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April 13, 2015

Senate Committee on Finance  
Vermont General Assembly  
Room 6, Vermont State House  
115 State Street  
Montpelier, VT 05633

Re: Administrative Judgments Proposal

Dear Chairman Ashe and Committee Members:

Thank you for the opportunity to testify before you last week on the proposal for administrative judgments made by the Vermont Department of Taxes (VDOT). As I said in my previous written testimony, Vermont Legal Aid opposes the proposal as presented by VDOT. However, we believe it is possible to enact an administrative process that protects the substantive and procedural due process rights of taxpayers.

Under current law, VDOT must bring an action in Superior Court to garnish a taxpayer's wages or seize a taxpayer's bank account. The VDOT administrative judgments proposal would eliminate significant procedural and substantive protections currently afforded to taxpayers. Among the most significant of these protections for low-income individuals is the limit on wage garnishments applicable to actions in Superior Court under 12 V.S.A. § 3170 and V.R.C.P. 4.2(j). (In Superior Court, wage garnishment is known as trustee process.) During my testimony last week, you requested examples of how the current trustee process system protects individuals and how this would be different under the administrative judgments proposal.

The trustee process statute (12 V.S.A. § 3170) includes three important protections that are absent from the VDOT proposal.

1. Wage garnishment is prohibited if the taxpayer has been a recipient of public assistance from the Department for Children and Families or the Department of Vermont Health Access within the past two months. 12 V.S.A. § 3170(a).
2. There is an absolute amount of protected wages. 12 V.S.A. § 3170(b)(1). Wages in the amount of 30 times the federal minimum hourly wage are exempt from garnishment.

There is no such floor in the VDOT proposal. Rather, 25% of disposable earnings may be garnished no matter how little the taxpayer earns.

3. The court has discretion to increase the exempt amount of wages, if the reasonable expenses for support of the taxpayer and his or her dependents exceed the amount normally exempted. 12 V.S.A. § 3170(b)(3).

These protections currently apply to VDOT wage garnishments in Superior Court. They should be maintained in any administrative garnishment process.

The following examples illustrate the differences between the current Superior Court process and the administrative judgments proposal.

1. Recipient of public assistance

Ms. A has two children and works at minimum wage for 35 hours per week. Her net pay after tax withholding is \$290 per week, or \$1257 per month (at 4.333 weeks per month). This puts her at 75% of the federal poverty line and qualifies her family for Dr. Dynasaur and Medicaid. Under the current Superior Court process, VDOT could not garnish Ms. A's wages at all, because she is a recipient of public assistance. Under the administrative judgments proposal, VDOT could garnish 25% of Ms. A's disposable wages, or \$314 per month.

2. Low-wage worker

Mr. B works part-time and makes \$200 per week. This is less than 30 times the federal hourly minimum wage of \$7.25. Under current law, VDOT would not be able to garnish Mr. B's wages at all. Under the administrative judgments proposal, VDOT could garnish 25% of Mr. B's disposable wages.

3. Worker with high expenses

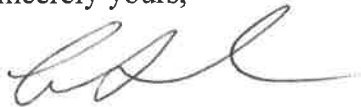
Mr. C is single and works 35 hours per week at \$13 per hour. His gross wages are \$1972 per month, before taxes are withheld. Mr. C has health insurance through his work. His health insurance premiums are \$150 per month, plus he has copayments, coinsurance, and a deductible. Recently Mr. C was diagnosed with cancer. He can still work, but he has a lot of medical bills. Right now, Mr. C's reasonable living expenses including his medical bills take up all of his disposable income. Under the current trustee process, Mr. C could explain his situation to the court and ask that all of his wages be exempt from garnishment under 12 V.S.A. § 3170(b)(3). The judge could decide how much of Mr. C's wages should be exempt. Under the administrative judgments proposal, VDOT could garnish 25% of Mr. C's wages after taxes are withheld, and there is no requirement that VDOT consider Mr. C's medical bills or any other expenses.

In each of those examples, the taxpayer would be better off under the current Superior Court process.

The protections for low-income taxpayers are important because they form part of our safety net and prevent a garnishment from causing serious hardship. In addition to benefiting at-risk families, procedural and substantive protections benefit all taxpayers because greater economic destabilization for families living on the edge could cause additional expenses to the state budget through increased pressure on human services agencies. Public assistance is meant for the maintenance of the individual and their family. Temporary supports such as Reach Up ensure family stability and guard against homelessness, hunger, or other serious deprivation. Without safeguards against garnishment, many of the lowest income households could face additional monthly burdens they are ill-equipped to absorb that could threaten the health and well-being of themselves and their children and impair their ability to become economically independent or ever re-pay a tax debt.

For all these reasons, we believe the compelling public interest is in preserving safeguards already expressed in state law and for which we have testified in support. Vermont Legal Aid recognizes the Tax Department's interest in an administrative process, and in truth, such a process—with the right protections—could prove less daunting to low-income taxpayers as well. But, due process consistent with that offered by federal law and existing state law and the ability to challenge the merits of a claim are all requirements for a fair administrative procedure for Vermont taxpayers.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'CS', written in a cursive style.

Christine Speidel  
Staff Attorney