



Tip of the Month September 2011

HOW TO CLAIM BANK ACCOUNT EXEMPTIONS

Submitted by Jeremy Carvell,
Legal Aid Society of Minneapolis

Use these instructions to make an exemption claim for money that has been frozen (“garnished”) in your bank account. These exemptions will work for most types of consumer debts: credit cards, car loans, medical debt, etc. There are different rules and few special conditions for other types of debts such as child support, student loans, state taxes and federal taxes.

The instructions start on page two. The worksheets on this page will be explained as you go through the instructions.

EXEMPTIONS WORKSHEET

(Step 1: Box A) <i>Date of Garnishment</i>	(Step 1: Box B) <i>Garnished Amount</i>	(Step 1: Box C) <i>Amt. left in account</i>	(Step 2: Box D) <i>Total that has to be traced in deposits (Box B) + (Box C) =</i>

CHART OF DEPOSITS

(Step 3: Col. E) <i>Date of Deposit</i>	(Step 3: Col. F) <i>Deposit Amount</i>	(Step 4: Col. G) <i>Source of Deposit</i>	(Step 5: Col. H) <i>Category of Deposit</i>	(Step 7: Col. I) <i>How much of the Deposit is Exempt?</i>

TOTAL EXEMPTION CLAIM:

(Step 8: Box J) Add up all of the exempt amounts in (Column I) .

INSTRUCTIONS

Before you start, make sure you have these papers ready:

- The Exemption Form. (Your bank is required to mail this to you two days after your account is frozen.)
- Bank records for the last 2 months. If your monthly bank statements do not show the garnishment, ask your bank for a printout that shows the garnishment and the two months before the garnishment.
- If any money from a job was in your bank account, you will probably need your recent paystubs.
- If you receive any government assistance or social security, you will probably need a copy of your benefit statement or some other proof of your benefits.

Step 1: Look at your bank statement to find:

- the date of the garnishment, write this in the Exemption Worksheet in **Box A**.
 - Sometimes bank statements will not identify this as a “garnishment” – sometimes it will say “Levy”, or “Attachment” or “Legal Order.” Sometimes the garnishment will only be identified as a plain withdrawal or debit – in this case, you might need to look for the amount of a debit/withdrawal that matches the amount listed in the papers that you receive from the bank;
- the amount of money that was garnished, write this in **Box B**; and
- the amount, if any, that was left in your account after the garnishment, write this in **Box C**.
 - Most bank statements show the “remaining balance” amount next to the column of debits or withdrawals – this is the amount you want. A few bank statements don’t print the balance next to the withdrawals and have a different list of “end of day balances” – this number will work too if you account for any other withdrawals that happened on that same day after the garnishment.

If the garnishment did not leave a positive balance in the account, leave **Box C** blank.

Step 2: Add up the total of (**Box B**) the Garnished Amount and (**Box C**) the Amount left in the account; write this in **Box D**.

Step 3: Look at your bank statement to find the deposits that were made before the garnishment. (Ignore the deposits that happened after the garnishment.) List these deposits in reverse order until they add up to (or exceed) the amount in **Box D**. Start with the last deposit right before the garnishment and keep going backwards in time. You might need your earlier bank statements to see all of the deposits that were garnished. Write the date of each deposit in the Chart of Deposits in (**Column E**) and the amount of the deposit in (**Column F**).

What to do if the deposits don’t add up exactly to the amount garnished:

If the deposit that you add results in a total sum greater than the amount in **Box D**, determine if that earliest deposit was from a mix of exempt and non-exempt money.

- If the deposit was completely exempt or completely non-exempt, write in **Column F** the amount needed so that the deposits add up to the amount in **Box D**.

- If the deposit was mixed, calculate the percentage of the total deposit that was exempt and multiply it by the amount needed to get to the amount in **Box D**. This result is the exempt amount that you write in **Column F**. *Minnesota statute does not explicitly state which method should be used when a garnishment attaches only a portion of a mixed source deposit. However, this pro rata method has been successfully used in a number of exemption claims without objection. Nevertheless, the statutes appear to permit at least two other methods for approaching this issue in ways that could favor the debtor or the creditor.*

Step 4: Determine the source for each deposit. (Where did that money come from?) Write the source in **Column G** for each deposit. The bank statement might identify the source if the deposit was automatic. If the bank statement does not indicate where the money is from, you will need something else to show where the money was from. For example, if you deposit your own paycheck, then you can use a copy of your paystub for that deposit.

Step 5: Each deposit will probably fit into only one category. Find the right category for each garnished deposit and write the category number in **Column H**. If a deposit had money from more than one category, treat the money from each category as a separate deposit.

Category 1: Normally Protected Money (use the list on page 6).

Category 2: Earnings (any money that you were paid for doing work). This category also includes money received for spousal maintenance (alimony) and most money paid to farmers

Category 3: Unprotected money.

Category 4: Money that isn't yours – i.e., owned by a different person in a joint-account.

Step 6: If none of the deposits are from Category 2 (your earnings), skip to Step 7.

For each garnished deposit that was from Category 2 (your earnings), use the Flowchart on page 5 to see if you can claim an exemption for that earnings deposit.

Step 7: Write in **Column I** if each deposit is exempt or not.

- For each “Category 1” deposit, write the full amount of the deposit.
- For each “Category 2” deposit, write the number you got from the flowchart in Step 6.
- For each “Category 3” deposit, write “\$0.”
- If there is any money in “Category 4”, the person who owns the money should contact the creditor and document that those garnished funds did not belong to the debtor. For purposes of calculating your exemption claim, write \$0 in **Column I**.

