

**STATE OF TENNESSEE  
OFFICE OF THE ATTORNEY GENERAL**

**July 3, 2019**

**Opinion No. 19-10**

**Wage Garnishment Liens: Amount, Priority, and Duration**

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**Question 1**

If an existing writ of garnishment is deducting the maximum allowable amount under Tenn. Code Ann. § 26-2-106, can a second, later-filed writ of garnishment run concurrently with the first writ if the second writ seeks to deduct an amount less than the maximum allowable amount?

**Opinion 1**

Yes. A second, later-filed writ that seeks less than the maximum allowable amount would run concurrently with the first writ.

**Question 2**

If an existing writ of garnishment is deducting an amount less than the maximum allowable amount under Tenn. Code Ann. § 26-2-106, can a second, later-filed writ of garnishment run concurrently with the first writ if the second writ seeks to deduct an amount less than the maximum allowable amount?

**Opinion 2**

Yes. A second, later-filed writ that seeks less than the maximum allowable amount would run concurrently with the first writ.

**Question 3**

If the answer to Question #2 is “yes,” can the second writ deduct an amount up to the maximum allowable amount under Tenn. Code Ann. § 26-2-106, or is the amount that the second writ can deduct restricted by the amount deducted by the first writ so that the amount of the first and second writs, combined, do not exceed the maximum allowable amount under Tenn. Code Ann. § 26-2-106?

**Opinion 3**

The amount that the second writ could deduct would be restricted by the amount deducted by the first writ. The amount of the first and second writs, combined, cannot exceed the maximum allowable amount under Tenn. Code Ann. § 26-2-106.

#### **Question 4**

If the amount that can be deducted by a second, concurrently running writ is restricted by the amount being deducted by the first writ, does the previously restricted deduction under the second writ automatically adjust upward when the first writ is satisfied, expires or is stayed, or is a new writ of garnishment required to collect the difference?

#### **Opinion 4**

A new writ of garnishment is not required to increase the amount of money available to satisfy the obligation of the second writ. The second writ adjusts upward.

#### **Question 5**

If the deduction under the second writ of garnishment automatically adjusts upward as described in Question #4, how does the six-month time limit prescribed in Tenn. Code Ann. § 26-2-214 apply to this adjustment? Can the adjusted withholding run for the full six months, or does the adjusted withholding cease six months from the time withholding originally began on the second writ?

#### **Opinion 5**

Adjusting the second writ of garnishment upward does not alter when the six-month time period prescribed in Tennessee Code Annotated § 26-2-214 begins. The lien created by the second writ would begin at the time of its service.

### **ANALYSIS**

Under Tennessee law, a person's wages are generally subject to the claims of judgment creditors through the process of "garnishment," which is defined as "any legal or equitable procedure through which the earnings<sup>1</sup> of an individual are required to be withheld for payment of any debt." Tenn. Code Ann. § 26-2-102(3). Not all of a person's earnings, though, are subject to garnishment. A portion of a judgment debtor's earnings is protected by Tenn. Code Ann. § 26-2-106, which provides the formula for calculating the amount of a debtor's earnings that may be subject to garnishment:

(a) The maximum part of the aggregate disposable earnings<sup>2</sup> of an individual for any workweek which is subjected to garnishment may not exceed:

(1) Twenty-five percent (25%) of the disposable earnings for that week; or

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<sup>1</sup> "Earnings" means the compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program." Tenn. Code Ann. § 26-2-102(1).

<sup>2</sup> "Disposable earnings" means that part of earnings of an individual remaining after the deduction from those earnings of any amounts required by law to be withheld." Tenn. Code Ann. § 26-2-102(2).

(2) The amount by which the disposable earnings for that week exceed thirty (30) times the federal minimum hourly wage at the time the earnings for any pay period become due and payable, whichever is less.

(b) In the case of earnings for any pay period other than a week, an equivalent amount shall be in effect.

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Tenn. Code Ann. § 26-2-106.

