

Collection Activity – Administrative Judgments

April 2, 2015

Proposal

Administrative judgments would allow the Department of Taxes to garnish wages or levy a bank account (asset attachment) for a delinquent taxpayer through an internal process.

When collecting on a delinquent tax debt, the Department may have identified a non-filer, sent multiple notices of an assessment and appeal rights, and still have no response from the taxpayer. Under current law, the Department must file a civil suit against the taxpayer and obtain a judgment in order to collect the debt through garnishment or levy. This extra step in the process is not only costly to the Department, but also to the taxpayer, who will face extra penalties and interest the longer the tax debt goes unpaid.

How It Will Work

For administrative attachments (bank levies), the following steps must occur:

- The Department issues an assessment to taxpayer. The taxpayer is given 60 days to appeal.
- The 60 days expire with no communication from taxpayer. The liability becomes fixed.
- The Department issues a notice to the taxpayer that they are subject to attachment of property after 30 days.
- At any point after the 30 days, the Department will contact the financial institution to remit the amount stated in the notice.
- A copy of the notice of attachment is sent to taxpayer. The taxpayer has 15 days to petition the Department for a determination of whether the notice of attachment has identified the wrong taxpayer or the property garnished/levied would be exempt from attachment under 12 V.S.A. §2740.
- The Commissioner shall grant a hearing on the matter. The scope of the hearing does not include the underlying debt – only if it was the wrong taxpayer or property that should be exempt as noted above.

Explanation of common exemptions from attachment

- A motor vehicle, up to \$2,500 in total value, in a motor vehicle or motor vehicles. 12 V.S.A. §2740(1);
- Bank deposits or deposit accounts, up to \$700 in value. 12 V.S.A. §2740(15);
- Tools of your profession or trade, up to \$5,000 in total value. 12 V.S.A. §2740(2);
- Household furnishings, goods or appliances, books, clothing, animals, and musical instruments that are used primarily for personal, family, or household use by you or your dependents, up to \$2,500 in total value. 12 V.S.A. §2740(5);
- Jewelry held primarily for personal, family, or household use, up to \$500 in total value. A wedding ring, regardless of value, is totally exempt. 12 V.S.A. §2740(3), (4);
- Growing crops, up to \$5,000 in total value.
- The Wildcard Exemption. A debtor's aggregate interest in any property not to exceed \$400 in value, plus up to \$7000 of any unused amount of the above-described exemptions for motor vehicles, tools of trade, jewelry or household items. (12 V.S.A. § 2740(7))

The process is essentially the same for wage garnishment, with a few changes:

- The Department issues an assessment to taxpayer. The taxpayer is given 60 days to appeal.
- The 60 days expire with no communication from taxpayer. The liability becomes fixed.
- The Department issues a notice to the taxpayer that they are subject to wage garnishment after 30 days.
- After 30 days, the Department directs the employer to transmit a specified amount, up to 25%, of the taxpayer’s disposable earnings.
- A copy of the notice of garnishment is sent to taxpayer. The taxpayer has 15 days to petition the Department for a determination of whether the notice of attachment has identified the wrong taxpayer or that the garnishment exceeds 25% of the taxpayer’s disposable earnings.
- The Commissioner shall grant a hearing on the matter. The scope of the hearing does not include the underlying debt – only if it was the wrong taxpayer or the garnished wages exceed 25% of disposable earnings.

An employer who fails to withhold and transmit the garnished wages to the Department shall be liable to such amounts and may be assessed in the same manner as withholding taxes. No taxpayer may be discharged from employment on account of garnishment. “Disposable earnings” is defined as the part of the earnings of any individual remaining after deductions from those earnings required by law to be withheld and the amount of any wage garnishment payable to the Office of Child Support.

Other States

At least 18 other states have a mechanism where the taxing agency can garnish a delinquent taxpayer’s wages without first obtaining a judgment through the judicial system.

State	Policy
Connecticut	Department can issue a warrant to the employer to garnish wages after 30 days written notice has been provided to the taxpayer.
Iowa	Department can garnish wages if the taxpayer has exhausted its administrative remedies and was given 20 days’ notice of garnishment.
Kentucky	If payment is not made, after administrative remedies have been exhausted, after 30 days, the department may garnish a taxpayer’s wages upon 10 days additional written notice.
Maine	Department may garnish wages upon 10 days written notice to taxpayer.
Massachusetts	Department may garnish wages upon 10 days written demand to the taxpayer.
North Carolina	Records a “certificate of tax liability” (an administrative judgment) and can garnish up to 10% of taxpayer wages without judicial intervention.

