

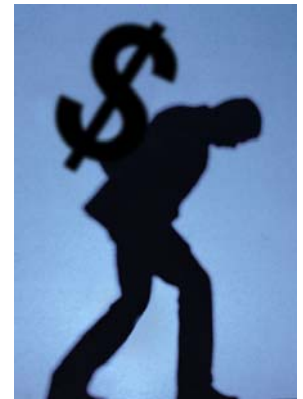
## Issue Brief #7

# Employee Wage Garnishments

## Background

It's a fact of life. People -- company owners, employees, friends and family; all of us -- borrow money and can end up unable to pay it back in a timely fashion, in part or in whole, for any number of reasons. Likewise, many married couples experience separation or divorce proceedings that can trigger parental child support payments. The same goes for state and federal income taxes; individuals may fail to file and meet their obligations, resulting in money owed to the government.

As a result of such debt, a collections (or pay back) process is initiated -- typically handled through the courts (though voluntary wage assignments may also be structured) -- whereby an employer is held liable for withholding funds from their workers: money deducted directly from paychecks to service debt. Employers commonly receive three types of employee wage garnishments: 1) Internal Revenue Service tax levies, 2) Child Support orders, and 3) Third Party collections. Each of these employee debts, and corresponding employer obligations, is described below in more detail.



## Types of Garnishments

### 1) *IRS Tax Levies*

Tax levies are incurred when a taxpayer fails to pay federal or local income taxes in a timely manner. The number of IRS levies against wages and bank accounts increased from just over 500,000 in 2000 to 3.7 million in 2007. The IRS has 10 years to collect a liability from the date it puts the liability on its books. When the 10 years is up, the tax is cleared from the IRS's books and can longer be collected. Many individuals who owe the government money often work with the IRS to resolve their debt via "Offers in Compromise." In 2007, the IRS accepted 11,618 offers.

When a company receives a tax levy, it typically means that the government has tried other collection methods with the employee and that such efforts have failed. A final recourse, then, is to collect the amount due via a payroll deduction. The tax levy includes not only the amount of the tax due, but the penalties and interest incurred on the outstanding balance. Tax levies take priority over all other garnishments, except child support, that were in effect prior to the tax levy. If one or more tax levies from different jurisdictions have been received for an employee and the employee does not have enough non-exempt funds to satisfy them, levies are implemented in the order received (unless otherwise instructed by the IRS).

When the levy is received, there are a couple of determinations that need to be made: the amount of the wages subject to the levy; other garnishments in effect that take priority over the tax levy. Basically, all wages paid to the employee are subject to the levy, unless specifically exempt under the IRS regulations.

The following list comprises wage-related payments that typically are exempt from tax levies:

- Worker's compensation income
- Railroad Retirement Tax Act pension and annuity payments and certain armed forces personnel
- Child Support orders already in effect
- Welfare and supplemental social security payments
- Unemployment compensation payments
- Armed forces disability payments



A six part Form 668-W *Notice of Levy on Wages, Salary, and Other Income* is mailed from the IRS to the employee's employer to attach or garnish wages. The six parts consist of:

- Part 1 Employer's copy of the levy - Information on the amount owed and the employer's obligation to withhold
- Part 2 Employee's copy of the levy
- Part 3 - 5 Employees' information to company and IRS on filing status and dependents. Employees need to return Parts 3 and 4 to the employer within 3 days of receipt. The employer remits Part 3 to the IRS with the first payment and keeps Part 4. Part 5 is employee's copy to keep.
- Part 6 The IRS keeps this one. If the employee does not return Parts 3 and 4, the employer must figure the exempt amount as if the employee's filing status was married, filing separately, with one personal exemption. Do not use the employee's *Form W-4* to determine the filing status and number of exemptions.

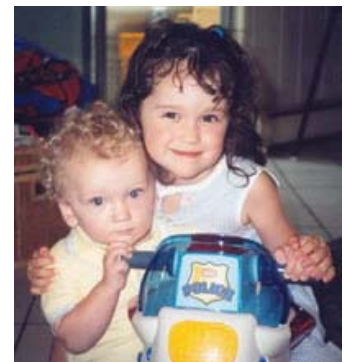
The IRS will notify the employer to stop withholding with *Form 668-D, Release of Levy/Release of Property from Levy*. The withholding should not be stopped prior, even if the amount withheld equals the amount due on Part 1. Penalties and Interest continue to accrue as deductions are made to satisfy the levy. Usually, *Form 668-D* provides the final deduction amount to withhold and remit.

If the employee leaves the company prior to satisfying the levy, it is the employer's obligation to notify the IRS. If known, the new employer's name and address should also be provided to the IRS. If there is severance, dismissal or vacation pay paid at termination, the IRS levy must be applied to those payments too. If a company fails to withhold and pay amounts not exempt from the levy, the company is liable for the full amount required to be withheld plus interest from the date the wages were paid. Additionally, the employer is liable for a penalty equal to 50% of the amount recoverable by the IRS. If an employer threatens to fire an employee to avoid processing a levy, the company might be found in violation of Federal law (15 USC 1674). If the employer fires the taxpayer because of a levy, the employer might be fined not more than \$1000 or imprisoned for not more than one year, or both.

For more information: <http://www.irs.gov/taxtopics/>

## 2) *Child Support Orders*

Another common type of employee income withholding is a court- or administratively-ordered deduction of a specified amount from a parent's income for payment of child support. In the state of Utah, income withholdings placed on employee earnings comprise more than 70 percent of child support payments sent to families -- payments which totaled over \$211 million in 2008.



