6-30/205.00 Earnings

• 6-30/205.10 Child or Spousal Support Debt

A withholding order for support under an execution for alimony or child support does not reach all of the debtor's earnings. 50 percent of the debtor's earnings are automatically exempt if the debt is for child or spousal support. (CCP 706.052(a))

15 USC 1677 permits the states to have more stringent restrictions than are set forth in Federal legislation. As a consequence, the Federal restrictions pursuant to 15 USC 1673(b) of the amounts that may be withheld from wages do not apply to a judgment for alimony or child support, and California law is controlling.

Although no claim of exemption may be filed for earnings withheld pursuant to a withholding order for support, upon motion of any interested party, the court shall make an equitable division of the judgment debtor's earnings that takes into account the needs of all the persons the judgment debtor is required to support and shall effectuate such division by an order determining the amount to be withheld from the judgment debtor's earnings pursuant to the withholding order for support. (CCP 706.052(b))

Such an order may not authorize an amount to be withheld which is in excess of that allowable by Federal law under 15 USC 1673. (CCP 706.052(c))

Attorney's fees and costs awarded in an action for dissolution of marriage are not in the same category as a judgment for support.

• 6-30/205.20 All Other Debt

75 percent of the debtor's disposable wages are automatically exempt if the debt is not for child or spousal support. (CCP 706.050, 15 USC 1673)

• 6-30/205.30 Exemption Claimed for Support of Debtor and Debtorâ€™s Family

The debtor may claim as exempt the portion of the debtor's earnings which is necessary for the support of the debtor or the debtor's family supported in whole or in part by the debtor unless the debt is incurred for personal services rendered by any employee or former employee of the debtor or is incurred by the debtor, or his or her spouse or family for the common necessaries of life. In determining whether the debtor's earnings are necessary for the use of the debtor's family, the circumstances of each case and the position of the family involved must be considered. It has been held that items of expense for recreation, music lessons and insurance for the debtor's wife and family were for necessaries. (Sanker v. Humborg, 48 CA 2d 205)

Monthly expenses expended on behalf of the debtor's minor daughter attending university have been held to be necessaries. (Diamond v. Bent 157 CA 2d Supp. 857) The term "common necessaries of life" has a different meaning than above. If the plaintiff's cause of action is based on an obligation incurred for "common necessaries of life," only that portion of the debtor's earnings included in the automatic exemption is exempt.

Common necessaries of life as used in (rechaptered as CCP 706.051) means those things which are commonly required by persons for the sustenance of life regardless of their employment or status. It must be such an article that in the hands of anyone, it is to be regarded universally, or substantially so, as necessary to sustain life. (Los Angeles Finance v. Flores, 110 CA 2d Supp. 850)

• 6-30/205.40 Earnings in Deposit Account

Earnings already received by the debtor may still be claimed as exempt earnings if they can be traced into deposit accounts or in the form of cash or its equivalent. (CCP 703.080) Earnings that have already been garnished for support and placed in a deposit account are totally exempt. If earnings have not been previously garnished, then 75 percent of the earnings in the account are exempt. This is not an automatic exemption and a claim must be filed. The procedures governing such a claim are not the procedures for claiming an exemption pursuant to an earnings withholding order, but rather the procedures for claiming an exemption for other property. (CCP 704.070)

• 6-30/205.50 Seamen

The wages of a seaman on a fishing vessel are not subject to levy except for support. (46 USC 11109)