

Memorandum 80-65

Subject: Study D-300 - Enforcement of Judgments (Wage Garnishment)

Attached is Chapter 5 (commencing with Section 706.010) of Division 2 of the proposed comprehensive enforcement of judgment statute. This chapter, relating to wage garnishment, makes only technical changes in the existing law. We have revised the official Comments to existing law to conform to the new law and the revised Comments are set out in the attached material.

We have permitted a wage garnishment in any case where a state agency has a state tax lien. This is a substitution for an incomplete listing in existing law of relevant sections of various codes imposing particular state taxes. We will contact the state taxing agencies to determine whether this change creates any problems.

We have no particular problems with the attached material. We do not feel that you need to study it carefully prior to the meeting, but we would like to have it approved for printing at the meeting.

Respectfully submitted,

John H. DeMouly
Executive Secretary

WAGE GARNISHMENT

The proposed law continues the wage garnishment provisions of existing law with a few technical changes.¹ The Commission has in the past recommended changes in the amount that can be withheld on a wage garnishment,² but the proposed law makes no change in the amounts that can be withheld under existing law.³

1. These changes include: (1) the proposed law changes the name "Employees' Earnings Protection Law" to the more descriptive name "Wage Garnishment Law"; (2) the proposed law clarifies but does not change the substance of the existing provisions dealing with the amount of earnings that may be withheld; (3) the proposed law somewhat expands the types of state taxes that are subject to the wage garnishment law.
2. Recommendations relating to wage garnishment are found in 10 Cal. L. Revision Comm'n Reports 701 (1971); 11 Cal. L. Revision Comm'n Reports 101 (1973), 12 Cal. L. Revision Comm'n Reports 901 (1974); 13 Cal. L. Revision Comm'n Reports 601 (1976); 13 Cal. L. Revision Comm'n Reports 1703 (1976). See also 14 Cal. L. Revision Comm'n Reports 255 (1978).
3. The Commission recommends that no change be made in the existing law at this time. This decision recognizes the long history of efforts of the Commission to improve the provisions relating to the amount to be withheld on a wage garnishment and the failure of the Legislature to adopt the Commission's recommendations.

CHAPTER 5. WAGE GARNISHMENT

Article 1. Short Title; Definitions

§ 706.010. Short Title

706.010. This chapter shall be known and may be cited as the "Wage Garnishment Law."

Comment. Section 706.010 substitutes the more descriptive term "Wage Garnishment Law" for the term "Employees' Earnings Protection Law" used in former Section 723.010.

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§ 706.011. Definitions

706.011. As used in this chapter:

(a) "Earnings" means compensation payable by an employer to an employee for personal services performed by such employee, whether denominated as wages, salary, commission, bonus, or otherwise.

(b) "Employee" means a public officer and any individual who performs services subject to the right of the employer to control both what shall be done and how it shall be done.

(c) "Employer" means a person for whom an individual performs services as an employee.

(d) "Judgment creditor," as applied to the state, means the specific state agency seeking to collect a judgment or tax liability.

(e) "Judgment debtor" includes a person from whom the state is seeking to collect a tax liability under Article 4 (commencing with Section 706.070), whether or not a judgment has been obtained on such tax liability.

(f) "Person" includes an individual, a corporation, a partnership or other unincorporated association, and a public entity.

Comment. Section 706.011 continues former Section 723.011 and states definitions used in applying,

this chapter. This chapter deals only with the garnishment or withholding of earnings for services rendered in an employer-employee relationship. See Section ~~723.020~~ — 706.020. Subdivisions (b) and (c) are based on the common law requirements for such relationship. It should be noted that an employee may be given considerable discretion and still be an employee as long as his employer has the legal right to control both method and result. However, no attempt is made here to incorporate specific case law arising out of situations involving problems and issues unrelated to the purposes and procedures relevant in applying this chapter. "Employee" includes both private and public employees. See subdivisions (b), (c), and (f).

"Earnings" embraces all remuneration "whether denominated as wages, salary, commission, bonus, or otherwise." The infinite variety of forms which such compensation can take precludes a more precise statutory definition.

Unlike the definition of "earnings" used in Title III of the federal Consumer Credit Protection Act of 1968, the term used here does not include "periodic payments pursuant to a pension or retirement program." Exemptions applicable to such payments are provided by various sections of the California statutes. These statutes apply unless a greater exemption is available under the federal Consumer Credit Protection Act of 1968.

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Article 2. General Provisions

§ 706.020. Withholding earnings; use of provisions of chapter

706.020. Except as provided in Section 4701 of the Civil Code, the earnings of an employee shall not be required to be withheld by an employer for payment of a debt by means of any judicial procedure other than pursuant to this chapter.

Comment. Section 706.020 makes clear that, with the

exception of wage assignments for support under Civil Code Section 4701, the Wage Garnishment Law is the exclusive judicial method of compelling an employer to withhold earnings. Attachment of earnings before judgment is abolished by Section 487.020(c). For provisions relating to voluntary wage assignments, see Labor Code Section 300. This chapter has no effect on judgment collection procedures that do not involve the withholding of an employee's earnings. However, where an employee's earnings are sought to be garnished, the creditor must comply with the provisions of this chapter. This rule applies to public entities as well as private persons. This chapter, for example, imposes limitations on the state's ability to garnish wages for tax delinquencies pursuant to its warrant and notice procedures. See Article 4 (commencing with Section ~~706.070~~).

The section continues former Section 723.020.

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The Wage Garnishment Law has no effect on matters that are preempted by the federal law, such as federal bankruptcy proceedings—including proceedings under Chapter XIII of the Bankruptcy Act—and federal tax collection procedures. *E.g.*, Int. Rev. Code of 1954, § 6334(c). Nor does this chapter apply to deductions which an employer is authorized by statute to make for such items as insurance premiums and payments to health, welfare, or pension plans. See, *e.g.*, Govt. Code §§ 1158, 12420; Labor Code §§ 224, 300. Finally, this chapter does not affect the procedures for the examination of a debtor of the judgment debtor provided in Article 2.

(commencing with Section 708.110) of Chapter 6. See also Comment to Section 706.154.

§ 706.021. Levy of execution; service of earnings withholding order

706.021. Notwithstanding any other provision of this title, a levy of execution upon the earnings of an employee shall be made by service of an earnings withholding order upon the employer in accordance with this chapter.

Comment. Section 706.021 continues former Section 723.021 except that a reference to "this title" is substituted for the reference to former Section 688 in the introductory clause. Section 706.021 makes clear that a levy of execution on earnings is made as provided in this chapter rather than under Chapter 3 (commencing with Section 699.010).

§ 706.022. Employer's duty to withhold; immunity from liability

706.022. (a) As used in this section, "withholding period" means the period which commences on the 10th day after service of an earnings withholding order upon the employer and which continues until the earliest of the following dates:

(1) The 100th day after the order was served.

(2) The date the employer has withheld the full amount specified in the order.

(3) The date of termination specified in a court order served on the employer.

(4) The date of termination specified in a notice of termination served on the employer by the levying officer.

(b) Except as otherwise provided by statute, an employer shall withhold the amounts required by an earnings withholding order from all earnings of the employee payable for any pay period of such employee which ends during the withholding period.

(c) An employer is not liable for any amounts withheld and paid over to the levying officer pursuant to an earnings withholding order prior to service upon the employer pursuant to paragraph (3) or (4) of subdivision (a).

Comment. Section 706.022 continues former Section 723.022 and states the basic rules governing

the employer's duty to withhold pursuant to an earnings withholding order.

Subdivision (b) requires the employer to withhold from all earnings of an employee payable for any pay period of such employee which ends during the "withholding period." The

"withholding period" is described in subdivision (a). It should be noted that *only* earnings for a pay period ending during the withholding period are subject to levy. Earnings for prior periods, even though still in the possession of the employer, are not subject to the order. An employer may not, however, defer or accelerate any payment of earnings to an employee with the intent to defeat or diminish the satisfaction of a judgment pursuant to this chapter. See Section ~~723.153~~.

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706.101 — Under subdivision (a), the withholding period generally commences 10 calendar days (not working or business days) after service of an earnings withholding order is completed. See Section ~~723.101~~ (when service completed). For example, if an order is served on Friday, the withholding period would commence on the second following Monday. See Code Civ. Proc. § 12. The 10-day delay affords the employer time to process the order within his organization, *i.e.*, deliver the order to the employer's bookkeeper, make bookkeeping adjustments, and so on. The introductory clause to subdivision (b) recognizes certain exceptions to this general rule. An employer is not generally required to withhold pursuant to two orders at the same time; thus, a subsequent order will not be given effect. See Section ~~723.023~~ (priority of orders) and Comment thereto. Moreover, withholding may be delayed beyond the normal 10-day period where a prior assignment of wages is in effect. See Labor Code § 300(c) and Comment thereto. However, this delay does not affect the date the withholding period terminates under subdivision (a) (1).

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The withholding period does not end until the first of the events described in paragraphs (1) through (4) of subdivision (a) occurs; thus, the employer has a *continuing* duty to withhold.

Paragraph (1) provides a general expiration date 100 days after the date of service; thus, the employer will usually be required to withhold for 90 days.

Paragraph (2) requires the employer to stop withholding when he has withheld the full amount specified in the order.

706.105 — Paragraph (3) reflects the fact that the court may order the termination of the earnings withholding order. See Section ~~723.105~~ (g). Of course, in some situations, the court will only modify the prior order, and the employer then must comply with the order as modified for the remainder of the withholding period.

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706.101 — Paragraph (4) requires the employer to stop withholding when he is served with a notice of termination. See Section ~~723.101~~ (manner of service). A notice of termination is served where the levying officer is notified of the satisfaction of the judgment or where the judgment debtor has claimed an exemption for the entire amount of earnings but the judgment creditor has failed within the time allowed to file with the levying officer a notice of opposition to claim of exemption and a notice of the hearing on the exemption. See Sections ~~723.027~~ (satisfaction of judgment) and ~~723.105~~ (f) (grounds for termination of withholding order by levying officer). The judgment creditor has an affirmative duty to inform the levying officer of the satisfaction of the judgment. See Section ~~723.027~~. Service of an order for the collection of state taxes suspends the duty of an employer to withhold pursuant to a prior order (other

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than an order for support). See Section ~~723.077~~ (tax orders). 706.077
However, this is only a suspension. After the tax order is satisfied,
if the withholding period for the prior order has not ended, the
employer must again withhold pursuant to the prior order.
Similarly, the duty to withhold is not terminated by the layoff,
discharge, or suspension of an employee and, if the employee is
rehired or returns to work during the withholding period, the
employer must resume withholding pursuant to the order.
Finally, the termination of certain types of orders—orders for the
collection of state taxes and support orders—are governed by
separate rules. See Sections ~~723.080~~ (support orders), ~~723.078~~ (tax 706.078
orders). 706.030

Sometimes an order will be terminated without the employer's
prior knowledge. Subdivision (c) makes clear that an employer
will not be subject to liability for having withheld and paid over
amounts pursuant to an order prior to service of a written notice
of termination of the order. In such a case, the employee must
look to the judgment creditor for the recovery of amounts
previously paid to the judgment creditor. See Section ~~723.154~~ 706.154
(employer entitled to rely on documents actually served). See
706.105 also Section ~~723.105~~(i) (recovery from levying officer or
judgment creditor of amounts received after order terminated).
An earnings withholding order may also be affected by federal
bankruptcy proceedings. See the Comment to Section ~~723.020~~ 706.020

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§ 706.023. Priority of earnings withholding order

706.023. Except as otherwise provided in this chapter:

(a) An employer shall comply with the first earnings withholding
order served upon the employer.

