



## Tip of the Month July, 2011 Administrative Wage Garnishment

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Did you know that under federal law certain creditors can garnish wage, bank accounts, and other assets without obtaining a judgment or even starting a lawsuit? The process is called Administrative Wage Garnishment (AWG). Because no judgment is required, the protections afforded to most debtors by Minn.Stat. § 550.37 do not apply.<sup>i</sup> The limited protections that do exist are derived from a variety of other federal law sources.

### **Creditors capable of utilizing administrative wage procedures.**

The Debt Collection Improvement Act of 1996 (DCIA) and the Department of Treasury regulation 31 CFR § 285.11 give federal agencies the authority to request that a non-federal employer garnish the disposable pay of an individual to collect delinquent nontax debt owed to that agency.<sup>ii</sup> The secretary of the Internal Revenue Service has the authority to collect delinquent taxes by placing a levy “upon all property and rights to property... belonging to such person.”<sup>iii</sup> The DCIA also charged the Financial Management Service (FMS), a division of the Treasury Department, with implementing the government’s centralized delinquent debt collection program.<sup>iv</sup> In 2008 \$180 million was collected by the FMS for non-tax debts. That number is \$5.9 billion when delinquent tax debts are included.<sup>v</sup>

### **Limitations or exemptions for garnishment of wages by creditors**

The DCIA limits the amounts of administrative wage garnishment to 15% of disposable pay.<sup>vi</sup> There is some protection for debtors who have been recently fired. “If an individual has been reemployed within 12 months after having been involuntarily separated from employment, no amount may be deducted from the disposable pay of such individual until such individual has been reemployed continuously for at least 12 months.”<sup>vii</sup> The DCIA also provides a number of procedural protections including 30-day written notice, an opportunity to inspect and copy records relating to the debt, an opportunity to enter into a written agreement, and an opportunity for a hearing.<sup>viii</sup>

*Practice Tip:* The Consumer Credit Protection Act (CCP) limits AWG to 25% of disposable pay or “the amount by which his disposable earnings for that week exceed thirty times the Federal minimum hourly wage... whichever is less.”<sup>ix</sup> Though the 25% is a higher amount, the CCP may provide a lower ceiling than the DCIA’s 15% if the debtor’s income is close to the thirty times the minimum wage (\$217.50 per week).

### **Student Loans: Lenders and Hardship**

Student Loan Creditors: Creditors collecting student loan debts may utilize administrative wage garnishment procedures if the creditor is a “guaranty agency,” typically the Federal Direct Loan

Program (Direct Loans) or an “eligible lender” whose loan is guaranteed by the Secretary of Education.<sup>x</sup> Some smaller or local banks may not qualify as an “eligible lender,” and thus cannot use AWG despite collecting loans expressly granted for education purposes.

Undue Hardship: Debtors facing AWG by a creditor collecting on student loan debts may also object to the garnishment on the basis that the withholding of income would cause an undue financial hardship.<sup>xi</sup> An objecting creditor must request a hearing which can either be in person or on paper.<sup>xii</sup> Hearings are held by the Department of Education’s Default Resolution Group (DRG). To show financial hardship, the DRG will compare the debtor’s basic living expenses against the amounts spent for basic living expenses by families of the same size and similar income to that of the debtor.<sup>xiii</sup> The debtor bears the burden of proving their financial hardship claim by a preponderance of the credible evidence.<sup>xiv</sup> The debtor must prove by “credible documentation,” the debtor’s basic living expenses and the income available from any source to meet those expenses.<sup>xv</sup>

Receipt of public assistance based on need does not make a debtor exempt from AWG. The creditors that can utilize AWG are also considered to hold unsecured, but generally non-dischargeable debts in bankruptcy. There are indeed few solutions for debtors facing garnishment by the Federal agencies or those creditors holding student loan debts.

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<sup>i</sup> Creditors seeking to enforce a judgment may not collect income if the source is considered “assistance based on need” as described in Minn.Stat. § 550.37, subd 14 (2010). The statute also prevents creditors from garnishing a creditor’s wages from employment if the debtor is receiving, or has received in the preceding six months, a variety of types of public assistance based on need (e.g. MFIP, GA, MA, SSI, Food support, etc...). *Id.* Additionally, creditors cannot garnish funds held in a bank account if the funds in that account can be traced to any of the aforementioned types of public assistance. *Id.*

<sup>ii</sup> 31 U.S.C. § 3701 . 31 CFR §285.11(c) defines “agency” to include government corporations.

<sup>iii</sup> 26 U.S.C. § 6331(a).

<sup>iv</sup> 31 U.S.C. § 3711(g).

<sup>v</sup> [http://www.fms.treas.gov/news/factsheets/delinquent\\_debtcollection\\_2008.html](http://www.fms.treas.gov/news/factsheets/delinquent_debtcollection_2008.html)

<sup>vi</sup> 31 U.S.C. §3720D Collections on judgments in Minnesota are limited to 25% of disposable earnings.

Minn.Stat.550.37, subd. 14. The term “disposable pay” means, “that part of the compensation of any individual from an employer remaining after the deduction of any amounts required by law to be withheld.” 20 U.S.C.A. §1095(e). The deductions referred to are typically FICA and tax withholdings.

<sup>vii</sup> 31 U.S.C. §3720D(b).

<sup>viii</sup> *Id.*

<sup>ix</sup> 15 U.S.C. § 1673.

<sup>x</sup> 20 U.S.C. § 1095a “Eligible Lender” is defined in 20 U.S.C. §1085(d). The Higher Education Act places a capital and reporting requirements on the banks which some small, local banks cannot meet.

<sup>xi</sup> 34 C.F.R. § 34.24.

<sup>xii</sup> *Id.*

<sup>xiii</sup> 34 C.F.R. § 34.24(e)(1).

<sup>xiv</sup> 34 C.F.R. § 34.24(d)(1).

<sup>xv</sup> 34 C.F.R. §34.24(d)(2).