Step 8: Add up the Exempt amounts in **Column I** and write the sum in **Box J**. This is the total amount of your Exemption Claim.

- If all of the garnished deposits were exempt, mark an “X” next to “I claim all of the money being frozen by the bank is protected.”

- If all of the deposits were not exempt, mark an “**X**” next to “*I claim some of the money is protected*” and write in the total amount of (**Box J**) as your exemption claim.

Step 9: Complete the rest of the **Exemption Form**. Read the list of protected money and mark an “**X**” next to each of the sources that you listed in **Column G**. Sign the bottom of the last page and write your address and your phone number.

Step 10: Gather the documents that you need to prove your exemption claim:

- You need proof of the source for each of the garnished deposits (everything you listed in **Column G**.) In other words, you need to show where all of the money came from.
- Sometimes your bank records will show where the deposit came from. If the bank records don’t indicate the source, you’ll need other documentation. (e.g., payroll stubs, benefit statements, deposit slips, cancelled checks, etc.)
- If you are claiming an exemption for earnings, you also need to show proof if you receive government assistance based on need (e.g.: benefits statement) or if you were in a correctional institution.

Step 11: Make two copies of the Exemption Form, the bank records, and the documents that show the source of your garnished deposits or your right to an earnings exemption.

Step 12: Keep one copy for yourself, mail one copy of everything to your bank and one copy of everything to the creditor.

You might need an attorney: if the creditor objects or if your protected money is not returned to you. If you are low income, you can call Legal Aid.

Flowchart: Exemptions for Earnings in Bank Account

Use this flowchart in Step 6 in “How to Claim Bank Account Exemptions”
Use this flowchart for *each* of the *earnings deposits* that was garnished. You do not need to use this flowchart for anything on the list of “normally protected money.” (On page 6).

Did you receive government assistance based on need within the past 6 months (see list on pg. 6) **or** were you in a correctional institution within the past 6 months?

YES

NO

Had the deposit been in your bank account for more than 60 days when the garnishment happened?

NO

YES

This deposit is 100% exempt.

None of this deposit is exempt.

Had the deposit been in your account for more than 20 days when the garnishment happened?

NO

YES

None of this deposit is exempt.

Calculate the “disposable earnings” (see pg. 6) for the paycheck that was deposited. Is the “disposable earnings” less than the minimum wage for your pay period (see pg. 6).

NO

YES

Calculate 75% of your disposable earnings (multiply by .75). Is this number less than the minimum wage for your pay period?

NO

YES

The exempt amount is 75% of the disposable earnings - the creditor keeps the rest.

The exempt amount is the minimum wage amount for the pay period- the creditor keeps the rest.

I. NORMALLY PROTECTED MONEY

<p>This money is completely protected from most types of garnishment. These “normal protections” will apply in for all debts from credit cards, vehicle loans, medical debts, and landlord-tenant debts. WARNING: these “normal” protections are different if the garnishment is for child support, federal taxes, student loans and a few other less common types of debts.</p>	
<ul style="list-style-type: none"> ▪ RSDI - Social Security (Retirement, Survivor & Disability) ▪ SSI - Supplemental Security Income ▪ MFIP – MN family investment program ▪ EA - emergency assistance or county crisis funds ▪ GA - general assistance ▪ EGA - emergency general assistance ▪ MSA - Minnesota supplemental aid ▪ MSA-EA - MSA emergency assistance ▪ EITC ▪ Student Loans, Work Study and Education Grants 	<ul style="list-style-type: none"> ▪ MFIP Diversionary Work Program, ▪ Work participation cash benefit ▪ Food Support ▪ Veterans Benefits & Railroad Retirement Benefits ▪ Pensions and Annuities from an accident, disability, or retirement ▪ Life insurance proceeds ▪ Child support paid to you ▪ Money from some insurance claims (you might need a lawyer to see if this applies) ▪ Earnings of the debtor’s children under 18.
<p>➤ If the money was garnished from a joint bank account, the other person’s money is protected if they were not listed in the lawsuit.</p>	<p>➤ If the money in the account was being held for someone else, but not in a joint bank account, there might be a way to get that money back but you might need a lawyer’s help.</p>

II. GOVERNMENT ASSISTANCE BASED ON NEED

<p>Your Earnings are completely protected for 60 days if you are currently get any of these benefits or if you got any of these benefits within the past 6 months.</p>	
<ul style="list-style-type: none"> ▪ MFIP – MN family investment program ▪ EA - emergency assistance or county crisis funds ▪ GA - general assistance ▪ MA - medical assistance ▪ GAMC - general assistance med care ▪ EGA - emergency general assistance ▪ SSI - Supplemental Security Income ▪ MSA - Minnesota supplemental aid 	<ul style="list-style-type: none"> ▪ MSA-EA - MSA emergency assistance ▪ Energy or fuel assistance ▪ MFIP Diversionary Work Program, ▪ Work participation cash benefit ▪ Food Support ▪ Minnesota Care ▪ Medicare part B premium payments ▪ Medicare part D extra help ▪ EITC – Earned Income Tax Credit

III. DISPOSABLE EARNINGS

$$\text{Paycheck} + \text{Voluntary Withholdings} = \text{Disposable Earnings}$$

“Voluntary Withholdings” are the deductions that you asked your employer to take out of your paycheck for you - usually for retirement or for medical insurance.

IV. MINIMUM WAGE PER PAY PERIOD

\$290 every week

\$580 every two weeks

\$628 if you are paid twice each month

\$1256 if you are paid once each month