee.

723.051. Except as provided in Article 4 (commencing with Section
723.070), the portion of the judgment debtor's earnings which the
judgment debtor proves is necessary for the use of the judgment debtor
or the judgment debtor's family supported in whole or in part by the
judgment debtor is exempt from levy under this chapter unless the judgment
is for a debt:

(a) Incurred by the judgment debtor, the judgment debtor's spouse, or the judgment debtor's family for the common necessities of life.

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

Section 723.074 (pages 23-24)

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 18906 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 18906 of the Revenue and Taxation Code, the table issued under that section applicable to a single person without allowance for additional exemption 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.~~

Section 723.075 (pages 24-25)

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 10 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. The determination of the state pursuant to this subdivision is final and not subject to court review.

~~(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 722.105, 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 722.050.~~

(d)

(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 hold the employer in contempt of court for failure to comply with subdivision (b).

Section 723.071 (page 27)

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 earnings withholding 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 earnings withholding order, he shall notify the levying officer who served the prior earnings withholding order that a supervening withholding order for taxes is in effect.

(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.

Section 723.103 (pages 30-31)

* 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 employer 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.~~

(b)

~~(a)~~ 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.

Article 6 (Heading) (page 34)

Article 6. Forms ; ~~Employer's Instructions~~ ;

~~Withholding Tables~~

Section 723.122 (page 35)

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 earnings withholding 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.

(b) ~~The maximum manner in which the amounts amount~~ allowed by law to be withheld pursuant to Section 723.050 ~~on illustrative amounts of earnings will be computed.~~

(c) No amount can be withheld from the earnings of a judgment debtor which ~~he can prove~~ is necessary for his ~~support or for the support of his family~~ for the use of the judgment debtor or the judgment debtor's family supported in whole or in part by the judgment debtor unless the judgment is for a debt incurred by the judgment debtor, the judgment debtor's spouse, or the judgment debtor's family for the common necessities of life or incurred for personal services rendered by any employee or former employee of the judgment 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 his ~~support or for the support of his family~~ the use of the judgment debtor or the judgment debtor's family supported in whole or in part by the judgment debtor, he the judgment debtor 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.

Section 723.127 (page 38)

Delete entire section.

Section 723.128 (pages 38-39)

Renumber section as Section 723.127.

Section 723.150 (page 39)

^{may}
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.

Sections 11. and 12 (page 44)

July 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 1, 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 pursuant to Section 682.3 of the Code of Civil Procedure 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.

July SEC. 12. This act shall become operative on January 1, 1977. The Judicial Council, the state agencies concerned with the implementation of Article 4 (commencing with Section 723.070) of Chapter 2.5, of Title 9, of Part 2 of the Code of Civil Procedure, and the court clerks and levying officers shall, prior to that date, take all measures necessary in order that the provisions of this act may be implemented on January 1, 1977.