

#39.32

08/927

2/28/77

Memorandum 77-17

Subject: Study 39.32 - Wage Garnishment

The Commission will be interested in a provision of the Tax Reform Act of 1976 which limits the amount that can be withheld from earnings on a federal tax levy and provides for a continuing levy. The relevant provision is set out in Exhibit 1 attached.

The exemption formula provided in the federal tax law is:

- (1) \$50 per week plus
- (2) \$15 per each dependent of the taxpayer.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

SEC. 128. MINIMUM EXEMPTION FROM LEVY FOR WAGES, SALARY, AND OTHER INCOME.

(a) **GENERAL RULE.**—Subsection (a) of section 6334 (relating to property exempt from levy) is amended by adding at the end thereof the following new paragraph:

"(9) **MINIMUM EXEMPTION FOR WAGES, SALARY, AND OTHER INCOME.**—Any amount payable to or received by an individual as wages or salary for personal services, or as income derived from other sources, during any period, to the extent that the total of such amounts payable to or received by him during such period does not exceed the applicable exempt amount determined under subsection (1)."

(b) **DETERMINATION OF EXEMPT AMOUNT.**—Section 6334 is amended by adding at the end thereof the following new subsection:

"(d) **EXEMPT AMOUNT OF WAGES, SALARY, OR OTHER INCOME.**—

"(1) **INDIVIDUALS ON WEEKLY BASIS.**—In the case of an individual who is paid or receives all of his wages, salary, and other income on a weekly basis, the amount of the wages, salary, and other income payable to or received by him during any week which is exempt from levy under subsection (a)(9) shall be—

"(A) \$50, plus

"(B) \$15 for each individual who is specified in a written statement which is submitted to the person on whom notice of levy is served and which is verified in such manner as the Secretary shall prescribe by regulations and—

"(i) over half of whose support for the payroll period was received from the taxpayer,

"(ii) who is the spouse of the taxpayer, or who bears a relationship to the taxpayer specified in paragraphs (1) through (9) of section 152(a) (relating to definition of dependents), and

"(iii) who is not a minor child of the taxpayer with respect to whom amounts are exempt from levy under subsection (a)(9) for the payroll period.

For purposes of subparagraph (1)(ii) of the preceding sentence, 'payroll period' shall be substituted for 'taxable year' each place it appears in paragraph (9) of section 102(a).

Regulations.

"(2) **INDIVIDUALS ON BASIS OTHER THAN WEEKLY.**—In the case of any individual not described in paragraph (1), the amount of the wages, salary, and other income payable to or received by him during any applicable pay period or other fiscal period (as determined under regulations prescribed by the Secretary) which is exempt from levy under subsection (a)(9) shall be an amount (determined under such regulations) which as nearly as possible will result in the same total exemption from levy for such individual over a period of time as he would have under paragraph (1) if (during such period of time) he were paid or received such wages, salary, and other income on a regular weekly basis."

(c) **CONTINUING AMOUNTS.**—The paragraph heading for paragraph (8) of section 6334(a) is amended to read as follows:

"(8) **JUDGMENTS FOR SUPPORT OF MINOR CHILDREN.**—"

(d) **LEVY ON WAGES, ETC. TO BE CONTINUING.**—

(1) **SUBSECTION (1) OF SECTION 6331 (RELATING TO LEVY ON SALARIES AND WAGES) IS AMENDED BY ADDING AT THE END THEREOF THE FOLLOWING NEW PARAGRAPH:**

"(A) **CONTINUING LEVY ON SALARY AND WAGES.**—

"(A) **EFFECT OF LEVY.**—The effect of a levy on salary or wages payable to or received by a taxpayer shall be continuous from the date such levy is first made until the liability out of which such levy arose is satisfied or becomes unenforceable by reason of lapse of time.

"(B) **RELEASE AND NOTICE OF RELEASE.**—With respect to a levy described in subparagraph (A), the Secretary shall promptly release the levy when the liability out of which such levy arose is satisfied or becomes unenforceable by reason of lapse of time, and shall promptly notify the person upon whom such levy was made that such levy has been released.

26 USC 6331.