

§ 5232. Levy upon personal property. (a) Levy by service of execution. The sheriff or support collection unit designated by the appropriate social services district shall levy upon any interest of the judgment debtor or obligor in personal property not capable of delivery, or upon any debt owed to the judgment debtor or obligor, by serving a copy of the execution upon the garnishee, in the same manner as a summons, 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. In the event the garnishee is the state of New York, such levy shall be made in the same manner as an income execution pursuant to section 5231 of this article. A levy by service of the execution is effective only if, at the time of service, the person served owes a debt to the judgment debtor or obligor or he or she is in the possession or custody of property not capable of delivery in which he or she knows or has reason to believe the judgment debtor or obligor has an interest, or if the judgment creditor or support collection unit has stated in a notice which shall be served with the execution that a specified debt is owed by the person served to the judgment debtor or obligor or that the judgment debtor or obligor has an interest in specified property not capable of delivery in the possession or custody of the person served. All property not capable of delivery in which the judgment debtor or obligor is known or believed to have an interest then in or thereafter coming into the possession or custody of such a person, including any specified in the notice, and all debts of such a person, including any specified in the notice, then due or thereafter coming due to the judgment debtor or obligor, shall be subject to the levy. The person served with the execution shall forthwith transfer all such property, and pay all such debts upon maturity, to the sheriff or to the support collection unit and execute any document necessary to effect the transfer or payment. After such transfer or payment, property coming into the possession or custody of the garnishee, or debt incurred by him, or her shall not be subject to the levy. Until such transfer or payment is made, or until the expiration of ninety days after the service of the execution upon him or her, or of such further time as is provided by any order of the court served upon him or her, whichever event first occurs, the garnishee is forbidden to make or suffer any sale, assignment or transfer of, or any

interference with, any such property, or pay over or otherwise dispose of any such debt, to any person other than the sheriff or the support collection unit, except upon direction of the sheriff or the support collection unit or pursuant to an order of the court. At the expiration of ninety days after a levy is made by service of the execution, or of such further time as the court, upon motion of the judgment creditor or support collection unit has provided, the levy shall be void except as to property or debts which have been transferred or paid to the sheriff or to the support collection unit or as to which a proceeding under sections 5225 or 5227 has been brought. A judgment creditor who, or support collection unit which, has specified personal property or debt to be levied upon in a notice served with an execution shall be liable to the owner of the property or the person to whom the debt is owed, if other than the judgment debtor or obligor, for any damages sustained by reason of the levy.

(b) Levy by seizure. The sheriff or support collection unit of the appropriate social services district shall levy upon any interest of the judgment debtor in personal property capable of delivery by taking the property into custody without interfering with the lawful possession of pledgees and lessees. The sheriff or support collection unit shall forthwith serve a copy of the execution in the manner prescribed by subdivision (a) upon the person from whose possession or custody the property was taken.

(c) Notice to judgment debtor or obligor. Where an execution does not state that a notice in the form presented by subdivision (e) of section fifty-two hundred twenty-two of this chapter has been duly served upon the judgment debtor or obligor within a year, the sheriff or support collection unit shall, not later than four days after service of the execution upon any garnishee, mail by first class mail, or personally deliver, to each judgment debtor or obligor who is a natural person, a copy of the execution together with such notice. The sheriff or support collection unit shall specify on the notice to judgment debtor or obligor the name and address of the judgment creditor or the judgment creditor's attorney or the support collection unit. The notice shall be mailed to the judgment debtor or obligor at his or her residence address; and in the event such mailing is returned as undeliverable by the post office, or if the residence address of the judgment debtor or

obligor is unknown, then to the judgment debtor or obligor in care of the place of employment of the judgment debtor or obligor if known, in an envelope bearing the legend "personal and confidential" and not indicating on the outside thereof, by the return address or otherwise, that the communication is from a sheriff or support collection unit or concerns a debt; or if neither the residence nor the place of employment of the judgment debtor or obligor is known, then to the judgment debtor or obligor at any other known address.