Similar to wage garnishments, some states have a mechanism for levying taxpayer’s bank accounts (asset attachment) that is more efficient than the current procedure. At least 19 states have procedures for administrative bank levies.

State	Policy
Iowa	Department can send notice to financial institution if a taxpayer has exhausted its administrative remedies and was given 20 days' notice of levy.
Kentucky	If payment is not made, after administrative remedies have been exhausted, after 30 days, the department may levy an account upon 10 days additional written notice.
Maine	The department may levy a bank account upon 10 days written notice to the taxpayer.
Massachusetts	Department may garnish wages upon 10 days written demand to the taxpayer.
North Carolina	Records a "certificate of tax liability" (an administrative judgment) and can levy a taxpayer's bank account without judicial action.

North Carolina also has a "financial institutions records match" program authorized by statute. This program allows their Department of Revenue to send financial institutions a list of delinquent taxpayers and the institution is required to see if any of the taxpayers have an account with the institution. This eliminates most of the investigative work that needs to be done by the department in determining where a taxpayer has an account.

Estimate

Based on conversations with other states, we are comfortable estimating that adding administrative wage garnishment and asset attachments will increase our current collections by 10%. For FY2016, this means additional revenue of \$6.0M. We can begin the process of applying administrative wage garnishments and asset attachments as soon as the law becomes effective (assumed July 1, 2015 effective date).

In 2014, we received just over \$750,000 from garnished wages. This was only collectable from the personal income tax. By adding administrative wage garnishment and asset attachments, we can use these tools for all tax types.

2014 Compliance Collections

Type	Collections (minus garnished wages)	10% Increase
Personal Income	18,811,141	1,881,411
School Property	1,389,091	138,909
Renter Rebate	92,141	9,214
Withholding	4,682,517	468,252
Meals and Rooms	9,179,536	917,954
Sales and Use	14,415,303	1,441,530
Business Income Tax	8,479,624	847,962
Corporate Income Tax	2,425,181	242,518
Fuel Gross Receipts	770,165	77,016
Property Transfer	593,263	59,326
	REVENUE ESTIMATE:	6,000,000

In addition to the estimates for additional revenue in Tax, this proposal will also bring significant savings in sheriff service fees and judiciary savings. The Department currently brings forward about 300 cases/year for wage garnishment. This proposal will eliminate the need to hear those cases.

Sec. 1. 32 V.S.A. §3201(a) is amended to read:

(a) In the administration of taxes, the Commissioner may:

(9) Attach property pursuant to section 3207 of this title for payment of an amount collectible by the Commissioner under this Title.

(10) Garnish earnings pursuant to section 3208 for payment of an amount collectible by the Commissioner under this Title.

Sec. 2. 32 V.S.A. §3207 is added to read:

§ 3207. Administrative attachment

(a) Notwithstanding other statutes which provide for levy of execution, trustee process, and attachment, the Commissioner, pursuant to this section, may attach tangible and intangible property of a taxpayer, to satisfy amounts collectible by the Commissioner under Title 32 by transmitting a notice of attachment to a financial institution or person holding property belonging to or owed to a taxpayer.

(b) The Commissioner may contact a financial institution to obtain verification of the account number, the names and social security numbers listed for an account, and account balances of accounts held by a taxpayer. A financial institution is immune from any liability for release of this information to the Commissioner.

(c) At least 30 days prior to attaching a taxpayer's property, the Commissioner must demand payment from the taxpayer together with notice that the taxpayer is subject to attachment of property under this section. This notice must be sent by first class mail to the taxpayer's last known address. The mailing of the notice shall be presumptive evidence of its receipt.

(d) A notice of attachment shall direct the financial institution or person to transmit all or a portion of the property in the taxpayer's accounts or owed to the taxpayer to the Commissioner up to the amount owed to the Commissioner. The notice shall identify the taxpayer by social security number or federal employer identification number. Upon receipt of the notice, the financial institution or person forthwith shall remit the amount stated in the notice or the amount held or owned by such financial institution or person, whichever is less, to the Commissioner.

