

§ 5231. Income execution. (a) Form. An income execution shall specify, in addition to the requirements of subdivision (a) of section 5230: (i) the name and address of the person or entity from whom the judgment debtor is receiving or will receive money; (ii) the amount of money, the frequency of its payment and the amount of the installments to be collected therefrom; and (iii) shall contain a notice to the judgment debtor that he or she shall commence payment of the installments specified to the sheriff forthwith and that, upon his or her default, the execution will be served upon the person or entity from whom he or she is receiving or will receive money. Provided, however, that if a judgment creditor issues an amended execution pursuant to section five thousand two hundred thirty of this article because the applicable interest rate changes pursuant to section five thousand four of this chapter, the income execution need only specify paragraphs (i) and (ii) of this subdivision.

(b) Issuance. Where a judgment debtor is receiving or will receive money from any source, an income execution for installments therefrom of not more than ten percent thereof may be issued and delivered to the sheriff of the county in which the judgment debtor resides or, where the judgment debtor is a non-resident, the county in which he is employed; provided, however, that (i) no amount shall be withheld from the judgment debtor's earnings pursuant to an income execution for any week unless the disposable earnings of the judgment debtor for that week exceed the greater of thirty times the federal minimum hourly wage prescribed in the Fair Labor Standards Act of 1938 or thirty times the state minimum hourly wage prescribed in section six hundred fifty-two of the labor law as in effect at the time the earnings are payable; (ii) the amount withheld from the judgment debtor's earnings pursuant to an income execution for any week shall not exceed twenty-five percent of the disposable earnings of the judgment debtor for that week, or, the amount by which the disposable earnings of the judgment debtor for that week exceed the greater of thirty times the federal minimum hourly wage prescribed by the Fair Labor Standards Act of 1938 or thirty times the state minimum hourly wage prescribed in section six hundred fifty-two of the labor law as in effect at the time the earnings are payable, whichever is less; (iii) if the earnings of the judgment debtor are also subject to deductions for alimony, support or maintenance for family

members or former spouses pursuant to section five thousand two hundred forty-one or section five thousand two hundred forty-two of this article, the amount withheld from the judgment debtor's earnings pursuant to this section shall not exceed the amount by which twenty-five percent of the disposable earnings of the judgment debtor for that week exceeds the amount deducted from the judgment debtor's earnings in accordance with section five thousand two hundred forty-one or section five thousand two hundred forty-two of this article; and (iv) no amount shall be imposed in judgments arising from a medical debt action brought by a hospital licensed under article twenty-eight of the public health law or a health care professional authorized under title eight of the education law. Nothing in this section shall be construed to modify, abrogate, impair, or affect any exemption from the satisfaction of a money judgment otherwise granted by law.

(c) Definition of earnings and disposable earnings. (i) As used herein earnings means 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.

(ii) As used herein disposable earnings means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld.

(d) Service upon debtor; first service by sheriff. Within twenty days after an income execution is delivered to the sheriff, the sheriff shall serve a copy of it upon the judgment debtor, in the same manner as a summons or, in lieu thereof, by certified mail return receipt requested provided an additional copy is sent by regular mail to the debtor. If service is by mail as herein provided, the person effecting service shall retain the receipt together with a post office certificate of mailing as proof of such service. Provided, however, that if a judgment creditor issues an amended execution pursuant to section five thousand two hundred thirty of this article because the applicable interest rate changes pursuant to section five thousand four of this chapter, the sheriff shall serve a copy of the income execution within forty-five days after an income execution is delivered to the sheriff.

(e) Levy upon default or failure to serve debtor; second service by sheriff. If a judgment debtor fails to pay installments pursuant to an

income execution served upon him or her for a period of twenty days, or if the sheriff is unable to serve an income execution upon the judgment debtor within twenty days after the execution is delivered to the sheriff, the sheriff shall levy upon the money that the judgment debtor is receiving or will receive by serving a copy of the income execution, indorsed to indicate the extent to which paid installments have satisfied the judgment, upon the person or entity from whom the judgment debtor is receiving or will receive money. The income execution shall be served personally within any county in which the person or entity from whom the judgment debtor is receiving or will receive money has an office or place of business in the same manner as a summons, or by certified mail return receipt requested, except that such service shall not be made by delivery to a person authorized to receive service of summons solely by a designation filed pursuant to a provision of law other than rule 318.

(f) Withholding of installments. A person served with an income execution shall withhold from money then or thereafter due to the judgment debtor installments as provided therein and pay them over to the sheriff. If such person shall fail to so pay the sheriff, the judgment creditor may commence a proceeding against him for accrued installments. If the money due to the judgment debtor consists of salary or wages and his 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.