(d) For the purposes of this section "obligor" shall mean an individual other than a judgment debtor obligated to pay support, alimony or maintenance pursuant to an order of a court of competent jurisdiction who has been found to be in "default" of such order as such term is defined in paragraph seven of subdivision (a) of section fifty-two hundred forty-one of this article and the establishment of such default has been subject to the procedures established for the determination of a "mistake of fact" for income executions pursuant to subdivision (e) of section fifty-two hundred forty-one of this article, except that for the purposes of this section only, a default shall not be founded upon retroactive child support obligations as defined in paragraph (c) of subdivision one of section four hundred forty and subdivision one of section two hundred forty, and paragraph b of subdivision nine of section two hundred thirty-six of the domestic relations law.

(e) Notwithstanding the provisions of subdivision (a) of this section, if direct deposit or electronic payments reasonably identifiable as statutorily exempt payments as defined in paragraph two of subdivision (l) of section fifty-two hundred five of this article were made to the judgment debtor's account during the forty-five day period preceding the date that the execution notice was served on the garnishee banking institution, then a garnishee banking institution shall not execute, levy, attach, garnish or otherwise restrain or encumber two thousand five hundred dollars in the judgment debtor's account. Notwithstanding the provisions of subdivision (a) of this section, an execution shall not apply to an amount equal to or less than the greater of two hundred forty times the federal minimum hourly wage prescribed in the Fair Labor Standards Act of 1938 or two hundred forty 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 (as published on the websites of the United States department of labor and the state department of labor) except such part thereof as a court determines to be unnecessary for the reasonable requirements of the judgment debtor and his or her dependents. This amount shall be equal to seventeen hundred sixteen dollars on the effective date of this subdivision, and shall rise to seventeen hundred forty dollars on July twenty-fourth, two thousand nine, and shall rise thereafter in tandem with the minimum wage. Nothing in this subsection shall be construed to limit a banking institution's right or obligation to restrain, remove or execute upon such funds from the judgment debtor's account if required by 42 U.S.C. § 659 or 38 U.S.C. § 5301 or to enforce a child support, spousal support, alimony or maintenance obligation or by a court order. Nothing in this subdivision shall alter the exempt status of funds that are protected from execution, levy, attachment, garnishment, or other legal process, under section fifty-two hundred five of this article or under any other provision of state or federal law, or affect the right of a judgment debtor to claim such exemption.

(f) Fee for banking institution's costs in processing a levy by service of execution when account contains only exempt, direct deposit or electronic payments. In the event that a banking institution cannot lawfully garnish or execute upon on a judgment debtor's banking institution account or funds are garnished or executed upon in violation of any section of this chapter, the banking institution shall charge no fee to the judgment debtor regardless of any terms of agreement, or schedule of fees, or other contract between the judgment debtor and the banking institution.

(g) Where a levy by execution pursuant to this section is made against a natural person's account at a banking institution, the sheriff or support collection unit shall serve the banking institution with the exemption notice and two exemption claim forms prescribed in subdivision (b) of section fifty-two hundred twenty-two-a of this article. The notice and forms must be served upon the banking institution simultaneously with the execution and section fifty-two hundred twenty-two-a of this article shall apply, and all procedures stated therein must be followed. The banking institution shall not transfer the funds in the account to the sheriff or support collection unit for at

least twenty-seven days. If, after thirty days, the banking institution has not received an exemption claim form from the judgment debtor, or a court order directing otherwise, it may thereafter transfer the funds to the sheriff or support collection unit.

(h) The provisions of subdivisions (e), (f) and (g) of this section do not apply when the state of New York, or any of its agencies or municipal corporations is the judgment creditor, or if the debt enforced is for child support, spousal support, maintenance or alimony provided that in those instances the execution contains a legend at the top thereof, above the caption, in sixteen point bold type with the following language: "The judgment creditor is the state of New York, or any of its agencies or municipal corporations, AND/OR the debt enforced is for child support, spousal support, maintenance or alimony."