(b) If the employer is served with two or more earnings withholding
orders on the same day, the employer shall comply with the order issued
pursuant to the judgment first entered. If two or more orders served on
the same day are based on judgments entered upon the same day, the
employer shall comply with whichever one of such orders the employer
selects.

(c) If an earnings withholding order is served during the period
that an employer is required to comply with another earnings withholding
order for the same judgment debtor, the subsequent order is ineffective
and the employer shall not withhold earnings pursuant to the subsequent
order.

Comment. Section 706.023 continues former Section 723.023 and
establishes the general rules

governing priority of earnings withholding orders. Generally
speaking, the first order served is given priority. Occasionally,
two or more earnings withholding orders will be served on the
same day. In this situation, the employer must comply with the

earnings withholding order which was issued pursuant to the judgment first entered. The date of entry of judgment will be indicated on the face of the order. See Section ~~723.125~~. In rare instances, earnings withholding orders served the same day will also be based on judgments entered the same day. In this situation, the employer has complete discretion to choose the order with which he will comply. He must, of course, comply with one of these orders. For exceptions to these basic priority rules, see Sections ~~723.030~~ (support orders) and ~~723.077~~ (state taxes) and the Comments thereto. Unless the subsequent earnings withholding order is for state taxes or for support, an earnings withholding order is ineffective if the employer receives the order while he is required to comply with another earnings withholding order. In such a case, the employer does not hold such an order and give it effect when the prior order expires but returns it. See Section ~~723.104~~. However, the levying officer may later serve the same earnings withholding order if the writ of execution upon which the order is based has not yet been returned. See Section ~~723.103(e)~~.

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It should be noted that, in some circumstances, the operation of an earnings withholding order may be suspended, but the duty to withhold is not terminated nor does the 100-day period provided by Section ~~723.022~~(a) (1) cease to run. See, e.g., Section ~~723.077~~ (tax order suspends operation of prior order); Labor Code § 300(c) (suspension where prior assignment in effect). See also Comment to Section ~~723.022~~. In such cases, as well as in cases where the subsequent earnings withholding order is not given effect, the employer is required to advise the levying officer who has served the order that is suspended or not given effect of the reason for the employer's action. See Sections: ~~723.077~~ and ~~723.104~~.

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An employer is generally entitled to rely upon what is served upon him. See Section ~~723.154~~ and Comment thereto.

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§ 706.025. Payments to levying officer by employer

706.025. (a) Except as provided in subdivision (b), the amount required to be withheld pursuant to an earnings withholding order shall be paid monthly to the levying officer not later than the 15th day of each month. The initial monthly payment shall include all amounts required to be withheld from the earnings of the employee during the preceding calendar month up to the close of the employee's pay period ending closest to the last day of that month, and thereafter each monthly payment shall include amounts withheld from the employee's earnings for services rendered in the interim up to the close of the employee's pay period ending closest to the last day of the preceding calendar month.

(b) The employer may elect to pay the amounts withheld to the levying officer more frequently than monthly. If the employer so

elects, payment of the amount withheld from the employee's earnings for each pay period shall be made not later than 10 days after the close of the pay period.

Comment. Section 706.025 specifies when the amounts withheld pursuant to an earnings withholding order must be paid over to the levying officer. Regardless whether payment is required, the employer is required to send an employer's return to the levying officer. See Sections 706.104 and 706.126. Section 706.025 continues former Section 723.025.

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§ 706.026. Receipt and account by levying officer; payments to entitled person; return of writ of execution

706.026. (a) The levying officer shall receive and account for all amounts received pursuant to Section 706.025 and shall pay the amounts so received over to the person entitled thereto at least once every 30 days.

(b) Where an earnings withholding order has been served prior to the time the writ of execution is made returnable under subdivision (a) of Section 699.560, the levying officer may, in the levying officer's discretion, return the writ of execution at either of the following times:

(1) The writ of execution may be returned after the earnings withholding order terminates and the amount withheld by the employer has been paid over to the levying officer.

(2) The writ of execution may be returned at a time earlier than the time specified in paragraph (1). In such case, the issuance of the earnings withholding order and the date of its service on the employer shall be indicated on the writ, or separately and attached thereto, and a supplemental return on the earnings withholding order shall be made at the time provided in paragraph (1) in the same manner as the writ was returned.

(c) Nothing in subdivision (b) extends the time within which a levy may be made under the writ of execution pursuant to which the earnings withholding order was issued.

Comment. Section 706.026 continues former Section 723.026.

Subdivision (b) permits the levying officer either to return the writ of execution at the time provided in paragraph (2) or after the earnings withholding order expires. See also Section ~~682(f)~~ 699.560(b). Ordinarily, the levying officer will delay making his return of the

writ of execution until the earnings withholding order expires so he can avoid the need to make a supplemental return. However, the judgment creditor may desire to secure another writ so he can levy on property other than earnings after the time for levy of the writ of execution under which the earnings withholding order was issued has expired. In such a case, the levying officer can return the writ of execution and make a supplemental return on the earnings withholding order later, thus permitting the judgment creditor to obtain another writ of execution so the levy on the other property can be made. Subdivision (c) makes clear that subdivision (b) does not extend the time within which a levy may be made on the writ of execution. A levy on the earnings of the employee or on other property must be made within the time otherwise prescribed by law. See Section ~~723.103(c)~~ 706.103(c).

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§ 706.027. Satisfaction of judgment prior to termination of order; notices

706.027. If the judgment pursuant to which the earnings withholding order is issued is satisfied before the order otherwise terminates pursuant to Section 706.022, the judgment creditor shall promptly notify the levying officer who shall promptly terminate the order by serving a notice of termination on the employer.

Comment. Section 706.027 continues former Section 723.027 and requires the judgment creditor to

706.022 — give notice of satisfaction of the judgment to the levying officer if the earnings withholding order has not yet terminated. See Section ~~723.022~~ (withholding period). In some cases, the employer will be aware of the satisfaction by virtue of the employer's having withheld the amount necessary to satisfy the judgment. See Section ~~723.022~~ (a) (2). In this case, Section ~~723.027~~ 706.027 does not apply. However, the judgment may be satisfied by additional payments from the debtor or through other debt collection procedures instituted by the judgment creditor. If this is the case, Section ~~723.027~~ applies, and the judgment creditor has the duty to notify the levying officer promptly of the satisfaction so that the levying officer may serve a notice of termination on the employer. Service of the notice of termination is to be made on the person, and at the address, indicated in the employer's return. See Sections ~~723.101(c)~~ and ~~723.106(b)(6)~~. As to the general duty of a creditor to furnish a debtor a satisfaction of judgment, see Chapter 1 (commencing with Section 724.010) of Division 5. Failure to perform the duty imposed by this section may make the judgment creditor liable in an action for abuse of process. See *White Lighting Co. v. Wolfson*, 68 Cal.2d 336, 347-351, 438 P.2d 345, 351-354, 66 Cal. Rptr. 697, 703-706 (1968).

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§ 706.028. Subsequent earnings withholding order for costs and interest

706.028. Subject to Section 706.107, after the amount stated as owing in the earnings withholding order is paid, the judgment creditor may apply for issuance of another earnings withholding order covering costs and interest that may have accrued since application for the prior order.

Coment. Section 706.028 continues former Section 723.028 and

makes clear that a judgment creditor must apply for another earnings withholding order to recover costs and interest that accrue following the application for a prior order. To illustrate: A creditor obtains a judgment which his debtor does not pay. The creditor applies for and secures an earnings withholding order directed to the debtor's employer. The application and order require payment of only those amounts owing at the time of the application for this order.

(including the levying officer's starting fee for service of the order).

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See Sections ~~723.121~~ (application for issuance of earnings withholding order) and ~~723.125~~ (content of earnings withholding order). After the application for this order, further costs may, and interest on the judgment will, accrue. If the creditor wishes to recover these amounts by wage garnishment, he must apply for another earnings withholding order, following the same procedure as before. This later application and order are subject to the same general requirements as any other withholding order. Of course, the earnings withholding order for costs and interest may only be issued if a writ of execution is outstanding. See Section ~~723.102~~. It is not entitled to any priority over the orders of other creditors, and the creditor is required to comply with the waiting period prescribed by Section ~~723.107~~.

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Service of an earnings withholding order for costs and interest, like service of a second earnings withholding order to collect the principle amount due on the judgment, is a "garnishment for the payment of one judgment" under Labor Code Section 2929(b) which forbids the discharge of an employee for wage garnishment on one judgment.

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§ 706.029. Lien on employer's property

706.029. Service of an earnings withholding order creates a lien upon all property of the employer subject to the enforcement of a money judgment in the amount required to be withheld pursuant to such order. The lien continues for a period of one year from the date the earnings of the judgment debtor become payable unless the amount required to be withheld pursuant to the order is paid as required by law.

Comment. Section 706.029 continues the substance of former Section 723.029 and makes clear that the lien covers all property of the employer subject to the enforcement of a money judgment. The lien may

give the levying creditor priority over competing claims by third parties (e.g., in bankruptcy) where the priority questions are not already regulated by other provisions of this chapter. See Section 706.023 and the Comment thereto.

The rule of Section 706.029 that the lien continues for one year from the date the earnings become payable prevails over the general rule that the lien created by levy under a writ of execution continues for one year from the date of issuance of the writ. See Section 699.010. Although the lien is limited to one year, it will not expire if, before the end of the one-year period, the levying creditor brings suit against the employer for the payment of the sums the creditor claims should have been paid to him. See Boyle v. Hawkins, 71 Cal.2d 229, 455 P.2d 97, 78 Cal. Rptr. 161 (1969).

404/148

§ 706.030. Withholding order for support

706.030. (a) A "withholding order for support" is an earnings withholding order on a writ of execution issued to collect delinquent amounts payable under a judgment for the support of a child, or spouse or former spouse, of the judgment debtor. A withholding order for support shall be denoted as such on its face.

(b) Notwithstanding any other provision of this chapter:

(1) An employer shall continue to withhold pursuant to a withholding order for support until the earliest of the dates specified in paragraph (2), (3), or (4) of subdivision (a) of Section 706.022, except that a withholding order for support shall automatically terminate one year after the employment of the employee by the employer terminates.

(2) A withholding order for support has priority over any other earnings withholding order. An employer upon whom a withholding order for support is served shall withhold and pay over earnings of the employee pursuant to such order notwithstanding the requirements of another earnings withholding order.

(3) Subject to paragraph (2) and to Article 3 (commencing with Section 706.050), an employer shall withhold earnings pursuant to both a withholding order for support and another earnings withholding order simultaneously.

Comment. Section 706.030 continues former Section 723.030 and provides special rules for an earnings withholding order to enforce a judgment for delinquent support payments for a child or spouse or former spouse of the judgment debtor. An earnings withholding order for support is given a different effect than other withholding orders: It is effective until the employer has withheld the full amount

specified in the order or he is served with a notice of termination, in which case the date of termination will be specified in the notice. See subdivision (b) (1). Thus, the withholding order for support does not terminate 100 days after service (it may, of course, be modified). The withholding order for support is subject to special exemption rules (see Section ~~723.052~~). Even when in effect, it does not necessarily preclude withholding on either a prior or subsequent earnings withholding order. If not earlier terminated, the withholding order for support automatically terminates one year after the employment of the employee terminates. Thus, for example, if the employee returns to work for the same employer within one year from the date his employment terminated, the employer must withhold pursuant to the withholding order for support. On the other hand, if the employee does not return to work until more than one year from the date his employment terminated, the order expires at the end of the year, and nothing is withheld pursuant to the order when the employee returns to work.