This statutory provision is patterned after 15 U.S.C. § 1673, a provision of the federal Consumer Credit Protection Act (“CCPA”), which provides the identical formula for determining the maximum allowable garnishment of an individual’s earnings. *Kendle v. Kendle*, M2017-02434-COA-R3-CV, 2018 WL 5098202 \*5 (Tenn. Ct. App. 2018); *In re Lawrence*, 219 B.R. 786, 795 (E.D. Tenn. 1998). While States may provide a judgment debtor with greater protection from garnishment than that provided by federal law,<sup>3</sup> they may not provide lesser protection. *Marshall v. Safeway*, 88 A.3d 735, 738 (Md. 2014) (citing 15 U.S.C. § 1677); *Sears, Roebuck & Co. v. A. T. & G. Co., Inc.*, 239 N.W.2d 614, 617 (Mich. App. 1976) (citing 15 U.S.C. §§ 1673(c), -1677). The CCPA preempts State garnishment laws that permit a larger amount of a debtor’s earnings to be garnished than that provided by federal law. *Crane v. Crane*, 417 F.Supp. 38, 40 (E.D. Okla. 1976) (citing 15 U.S.C. §§ 1671-1677); *Hodgson v. Hamilton Mun. Court*, 349 F.Supp. 1125, 1132-1133 (S.D. Ohio 1972) (citing 15 U.S.C. §§ 1673(c), -1677)

The CCPA, though, does not preempt the entire field of garnishment law from the States. *Hodgson*, 349 F.Supp. at 1132. For instance, the CCPA does not establish any order of priority among garnishments. *Long Island Trust Co. v. U.S. Postal Serv.*, 647 F.2d 336, 338 (2nd Cir. 1981); *Voss Products, Inc. v. Carlton*, 147 F.Supp.2d 892, 896 (E.D. Tenn. 2001); *Commonwealth Edison v. Denson*, 494 N.E.2d 1186, 1189 (Ill. App. 1986). See 29 C.F.R. § 870.1. Therefore, unless another federal statutory provision sets priorities among garnishments, the matter of priority is determined by State law. *Long Island Trust*, 647 F.2d at 339 (citing 29 C.F.R. § 870.11(a)(2) which is currently 29 C.F.R. § 870.11(b)(2)); *Voss Products*, 147 F.Supp.2d at 896; *Denson*, 494 N.E.2d at 1189. But the application of priority laws may not cause the garnished amount of an individual’s disposable earnings to exceed the ceiling set forth in 15 U.S.C. § 1673. 29 C.F.R. § 870.11(b)(2). See *Antwerp Weatherhead Fed. Credit Union v. Gonzales*, 30 Ohio Misc.2d 31, 33-34, 507 N.E.2d 472, 475 (1982).

Accordingly, assuming no other federal statutory provision sets priorities among garnishments, Tennessee law would govern the priority of garnishments. Tennessee Code Annotated § 26-2-214(b) generally addresses the duties of the garnishee with respect to the duration and priority of wage garnishment liens:

(1) To the extent of the amount due upon the judgment and costs, the garnishee shall hold, subject to the order of the court, any nonexempt earnings due or that subsequently become due. *The judgment or balance due is a lien on earnings due*

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<sup>3</sup> For example, Tennessee law provides a judgment debtor with additional exemptions for dependent children. See Tenn. Code Ann. § 26-2-107.

*at the time of the service of the execution. The lien shall continue as to subsequent earnings until the total amount due upon the judgment and costs is paid or satisfied, or until the expiration of the payment period immediately prior to six (6) calendar months after service of the execution, whichever occurs first. The lien on subsequent earnings shall terminate sooner if the relationship between judgment debtor and garnishee is terminated or if the underlying judgment is vacated or modified.*

*(2) A lien obtained under this section shall have priority over any subsequent liens obtained under this section.*

Tenn. Code Ann. § 26-2-214(b) (emphasis added).<sup>4</sup>

This statutory provision functions as follows: A wage garnishment lien begins at the time of service of the execution; and the lien remains in effect until the judgment is satisfied, or until the expiration of the employer's payroll period immediately prior to six calendar months after service of the execution, whichever occurs first. *See* Tenn. Code Ann. § 26-2-214(b)(1). If a second wage garnishment is served upon the employer during the six-month period in which the earlier garnishment lien is in effect, the six-month duration of the second lien is measured from its time of service. Thus, the two liens would overlap, and according to (b)(2) of the statute, the first would have priority. *Tenn. Att'y Gen. Op. 95-072* (July 6, 1995).

Tennessee's garnishment law, though, does contain an exception to the general priority scheme set forth in Tenn. Code Ann. § 26-2-214(b) that requires multiple liens to run concurrently. Tennessee Code Annotated § 26-2-224(a) provides:

Notwithstanding any other provision of law or rule to the contrary, a writ of garnishment that is filed later in time than another such writ, and which deducts the maximum amount allowable by law from the debtor's wages, shall not run concurrently with the earlier filed writ with regard to the six-month time limit prescribed in § 26-2-214. Such later filed writ of garnishment shall not begin to run until the earlier filed writ's judgment has been satisfied, such earlier filed writ has expired, or such earlier filed writ has been stayed by installment motion as prescribed in § 26-2-216.

