OREGON DEPARTMENT OF REVENUE

Debt Collections/House Bill 2008-1

Relating to protections from debt collections

Background

The -1 amendment to House Bill 2008 updates the property of a debtor that are exempt from garnishment; increases some of the existing thresholds while also creating new ones; and sets requirements to index thresholds to inflation annually. The measure also increases debtor protections for unlawful debt collection practices.

Implementation

The Department of Revenue collects tax and non-tax debt owed to the State of Oregon and other government entities that have assigned debt to be collected by the department.

Based on communications about the intent of the amendment, the department has identified several technical issues that should be clarified.

Analysis

Page/Line #	**Anticipated impact of –1 amendment**	**Suggested change**
• Page 4/lines 13-18 Application of 'wildcard' exemption	If the debt is not a support obligation or restitution judgment, a debtor would be able to stack the 'wildcard' exemption to any other exemption, including wages and bank accounts.	To clarify that the 'wildcard' is not applied to wages and bank accounts, on line 15 delete "the wages" through line 18 and replace with "wages or funds in a deposit account held by a financial institution on behalf of a debtor."
• Page 6/lines 14-29 Correction for minimum wage indexing	The effect of this language doubles the indexed amounts exempt from garnishment. Amounts that are exempt from execution in ORS 18.348 are already indexed in the amendment.	Delete amendments on page 6/lines 14-29.
• Page 7/lines 18-30 Alignment of wage protection	The new minimum wage amounts represent gross wages which conflicts with the term "disposable earnings" found in ORS 18.385. Disposable earnings are after payroll taxes are withheld, such as federal and state withholding, workers' benefit fund, paid leave, and transit district taxes, etc. Most people have between 65 and 70 percent of their gross pay withheld for payroll taxes. As currently drafted, the -1 will "back into" gross wages of approximately $883 per week	Two options: 1. Calculate and state the minimum wage amount that represents "disposable earnings". **OR** 2. Multiply the amounts specified in ORS 653.025 (2) by 30 instead of the proposed 40 to account for the adjustment to disposable earnings. This represents 75

	based on the Portland Metro minimum wage of \$15.45 (\$15.45 x 40 hours divided by 70% = \$882.86).	percent which is lower than actual payroll taxes withheld.
• Page 8/lines 1-12 Corrects conflicts with minimum wage limits	The amounts stated here effectively render the minimum wage amounts (see above) stated on page 7/lines 18-30 moot.	Update the amounts to match the minimum weekly amount stated on page 7/line 18.
• Page 13, lines 18-22 Bank balance limits	This new \$2,500 minimum deposit account balance exemption has been placed in ORS 18.785 which describes the duties of financial institutions, instead of ORS 18.348 where all other exempt funds in a deposit account are located. If the exemption is added to 18.348, where all the other exemptions are, and referenced in 18.784 where the duties of financial institutions are located, financial institutions would refer to it when calculating the "lookback" they are required to do under 18.784 and 18.785. Adding the exemption to 18.348 would create a \$2,500 floor for all financial institution deposit accounts.	Add a new section to ORS 18.348 to set this new \$2,500 minimum deposit account balance. Reference the new exemption in 18.348 within the duties of the financial institution in 18.784. This change will clarify that the new \$2,500 minimum deposit account balance exemption (floor) interacts with the \$7,500 (ceiling) stated at ORS 18.348.
• Page 24, lines 2, 9-11 Restoration of language for accounts exempt from garnishment	Deletes exemptions from the exempt property form even though the property remains exempt by law. <u>We believe this is a drafting error</u> - The original version of the bill duplicated the exemptions and the –1 deletes them. The proposed change to the form is not needed because the items are exempt under current law.	Restore the deleted exemptions to the form - they are exempt from garnishment under current law.
• Page 25, line 2 Corrects terminology	The term "account" is not defined.	Replace "account" with "deposit account" or some other similar definition to ensure people understand the statute is referring to deposit accounts (e.g., checking and savings) with financial institutions.
• Page 35, line 22 and 23	The -1 language would result in two sets of rules based on the effective date of the bill: one for garnishments issued prior to the	Amend Section 15 to clarify that the new thresholds in ORS Chapter 18 apply to any garnishment whether it's

Application of changes to existing and future garnishments	effective date; and one for garnishments issued after the effective date. Some garnishments issued are continuous until the debt is paid in full so it is important to clarify that continuous existing wage garnishments will be updated to include the new amounts. We are unclear whether the consumer protection provisions need a specific applicability date or whether the general effective date of 91 days after sine die is enough to accomplish the proponents' goals. Additionally, the applicability dates found in the indexing language in page 5, lines 2-5, page 6, lines 27-29 and page 14, lines 20-22 of "and apply to all executions that occur with respect to the applicable property before July 1 of the following year." should be deleted to align with this applicability change. This change ensures that whenever the minimum wage, for example, increases it will apply to any existing and new garnishments and will improve the ease of compliance for the businesses that must respond to these garnishments.	already in effect or issued after the effective date of the bill. Suggested language based on the -1 amendment: "SECTION 15. (1) The amendments to ORS 18.345, 18.348, 18.385, 18.395, 18.402, 18.412, 18.785, 18.840, 18.845, and 87.162 by sections 1 to 10 of this 2023 Act apply to writs of execution in effect or issued on or after the effective date of this 2023 Act. (2) The amendments to ORS 646.639 and 646.641 by sections 11 and 12 of this 2023 Act and the repeal of ORS 646.643 by section 13 of this 2023 Act apply to <<insert applicability date, if different than the effective date>>.

In addition to the technical issues, updates to the homestead exemption in Sections 4 and 5, would result in greater asset protection for debtors with higher-valued property. Debtors with a more valuable homestead have the benefit of a larger homestead exemption than debtors with lower-valued property. An increased limit on the equity calculation could prevent debtors with higher-valued property from shielding assets. We understand that the proponents may agree to adding an upward limit on the value of this exemption of some kind.

Also, if the homestead exemption is automatic, it will be difficult to administer. Liens against real property will be less effective overall. The department will still pay recording fees for properties from which a payment may not be received because, at the time the lien is filed, the available equity will not be known, nor the age of the debtor. When a sale occurs under current law, judgment creditors are to be notified of the potential for proceeds from the sale under ORS 18.412. This process is somewhat helpful, but because it happens at the time of sale, it doesn't help us determine whether we should spend taxpayer dollars on filing the lien in the first place or not. At the time we decide to file any lien, we will not know the age of the owners, the ownership status, or the available equity in the property.

If the homestead exemption remains as one that must be requested, the department can calculate the correct amount of exemption (by age and county), to mitigate the impact to the efficacy of the lien that is filed in the county record, and to address high-value properties.

Finally, clarity should be provided with regard to whether there is more than one owner of the property and what creditors should do if the multiple owners are of different ages. We understand that clarity will be in a future amendment.

Conclusion

For awareness, it is important to note that this proposal will affect the department's ability to recover debts owed to the General Fund and Other Funds. We commit to continue working with interested parties on additional amendments.

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