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The earnings withholding order for support is given priority over any other earnings withholding order. *But see* Section ~~723.031~~ (wage assignment for support given priority). However, a prior earnings withholding order remains in effect, and a judgment creditor may still obtain an earnings withholding order even where there is already in effect a prior earnings withholding order for support. Thus, where there are two earnings withholding orders in effect—one for support and one for another obligation—the amount withheld for support is deducted from the employee's earnings first. The amount, if any, that may be withheld pursuant to the other earnings withholding order is determined by subtracting the amount withheld pursuant to the withholding order for support from the amount that otherwise could be withheld pursuant to the other earnings withholding order. See Sections ~~723.077~~, ~~723.050~~, and ~~723.051~~ and the Comments thereto.

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§ 706.031. Order for wage assignment for support

706.031. (a) Nothing in this chapter affects an order made pursuant to Section 4701 of the Civil Code.

(b) An order made pursuant to Section 4701 of the Civil Code shall be given priority over any earnings withholding order as provided in that section. An employer upon whom an order made pursuant to Section 4701 is served shall withhold and pay over the earnings of the employee pursuant to such order notwithstanding the requirements of any earnings withholding order. When an employer is required to cease withholding earnings pursuant to an earnings withholding order, the employer shall notify the levying officer who served the earnings withholding order that a supervening wage assignment for support is in effect.

(c) Subject to subdivisions (b), (d), and (e), an employer shall withhold earnings of an employee pursuant to both an order made under Section 4701 of the Civil Code and an earnings withholding order.

(d) The employer shall withhold pursuant to an earnings withholding order only to the extent that the sum of the amount withheld pursuant to the order made under Section 4701 of the Civil Code and the amount withheld pursuant to the earnings withholding order does not exceed the amount that may be withheld under Article 3 (commencing with Section 706.050).

(e) The employer shall withhold pursuant to an earnings withholding order for taxes only to the extent that the sum of the amount withheld pursuant to the order made under Section 4701 of the Civil Code and the amount withheld pursuant to the earnings withholding order for taxes does not exceed the amount that may be withheld under Article 4 (commencing with Section 706.070).

Comment. Section 706.031 continues former Section 723.031 and states the effect of a wage

assignment for support made pursuant to Section 4701 of the Civil Code on an earnings withholding order.

Subdivision (a) makes clear that nothing in this chapter affects the wage assignment for support, and subdivision (b) makes clear that the wage assignment has priority (as provided in Section 4701) over any earnings withholding order, including a withholding order for support under Section ~~723.030~~. Under subdivision (b), the employer is required to notify the levying officer who earlier served an earnings withholding order if that order is completely superseded by the wage assignment. It should be noted that "levying officer" ~~means the state agency~~ where a withholding order for taxes is superseded. See Section ~~723.073~~. 706.030.

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Subdivisions (b) and (d) of Section ~~723.031~~ make clear that, where a wage assignment for support under Section 4701 of the Civil Code is in effect, the amount withheld from the debtor's earnings pursuant to such wage assignment is deducted from the amount that otherwise would be withheld under Section ~~723.050~~ on an earnings withholding order to enforce an ordinary money judgment or that otherwise would be withheld where a portion of the debtor's earnings have been determined to be exempt under Section ~~723.051~~. Suppose, for example, that a wage assignment for support under Section 4701 is in effect which requires that \$40 per week be withheld. Assume that Section ~~723.050~~ limits the amount that may be withheld to \$56. To determine the maximum amount that may be withheld pursuant to the earnings withholding order (absent any exemption allowed under Section ~~723.051~~), the \$40 withheld pursuant to the wage assignment for support is subtracted from the \$56, leaving \$16 as the maximum amount that may be withheld pursuant to the earnings withholding order. For a special rule applicable 706.031

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706.030 ~~when the earnings withholding order is on a judgment for delinquent amounts payable for child or spousal support, see Sections 723.030 and 723.052. The rule stated in subdivision (d) of Section 723.031 is required to avoid conflict with the federal~~ 706.052.
 706.031 ~~Consumer Credit Protection Act. That act requires that the amount withheld pursuant to a wage assignment under Section 4701 of the Civil Code be included in determining whether any amount may be withheld pursuant to an earnings withholding order on an ordinary judgment. See subdivision (c) of Section 302 of the act, 15 U.S.C. § 1672(c) (1970) ("garnishment" means "any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt") and [1969-1973 Transfer Binder] Lab. L. Rep. (CCH) para. 30,813.~~

706.050 ~~Under subdivision (e), the amount that could be withheld pursuant to a withholding order for taxes would be computed in the same manner as for an ordinary earnings withholding order pursuant to Section 723.050 unless the withholding order for taxes is obtained under Section 723.076.~~ 706.076.

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Article 3. Restrictions on Earnings Withholding

§ 706.050. Exemption from levy; amount of earnings

706.050. Except as otherwise provided in this chapter, the amount of earnings of a judgment debtor exempt from the levy of an earnings withholding order shall be that amount provided by federal law in Title 15, United States Code, Section 1673.

Comment. Section 706.050 continues the substance of former Section 723.050. The introductory clause is added to reflect the fact that a different amount may in some cases be withheld. This addition is not a substantive change. Section 706.050

provides the standard exemption applicable to all earnings withholding orders other than earnings withholding orders on writs issued for the collection of delinquent amounts payable on a judgment for child or spousal support (Sections ~~723.030~~ and ~~723.052~~) or certain withholding orders for taxes (Section ~~723.076~~). See also Sections ~~723.031~~ (wage assignments for support), ~~723.051~~ (exemption obtained by special hardship showing), ~~723.074~~(b) (agency issued withholding order for taxes in lesser amount), ~~723.075~~(e) (exemption obtained by special hardship showing to agency which issued withholding order for taxes), ~~723.105~~(f) (modification or termination of earnings withholding order where exemption claims are unopposed).

706.030 ~~support (Sections 723.030 and 723.052)~~ 706.052
 706.076 ~~orders for taxes (Section 723.076). See also Sections 723.031 (wage assignments for support), 723.051 (exemption obtained by special hardship showing), 723.074(b) (agency issued withholding order for taxes in lesser amount), 723.075(e) (exemption obtained by special hardship showing to agency which issued withholding order for taxes), 723.105(f) (modification or termination of earnings withholding order where exemption claims are unopposed).~~ 706.031
 706.074 ~~withholding order for taxes in lesser amount), 723.075(e) (exemption obtained by special hardship showing to agency which issued withholding order for taxes), 723.105(f) (modification or termination of earnings withholding order where exemption claims are unopposed).~~ 706.051
 706.075(c)
 706.105(f)

706.050 ~~Where a wage assignment for support under Section 4701 of the Civil Code is in effect, the amount withheld from the debtor's earnings pursuant to such wage assignment is deducted from the amount that otherwise would be withheld pursuant to Section 723.050 on an earnings withholding order on an ordinary money judgment. See Section 723.031 and Comment thereto. The~~ 706.031

amount that may be withheld pursuant to an administratively issued earnings withholding order for taxes when a wage assignment under Section 4701 of the Civil Code is in effect is computed in the same manner. See Section ~~723.031~~ and the 706.031 Comment thereto.

30942

§ 706.051. Earnings necessary for support of judgment debtor or his family

706.051. Except as provided in Section 706.052 and in Article 4 (commencing with Section 706.070), the portion of the judgment debtor's earnings which the judgment debtor proves is necessary for the support of the judgment debtor or the judgment debtor's family supported in whole or in part by the judgment debtor is exempt from levy under this chapter unless the debt is incurred for personal services rendered by any employee or former employee of the judgment debtor or is incurred by the debtor, or his or her spouse or family for the common necessities of life.

Comment. Section 706.051 continues former Section 723.051. Both the judgment debtor with a family and one without a family may claim the exemption under Section 706.051. For a special provision applicable where the earnings withholding order is on a writ issued for the collection of delinquent support payments, see Section 706.052.

30957

§ 706.052. Withholding order for support

706.052. (a) Except as provided in subdivision (b), only one-half of the disposable earnings (as defined by Title 15, United States Code, Section 1672) of the judgment debtor plus any amount withheld from the judgment debtor's earnings pursuant to a wage assignment under Section 4701 of the Civil Code is exempt from levy under this chapter where the earnings withholding order is a withholding order for support under Section 706.030.

(b) Except as provided in subdivision (c), upon motion of any interested party, the court shall make an equitable division of the judgment debtor's earnings that takes into account the needs of all the persons the judgment debtor is required to support and shall effectuate such division by an order determining the amount to be withheld from the judgment debtor's earnings pursuant to the withholding order for support.

(c) An order made under subdivision (b) may not authorize the withholding of an amount in excess of the amount that may be withheld for support under federal law under Title 15, United States Code, Section 1673.

Comment. Section 706.052 continues former Section 723.052 except that subdivision (c) is added to reflect that the court's authority under subdivision (b) is limited by the maximum amounts that may be withheld under federal law. See Title 15, United States Code, Section 1673(b) (2).

Subdivision (a) of Section ~~723.052~~ prescribes the exemption applicable to a wage garnishment for the collection of delinquent child or spousal support payments except in cases where the court has made an equitable division pursuant to subdivision (b). The judgment debtor's earnings that are subject to the 50 percent exemption under subdivision (a) are "disposable earnings" as defined by the federal Consumer Credit Protection Act, 15 U.S.C. § 1672 (1970). See Section ~~723.050~~. Unlike federal law, however, subdivision (a) protects the same amount of earnings regardless of whether the judgment debtor is supporting a present and a former spouse or is more than 12 weeks delinquent. Federal law permits garnishment of 50 percent of the employee's earnings if the employee is supporting a spouse or dependent other than the person who caused the garnishment and 60 percent if the employee is not supporting such additional persons; these percentages are increased to 55 percent and 65 percent, respectively, if the support payments are more than 12 weeks delinquent. See 15 U.S.C.A. § 1673(b) (2) (Supp. 1978).

Subdivision (a) also makes clear that, in applying the 50 percent exemption, the amount withheld from the earnings of the judgment debtor pursuant to a wage assignment for support under Section 4701 of the Civil Code is included in computing the 50 percent of the judgment debtor's earnings that may be withheld. For example, if 30 percent of the judgment debtor's earnings are withheld pursuant to a wage assignment for support, an additional 20 percent may be withheld pursuant to the earnings withholding order on the writ issued for the collection of delinquent amounts payable for child or spousal support.

Subdivision (b) makes the 50 percent standard provided by subdivision (a) subject to the power of the court to make an order that more or less of the judgment debtor's earnings be withheld where the earnings withholding order is issued to collect delinquent child or spousal support payments. It should be noted that the court may not order the withholding of an amount in excess of that permitted by federal law. This maximum amount varies depending upon whether the judgment debtor is supporting more than one person or is more than 12 weeks delinquent. The authority of the court to make an equitable division of the judgment debtor's earnings between, for example, the debtor and a former spouse, or between a former spouse and a present family, is based on decisions under the former statute. See, e.g., Rankins v. Rankins, 52 Cal. App.2d 231, 126 P.2d 125 (1942).

Under this section, an employer who receives an earnings withholding order for support will know that 50 percent of disposable earnings is to be withheld unless the employer is served with a court order requiring a greater or lesser amount to be withheld.

For rules relating to the priority to be given a withholding order for support, see Section ~~723.030~~.

