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April 3, 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 review the recent proposal for administrative judgments by the Vermont Department of Taxes (VDOT). Vermont Legal Aid has some concerns and some suggestions for your consideration. As currently constructed we cannot support – and will actively oppose – the Department’s proposal. However, we believe there are protections, consistent with existing law and procedure, which could potentially remedy our concerns.

Compliance is improved when taxpayers believe that the Tax Department’s assessment and collection procedures are fair. In keeping with the fairness principle, it seems self-evident that taxpayers should be required to pay no more than the amount of tax actually due under the law.

The administrative judgments proposal would eliminate significant procedural and substantive protections currently afforded to taxpayers to ensure the fairness of the system and any actions taken by the Tax Department against them. Any proposal to reform the current system must establish mechanisms that balance the interests of the Department with the interests of taxpayers. We believe there are five things that are critical to preserving due process and protecting vulnerable taxpayers.

1. Notice and Due Process: The 30-day notice to the taxpayer should include appeal rights. The appeal should include the opportunity for a phone or in-person conference with the VDOT employee who will decide the appeal.
2. The Fair Hearing: As currently constructed, the proposal before you is overly narrow and restricts the ability of taxpayers to contest alleged debts at hearing. During the administrative appeal, the taxpayer should be permitted to raise a challenge to the underlying assessment as well as propose a collection alternative such as an installment plan or hardship status. If an assessment is obviously incorrect or inflated, VDOT should correct that as part of the collection appeal.

3. Taxpayers should have reasonable repayment options. Hardship or “currently uncollectible” status should be mandated if the seizure or garnishment would leave the taxpayer unable to pay reasonable and necessary living expenses.
4. Wage Garnishment Protections: Currently Vermont law provides that certain taxpayers are not subject to wage garnishment. The law also establishes a protected amount of wages that is not subject to garnishment. See, 12 V.S.A. § 3170 and V.R.C.P. 4.2(j). These protections apply to any judgment creditors seeking wage garnishment in state courts, and there are sound public policy reasons why that is the case. For example, public assistance is meant for the maintenance primarily of families with children, not to pay for the alleged sins of the parents. As such, Vermont law currently prohibits wage garnishment from anyone in receipt of public assistance. These substantive wage garnishment protections should be incorporated in place of the current proposal to garnish 25% of disposable earnings.
5. Hold Period: The proposal requires a financial institution or employer to immediately implement a garnishment or seizure. There should be some period during which the taxpayer may assert rights under Vermont law. For comparison, IRS bank account levies are subject to a 21-day hold period. See, Internal Revenue Code § 6332(c). For wage garnishments, IRS policy allows an employee three business days to assert the correct exemption amount. See, Internal Revenue Manual 5.11.5.4.1 Claiming the Exempt Amount (09-26-2014) and IRS Form 668-W.

Most of our suggestions are protections currently enjoyed by debtors facing collection by the Internal Revenue Service. VDOT procedures should be at least as protective of taxpayer rights as the federal standard.

I would be happy to provide more information or proposed language. I am available to testify next Wednesday, April 8.

Sincerely yours,



Christine Speidel
Staff Attorney