STATE OF NEW YORK

5923

2021-2022 Regular Sessions

IN SENATE

March 23, 2021

Introduced by Sen. THOMAS -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, the banking law and the debtor and creditor law, in relation to exempting COVID-19 stimulus relief for individuals and families with children from money judgments

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Paragraph 2 of subdivision (l) of section 5205 of the civil practice law and rules, as amended by chapter 24 of the laws of 2009, is amended and a new subdivision (p) is added to read as follows:

2. For purposes of this article, "statutorily exempt payments" means any personal property exempt from application to the satisfaction of a money judgment under any provision of state or federal law. Such term shall include, but not be limited to, payments from any of the following sources: social security, including retirement, survivors' and disability benefits, supplemental security income or child support payments; veterans administration benefits; public assistance; workers' compensation; unemployment insurance; public or private pensions; railroad retirement; [~~and~~] black lung benefits**; and emergency relief funds**.

(p) Exemption for emergency relief funds. Any payments to individuals, including tax refunds, recovery rebates, refundable tax credits, and any advances of any tax credits, under the federal Families First Coronavirus Response Act (FFCRA), Coronavirus Aid, Relief, and Economic Security Act of 2020 (CARES Act), Consolidated Appropriations Act of 2021, and American Rescue Plan Act of 2021 (ARPA), except payments levied as of the effective date, are exempt from application to the satisfaction of a money judgment.

§ 2. Subdivision (e) of section 5222 of the civil practice law and rules, as amended by chapter 575 of the laws of 2008, is amended to read as follows:

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

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(e) Content of notice. The notice required by subdivision (d) of this section shall be in substantially the following form and may be included in the restraining notice:

NOTICE TO JUDGMENT DEBTOR OR OBLIGOR

Money or property belonging to you may have been taken or held in order to satisfy a judgment or order which has been entered against you. Read this carefully.

YOU MAY BE ABLE TO GET YOUR MONEY BACK

State and federal laws prevent certain money or property from being taken to satisfy judgments or orders. Such money or property is said to be "exempt". The following is a partial list of money which may be exempt:

1. Supplemental security income, (SSI);
2. Social security;
3. Public assistance (welfare);
4. Spousal support, maintenance (alimony) or child support;
5. Unemployment benefits;
6. Disability benefits;
7. Workers' compensation benefits;
8. Public or private pensions;
9. Veterans benefits;
10. Ninety percent of your wages or salary earned in the last sixty days;
11. Twenty-five hundred dollars of any bank account containing statutorily exempt payments that were deposited electronically or by direct deposit within the last forty-five days, including, but not limited to, your social security, supplemental security income, veterans benefits, public assistance, workers' compensation, unemployment insurance, public or private pensions, railroad retirement benefits, black lung benefits, or child support payments;
12. Railroad retirement; [~~and~~]
13. Black lung benefits**; and**
14. COVID-19 stimulus relief for individuals and families with children.

If you think that any of your money that has been taken or held is exempt, you must act promptly because the money may be applied to the judgment or order. If you claim that any of your money that has been taken or held is exempt, you may contact the person sending this notice.

Also, YOU MAY CONSULT AN ATTORNEY, INCLUDING ANY FREE LEGAL SERVICES ORGANIZATION IF YOU QUALIFY. You can also go to court without an attorney to get your money back. Bring this notice with you when you go. You are allowed to try to prove to a judge that your money is exempt from collection under New York civil practice law and rules, sections fifty-two hundred twenty-two-a, fifty-two hundred thirty-nine and fifty-two hundred forty. If you do not have a lawyer, the clerk of the court may give you forms to help you prove your account contains exempt money that the creditor cannot collect. The law (New York civil practice law and rules, article four and sections fifty-two hundred thirty-nine and fifty-two hundred forty) provides a procedure for determination of a claim to an exemption.

§ 3. Paragraph 4 of subdivision (b) of section 5222-a of the civil practice law and rules, as added by chapter 575 of the laws of 2008, is amended to read as follows:

4. Content of exemption notice and exemption claim form. a. The exemption notice shall be in the following form:

"EXEMPTION NOTICE
as required by New York Law

YOUR BANK ACCOUNT IS RESTRAINED OR "FROZEN"

The attached Restraining Notice or notice of Levy by Execution has been issued against your bank account. You are receiving this notice because a creditor has obtained a money judgment against you, and one or more of your bank accounts has been restrained to pay the judgment. A money judgment is a court's decision that you owe money to a creditor. You should be aware that FUTURE DEPOSITS into your account(s) might also be restrained if you do not respond to this notice.

You may be able to "vacate" (remove) the judgment. If the judgment is vacated, your bank account will be released. Consult an attorney (including free legal services) or visit the court clerk for more information about how to do this.