706.052

706.050.

706.030.

Article 4. Earnings Withholding
Order for Taxes

§ 706.070. State and state tax liability defined

706.070. As used in this article:

(a) "State" means the State of California and includes any officer, department, board, or agency thereof.

(b) "State tax liability" means an amount for which the state has a state tax lien as defined in Section 7162 of the Government Code.

Comment. Section 706.070 provides definitions for terms used in this article.

Subdivision (a) continues subdivision (a) of former Section 723.070. "State" means the state or any agency thereof. Where the term "state" is used in this article, it refers to the particular state agency that administers the particular tax law under which recovery of the delinquent tax is sought. See Section 706.011(d).

Subdivision (b) supersedes subdivision (b) of former Section 723.070 and substitutes a general reference to the amount for which the state has a state tax lien for the listing of the sections of various tax laws in former Section 723.070(b). Subdivision (b) continues former law by permitting an earnings withholding order for taxes in the case of sales and use taxes (Rev. & Tax. Code § 6757), vehicle fuel license taxes (Rev. & Tax. Code § 7872), use fuel taxes (Rev. & Tax. Code § 8996), gift taxes (Rev. & Tax. Code § 16063), personal income taxes (Rev. & Tax. Code § 18881), bank and corporation taxes (Rev. & Tax. Code § 26161), cigarette taxes (Rev. & Tax. Code § 30322), alcoholic beverage taxes (Rev. & Tax. Code § 32363), and unemployment compensation contributions (Unemp. Ins. Code § 1703). Subdivision (b) adds new authority for an earnings withholding order for taxes in the case of fish packing and processing privilege taxes (Fish & Game Code § 8048), oil and gas conservation charges (Pub. Res. Code § 3423), and geothermal resources charges (Pub. & Res. Code § 3772). The former provision permitting an earnings withholding order for taxes in the case of private car taxes under Section 11451 of the Revenue and Taxation Code is not continued.

28750

§ 706.071. Collection of state tax liability; limitations

706.071. This chapter does not limit the state's right to collect a state tax liability except that (a) no levy upon earnings of an employee held by an employer is effective unless such levy is made in accordance with the provisions of this chapter and (b) other methods of collection may not be used to require an employer to withhold earnings of an employee in payment of a state tax liability.

Comment. Section 706.071 continues the substance of former Section 723.071. The substitution of "other methods of collection" for "the

methods of collection referred to in subdivision (b) of Section 723.070" is not a substantive change; this change merely conforms to the change made by Section 706.070 in the language found in former Section 723.070.

Section ~~723.071~~ makes clear that the levy procedure for withholding *earnings* of an employee for the collection of state tax liability provided in the

Wage Garnishment Law is exclusive. The authorization, for example, to direct orders to third persons who owe the taxpayer money found in Section 18817 (personal income tax) and Section 26132 (bank and corporation taxes) of the Revenue and Taxation Code is limited by Section ~~723.071~~. This article deals, however, only with levy on earnings to collect certain state taxes. The collection of federal taxes is accomplished pursuant to federal law and cannot be limited by state law. See Int. Rev. Code of 1954, § 6334. As to other taxes not within the scope of this article, the tax obligation must be reduced to judgment, and the taxing authority may then obtain an earnings withholding order like any other creditor; such order is treated the same as any other earnings withholding order, and this article does not apply.

16962

§ 706.072. Withholding order for taxes; issuance; conditions

706.072. (a) A "withholding order for taxes" is an earnings withholding order issued pursuant to this article to collect a state tax liability and shall be denoted as a withholding order for taxes on its face.

(b) A withholding order for taxes may only be issued under one of the following circumstances:

(1) The existence of the state tax liability appears on the face of the taxpayer's return, including a case where such tax liability is disclosed from the taxpayer's return after errors in mathematical computations in the return have been corrected.

(2) The state tax liability has been assessed or determined as provided in the Fish and Game Code, Public Resources Code, Revenue and Taxation Code, or Unemployment Insurance Code, and the taxpayer had notice of the proposed assessment or determination reviewed by appropriate administrative procedures. If the taxpayer makes a timely request for review of the assessment or determination, the state shall not issue a withholding order for taxes until the administrative review procedure is completed. If the taxpayer is given notice of the proposed assessment or determination but does not make a timely request for review, the state may issue a withholding order for taxes.

(c) In any case where a state tax liability has been assessed or determined prior to January 1, 1983, and the state determines that the

requirements of subdivision (b) may not have been satisfied, the state may send a "Notice of Proposed Issuance of Withholding Order for Taxes" to the taxpayer at the taxpayer's last known address by first-class mail, postage prepaid. The notice shall advise the taxpayer that the taxpayer may have the assessment or determination reviewed by appropriate administrative procedures and state how such a review may be obtained. If the taxpayer is sent such a notice and requests such a review within 30 days from the date the notice was mailed to the taxpayer, the state shall provide appropriate administrative procedures for review of the assessment or determination and shall not issue the withholding order for taxes until the administrative review procedure is completed. If the taxpayer is sent such a notice and does not request such a review within 30 days from the date the notice was mailed to the taxpayer, the state may issue the withholding order for taxes.

(d) A withholding order for taxes may be issued whether or not the state tax liability has been reduced to judgment.

Comment. Section 706.072 continues former Section 723.072. The date in subdivision (c) has been changed from "January 1, 1980" to "January 1, 1983" to give the state agency an opportunity to provide for review. This will be useful in cases covered by this chapter but not under former law. See the Comment to Section 706.070.

Section ~~723.072~~ provides that no withholding order for taxes may be issued unless the state tax liability either appears on the face of the taxpayer's tax return or has been determined in an administrative proceeding in which the taxpayer had notice and an opportunity for administrative review. See *Greene v. Franchise Tax Board*, 27 Cal. App.3d 38, 103 Cal. Rptr. 483 (1972). However, no review of the taxpayer's tax liability is permitted in court proceedings under this chapter. See Section ~~723.082~~. Under subdivision (b) (2), the time for making a request for review of an assessment or determination depends on the appropriate procedures applicable to a particular agency.

706.072

706.082

Subdivision (d) recognizes that few state tax liabilities are reduced to judgment.

30161

§ 706.073. Application of chapter to withholding order for taxes

706.073. Except as otherwise provided in this article, the provisions of this chapter govern the procedures and proceedings concerning a withholding order for taxes. For the purposes of this article, a reference in this chapter to a "levying officer" shall be deemed to mean the specific state agency seeking to collect a state tax liability under this article.

Comment. Section 706.073 continues former Section 723.073 and makes clear that the provisions of this chapter governing earnings withholding orders are applicable to withholding orders for taxes except to the extent that this article contains special provisions applicable to such orders.

30159

§ 706.074. Issuance by state to collect state tax liability; amount to be withheld

706.074. (a) The state may itself issue a withholding order for taxes under this section to collect a state tax liability. The order shall specify the total amount required to be withheld pursuant to the order (unpaid tax liability including any penalties, accrued interest, and costs).

(b) Unless a lesser amount is specified in the order, the amount to be withheld by the employer each pay period pursuant to an order issued under this section is the amount required to be withheld under Title 15 of the United States Code, Section 1673(a) and is not subject to the exception provided in Title 15 of the United States Code, Section 1673(b).

Comment. Section 706.074 continues the substance of former Section 723.074. The reference to the relevant provision of federal law has been substituted for the reference to former Section 723.050. This makes clear that an order issued under this section is limited to the amount that can be withheld on a garnishment by an ordinary creditor. A court-issued order can require the withholding of a greater amount. See Section 706.076.

706.074, ~~Section 723.074~~ specifies the procedure to be followed when the state taxing agency itself issues the withholding order for taxes. In such case, no application to a court for the order is required. Under an order issued pursuant to Section ~~723.074~~, the employer may be required to withhold the same amount as if the earnings withholding order were issued at the behest of a judgment creditor. This amount

~~706.075~~ must be withheld by the employer unless the order itself specifies a lesser amount or the amount to be withheld is reduced pursuant to subdivision (c) of Section ~~723.075~~. As to the effect of a wage assignment for support under Section 4701 of the Civil Code, see subdivision (e) of Section ~~723.031~~ and the Comment thereto.

§ 706.075. Service on employer of order and notice; delivery to employee; administrative hearing; liability of employer

706.075. (a) This section applies to any withholding order for taxes issued under this article.

(b) Together with the withholding order for taxes, the state shall serve upon the employer an additional copy of the order and a notice informing the taxpayer of the effect of the order and of his right to hearings and remedies provided in this chapter. Within 10 days from the date of service, the employer shall deliver to the taxpayer a copy of the order and the notice, except that immediate delivery shall be made where a jeopardy withholding order for taxes has been served. If the taxpayer is no longer employed by the employer and the employer does not owe the taxpayer any earnings, the employer is not required to make such delivery.

(c) The state shall provide for an administrative hearing to reconsider or modify the amount to be withheld pursuant to the withholding order for taxes, and the taxpayer may request such a hearing at any time after service of the order. If the taxpayer requests a hearing, the hearing shall be provided, and the matter shall be determined, within 15 days after the request is received by the state. The determination of the amount to be withheld is subject to the standard provided in Section 706.051.

(d) The employer is not subject to any civil liability for failure to comply with subdivision (b). Nothing in this subdivision limits the power of a court to hold the employer in contempt of court for failure to comply with subdivision (b).

Comment. Section 706.075 continues former Section 723.075. Section 706.075 requires service of a copy of the

order and a notice informing the employee of the effect of the order and the employee's right to hearings and other remedies. ^{706.080} ~~See Section 723.080~~ (manner of service). These papers are served on the employer who is required to deliver them to the employee. ^{also}

The state is required by subdivision (c) to provide for an administrative hearing for the determination of the employee's application for modification of the amount to be withheld under the withholding order for taxes. The state is to apply the standard of Section ~~723.051~~ ^{706.051} to the determination of the application for modification, and such determination is subject to review by way of administrative mandamus. See Section 1094.5; *County of Tuolumne v. State Board of Equalization*, 206 Cal. App.2d 352, 373, 24 Cal. Rptr. 113, 127 (1962).

Subdivision (d) is the same in substance as the last two sentences of subdivision (a) of Section ~~723.104~~ See the Comment ~~to that section for a discussion of the comparable provision.~~ 706.104.

32235

§ 706.076. Order of court for amount in excess of order issued by state; temporary earnings holding order

706.076. (a) A withholding order for taxes may be issued pursuant to this section requiring the employer of the taxpayer to withhold an amount in excess of the amount that may be required to be withheld pursuant to an order issued under Section 706.074.

(b) The state may, at any time, apply to a court of record in the county where the taxpayer was last known to reside for the issuance of a withholding order for taxes under this section to collect a state tax liability.

(c) The application for the order shall include a statement under oath that the state has served upon the taxpayer both of the following:

(1) A copy of the application.

(2) A notice informing the taxpayer of the purpose of the application and the right of the taxpayer to appear at the court hearing on the application.

(d) Upon the filing of the application, the court shall immediately set the matter for hearing and the court clerk shall send a notice of the time and place of the hearing by first-class mail, postage prepaid, to the state and the taxpayer. The notice shall be deposited in the mail at least 10 days before the day set for the hearing.

(e) After hearing, the court shall issue a withholding order for taxes which shall require the taxpayer's employer to withhold and pay over all earnings of the taxpayer other than that amount which the taxpayer proves is exempt under Section 706.051, but in no event shall the amount to be withheld be less than that permitted to be withheld under Section 706.050.