All employers must honor an income-withholding order/notice for child support from any state. Out-of-state income-withholding orders/notices are valid throughout the country including U.S. territories. All states are required to use a standardized withholding form entitled, *Income Withholding for Support (OMB-0970-0154)*. State health and human services agencies rely on new hire reporting (notification within 20 days of hire) to determine if a non-custodial parent is currently employed and thus eligible for a wage withholding.

A child support income-withholding order/notice must be paid before all other garnishments, with one exception. As noted earlier, the only withholding that takes precedence over child support is an IRS Levy entered prior to when the underlying child support order was established. It is the date that the child support order is established, and not the date the withholding order/notice is served on the employer, that determines precedence. Not only must child support be paid first in most instances, but a higher percentage of the employee's disposable income can be withheld for child support. The employer deducts the specified amount of child support each pay period and sends it to the State Disbursement Unit (SDU), which then forwards the payment to the custodial parent. In private cases (not enforced by the child support agency) in which the support order was initially issued on or after January 1, 1994, the employer must forward the payment to the SDU. Some states require that all child support payments be sent to the SDU, regardless of date.

The withholding limits set by the Federal government are as follows:

- 50% Supports a second family, with no arrearage or less than 12 weeks in arrears
- 55% Supports a second family, and more than 12 weeks in arrears
- 60% Single, with no arrearage or less than 12 weeks in arrears
- 65% Single, and is more than 12 weeks in arrears

Employers should report terminated employees and should not stop withholding for child support until one of the following occurs:

- An official notification to stop withholding is received from the issuing agency
- The employee is terminated, for whatever reason
- Bankruptcy proceedings are underway and a bankruptcy trustee takes over the withholding

For more information: <http://ors.utah.gov/>

### ***3) Third Party Collections***

Collections efforts undertaken by Third Parties -- either individuals, businesses or, most commonly, debt collection agencies that have "bought" debt from another source -- represent another common source of employee wage garnishments. These garnishments typically are court-ordered, though voluntary wage assignments may also be structured between parties whereby a repayment plan is established outside of any legal process.



Federal law limits the amount of employee wages that are subject to Third Party garnishments: the lesser of 25% of the employee's disposable earnings (earnings remaining after all legally required deductions have been made, e.g., state and federal taxes, Social Security and Medicare contributions) or the amount by which disposable earnings exceed 30 times the current minimum hourly wage (\$6.55 through July 24, 2009, to increase to \$7.25 after that day) -- a base wage floor initially determined by the Fair Labor Standards Act and later modified through subsequent federal legislation.

Within the court paperwork that is served to the garnishee (employer), there is a worksheet that is filled out to determine the appropriate amount to be withheld, per the guidelines described below. Based on a federal minimum wage rate of \$6.55 per hour (again, effective through July 24, 2009), the following garnishment limits apply to Third Party garnishments:

Weekly payroll

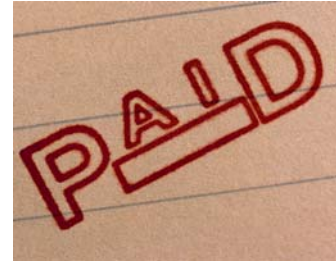
- Disposable earnings of \$196.50 or less: No amount may be garnished.
- Disposable earnings more than \$196.50, but less than \$262.00: Amount above \$196.50 may be garnished.
- Disposable earnings of \$262.00 or more: Maximum garnishment 25% of disposable earnings.

### Biweekly payroll

- Disposable earnings of \$393.00 or less: No amount may be garnished.
- Disposable earnings more than \$393.00 but less than \$524.00: Amount above \$393.00 may be garnished.
- Disposable earnings of \$524.00 or more: Maximum garnishment 25% of disposable earnings.

### Semi-monthly payroll

- Disposable earnings of \$425.75 or less: No amount may be garnished.
- Disposable earnings more than \$425.75 but less than \$567.67: Amount above \$425.75 may be garnished.
- Disposable earnings of \$567.67 or more: Maximum garnishment 25% of disposable earnings.



### Monthly payroll

- Disposable earnings of \$851.50 or less: No amount may be garnished.
- Disposable earnings more than \$851.50 but less than \$1,135.33: Amount above \$851.50 may be garnished.
- Disposable earnings of \$1,135.33 or more: Maximum garnishment 25% of disposable earnings.

## General Tips for Processing Employee Wage Deductions

- Review the wage deduction order as soon as it is received.
- Determine the purpose of the order. In other words, is it a tax levy, child support order, etc.
- Provide the employee with a copy of the order (if required).
- Determine what portion of the employee's wages may be exempt from the order.
- Determine, in what priority, multiple orders (if any) against the same employee must be satisfied.
- Answer the wage deduction order as stated on the face of the order or as required by state law.
- Withhold from the employee's wages the amount required by the order. Begin to withhold based upon the order, even if the employee is currently challenging the legitimacy and/or amount of the order.

Note: As part of our service offering to clients, Payday Resources (PDR) typically processes and administers garnishments. To ensure prompt withholding, and to comply with any legal obligations per court or government orders, we recommend providing us -- as soon as possible -- with any garnishment paperwork received. Any delay can result in additional headache and hassle, added employer scrutiny, and even legal jeopardy.