**§ 5242. Income deduction order for support enforcement.** (a) Upon application of a creditor, for good cause shown, and upon such terms as justice may require, the court may correct any defect, irregularity, error or omission in an income execution for support enforcement issued pursuant to section 5241 of this article.

(b) Upon application of a creditor, for good cause shown, the court may enter an income deduction order for support enforcement. In determining good cause, the court may take into consideration evidence of the degree of such debtor's past financial responsibility, credit references, credit history, and any other matter the court considers relevant in determining the likelihood of payment in accordance with the order of support. Proof of default establishes a prima facie case against the debtor, which can be overcome only by proof of the debtor's inability to make the payments. Unless the prima facie case is overcome, the court shall enter an income deduction order for support enforcement pursuant to this section.

(c) When the court enters an order of support on behalf of persons other than those in receipt of public assistance or in receipt of services pursuant to section one hundred eleven-g of the social services law, or registers pursuant to article five-B of the family court act an order of support which has been issued by a foreign jurisdiction and which is not to be enforced pursuant to title six-A of article three of the social services law, where the court determines that the debtor has income that could be subject to an income deduction order, the court shall issue an income deduction order to obtain payment of the order at the same time it issues or registers the order. The court shall enter the income deduction order unless the court finds and sets forth in writing (i) the reasons that there is good cause not to require immediate income withholding; or (ii) that an agreement providing for an alternative arrangement has been reached between the parties. Such agreement may include a written agreement or an oral stipulation, made on the record, that results in a written order. For purposes of this subdivision, good cause shall mean substantial harm to the debtor. The absence of an arrearage or the mere issuance of an income deduction order shall not constitute good cause. When the court determines that there is good cause not to issue an income deduction order immediately or when the parties agree to an alternative arrangement as provided in

this subdivision, the court shall state expressly in the order of support the basis for its decision.

(d) In entering the income deduction order, the court shall use the form for income withholding promulgated by the office of temporary and disability assistance for this purpose, which form shall include the necessary information and directions to ensure the characterization of the income deduction order as an income withholding notice as described and required by subsection (b) of section six hundred sixty-six of title forty-two of the United States Code; provided, however, that where the court enters an order for spousal support only, an alternate spousal support form for income withholding promulgated by the office of temporary and disability assistance may be used but is not required. The court shall serve or cause to be served a copy of the income deduction order on the employer or income payor and transmit copies of such order to the parties; and, in addition, where the income deduction order is for child support or combined child and spousal support, to the state disbursement unit established in this state in accordance with section six hundred fifty-four-b of title forty-two of the United States Code.

(e) An employer or income payor served with an income deduction order entered pursuant to this section shall commence deductions from the income due or thereafter due to the debtor no later than the first pay period that occurs fourteen days after service of the income deduction order, and shall make payments payable to and remit such payments to the state disbursement unit if the deductions are for child or combined child and spousal support, or to the creditor if the deductions are for spousal support only, within seven business days of the date that the debtor is paid. Each payment remitted by the employer or income payor shall include the information as instructed on the income deduction order. The amount remitted by the employer or income payor shall be as set forth in the income deduction order including the additional amount that shall be ordered by the court and applied to the reduction of arrears, if any, unless such deduction is otherwise limited by subdivision (f) of this section.

(f) An employer or income payor shall be liable to the creditor for failure to deduct the amounts specified in the income deduction order, provided however that deduction by the employer or income payor of the amounts specified shall not relieve the debtor of the underlying

obligation of support. If an employer or income payor shall fail to so pay the state disbursement unit or, if a spousal support only payment the creditor, the creditor may commence a proceeding against the employer or income payor for accrued deductions, together with interest and reasonable attorney's fees. If the debtor's employment is terminated by resignation or dismissal at any time after service of the income deduction order, the order shall cease to have force and effect 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 must provide the debtor's last address and the name and address of the debtor's new employer, if known. An income payor must notify the issuer when the debtor no longer receives income and must provide the debtor's last address and the name and address of the debtor's new employer, if known. Where the income is compensation paid or payable to the debtor for personal services, the amount withheld by the employer shall not exceed the following:

(i) Where the debtor currently is supporting a spouse or dependent child other than the creditor's dependent child, the amount 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 withheld ("disposable earnings"), except that if any part of the 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 withheld shall not exceed fifty-five percent of disposable earnings.

(ii) Where the debtor currently is not supporting a spouse or dependent child other than the creditor's dependent child, the amount 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 the 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 withheld shall not exceed sixty-five percent of disposable earnings.

(g) An order pursuant to this section shall take priority over any other assignment, levy or process. If an employer or income payor is served with more than one income deduction order pertaining to a single

employee pursuant to this section, or with an order issued pursuant to this section and also an execution pursuant to section 5241 of this article, and if the combined total amount of the income to be withheld exceeds the limits set forth in subdivision (f) of this section, the employer or income payor shall withhold the maximum amount permitted thereby and pay to each creditor that proportion thereof which such creditor's claim bears to the combined total.

(h) An employer or income payor shall be liable to the creditor for failure to deduct the amounts specified, provided however that deduction of the amounts specified by the employer or income payor shall not relieve the debtor of the underlying obligation of support.

(i) A creditor shall not be required to issue process under section 5241 of this article prior to obtaining relief pursuant to this section.