(f) The state may issue a temporary earnings holding order, which shall be denoted as such on its face, in any case where the state intends to apply for a withholding order for taxes under this section and has determined that the collection of the state tax liability will be jeopardized in whole or in part if the temporary earnings holding order

is not issued. The temporary earnings holding order shall be directed to the taxpayer's employer and shall require the employer to retain in the employer's possession or under the employer's control all or such portion of the earnings of the taxpayer then or thereafter due as is specified in the order. Together with the temporary earnings holding order, the state shall serve upon the employer an additional copy of the order and a notice informing the taxpayer of the effect of the order and of the right to the remedies provided in this chapter. Upon receipt of the order, the employer shall deliver to the taxpayer a copy of the order and notice. If the taxpayer is no longer employed by the employer and the employer does not owe the taxpayer any earnings, the employer is not required to make such delivery. The temporary earnings holding order expires 15 days from the date it is served on the employer unless it is extended by the court on ex parte application for good cause shown. If a temporary earnings holding order is served on an employer, the state may not thereafter, for a period of six months, serve on the same employer another temporary earnings holding order for the same employee unless the court for good cause shown otherwise orders. Sections 706.153 and 706.154 apply to temporary earnings holding orders issued under this section.

Comment. Section 706.076 continues former Section 723.076. Section 706.076

provides a procedure whereby the taxing agency can obtain an order, after court hearing, that requires the employer to withhold all of the employee's earnings in excess of the amount necessary for the support of the taxpayer or his family. An order may be obtained under Section ~~723.076~~ 706.076 that requires the withholding of more than the amount that the state taxing agency could require the employer to withhold pursuant to an order issued by the agency itself under Section ~~723.074~~ 706.074. This grant of authority is not intended as a directive that such authority be used generally. This extreme remedy could be harsh in its application and should be used sparingly.

Provision is made in subdivision (f) of Section ~~723.076~~ 706.076 for a temporary order directing the employer to hold any earnings of the employee then or thereafter due. Such orders should be used only in rare and unusual cases. The temporary order prevents the employer from paying to the employee all or a specified portion of the employee's earnings for a limited period in order to permit the court to act on the state's application for an earnings withholding order for taxes.

§ 706.077. Priority

706.077. (a) Subject to subdivision (b), an employer upon whom a withholding order for taxes is served shall withhold and pay over earnings of the employee pursuant to such order and shall cease to withhold earnings pursuant to any prior earnings withholding order except that a withholding order for support shall be given priority as provided in Section 706.030. When an employer is required to cease withholding earnings pursuant to an earlier earnings withholding order, the employer shall notify the levying officer who served the earlier earnings withholding order that a supervening withholding order for taxes is in effect.

(b) An employer shall not withhold earnings of an employee pursuant to a withholding order for taxes if a prior withholding order for taxes is in effect, and, in such case, the subsequent withholding order for taxes is ineffective.

Comment. Section 706.077 continues former Section 723.077 and)

deals with the priority a tax withholding order is to be given with respect to other earnings withholding orders. A withholding order for taxes takes priority over any prior earnings withholding order except one for support or another withholding order for taxes. As indicated in the Comment to Section ~~723.030~~, a withholding order for support always takes priority over any other earnings withholding order. Thus, where a withholding order for support is in effect and a subsequent tax order is received, the employer will continue to withhold pursuant to the withholding order for support, and the amount withheld pursuant to the tax order will be reduced by the amount withheld pursuant to the withholding order for support. Similarly, where a tax order is in effect and a withholding order for support is served, the withholding order for support again takes priority. See the Comments to Sections ~~723.030~~ and ~~723.050~~. However, where the prior earnings withholding order is for the collection of a debt other than for taxes or delinquent support, the tax order displaces the prior earnings withholding order, and the employer must withhold only pursuant to the tax order until the tax debt is completely paid. If the earnings withholding order for taxes is satisfied during the withholding period of the prior earnings withholding order (Section ~~723.022~~), the employer must then again withhold pursuant to the prior earnings withholding order. Where there is a prior tax order in effect, the second tax order is ineffective; the employer may not withhold pursuant to the second order and must promptly notify the agency which issued or obtained the second order of the reason for his action. See Section ~~723.104(b)~~.

As to the effect of a wage assignment for support under Section 4701 of the Civil Code, see Section ~~723.031~~ (e). As indicated in the Comment to Section ~~723.031~~, a wage assignment for support under Civil Code Section 4701 takes priority over any earnings

706.030,

706.030

706.050.

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706.031

706.104(b).

706.031

withholding order. Thus, where a wage assignment for support is in effect and a subsequent tax order is received, the employer will continue to withhold pursuant to the wage assignment, and the amount withheld pursuant to the tax order will be reduced by the amount withheld pursuant to the wage assignment for support. Similarly, where a tax order is in effect and a wage assignment for support is served, the wage assignment takes priority. See the Comments to Sections ~~723.031~~ and ~~723.050~~.

706.031

706.050

31071

§ 706.078. Pay periods subject to order; jeopardy withholding order for taxes; duration of withholding

706.078. (a) Except as provided in subdivision (b), the employer shall not withhold pursuant to a withholding order for taxes from earnings of the employee payable for any pay period of such employee that ends prior to the 10th day after service of the order.

(b) A "jeopardy withholding order for taxes," which shall be denoted as such on its face, is a withholding order for taxes that requires that the employer withhold pursuant to the order from earnings due to the employee at the time of service of the order on the employer and from earnings thereafter due. A jeopardy withholding order for taxes may be issued only where the state has determined that the collection of a state tax liability will be jeopardized in whole or in part by delaying the time when withholding from earnings commences.

(c) An employer shall continue to withhold pursuant to a withholding order for taxes until the amount specified in the order has been paid in full or the order is withdrawn, except that the order automatically terminates one year after the employment of the employee by the employer terminates. The state shall promptly serve on the employer a notice terminating the withholding order for taxes if the state tax liability for which the withholding order for taxes was issued is satisfied before the employer has withheld the full amount specified in the order, and the employer shall discontinue withholding in compliance with such notice.

Comment. Section 706.078 continues former Section 723.078. Subdivision (a)

requires the employer to withhold commencing at the same time as with any other order. ~~Of Section 723.022~~ Subdivision (b) provides for a jeopardy withholding order that requires immediate withholding. Such an order should be used only in rare and unusual cases. Subdivision (c) requires the employer to withhold earnings pursuant to a withholding order for taxes until the amount specified in the order has been paid in full and provides for a notice if the tax liability is satisfied before the full amount

See

706.022.

706.078 _____ specified in the order has been withheld. The notice required by
Section ~~723.078~~ is in lieu of the notice provided by Section
706.027. ~~723.027~~. If not earlier terminated by the court, the order
automatically terminates one year after the employment of the
employee by the employer terminates. See the discussion of a
comparable provision in the Comment to Section ~~723.030~~ 706.030.

30162

§ 706.080. Service of order or other notice or document; method;
completion

706.080. Service of a withholding order for taxes or of any other notice or document required under this chapter in connection with a withholding order for taxes may be made by the state by first-class mail, postage prepaid, or by any authorized state employee. Service of a withholding order for taxes is complete when it is received by the employer or a person described in paragraph (1) or (2) of subdivision (a) of Section 706.101. Service of, or the providing of, any other notice or document required to be served or provided under this chapter in connection with a withholding order for taxes is complete when the notice or document is deposited in the mail addressed to the last known address of the person on whom it is served or to whom it is to be provided.

Comment. Section 706.080 continues the substance of former Section 723.080 and provides special provisions for service of notices, documents, and orders under this article. This special service provision is in lieu of the one prescribed by Section 706.101.

30163

§ 706.081. Forms; prescription by state

706.081. Except for the forms referred to in Section 706.076, the state shall prescribe the form of any order, notice, or other document required by this chapter in connection with a withholding order for taxes notwithstanding Sections 706.100 and 706.120, and any form so prescribed is deemed to comply with this chapter.

Comment. Section 706.081 continues former Section 723.081. The section requires that forms used in connection with this article be prescribed by the state taxing agency administering the particular tax law except that the Judicial Council prescribes the forms used in connection with court issued orders under Section 706.076. See Section 706.120.

706.082. Review of tax liability; prohibition

706.082. No review of the taxpayer's tax liability shall be permitted in any court proceedings under this chapter.

Comment. Section 706.082 continues former Section 723.082 and makes clear that the court, in a proceeding to determine whether a withholding order for taxes should be issued or be modified or terminated because of hardship, may not review the taxpayer's tax liability.

§ 706.084. Warrant, notice of levy or notice or order to withhold served on employer deemed withholding order for taxes; requirements

706.084. Where a warrant, notice of levy, or notice or order to withhold is served on the employer to enforce a state tax liability of a person who is an employee of that employer, it shall be deemed to be a withholding order for taxes as to any earnings that are subject to the provisions of this chapter if both of the following requirements are satisfied:

(a) The form provides notice on its face that it is to be treated as a withholding order for taxes as to any earnings that are subject to the provisions of this chapter.

(b) The form provides all the information provided in a withholding order for taxes.

Comment. Section 706.084 continues the substance of former Section 723.084. The section has been revised to reflect the revised definition of "state tax liability" in Section 706.070.

Section ~~723.084~~ deals with the situation where it is not clear whether an employer-employee relationship exists. The warrant, notice of levy, or notice or order to withhold may be issued on the assumption the taxpayer is an independent contractor. However, so that the taxpayer cannot avoid the withholding by claiming that he is an employee and that his earnings may be withheld only pursuant to an earnings withholding order, Section ~~723.084~~ provides that the warrant, notice, or order may require that it be treated as an earnings withholding order if the taxpayer is an employee. The contents of the forms (except for a court issued withholding order for taxes) are prescribed by the state. See Section ~~723.081~~. The form for the court issued withholding order for taxes is prescribed by the Judicial Council. See Section ~~723.120~~.

706.084

706.084

706.081

706.120

Article 5. Procedure for Earnings Withholding
Orders and Exemption Claims

§ 706.100. Rules

706.100. Notwithstanding any other provision of the law, the Judicial Council may provide by rule for the practice and procedure in proceedings under this chapter except for the state's administrative hearings provided by Article 4 (commencing with Section 706.070).

Comment. Section 706.100 continues former Section 723.100.)

706.100 — Article 5 outlines generally the procedure for issuance and review of an earnings withholding order; however, Section ~~723.100~~ authorizes the Judicial Council to provide by rule for the practice and procedure in proceedings under this chapter.

706.120. — The state tax agency prescribes the rules of procedure for administrative hearings under Article 4 (withholding orders for taxes). The Judicial Council also prescribes the forms to be used under this chapter. See Section ~~723.120~~. But see Section ~~723.081~~ — 706.081 (forms used in connection with withholding orders for taxes—other than the form of a court issued order—are prescribed by state).

30972

§ 706.101. Service; earnings withholding order; employer; employee; delivery; notice or document

706.101. (a) An earnings withholding order shall be served by the levying officer upon the employer by delivery of the order to any of the following:

(1) The managing agent or person in charge, at the time of service, of the branch or office where the employee works or the office from which the employee is paid.

(2) Any person to whom a copy of the summons and of the complaint may be delivered to make service on the employer under Article 4 (commencing with Section 416.10) of Chapter 4 of Title 5.

