

## **INCOME EXECUTION**

An income execution (also known as a garnishment) is another manner of collecting a money judgment. When a money judgment is rendered in favor of one party and the judgment debtor fails to pay voluntarily, the judgment creditor may enforce his judgment with an income execution against a source of the debtor's income. This manner of judgment collection in effect gives the judgment debtor the choice of paying the Sheriff directly or having a portion of some income (usually his salary) deducted and remitted to the Sheriff.

## **CONTENTS OF AN INCOME EXECUTION**

Only an attorney for the judgment creditor as officer of the court or the clerk of the court in the county where the judgment was rendered may issue an income execution. A properly completed income execution will contain the following:

- A. The name and address of the person from whom the judgment debtor is receiving money;
- B. The amount of money;
- C. The frequency of its payment;
- D. The amount of the installments to be collected; and
- E. A notice to the defendant that if he does not commence paying immediately, the person from whom he is receiving income will be served.

## **INCOME SUBJECT TO COLLECTION**

An income execution is effective against the earnings of a judgment debtor defined as: compensation paid or payable for personal services, including wages, salary, commission, bonuses, and periodic payments of a pension or retirement program, and disposable earnings, defined as that part of the earnings of any individual remaining after the deduction from those earnings of any amount required by law to be withheld.

CPLR §5205(d) provides that income from certain sources is exempt from garnishment to satisfy a money judgment except as specifically ordered by a court. Payments made to a judgment debtor from certain individual retirements accounts (IRA), or part of a Keogh (HR-10), retirement, or other qualified plan of the kind specified in CPLR §5205(c)(2) are exempt.

An income execution may direct that installments from a judgment debtor's income of not more than 10% of the income be withheld and paid to the Sheriff, but no amount may be withheld for any week unless the judgment debtor's disposable earnings for that week exceed thirty (30) times the federal minimum hourly wage in effect at the time the earnings are payable.

Further, the amount withheld from the judgment debtor's earnings for any week may not exceed 25% of the judgment debtor's disposable earnings for that week or the amount by which the disposable earnings of the judgment debtor for that week exceed thirty (30) times the federal minimum hourly wage in effect at the time the earnings are payable, whichever is less. Where the earnings of the judgment debtor are also subject to deduction for alimony, support or maintenance for family members pursuant to CPLR §5241 or §5242, the amount withheld pursuant to the income execution may not exceed the amount by which 25% of the disposable earnings of the judgment debtor for that week exceeds the amount deducted from the judgment debtor's earnings, in accordance with CPLR §5241 and §5242.

Please refer to the following chart and CPLR §5231 to determine the proper amount to withhold in an income execution:

<b>Where Disposable Income is:</b>	<b>Amount to Deduct:</b>
30 times federal minimum wage or less	No deduction
More than 30 times and less than 40 times federal minimum wage	The lesser of the excess of 30 times the federal minimum wage in disposable earnings or 10% of gross earnings
40 times the federal minimum wage or more	The lesser of 25% of disposable earnings or 10% of gross earnings

A judgment creditor or debtor may move the civil court for an order modifying an income execution.