S T A T E O F N E W Y O R K

2859

2013-2014 Regular Sessions

I N A S S E M B L Y

January 18, 2013

Introduced by M. of A. GRAF, McDONOUGH, TENNEY -- read once and referred to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to noncompliance with an income execution order

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Paragraph 1 of subdivision (g) of section 5241 of the civil practice law and rules, as amended by chapter 398 of the laws of 1997, is amended to read as follows:

(1)(A) An employer or income payor served with an income execution shall commence deductions from income due or thereafter due to the debtor no later than the first pay period that occurs fourteen days after service of the execution, and shall remit payments to the creditor within seven business days of the date that the debtor is paid. Each payment remitted by an employer or income payor shall include, in addition to the identity and social security number of the debtor, the date and amount of each withholding of the debtor's income included in the payment. If the money due to the debtor consists of salary or wages and his or her employment is terminated by resignation or dismissal at any time after service of the execution, the levy shall thereafter be ineffective, and the execution shall be returned, unless the debtor is reinstated or re-employed within ninety days after such termination. An employer must notify the issuer promptly when the debtor terminates employment and provide the debtor's last address and name and address of the new employer, if known. Where the income is compensation paid or payable to the debtor for personal services, the amount of the deductions to be withheld shall not exceed the following:

(i) Where a debtor is currently supporting a spouse or dependent child other than the creditor, the amount of the deductions to be withheld shall not exceed fifty percent of the earnings of the debtor remaining after the deduction therefrom of any amounts required by law to be with-

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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held ("disposable earnings"), except that if any part of such deduction is to be applied to the reduction of arrears which shall have accrued more than twelve weeks prior to the beginning of the week for which such earnings are payable, the amount of such deduction shall not exceed fifty-five percent of disposable earnings.

(ii) Where a debtor is not currently supporting a spouse or dependent child other than the creditor, the amount of the deductions to be withheld shall not exceed sixty percent of the earnings of the debtor remaining after the deduction therefrom of any amounts required by law to be withheld ("disposable earnings"), except that if any part of such deduction is to be applied to the reduction of arrears which shall have accrued more than twelve weeks prior to the beginning of the week for which such earnings are payable, the amount of such deduction shall not exceed sixty-five percent of disposable earnings.

(B) AN EMPLOYER OR INCOME PAYOR SERVED WITH AN INCOME EXECUTION SHALL BE SERVED A NOTICE BY THE CREDITOR FOR EACH FAILURE TO WITHHOLD DEDUCTIONS FROM INCOME DUE OR THEREAFTER DUE TO THE DEBTOR. SUCH NOTICE SHALL STATE THE DATE PAYMENT WAS DUE UNDER SUBPARAGRAPH (A) OF THIS PARAGRAPH, THE DATE ON WHICH SUCH NOTICE WAS SERVED, WHETHER SUCH NOTICE CONCERNS A FIRST, OR SUBSEQUENT OFFENSE AND THE MONIES OWED IN PENALTY. IN CALCULATING THE PENALTY UNDER THIS SUBPARAGRAPH THE SUPPORT COLLECTION UNIT SHALL USE THE PENALTIES DESCRIBED IN SUBPARAGRAPH (D) OF PARAGRAPH TWO OF THIS SUBDIVISION AND SHALL AGGREGATE THE PENALTIES FOR EACH INSTANCE OF FAILURE TO WITHHOLD DEDUCTIONS OR TO REMIT PAYMENT TO THE UNIT.

S 2. Subparagraph (D) of paragraph 2 of subdivision (g) of section 5241 of the civil practice and rules, as amended by chapter 335 of the laws of 2006, is amended to read as follows:

(D) In addition to the remedies herein provided and as may be otherwise authorized by law, upon a finding by the family court that the employer or income payor failed to deduct or remit deductions as directed in the income execution, the court shall issue to the employer or income payor an order directing compliance and may direct the payment of a civil penalty not to exceed five hundred dollars for the first instance and one thousand dollars per instance for the second and subsequent instances of employer or income payor noncompliance. UPON A FINDING THAT THE CREDITOR HAS COMPLIED WITH THE NOTICE PROVISIONS OF SUBPARAGRAPH (B) OF PARAGRAPH ONE OF THIS SUBDIVISION, THE COURT SHALL IMPOSE A PENALTY AS DESCRIBED FOR EACH FAILURE TO WITHHOLD DEDUCTIONS OR REMIT PAYMENT TO THE UNIT; PROVIDED THAT SUCH PENALTIES SHALL NOT ACCRUE TO THE GOVERNMENT OF THE UNITED STATES OR THE GOVERNMENT OF THE STATE OF NEW YORK OR ITS POLITICAL SUBDIVISIONS. The penalty shall be paid to the creditor and may be enforced in the same manner as a civil judgment or in any other manner permitted by law.

S 3. This act shall take effect immediately.