(b) Service of an earnings withholding order shall be made by personal delivery as provided in Section 415.10 or 415.20 or by delivery by registered or certified mail, postage prepaid, with return receipt requested. When service is made by mail, service is completed at the time the return receipt is executed by or on behalf of the recipient. If the levying officer attempts service by mail under this subdivision and does not receive a return receipt within 15 days from the date of

deposit in the mail of the earnings withholding order, the levying officer shall make service as provided in Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5.

(c) Except as provided in subdivision (b), service of any notice or document under this chapter may be made by first class mail, postage prepaid. If service is made on the employer after the employer's return has been received by the levying officer, the service shall be made by first class mail, postage prepaid, on the person designated in the employer's return to receive notices and at the address indicated in the employer's return, whether or not such address is within the county. Nothing in this subdivision precludes service by personal delivery on the employer before the employer's return has been received by the levying officer, or on the person designated in the employer's return after its receipt.

(d) Notwithstanding subdivision (b), if the judgment creditor so requests, the levying officer shall make service of the earnings withholding order by personal delivery as provided in Section 415.10 or 415.20. If the judgment creditor requests that service be made under this subdivision, the fee provided in Section 26750 of the Government Code shall be increased by one dollar and fifty cents (\$1.50).

(e) An earnings withholding order also may be served by any person registered as a process server pursuant to Chapter 16 (commencing with Section 22350) of Division 8 of the Business and Professions Code. When an earnings withholding order is served by a process server pursuant to this subdivision, the levying officer shall perform all other duties required by the provisions of this chapter, except for the actual service of the order, as if the levying officer had served the order. When an earnings withholding order is served by a process server, the court, in allowing costs for service pursuant to Section 1032b, shall not allow a sum in excess of one dollar and fifty cents (\$1.50).

Comment. Section 706.101 continues former Section 723.101 and)

specifies the manner of service under this chapter. Although personal delivery is authorized, it is anticipated that the convenience and economy of service by mail will result in the general use of this method. Subdivision (b) requires personal delivery by the levying officer where mail service is apparently ineffective because a return receipt has not been received by the levying officer within 15 days after the order is mailed. Where service is made by mail, the employer must indicate on his employer's return the date service was completed. See Section ~~723.126~~ 706.126(b)(1). As to service of

706.126

withholding orders for taxes, see Section ~~723.086~~ Subdivision (c) ~~706.080.~~
makes clear that, after the levying officer has received the
employer's return, service of any notice or document under this
chapter is to be made on the person, and at the address, indicated
in the employer's return. See Sections ~~723.101(c)~~ and ~~706.101~~
~~706.126~~ ~~723.126~~(b) (6). See also, for example, the Comment to Section ~~706.101~~
~~706.027.~~ ~~723.027.~~

29644

§ 706.102. Application for order by judgment creditor prior to return
of writ of execution; issuance

706.102. (a) If a writ of execution has been issued to the county
where the judgment debtor's employer is to be served and the time for
the return of the writ under subdivision (a) of Section 699.560 has not
expired, a judgment creditor may apply for the issuance of an earnings
withholding order by filing an application, in the form prescribed by
the Judicial Council, with a levying officer in such county who shall
promptly issue an earnings withholding order in the form prescribed
pursuant to Sections 706.120 and 706.125.

(b) This section does not apply where the earnings withholding
order is a withholding order for taxes.

Comment. Section 706.102 continues former Section 723.102.

Subdivision (a) requires a
judgment creditor to apply for an earnings withholding order to
the levying officer in the county where the order is to be served.
The form prescribed by the Judicial Council must be used for the
application. See Section ~~723.120~~. See also Section ~~723.121~~
(contents of application). As a prerequisite to applying for the
earnings withholding order, the judgment creditor must have
obtained the issuance of a writ of execution to the county where
the order is to be served. See also Section ~~723.101~~ (place where
service may be made). An earnings withholding order shall be
promptly issued on the ex parte application of a judgment
creditor. The debtor may claim an exemption as provided in
Section ~~723.105~~, have such order modified or terminated, and
even recover from the creditor amounts withheld and paid over
pursuant to such order; but this does not affect the initial issuance
of the order. The earnings withholding order will be effective
only if served before the time for the return of the writ under
subdivision (a) of Section ~~682~~ has expired. See Section ~~723.103(c)~~.
For special provisions regarding the issuance of a withholding
order for taxes, see Article 4 (commencing with Section ~~723.070~~).

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706.103(c).

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§ 706.103. Service on employer; documents and instructions; limitations

706.103. (a) The levying officer shall serve upon the designated employer all of the following:

- (1) The original and one copy of the earnings withholding order.
- (2) The form for the employer's return.
- (3) The notice to employee of earnings withholding order in the form prescribed pursuant to Sections 706.120 and 706.122.

(b) At the time the levying officer makes service pursuant to subdivision (a), the levying officer shall provide the employer with a copy of the employer's instructions referred to in Section 706.127. The Judicial Council may adopt rules prescribing the circumstances when compliance with this subdivision is not required.

(c) No earnings withholding order shall be served upon the employer after the time specified in subdivision (a) of Section 699.560 for the return of the writ of execution under which the order was issued has expired.

Comment. Section 706.103 continues former Section 723.103 and

prescribes what must be served upon the employer by the levying officer and when such service must be accomplished to be effective. Service of the earnings withholding order must be completed before the writ must be returned. See Section ~~699~~

699.560.)

See also Section ~~723.026(c)~~

706.026(c).

706.103

~~Section 723.103~~ requires that the employer be supplied with a copy of the earnings withholding order and with a notice advising the employee of the effect of the earnings withholding order and his rights with respect to the order. The employer is required to deliver these papers to the employee within 10 days of service. See Section ~~723.104~~. The person to be served and the manner of service of the earnings withholding order and related documents is specified in Section ~~723.101~~.

706.104.

706.101.

§ 706.104. Duties of employer on service of order

706.104. Any employer who is served with an earnings withholding order shall:

(a) Deliver to the judgment debtor a copy of the earnings withholding order and the notice to employee of earnings withholding within 10 days from the date of service. If the judgment debtor is no longer employed by the employer and the employer does not owe the employee any earnings, the employer is not required to make such delivery. The

employer is not subject to any civil liability for failure to comply with this subdivision. Nothing in this subdivision limits the power of a court to hold the employer in contempt of court for failure to comply with this subdivision.

(b) Complete the employer's return on the form provided by the levying officer and mail it by first-class mail, postage prepaid, to the levying officer within 15 days from the date of service. If the earnings withholding order is ineffective, the employer shall state in the employer's return that the order will not be complied with for this reason and shall return the order to the levying officer with the employer's return.

Comment. Section 706.104 continues former Section 723.104 and)

imposes certain duties on an employer who is served with an earnings withholding order. The section applies to all earnings withholding orders, including those for support and taxes. See Sections ~~723.090~~ (a) (support), ~~723.072~~ (a) (taxes).

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706.030

Subdivision (a) requires the employer to deliver to the employee a copy of the order and a notice advising the employee of his rights. See also Section ~~723.075~~ (withholding order for taxes). There is a special provision, however, concerning the time for such delivery when the order is a jeopardy withholding order for taxes. See Sections ~~723.073~~, ~~723.075~~ (b). See also Section ~~723.076~~ (f) (notice of temporary earnings holding order).

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706.076(f)

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The last two sentences of subdivision (a) make clear that an employer is not liable for civil damages for failure to give the employee the notice concerning the employee's rights. Section ~~723.104~~ does not preclude the Labor Commissioner from taking action under the Labor Code if the employer consistently fails to give employees the notice required under subdivision (a). Moreover, although the employer is not civilly liable, the employer may be subject to punishment for contempt. This would be appropriate where the employer fails to give the employee notice out of malice or willful neglect but would not be appropriate where the employer merely inadvertently fails to give the notice.

706.104

Subdivision (b) requires the employer to fill out and mail an employer's return to the levying officer who served the earnings withholding order. In the case of a withholding order for taxes, the return is made to the state agency seeking to collect the tax.

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See Section ~~723.073~~. Under subdivision (b), if the earnings withholding order is ineffective (see Comment to Section ~~723.092~~), the employer must state in the return that the order will not be complied with for this reason and also return the order. The form of the return is prescribed by the Judicial Council. See Section ~~723.120~~. See also Sections ~~723.126~~ (contents of return), ~~723.081~~ (form of return for withholding order for taxes is prescribed by state).

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§ 706.105. Exemption; claim by judgment debtor

706.105. (a) A judgment debtor may claim an exemption under Section 706.051 under either of the following circumstances:

(1) No prior hearing has been held with respect to the earnings withholding order.

(2) There has been a material change in circumstances since the time of the last prior hearing on the earnings withholding order.

(b) A claim of exemption shall be made by filing with the levying officer an original and one copy of (1) the judgment debtor's claim of exemption and (2) the judgment debtor's financial statement.

(c) Upon the filing of the claim of exemption, the levying officer shall promptly send to the judgment creditor, at the address stated in the application for the earnings withholding order, by first-class mail, postage prepaid, all of the following:

(1) A copy of the claim of exemption.

(2) A copy of the financial statement.

(3) A notice of claim of exemption, in the form prescribed by the Judicial Council, stating that the claim of exemption has been filed and that the earnings withholding order will be terminated, or modified to reflect the amount of earnings claimed to be exempt in the claim of exemption, unless a notice of opposition to the claim of exemption is filed with the levying officer by the judgment creditor within 10 days after the date of the mailing of the notice of claim of exemption.

(d) A judgment creditor who desires to contest a claim of exemption shall, within 10 days after the date of the mailing of the notice of claim of exemption, file with the levying officer a notice of opposition to the claim of exemption.

(e) If a notice of opposition to the claim of exemption is filed with the levying officer within the 10-day period, the judgment creditor is entitled to a hearing on the claim of exemption. If the judgment creditor desires a hearing on the claim of exemption, the judgment creditor shall file a notice of motion for an order determining the claim of exemption with the court within 10 days after the date the levying officer mailed the notice of claim of exemption. If the notice of motion is so filed, the hearing on the motion shall be held not later than 20 days from the date the notice of motion was filed unless continued by the court for good cause. Not less than 10 days prior to the

hearing, the judgment creditor shall give written notice of the hearing to the levying officer and shall serve a notice of the hearing and a copy of the notice of opposition to the claim of exemption by first-class mail on the judgment debtor and, if the claim of exemption so requested, on the attorney for the judgment debtor. Service is deemed made when the notice of the hearing and a copy of the notice of opposition to the claim of exemption are deposited in the mail, postage prepaid, addressed to the judgment debtor at the address stated in the claim of exemption and, if service on the attorney for the judgment debtor was requested in the claim of exemption, to the attorney at the address stated in the claim of exemption. The judgment creditor shall file proof of such service with the court. After receiving the notice of the hearing and before the date set for the hearing, the levying officer shall file the claim of exemption and the notice of opposition to the claim of exemption with the court.

(f) If the levying officer does not receive a notice of opposition to the claim of exemption within the 10-day period after the date of mailing of the notice of claim of exemption and a notice of the hearing not later than 10 days after the filing of the notice of opposition to the claim of exemption, the levying officer shall serve on the employer one of the following:

(1) A notice that the earnings withholding order has been terminated if all of the judgment debtor's earnings were claimed to be exempt.

(2) A modified earnings withholding order which reflects the amount of earnings claimed to be exempt in the claim of exemption if only a portion of the judgment debtor's earnings was claimed to be exempt.