(g) Statement on income execution. Any income execution delivered to the sheriff on or after the effective date of this act shall contain the following statement:

THIS INCOME EXECUTION DIRECTS THE WITHHOLDING OF UP TO TEN PERCENT OF THE JUDGMENT DEBTOR'S GROSS INCOME. IN CERTAIN CASES, HOWEVER, STATE OR FEDERAL LAW DOES NOT PERMIT THE WITHHOLDING OF THAT MUCH OF THE JUDGMENT DEBTOR'S GROSS INCOME. THE JUDGMENT DEBTOR IS REFERRED TO NEW YORK CIVIL PRACTICE LAW AND RULES § 5231 AND 15 UNITED STATES CODE § 1671 ET SEQ.

I. LIMITATIONS ON THE AMOUNT THAT CAN BE WITHHELD.

A. AN INCOME EXECUTION FOR INSTALLMENTS FROM A JUDGMENT DEBTOR'S GROSS

INCOME CANNOT EXCEED TEN PERCENT (10%) OF THE JUDGMENT DEBTOR'S GROSS INCOME.

B. IF A JUDGMENT DEBTOR'S WEEKLY DISPOSABLE EARNINGS ARE LESS THAN THIRTY (30) TIMES THE CURRENT FEDERAL MINIMUM WAGE (, PER HOUR), OR (), NO DEDUCTION CAN BE MADE FROM THE JUDGMENT DEBTOR'S EARNINGS UNDER THIS INCOME EXECUTION.

C. A JUDGMENT DEBTOR'S WEEKLY DISPOSABLE EARNINGS CANNOT BE REDUCED BELOW THE AMOUNT ARRIVED AT BY MULTIPLYING THIRTY (30) TIMES THE CURRENT FEDERAL MINIMUM WAGE (, PER HOUR), OR (), UNDER THIS INCOME EXECUTION.

D. IF DEDUCTIONS ARE BEING MADE FROM A JUDGMENT DEBTOR'S EARNINGS UNDER ANY ORDERS FOR ALIMONY, SUPPORT OR MAINTENANCE FOR FAMILY MEMBERS OR FORMER SPOUSES, AND THOSE DEDUCTIONS EQUAL OR EXCEED TWENTY-FIVE PERCENT (25%) OF THE JUDGMENT DEBTOR'S DISPOSABLE EARNINGS, NO DEDUCTION CAN BE MADE FROM THE JUDGMENT DEBTOR'S EARNINGS UNDER THIS INCOME EXECUTION.

E. IF DEDUCTIONS ARE BEING MADE FROM A JUDGMENT DEBTOR'S EARNINGS UNDER ANY ORDERS FOR ALIMONY, SUPPORT OR MAINTENANCE FOR FAMILY MEMBERS OR FORMER SPOUSES, AND THOSE DEDUCTIONS ARE LESS THAN TWENTY-FIVE PERCENT (25%) OF THE JUDGMENT DEBTOR'S DISPOSABLE EARNINGS, DEDUCTIONS MAY BE MADE FROM THE JUDGMENT DEBTOR'S EARNINGS UNDER THIS INCOME EXECUTION. HOWEVER, THE AMOUNT ARRIVED AT BY ADDING THE DEDUCTIONS FROM EARNINGS MADE UNDER THIS EXECUTION TO THE DEDUCTIONS MADE FROM EARNINGS UNDER ANY ORDERS FOR ALIMONY, SUPPORT OR MAINTENANCE FOR FAMILY MEMBERS OR FORMER SPOUSES CANNOT EXCEED TWENTY-FIVE PERCENT (25%) OF THE JUDGMENT DEBTOR'S DISPOSABLE EARNINGS.

NOTE: NOTHING IN THIS NOTICE LIMITS THE PROPORTION OR AMOUNT WHICH MAY BE DEDUCTED UNDER ANY ORDER FOR ALIMONY, SUPPORT OR MAINTENANCE FOR FAMILY MEMBERS OR FORMER SPOUSES.

II. EXPLANATION OF LIMITATIONS

DEFINITIONS:

DISPOSABLE EARNINGS

DISPOSABLE EARNINGS ARE THAT PART OF AN INDIVIDUAL'S EARNINGS LEFT AFTER DEDUCTING THOSE AMOUNTS THAT ARE REQUIRED BY LAW TO BE WITHHELD (FOR EXAMPLE, TAXES, SOCIAL SECURITY, AND UNEMPLOYMENT INSURANCE, BUT NOT DEDUCTIONS FOR UNION DUES, INSURANCE PLANS, ETC.).
GROSS INCOME

GROSS INCOME IS SALARY, WAGES OR OTHER INCOME, INCLUDING ANY AND ALL OVERTIME EARNINGS, COMMISSIONS, AND INCOME FROM TRUSTS, BEFORE ANY DEDUCTIONS ARE MADE FROM SUCH INCOME.

ILLUSTRATIONS REGARDING EARNINGS:

	AMOUNT TO PAY OR DEDUCT FROM EARNINGS UNDER THIS INCOME EXECUTION IS:
IF DISPOSABLE EARNINGS IS:	
(a) 30 TIMES FEDERAL MINIMUM WAGE () OR LESS	NO PAYMENT OR DEDUCTION ALLOWED
(b) MORE THAN 30 TIMES FEDERAL MINIMUM WAGE () AND LESS THAN 40 TIMES FEDERAL MINIMUM WAGE ()	THE LESSER OF: THE EXCESS OVER 30 TIMES THE FEDERAL MINIMUM WAGE () IN DISPOSABLE EARNINGS, or 10% OF GROSS EARNINGS
(c) 40 TIMES THE FEDERAL MINIMUM WAGE () OR MORE	THE LESSER OF: 25% OF DISPOSABLE EARNINGS OR 10% OF GROSS EARNINGS.

