
Coates' Canons Blog: Revisiting the New Regulations for Bank Attachments

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[Update: In 2013 the federal government issued new regulations concerning this issue. See this blog post for more details.]

Remember those new federal regulations concerning the attachment and garnishment of bank accounts that contain exempt federal benefits? As I blogged earlier, the regulations took effect on May 1. But based on new guidance issued by the feds, it appears these regulations will *not* apply to state and local tax attachments and garnishments.

Of course, not all banks will interpret the regulations similarly. And the regulations may yet change after another public comment period that ends later this month.

Confused? Justly so. Here's the situation as I understand it. The new regulations cover only garnishments that result from "a writ, order, notice, summons, judgment, or similar written instruction issued by a court or a State child support enforcement agency, including a lien arising by operation of law for overdue child support, to effect a garnishment against a debtor." In North Carolina, bank account garnishments for unpaid local and state taxes occur *without* the need for a court order. However, under NCGS 105-321 the orders of collection issued by governing boards to tax collectors have "the full force and effect of a judgment and execution against the taxpayers' real and personal property." In other words, an order of collection is the equivalent of a court order in North Carolina. Meaning the conservative assumption was that the new regulations would apply to local tax garnishments to the same extent they applied to garnishments resulting from a court order.

That assumption was incorrect, according to Natalie Diana, a senior counsel for the U.S. Treasury Department. Ms. Diana reports that the most popular question her agency has received regarding the new regulations is whether they apply to tax garnishments. In response to these questions, the Treasury Department is advising banks that the new regulations do not cover any type of garnishment that is issued without a court order, other than the child support garnishments that specifically identified in the regulation's definition of "garnishment order." Under this interpretation, banks are not required to apply the new "lookback" procedure to North Carolina tax garnishments.

Regardless, some banks still may choose to apply the new procedure to all garnishments. That may be good news for tax collectors because it relieves them of the obligation to determine the existence and exempt status of federal benefits. But I think it's a risky approach for a bank.

The Machinery Act makes the bank, as garnishee, liable for any funds removed from the garnished account after receiving notice of the tax garnishment. The new federal regulations trump that state law by requiring banks to wait to freeze the account until after conducting the two-month "lookback" and absolving the banks of liability if the account holder withdraws money from the account between the notice date and the date of the lookback review. However, banks are protected by the federal regulations only for garnishments explicitly covered by those regulations. If a bank were to apply the lookback procedure to a state tax garnishment that is not covered by the new regulations, the bank could be held liable under the Machinery Act for any funds withdrawn after the bank received the garnishment notice but before it completed the lookback review.

With that risk in mind my bet is that most banks will *not* apply the lookback procedure to local and state tax garnishments. Or at least they'll stop doing so after they learn of the new guidance from the U.S. Treasury. What does that mean for local tax collectors?



It means that we'll be back where we started, once again relying on taxpayers to raise the issue of exempt federal benefits and negotiating with those taxpayers about how much, if any, of bank accounts that contain exempt benefits may be attached. But at least we now have some guidance on how to conduct those negotiations, courtesy of the new regulations that almost but not quite apply to tax garnishments. My advice is for tax collectors to begin relying on the regulation's two-month lookback period (described here) to resolve these disputes. Basically, a tax collector should garnish only those funds that exceed the amount of exempt benefits deposited in the account in the past two months.

Applying the new regulations' procedure makes sense not only because it is the best evidence of how the federal government (and likely the courts) believe the issue of exempt benefits should be resolved. It also makes sense because the new regulations are not yet final. They are actually "interim final rules" that are likely to be amended yet again after the most recent public comment period ends on May 24. Depending on the comments received, the regulations could be extended to cover tax garnishments.

Is that is a good idea? Or should the new regulations be ditched entirely? Tell the feds what you think here.

Hat tip to Linda Wiggins of Cleveland County for raising this important issue.

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