(g) If, after hearing, the court orders that the earnings withholding order be modified or terminated, the clerk shall promptly transmit a certified copy of the order to the levying officer who shall promptly serve on the employer of the judgment debtor (1) a copy of the modified earnings withholding order or (2) a notice that the earnings withholding order has been terminated. The court may order that the earnings withholding order be terminated as of a date which precedes the date of hearing. If the court determines that any amount withheld pursuant to the earnings withholding order shall be paid to the judgment debtor, the court shall make an order directing the person who holds such amount to pay it promptly to the judgment debtor.

(h) If the earnings withholding order is terminated by the court, unless the court otherwise orders or unless there is a material change of circumstances since the time of the last prior hearing on the earnings withholding order, the judgment creditor may not apply for another earnings withholding order directed to the same employer with respect to the same judgment debtor for a period of 100 days following the date of service of the earnings withholding order or 60 days after the date of the termination of the order, whichever is later.

(i) If an employer has withheld and paid over amounts pursuant to an earnings withholding order after the date of termination of such order but prior to the receipt of notice of its termination, the judgment debtor may recover such amounts only from the levying officer if the levying officer still holds such amounts or, if such amounts have been paid over to the judgment creditor, from the judgment creditor. If the employer has withheld amounts pursuant to an earnings withholding order after termination of the order but has not paid over such amounts to the levying officer, the employer shall promptly pay such amounts to the judgment debtor.

(j) An appeal lies from any court order under this section denying a claim of exemption or modifying or terminating an earnings withholding order. Such appeal shall be taken in the manner provided for appeals in the court in which the proceeding is had. An appeal by the judgment creditor from an order modifying or terminating the earnings withholding order does not stay the order from which the appeal is taken. Notwithstanding the appeal, until such time as the order modifying or terminating the earnings withholding order is set aside or modified, the order allowing the claim of exemption in whole or in part shall be given the same effect as if the appeal had not been taken.

(k) This section does not apply to a withholding order for support or a withholding order for taxes.

Comment. Section 706.105 continues former Section 723.105 and

outlines generally the procedure for the hearing of a judgment debtor's claim for the exemption under Section ~~723.051~~.

706.051.

The general provisions governing the A judgment debtor is not limited as to the time within which a claim of exemption must be made. However, unless there has been a material change in the debtor's income or needs, an exemption may be claimed only once during the period the order is in effect. See subdivision (a). A similar limitation applies to a judgment creditor; if a withholding order is terminated by the court, the judgment creditor may not apply for the issuance

procedures for claiming exemptions from execution are not applicable.

of an earnings withholding order directed to the same employer for the same debtor for 100 days following the date of service of a prior terminated order or 60 days after the date of termination, whichever is later, unless the court orders otherwise or there is a material change in circumstances. See subdivision (h).

A claim of exemption is made by the debtor by filing an original and one copy of the claim of exemption and a financial statement. Subdivision (b). The form of these documents is prescribed by the Judicial Council. See Section ~~723.120~~. See also Sections ~~723.123~~ and ~~723.124~~ (contents of documents). Upon receipt of these documents, the levying officer is required to send the copies of the application and financial statement to the creditor, together with a notice of the claim of exemption which advises the creditor of the effect of the claim. See subdivision (c).

The judgment creditor who contests the claim of exemption must file a notice of opposition and a notice of motion for an order determining the claim of exemption within 10 days after the levying officer mails notice of claim of exemption. See subdivisions (d), (e). If these notices are not filed, the levying officer serves on the employer a notice terminating the order or, if the claim of exemption lists an amount the judgment debtor believes should be withheld pursuant to the order (see Section ~~723.123~~), the levying officer serves on the employer a modified order in the amount indicated in the claim of exemption. Subdivision (f). Service of the notice of termination or modified order is to be made on the person, and at the address, indicated in the employer's return. See Sections ~~723.101~~(c) and ~~723.126~~(b) (6).

The 10-day period provided by subdivision (e) for the judgment creditor to file the documents there specified commences to run from the date of "mailing" of the notice of claim of exemption. This specific provision is intended to take precedence over the general provisions of Section 1013 (extra time to act after mail "service"). Cf. *Labarthe v. McRae*, 35 Cal. App.2d 734, 97 P.2d 251 (1939) (provision for running of time for notice of intention to move for new trial from receipt of notice of entry of judgment controls over Section 1013). And the 10-day period for service of the notice of hearing is not subject to Section 1013. See *Welden v. Davis Auto Exchange*, 153 Cal. App.2d 515, 521-522, 315 P.2d 33, 37 (1957).

The form of the notice of opposition is prescribed by the Judicial Council. See Section ~~723.120~~. See also Section ~~723.128~~ (contents of notice).

If the notice of opposition to the claim of exemption and the notice of motion for an order determining the claim of exemption are timely filed, the hearing is held within 20 days from the filing of the notice of motion unless continued by the court for good cause. The judgment creditor must also serve a copy of the notice of opposition and a notice of hearing on the judgment debtor and file proof of service. See also Section ~~723.123~~ (judgment debtor states present mailing address in claim of exemption). If the claim of exemption requested that the attorney for the judgment debtor also be served copies of such notices, the judgment creditor must also serve copies of the notices on such attorney and file proof of service.

After hearing, the court may order that the earnings withholding order be modified or even terminated. The date

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fixed for termination of the order may precede the date of the hearing. See subdivision (g). The court may order that amounts withheld in excess of the amount determined to be proper be paid to the judgment debtor. See subdivision (g). Where the date of termination is made retroactive, an employer may have already withheld and paid over pursuant to the earnings withholding order prior to receipt of notice of termination. Subdivision (c) of Section ~~723.022~~ makes clear that the employer is not liable to the debtor for such amounts, and subdivision (i) of Section ~~723.105~~ authorizes the debtor to recover such amounts from the levying officer or, if paid to the creditor, from the creditor. Where amounts have been withheld but not yet paid over to the levying officer, the employer is required to pay those amounts to the employee-judgment debtor. See subdivision (i).

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Subdivision (j) continues the rule that an appeal may be taken from the court's order allowing or denying the claim of exemption in whole or in part. See Section ~~690.50(m)~~. Under subdivision (j) of Section ~~723.105~~, until such time as the order modifying or terminating the earnings withholding order is set aside or modified, the order allowing the claim of exemption in whole or in part is given the same effect as if the appeal had not been taken.

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Subdivision (k) makes clear that this section does not apply to exemption claims made where a withholding order for taxes has been served pursuant to Article 4 (commencing with Section ~~723.070~~). See Section ~~723.075~~. Nor does this section apply to a withholding order for support; the exemption in the case of such an order is determined under Section ~~723.052~~ which specifies the procedure for claiming the exemption.

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§ 706.106. Findings in court proceedings

706.106. No findings are required in court proceedings under this chapter.

Comment. Section 706.106 continues former Section 723.106 and is comparable to a provision found in subdivision (d) of Section 703.580 (claims of exemption).

32244

§ 706.107. Service of another order by same judgment creditor after expiration of prior order; interval

706.107. If an employer withholds earnings pursuant to an earnings withholding order, the judgment creditor who obtained the order may not cause another earnings withholding order to be served on the same employer requiring the employer to withhold earnings of the same employee during the 10 days following the expiration of the prior earnings withholding order.

Comment. Section 706.107 continues former Section 723.107.
Section 706.107

precludes a creditor who has obtained an earnings withholding order which has gone into effect from causing another order to be served during the 10-day period following the expiration of his prior order. The purpose of this limitation is to give other judgment creditors a 10-day period during which their earnings withholding orders can be served while the original creditor is precluded from competing with them. The original creditor may apply for the second earnings withholding order either before or after his prior order expires. But service of the second order on the same employer while the original order is in effect will be ineffective under Section ~~723.023~~, and service during the 10-day period following expiration of the original order is prohibited by Section ~~723.107~~. Even though the 10-day moratorium period is violated, the employer may act pursuant to what has been served upon him. See Section ~~723.154~~. Of course, after the expiration of the 10-day period, the original creditor is treated like any other creditor.

706.023, ————— 706.107.
706.154. —————
706.011 — ~~723.011~~(d). Hence, even though one agency has been making collection, a second agency may serve an earnings withholding order within the 10-day period provided in this section.

32245

Article 6. Forms; Employer's Instructions

§ 706.120. Prescribing by judicial council

706.120. Except as provided in Section 706.081, the Judicial Council shall prescribe the form of the applications, notices, claims of exemption, orders, and other documents required by this chapter as provided in Section 681.030, and only such forms may be used to implement this chapter.

Comment. Section 706.120 continues the substance of former Section 723.120. The last two sentences of former Section 723.120 have been omitted as unnecessary in view of the inclusion of the substance of these sentences in the general provisions of Section 681.030.

Section 706.120 requires the Judicial Council to prescribe the forms necessary for the purposes of this chapter. Various sections prescribe information to be contained in the forms; but the Judicial Council has complete authority to adopt and revise the forms as necessary and may require additional information in the forms or may omit information from the forms that it determines is unnecessary. See also Section 706.081 (forms in connection with withholding order for taxes).

§ 706.121. Application for issuance of earnings withholding order; execution; contents

706.121. The "application for issuance of earnings withholding order" shall be executed under oath and shall include all of the following:

- (a) The name, the last known address, and, if known, the social security number of the judgment debtor.
- (b) The name and address of the judgment creditor.
- (c) The court where the judgment was entered and the date the judgment was entered.
- (d) The date of issuance of a writ of execution to the county where the earnings withholding order is sought.
- (e) The amount sought to be collected, indicating the amount of the judgment, plus additional accrued items (including the levying officer's statutory fee for service of the order), less partial satisfactions, if any.
- (f) The name and address of the employer to whom the order will be directed.
- (g) The name and address of the person to whom the withheld money is to be paid by the levying officer.

Comment. Section 706.121 continues former Section 723.121 but a reference has been added to the amount of the fee of the levying officer for the service of the earnings withholding order. See the Comment to Section 706.125.

The form for the application for an earnings withholding order is prescribed by the Judicial Council. See Section 706.120.

§ 706.122. Notice to employee of earnings withholding order; contents

706.122. The "notice to employee of earnings withholding order" shall contain a statement that informs the employee in simple terms of the nature of a wage garnishment, the right to an exemption, the procedure for claiming an exemption, and any other information the Judicial Council determines would be useful to the employee and appropriate for inclusion in the notice, including all of the following:

- (a) The named employer has been ordered to withhold from the earnings of the judgment debtor the amounts required to be withheld under Section 706.050, or such other amounts as are specified in the earnings withholding order, and to pay these amounts over to the levying officer

for transmittal to the person specified in the order in payment of the judgment described in the order.

(b) The amounts required to be withheld pursuant to Section 706.050 on illustrative amounts of earnings.

(c) No amount can be withheld from the earnings of a judgment debtor which the judgment debtor proves is necessary for the support of the judgment debtor or the judgment debtor's family supported in whole or in part by the judgment debtor.

(d) If a judgment debtor wishes a court hearing to prove that amounts should not be withheld from the judgment debtor's earnings because they are necessary for the support of the judgment debtor or the judgment debtor's family supported in whole or in part by the judgment debtor, the judgment debtor shall file with the levying officer an original and one copy of the "judgment debtor's claim of exemption" and an original and one copy of the "judgment debtor's financial statement." The notice shall also advise the judgment debtor that the claim of exemption form and the financial statement form may be obtained without charge at the office of the levying officer.

(e) Under Section 300 of the Labor Code, the judgment debtor may revoke an assignment of wages or salary to be earned after the time of the revocation unless the assignment is made pursuant to Section 4701 of the Civil Code.

Comment. Section 706.122 continues former Section 723.122.)