Under state and federal law, certain types of funds cannot be taken from your bank account to pay a judgment. Such money is said to be "exempt."

DOES YOUR BANK ACCOUNT CONTAIN ANY OF THE FOLLOWING TYPES OF FUNDS?

1. Social security;
2. Social security disability (SSD);
3. Supplemental security income (SSI);
4. Public assistance (welfare);
5. Income earned while receiving SSI or public assistance;
6. Veterans benefits;
7. Unemployment insurance;
8. Payments from pensions and retirement accounts;
9. Disability benefits;
10. Income earned in the last 60 days (90% of which is exempt);
11. Workers' compensation benefits;
12. Child support;
13. Spousal support or maintenance (alimony);
14. Railroad retirement; [~~and/or~~]
15. Black lung benefits**; and/or**
16. COVID-19 stimulus relief for individuals and families with children.

If YES, you can claim that your money is exempt and cannot be taken. To make the claim, you must

(a) complete the EXEMPTION CLAIM FORM attached;

(b) deliver or mail the form to the bank with the restrained or "frozen" account; and

(c) deliver or mail the form to the creditor or its attorney at the address listed on the form.

You must send the forms within 20 DAYS of the postmarked date on the envelope holding this notice. You may be able to get your account released faster if you send to the creditor or its attorney written proof that your money is exempt. Proof can include an award letter from the government, an annual statement from your pension, pay stubs, copies of checks, bank records showing the last two months of account activity, or other papers showing that the money in your bank account is exempt. If you send the creditor's attorney proof that the money in your account is exempt, the attorney must release that money within seven days. You do not need an attorney to make an exemption claim using the form."

b. The exemption claim form shall be in the following form:

NAME OF COURT, NAME OF COUNTY

----------x

PLAINTIFF/PETITIONER/CLAIMANT INDEX NO.

V.

DEFENDANT/RESPONDENT EXEMPTION CLAIM FORM

----------x

NAME AND ADDRESS OF JUDGMENT CREDITOR OR ATTORNEY (To be completed by judgment creditor or attorney)
ADDRESS
A_____
_____

NAME AND ADDRESS OF FINANCIAL INSTITUTION (To be completed by judgment creditor or attorney)
ADDRESS
B_____
_____

Directions: To claim that some or all of the funds in your account are exempt, complete both copies of this form, and make one copy for yourself. Mail or deliver one form to ADDRESS A and one form to ADDRESS B within twenty days of the date on the envelope holding this notice. **If you have any documents, such as an award letter, an annual statement from your pension, paystubs, copies of checks or bank records showing the last two months of account activity, include copies of the documents with this form. Your account may be released more quickly.

_____

I state that my account contains the following type(s) of funds (check all that apply):

____Social security
____Social security disability (SSD)
____Supplemental security income (SSI)
____Public assistance
____Wages while receiving SSI or public assistance
____Veterans benefits
____Unemployment insurance
____Payments from pensions and retirement accounts
____Income earned in the last 60 days (90% of which is exempt)
____Child support
____Spousal support or maintenance (alimony)
____Workers' compensation
____Railroad retirement or black lung benefits
____ COVID-19 stimulus relief for individuals and families with children
____Other (describe exemption):_____

I request that any correspondence to me regarding my claim be sent to the following address:

_____
(FILL IN YOUR COMPLETE ADDRESS)

I certify under penalty of perjury that the statement above is true to the best of my knowledge and belief.

_____
DATE SIGNATURE OF JUDGMENT DEBTOR

§ 4. Subdivision 1 of section 9-g of the banking law, as added by chapter 10 of the laws of 1980, is amended to read as follows:

1. **(a)** No banking institution shall assert, claim or exercise any right of set off against any deposit account into which social security or supplemental security income payments are deposited pursuant to an agreement with such banking institution which provides that such payments be deposited directly into such deposit account without presentation to the depositor at the time of deposit.

(b) No banking institution shall assert, claim or exercise any right of set off against any payments referred to in subdivision (p) of section fifty-two hundred five of the civil practice law and rules.

§ 5. Section 3 of the debtor and creditor law is amended by adding a new fifth undesignated paragraph to read as follows:

The right of any person to payments, including tax refunds, recovery rebates, refundable tax credits, and any advances of any tax credits, under the federal Families First Coronavirus Response Act (FFCRA), Coronavirus Aid, Relief, and Economic Security Act of 2020 (CARES Act), Consolidated Appropriations Act of 2021, and American Rescue Plan Act of 2021 (ARPA) shall not be transferable or assignable, at law or in equity.

§ 6. This act shall take effect immediately.