

The Attachment & Garnishment Property Tax Collection Remedy



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Are attachments really this easy?



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Are attachments really this easy?

- GS 105-368
- “the tax collector may attach wages and other compensation, rents, bank deposits, the proceeds of property subject to levy, or any other intangible personal property, including property held in the Escheat Fund”
- Two pieces of paper!
 1. Notice to taxpayer
 2. Notice to garnishee (party holding the \$\$)

The plan for today . . .

When

Who

What

How

When?

- Delinquency date
 - January 6 (but remember weekend/holiday rule!)
- Disqualifying date (for deferred taxes)
 - GS 105-277.1F

When?

- When collector has “reasonable grounds” to believe that the taxpayer will:
 - Remove property from taxing unit
 - Transfer property
 - “imminent danger of becoming insolvent”
 - GS 105-366(c)
- “Sellers of Goods or Fixtures”???
- GS 105-366(d)

Who?

- “responsible taxpayer”
- GS 105-365.1
- Taxes on Personal Property:
 - listing date owner
- Taxes on Real Property:
 - owner on delinquency date (plus successors)

Who?

- Joe sells his boat to Donald on January 3, 2024.
- Who is responsible for the 2023 taxes on the boat?
- Hubert sells his house to Jon on January 3, 2024.
- Who is responsible for the 2023 taxes on the house?

Who?

- Corporation owes delinquent taxes. May you attach the bank account of the sole owner of the corporation?
- Taxes delinquent on property owned by a married couple as tenants by the entirety. May you attach the wages of one spouse?
- Joe and Donald own property as tenants in common. Taxes become delinquent. May you attach Joe's bank account for the entire delinquent tax bill?

What?

- Funds owed to the taxpayer, including
 - **Bank deposits**
 - **Wages (10%)** – ESC and employee lists (GS 105-368(i))
 - **Rents** (taxpayer owns multiple properties?)
 - **Real estate sale proceeds** (closing attorney)
 - **Escheats Fund** (abandoned money) www.nccash.com
 - **Refunds** owed by city/county

What?

- Funds exempt from attachment: **government benefits**
 - Social Security
 - Federal & state pensions
 - State public assistance (welfare)
 - Unemployment benefits
 - Retirement savings (401(k)s and IRAs)

What?

- Social Security benefits are exempt POST PAYMENT
- Bank must protect SSA benefits deposited within last **90 days**
- Example:
 - Tina receives \$500 / month in Social Security
 - Checking account holds \$2,500 at time of attachment
 - Bank should protect \$1,500 and send \$1,000 to the local government
- What if bank makes a mistake?

How?

- Notice to taxpayer and garnishee
 - Name
 - SSN (**not mandatory!**)
 - Amount owed
 - Taxing units
 - Description of funds (can say “any”)
 - GS 105-366 and -368

How?

- Service:
 - Personal
 - NC Civil Procedure Rule 4 (registered/certified or “regular” mail)
- Electronic service on employers?
- Timing?

Attachment & Garnishment Fees

- \$30 per notice
- Usually \$60 total for attachment (bulk service on employer?)
- Carolina County sends attachment notice to Wells Fargo Bank for Tina
- Wells Fargo says Tina does not have an account here
- Should Carolina County refund the \$60 service fees?

Geographic Reach

- Bank in another NC county?
- Account created in an out-of-state branch of a bank with NC branches?
- Sale of property in another NC county?
- Out-of-state employer?

Response from Taxpayer & Garnishee

- 10 days to raise defense (taxpayer or garnishee)
 - “wrong taxpayer”
 - “tax already paid”
 - “we don’t have the taxpayer’s money”
 - “funds are exempt from attachment”
 - NOT “my property wasn’t worth that much” or “I was exempt”

- No answer? 15 days from service can SUE
 - Loser pays costs and fees

Multiple Garnishments?

- Employers must honor multiple garnishments
- 25% limitation? No---15 U.S. Code § 1673 doesn’t apply to taxes
- Example:
 - Tina earns \$1000 gross pay per week.
 - Already subject to a federal tax garnishment of \$100/week.
 - Subsequent local tax garnishment: 10% of \$900 = \$90 /week.

Duration

- GS 105-368(a): “current calendar year”
- Bank accounts:
 - Don’t expect bank to send additional funds. Must send new notice of attachment
- Wages:
 - Send new notice of attachment every January 1 with updated \$ amount