The form for the notice to the employee is prescribed by the Judicial Council (see Section ~~723.120~~) or, in the case of a notice of a withholding order for taxes, by the state (see Section ~~723.081~~). For the notice to the employee in the case of a withholding order for taxes, see Section ~~723.075~~. See also Section ~~723.076~~(f) (temporary earnings holding order). Under Section ~~723.122~~, the Judicial Council may, for example, provide a statement that informs the employee where to seek legal advice.

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§ 706.123. Judgment debtor's claim of exemption; execution; contents

706.123. The "judgment debtor's claim of exemption" shall be executed under oath. The claim of exemption shall indicate how much the judgment debtor believes should be withheld from the judgment debtor's earnings each pay period by the employer pursuant to the earnings with-

holding order and shall state the judgment debtor's present mailing address.

Comment. Section 706.123 continues former Section 723.123. The form for the claim of exemption is prescribed by the Judicial Council. See Section 706.120. The "present mailing address" may or may not be the judgment debtor's residence address.

32248

§ 706.124. Judgment debtor's financial statement; execution; contents

706.124. The "judgment debtor's financial statement" shall be executed under oath and shall include all of the following information:

- (a) The name, age, and relationship of all persons dependent upon the judgment debtor for support.
- (b) All sources of the judgment debtor's earnings and other income and the amounts of such earnings and other income.
- (c) All sources and the amounts of earnings and other income of the persons listed in subdivision (a).
- (d) A listing of the assets of the judgment debtor and the value of such assets.
- (e) All outstanding obligations of the judgment debtor.
- (f) Whether any earnings withholding orders are in effect for the judgment debtor or the persons listed in subdivision (a).
- (g) Whether any orders made under Section 4701 of the Civil Code are in effect for the judgment debtor or the persons listed in subdivision (a).

Comment. Section 706.124 continues former Section 723.124. The form for the financial statement is prescribed by the Judicial Council. See Section 706.120.

31173

§ 706.125. Earnings withholding order; contents

706.125. The "earnings withholding order" shall include all of the following:

- (a) The name, address, and, if known, the social security number of the judgment debtor.
- (b) The name and address of the employer to whom the order is directed.
- (c) The court where the judgment was entered, the date the judgment was entered, and the name of the judgment creditor.

(d) The date of issuance of the writ of execution to the county where the earnings withholding order is sought.

(e) The total amount that may be withheld pursuant to the order (the amount of the judgment, plus additional accrued items (including the levying officer's statutory fee for service of the order), less partial satisfactions, if any).

(f) A description of the withholding period and an order to the employer to withhold from the earnings of the judgment debtor for each pay period the amount required to be withheld under Section 706.050 or the amount specified in the order, as the case may be, for the pay periods ending during such withholding period.

(g) An order to the employer to pay over to the levying officer at a specified address the amount required to be withheld and paid over pursuant to the order in the manner and within the times provided by law.

(h) An order that the employer fill out the "employer's return" and return it by first-class mail, postage prepaid, to the levying officer at a specified address within 15 days after service of the earnings withholding order.

(i) An order that the employer deliver to the judgment debtor a copy of the earnings withholding order and the "notice to employee of earnings withholding order" within 10 days after service of the earnings withholding order; but, if the judgment debtor is no longer employed by the employer and the employer does not owe the employee any earnings, the employer is not required to make such delivery.

(j) The name and address of the levying officer.

Comment. Section 706.125 specifies the information to be included in the earnings withholding order. The form of the order is prescribed by the Judicial Council. See Section 706.120. Special forms are prescribed for earnings withholding orders for taxes. See Section 706.081.

Section 706.125 continues former Section 723.125 but adds a reference to the levying officer's fee for service of the earnings withholding order (see Gov't Code Section 26750). This reference is added to make clear that the amount to be withheld by the employer includes the amount of the fee for service of the earnings withholding order.

§ 706.126. Employer's return; execution; contents

706.126. (a) The "employer's return" shall be executed under oath. The form for the return provided to the employer shall state all of the following information:

(1) The name and address of the levying officer to whom the form is to be returned.

(2) A direction that the form be mailed to the levying officer by first-class mail, postage prepaid, no later than 15 days after the date of service of the earnings withholding order.

(3) The name, the address, and, if known, the social security number of the judgment debtor.

(b) In addition, the employer's return form shall require the employer to supply all of the following information:

(1) The date the earnings withholding order was served on the employer.

(2) Whether the judgment debtor is now employed by the employer or whether the employer otherwise owes earnings to the employee.

(3) If the judgment debtor is employed by the employer or the employer otherwise owes earnings to the employee, the amount of the employee's earnings for the last pay period and the length of this pay period.

(4) Whether the employer was required on the date of service to comply with an earlier earnings withholding order and, if so, the name of the judgment creditor who secured the earlier order, the levying officer who served such order, the date it was issued, the date it was served, the expiration date of such order, and which of the earnings withholding orders the employer is required to comply with under the applicable statutory rules concerning the priority of such orders.

(5) Whether the employer was required on the date of service to comply with an order made pursuant to Section 4701 of the Civil Code and, if so, the court which issued such order and the date it was issued and any other information the Judicial Council determines is needed to identify the order.

(6) The name and address of the person to whom notices to the employer are to be sent.

Comment. Section 706.126 continues former Section 723.126 and specifies the information to be included in the employer's return. The form for the return is prescribed by the Judicial Council (see Section 706.120) or, in the case of a return in connection with a withholding order for taxes, by the state (see Section 706.081).

32249

§ 706.127. Employer's instructions; preparation, publication, and distribution

706.127. (a) The Judicial Council shall prepare "employer's instructions" for employers and revise or supplement these instructions to reflect changes in the law or rules regulating the withholding of earnings.

(b) Except to the extent that they are included in the forms required to be provided by the employer by the levying officer, the Judicial Council shall publish and provide to the levying officers copies of the employer's instructions.

Comment. Section 706.127 continues former Section 723.127 and requires the preparation of employer's instructions that provide the employer with the information he needs to comply with the law. The levying officer provides the employer with a copy of the employer's instructions with the earnings withholding order. See Section 706.103.

32451

§ 706.128. Judgment creditor's notice of opposition to the claim of exemption; execution; contents

706.128. The "judgment creditor's notice of opposition to the claim of exemption" shall be executed under oath and shall include all of the following:

(a) The name, last known address, and, if known, the social security number of the judgment debtor.

(b) The name and address of the judgment creditor.

(c) The date of mailing of the notice of claim of exemption.

(d) The amount of the judgment debtor's claim of exemption which the judgment creditor claims is not exempt.

(e) The factual and legal grounds for the judgment creditor's opposition to the claim of exemption.

Comment. Section 706.108 continues former Section 723.108 and specifies the information to be included in the judgment creditor's notice of opposition to the claim of exemption. The form is prescribed by the Judicial Council. See Section 706.120.

§ 706.129. Forms for judgment debtors; availability for distribution

706.129. The levying officer shall have copies of the forms for the "judgment debtor's claim of exemption" and "judgment debtor's financial statement" available at the levying officer's office for distribution without charge to a person who desires to make a claim of exemption under Section 706.051.

Comment. Section 706.129 continues former Section 723.129 and implements the last sentence of subdivision (d) of Section 706.122.

30170

Article 7. Administration and Enforcement

§ 706.151. Exemption of state from earnings garnishment provisions of Consumer Credit Protection Act of 1968

706.151. The Judicial Council may perform all acts required by the Administrator of the Wage and Hour Division of the United States Department of Labor as conditions to exemption of this state from the earnings garnishment provisions of the Consumer Credit Protection Act of 1968 (15 U.S.C. Secs. 1671-1677), including, but not limited to:

(a) Representing and acting on behalf of the state in relation to the Administrator of the the Wage and Hour Division and the administrator's representatives with regard to any matter relating to, or arising out of, the application, interpretation, and enforcement of the laws of this state regulating withholding of earnings.

(b) Submitting to the Administrator of the Wage and Hour Division in duplicate and on a current basis, a certified copy of every statute of this state affecting earnings withholding, and a certified copy of any decision in any case involving any of those statutes, made by the Supreme Court of this state.

(c) Submitting to the Administrator of the Wage and Hour Division any information relating to the enforcement of earnings withholding laws of this state which the administrator may request.

Comment. Section 706.151 continues former Section 723.151 and)

authorizes the Judicial Council to do whatever is required by the federal administrator to obtain and maintain a state exemption from the earnings garnishment provisions of the Consumer Credit Protection Act.

Subdivisions (a), (b), and (c) are based on the language of 29 Code of Federal Regulations Section 870.55(a), requiring the state administrator to act as liaison with the federal administrator.

32467

§ 706.152. Failure to pay withheld earnings by employer with intent to defraud; misdemeanor

706.152. If an employer withholds earnings pursuant to this chapter and, with the intent to defraud either the judgment creditor or the judgment debtor, fails to pay such withheld earnings over to the levying officer, the employer is guilty of a misdemeanor.

Comment. Section 706.152 continues former Section 723.152.

32468

§ 706.153. Deferment or acceleration of payment of earnings to alter rights of judgment creditor; civil liability

706.153. (a) No employer shall defer or accelerate any payment of earnings to an employee with the intent to defeat or diminish the judgment creditor's rights under an earnings withholding order issued pursuant to the procedures provided by this chapter.

(b) If an employer violates this section, the judgment creditor may bring a civil action against the employer to recover the amount that would have been withheld and paid over pursuant to this chapter had the employer not violated this section. The remedy provided by this subdivision is not exclusive.

Comment. Section 706.153 continues former Section 723.153 and makes clear that an employer may neither defer nor accelerate payment of earnings to an employee in an attempt to avoid compliance with an earnings withholding order and specifies the measure of damages in case of violation.

32469

§ 706.154. Failure to withhold or pay over; civil action by judgment creditor; immunity from liability for compliance; exception

706.154. (a) If an employer fails to withhold or to pay over the amount the employer is required to withhold and pay over pursuant to this chapter, the judgment creditor may bring a civil action against the employer to recover such amount. The remedy provided by this subdivision is not exclusive.

(b) Notwithstanding subdivision (a), an employer who complies with any written order or written notice which purports to be given or served in accordance with the provisions of this chapter is not subject to any civil or criminal liability for such compliance unless the employer has actively participated in a fraud.

Comment. Section 706.154 continues former Section 723.154. The section authorizes suit by a creditor against an employer both where the employer fails to withhold properly and where he fails to pay over amounts withheld. This remedy is independent of the procedure for examination of a debtor of the judgment debtor under Section 708.120. Section 706.154 makes clear that supplemental proceedings are not a prerequisite to suit by the creditor against the employer. Whether or not the court can order the employer to withhold and pay over in a supplemental proceeding is a matter not dealt with in the Wage Garnishment Law.

Subdivision (b) makes clear that an employer is protected from liability where he complies with an order or written notice which appears proper on its face. Occasionally, through mistake, inadvertence, or even deliberate misconduct, an employer may be sent an order or notice which appears valid but which has been improperly obtained or served. For example, a creditor may fail to observe the 10-day moratorium on service of a second earnings withholding order. See Section ~~723.107~~ and Comment thereto. The employer is not required in such circumstances to go beyond the document itself and is not subject to liability where he complies with its directions and is not actively participating in a fraud. The remedy of the injured party in such a case is to proceed against the person who falsified the document or who improperly obtained the document or caused it prematurely to be served.

This section also makes clear that, where an employer is complying with a prior order, he is not liable for failing to comply with a subsequent valid order—even though the prior order is in fact invalid—unless he is actively participating in a fraud.

706.107