By its terms, this statutory exception applies only when a writ of garnishment is "filed later in time" to another writ of garnishment *and* the later-in-time writ of garnishment seeks to deduct the maximum amount allowable. This construction is commanded by the fact that the phrase "and which deducts the maximum amount allowable by law from the debtor's wages" modifies only the phrase "writ of garnishment that is filed later in time." *See General Care Corp. v. Olsen*, 705 S.W.2d 642, 648 (Tenn. 1986) (statutes are to be construed in their entirety and in accordance with

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<sup>4</sup> This provision addresses only the duration and priority of wage garnishment liens under Chapter 2 of Title 26 of the Tennessee Code. Other statutory schemes may affect the amount that may be deducted from a judgment debtor's earnings. For example, an assignment of income for child support "shall take priority over any other assignment or garnishment of wages as described in title 26, chapter 2 . . ." Tenn. Code Ann. § 36-5-501(j)(1). This Opinion discusses only wage garnishments under Chapter 2 of Title 26 of the Tennessee Code.

grammatical rules if possible). *See also Lind v. Beaman Dodge, Inc.*, 356 S.W.3d 889, 895 (Tenn. 2011) (when construing legislative enactments, a court's primary objective is to carry out the General Assembly's intent without broadening or restricting the statute beyond its intended scope).

Accordingly, this statutory exception merely requires the garnishee to examine the later-in-time writ of garnishment in a vacuum. If the later-in-time writ of garnishment seeks the maximum amount allowable, the exception applies, and the later-in-time writ of garnishment does not run concurrently with the earlier-filed writ. The later-in-time writ begins to run when the earlier writ terminates. In all other cases, the general priority scheme in Tenn. Code Ann. § 26-2-214 applies.

1. Therefore, even if an existing writ of garnishment is deducting the maximum amount allowable under Tenn. Code Ann. § 26-2-106, a later-filed writ would run concurrently with the first writ as long as the second writ seeks to deduct an amount that is less than the maximum allowable amount. The general priority scheme in Tenn. Code Ann. § 26-2-214 would apply; the statutory exception set forth in Tenn. Code Ann. § 26-2-224(a) would not apply. Accordingly, under this scenario, the second writ would run concurrently with the first writ, but the second writ would generate no payments to the judgment creditor as long as the first writ remains in effect because the first writ is deducting the maximum amount allowable. Federal law prohibits Tennessee law from being construed in a manner that would permit the garnishment of a greater amount of an employee's disposable earnings than that permitted under 15 U.S.C. § 1673. *See* 29 C.F.R. § 870.11(b)(2); *Crane*, 417 F.Supp. at 40; *Hodgson*, 349 F.Supp. at 1132-1133.

2. - 4. Similarly, if an existing writ of garnishment is deducting less than the maximum amount allowable under Tenn. Code Ann. § 26-2-106, a later-filed writ would run concurrently with the existing writ as long as the second writ seeks to deduct an amount that is less than the maximum allowable amount. The general priority scheme in Tenn. Code Ann. § 26-2-214 would apply. Under this scenario, the second writ could generate only up to the difference between the maximum allowable amount and the first writ. For instance, if Tenn. Code Ann. § 26-2-106(a) establishes the maximum allowable amount that may be garnished from a particular judgment debtor's disposable earnings at 25% and the first writ is garnishing 15% of the debtor's disposable earnings, the second writ could garnish only 10%. Once the first writ of garnishment is satisfied or expires, though, the second writ adjusts upward, as long as the amount being garnished does not exceed 25%. Again, federal law prohibits Tennessee law from being construed in a manner that would permit the garnishment of a greater amount of an employee's disposable earnings than permitted under 15 U.S.C. § 1673. *See* 29 C.F.R. § 870.11(b)(2); *Crane*, 417 F.Supp. at 40; *Hodgson*, 349 F.Supp. at 1132-1133.

5. In the above scenario, adjusting the second writ of garnishment upward does not alter when the six-month time period prescribed in Tenn. Code Ann. § 26-2-114 begins. The lien created by the second writ would begin at the time of its service. *See* Tenn. Code Ann. § 26-2-214(b)(1).

HERBERT H. SLATERY III  
Attorney General and Reporter

ANDRÉE SOPHIA BLUMSTEIN  
Solicitor General

LAURA T. KIDWELL  
Senior Assistant Attorney General

Requested by:

The Honorable Becky Massey  
State Senator  
Cordell Hull Building, Suite 776  
425 5<sup>th</sup> Avenue North  
Nashville, Tennessee 37243