(e) A copy of the notice of attachment transmitted to the financial institution or person holding property due to the taxpayer shall be sent by certified mail to the taxpayer at the time it is transmitted to the financial institution or person. The taxpayer may, within 15 days of mailing, petition the Commissioner in writing for a determination of whether the notice of attachment has identified the wrong taxpayer or whether property that would be exempt from attachment and levy under 12 V.S.A. §2740 in a judicial attachment has been attached. The Commissioner shall grant a hearing on the matter as provided in 32 V.S.A. § 5885(a) at which the taxpayer bears the burden of proof. The Commissioner

shall notify the taxpayer in writing of his or her decision concerning the attachment and the taxpayer may appeal in the manner provided in 32 V.S.A. § 5885(b). This shall be the taxpayer's exclusive remedy with respect to an attachment under this section.

(f) Attachment under this section and other collection measures provided by law are cumulative.

(g) For purposes of this section:

(1) "Intangible property" means property that has no intrinsic value, but is merely the representative of value such as cash, accounts, rents, stocks, bonds, promissory notes or other instruments that creates a payment obligation;

(2) "Financial institution" has the same meaning as in 8 V.S.A. § 11101(32); and

(3) "Person" has the same meaning as in 32 V.S.A. §3001.

Sec. 3. Sec. 2. 32 V.S.A. §3208 is added to read:

§ 3208. Administrative garnishment

(a) Notwithstanding other statutes which provide for levy or execution, trustee process, or attachment, the Commissioner may garnish up to twenty-five percent of the disposable earnings of a taxpayer pursuant to this section to satisfy amounts collectible by the Commissioner under Title 32.

(b) The Commissioner may contact an employer to obtain verification of a taxpayer's employment, earnings, deductions and payment frequency as necessary to determine disposable earnings. The employer shall be immune from any liability for release of this information to the Commissioner.

(c) At least 30 days prior to initiating wage garnishment, the Commissioner must demand payment from the taxpayer and notify the taxpayer that he or she is subject to garnishment under this section. This notice must be sent by first class mail to the taxpayer's last known address. The mailing of notice shall be presumptive evidence of receipt.

(d) A notice of garnishment shall direct an employer to transmit a specified portion, up to twenty-five percent, of the taxpayer's disposable earnings to the Commissioner from each periodic payment that is due to the taxpayer until the taxpayer's obligation is paid in full. The notice shall identify the taxpayer by social security number.

(e) A copy of the notice of garnishment shall be sent by certified mail to the taxpayer at the time it is transmitted to the employer. The taxpayer may, within 15 days of mailing, petition the Commissioner in writing for a determination of whether the notice of garnishment has identified the wrong taxpayer or whether the garnishment exceeds twenty-five percent of the taxpayer's disposable earnings. The Commissioner shall grant a hearing on the matter as provided in 32 V.S.A. § 5885(a) at which the taxpayer bears the burden of proof. The Commissioner shall notify the taxpayer in writing of

his or her decision concerning the garnishment and the taxpayer may appeal in the manner provided in 32 V.S.A. § 5885(b). This shall be the taxpayer's exclusive remedy with respect to a garnishment under this section.

(f) An employer's obligation to transmit garnished wages to the Commissioner shall begin with the first periodic payment of earnings following receipt of the notice of garnishment unless the notice is withdrawn by the Commissioner. An employer who fails to withhold and transmit the garnished earnings to the Commissioner shall be liable for such amounts and may be assessed in the same manner as withholding taxes are assessed under Chapter 151 of Title 32. As soon as reasonably practicable, the employer shall notify the Commissioner of the termination of the taxpayer's employment. No taxpayer may be discharged from employment on account of garnishment under this section against the taxpayer's wages.

(g) Upon full payment of the amounts collectible by the Commissioner, the Commissioner forthwith shall notify the employer in writing and the employer shall cease withholding from the earnings of the taxpayer.

(h) Wage garnishment under this section and other collection measures provided by law are cumulative.

(i) For purposes of this section:

(1) "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 and the amount of any wage garnishment payable to the Office of Child Support.

(2) "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 and proceeds from the sale of milk with respect to an individual engaged in the occupation of farming, but does not include payments from sources which by law are exempt from attachment.