III. NOTICE: YOU MAY BE ABLE TO CHALLENGE THIS INCOME EXECUTION THROUGH THE PROCEDURES PROVIDED IN CPLR § 5231 (i) AND CPLR § 5240

IF YOU THINK THAT THE AMOUNT OF YOUR INCOME BEING DEDUCTED UNDER THIS INCOME EXECUTION EXCEEDS THE AMOUNT PERMITTED BY STATE OR FEDERAL LAW, YOU SHOULD ACT PROMPTLY BECAUSE THE MONEY WILL BE APPLIED TO THE JUDGMENT. IF YOU CLAIM THAT THE AMOUNT OF YOUR INCOME BEING DEDUCTED UNDER THIS INCOME EXECUTION EXCEEDS THE AMOUNT PERMITTED BY STATE OR FEDERAL LAW, YOU SHOULD CONTACT YOUR EMPLOYER OR OTHER PERSON PAYING YOUR INCOME. FURTHER, YOU MAY CONSULT AN ATTORNEY, INCLUDING LEGAL AID IF YOU QUALIFY. NEW YORK STATE LAW PROVIDES TWO PROCEDURES THROUGH WHICH AN INCOME EXECUTION CAN BE CHALLENGED:

CPLR § 5231(i) MODIFICATION. AT ANY TIME, THE JUDGMENT DEBTOR MAY MAKE A

MOTION TO A COURT FOR AN ORDER MODIFYING AN INCOME EXECUTION.
CPLR § 5240 MODIFICATION OR PROTECTIVE ORDER: SUPERVISION OF
ENFORCEMENT. AT ANY TIME, THE JUDGMENT DEBTOR MAY MAKE A MOTION TO A
COURT FOR AN ORDER DENYING, LIMITING, CONDITIONING, REGULATING,
EXTENDING OR MODIFYING THE USE OF ANY POST-JUDGMENT ENFORCEMENT
PROCEDURE, INCLUDING THE USE OF INCOME EXECUTIONS.

(h) Levy upon money payable by municipal corporation or the state. The levy of an income execution served upon a municipal or public benefit corporation, or board of education, shall be effective fifteen days after such service. Such an execution shall specify the title or position of the judgment debtor and the bureau, office, department or subdivision in which he is employed and the municipal or public benefit corporation, or board of education, shall be entitled to a fee of two dollars upon being served. A levy upon money payable directly by a department of the state, or by an institution under its jurisdiction, shall be made by serving the income execution upon the head of the department, or upon a person designated by him, at the office of the department in Albany; a levy upon money payable directly upon the state comptroller's warrant, or directly by a state board, commission, body or agency which is not within any department of the state, shall be made by serving the income execution upon the state department of audit and control at its office in Albany. Service at the office of a department of the state in Albany may be made by the sheriff of any county by registered or certified mail, return receipt requested.

(i) Modification. At any time, the judgment creditor or the judgment debtor may move, upon such notice as the court may direct, for an order modifying an income execution.

(j) Priority; delivery to another sheriff. Two or more income executions issued against the same judgment debtor, specifying the same person or entity from whom the money is received and delivered to the same or different enforcement officers shall be satisfied out of that money in the order in which the executions are delivered to an officer authorized to levy in the county, town or city in which the debtor resides or, in any county in which the person or entity from whom the judgment debtor is receiving or will receive money has an office or place of business, or where the judgment debtor is a non-resident, the county, town or city in which he or she is employed. If the applicable

interest rate changes pursuant to section five thousand four of this chapter while an execution is ongoing, the issuance of the amended execution pursuant to section five thousand two hundred thirty of this article shall retain the priority of the ongoing execution. If an income execution delivered to a sheriff is returned unsatisfied in whole or in part because the sheriff to whom it was delivered is unable to find within the county the person or entity from whom the judgment debtor is receiving or will receive money, the execution may be delivered to the sheriff of any county in which such person or entity has an office or place of business. The priority of an income execution delivered to a sheriff within twenty days after its return by each previous sheriff shall be determined by the time of delivery to the first sheriff.

(k) Accounting by sheriff. It shall be the duty of the sheriff to whom such income execution shall be delivered, from time to time and at least once every ninety days from the time a levy shall be made thereunder, to account for and pay over to the person entitled thereto all monies collected thereon, less his lawful fees and expenses for collecting the same. Provided, however, that if a judgment creditor issues an amended execution pursuant to section five thousand two hundred thirty of this article because the applicable interest rate changes pursuant to section five thousand four of this chapter, any money collected in excess of the judgment amount shall be promptly returned to the debtor.