



Revenue Ruling
No. 01-001
May 16, 2001

Garnishment of Seamen and Masters Federal Income Tax Refund

This Revenue Ruling addresses the authority of the Louisiana Department of Revenue to garnish the federal income tax refunds of seamen and masters domiciled in Louisiana in order to satisfy state tax liabilities. The Internal Revenue Service is authorized to offset federal income tax refunds against debts owed to a state by its residents under the provisions of 26 USCA 6402 (e). However, Title 46 Section 11109 prohibits the garnishment of the wages of seamen and masters except for alimony and child support. If federal income tax refunds are considered wages, a seaman's or master's federal income tax refund is exempt from garnishment because the liability owed the Department is not for alimony or child support as specified in 46 USCA 11109. On the contrary, if federal income tax refunds are not considered wages, a seaman's or master's federal income tax refund is not exempt from garnishment.

Federal and state statutes are silent on the subject of whether income tax refunds constitute wages. For federal tax purposes, 26 USCA 3121 defines wages as all remuneration for employment, including the cash value of all remuneration (including benefits) paid in any medium other than cash. Title 47 Section 111 of the Louisiana Revised Statutes defines wages as all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration paid in any medium other than cash. However, jurisprudence has established that federal income tax refunds are not considered wages. In Re Wallerstedt, 930 F.2d. 630 (8th Cir. 1991), the court held that federal and state income tax refunds that debtors received when their employers withheld too much of their earnings were not themselves earnings within the meaning of the Missouri exemption statute. In Re Traux, 104 BR 471 (Bankr. M.D. Fla. 1989), the court held that a tax refund is not wages and thus is not exempt from the bankruptcy estate under Florida's garnishment law. In Re Linn, 52 BR 63 (Bankr. W.D. Okla. 1985), the court held that a federal income tax refund is not earnings within the meaning of Oklahoma's garnishment statute. In Re Verill, 17 BR 652 (Bankr. D. Md. 1982), the court held that excess income tax withholding is simply not wages within the meaning of the state garnishment statute. In Re Fishbein, 245 BR 36 (Bankr. D. Md. 2000), the court held that tax refunds are not wages, but debts owed to debtors that are related to the amount of wages earned. Based on this line of jurisprudence, an income tax refund is not considered wages or earnings.

In Sea Land Service v. United States, 622 F. Supp. 769 (D. NJ 1985), the court held the statute prohibiting attachment of a seaman's wages did not preclude enforcement of federal tax levies. In United States v. Offshore Logistics International, Inc., 483 F. Supp. 1055 (W.D. La. 1979), the court held that Congress has provided an exclusive listing of property that is exempt from Internal Revenue Service garnishments for tax liabilities and seaman's wages are not afforded exempt status. Thus, a seaman's wages are subject to garnishment for Internal Revenue Service liabilities. If Congress desired for the wages or income tax refunds of seamen or masters to be

exempt from garnishment, it would have provided for the exemption. In light of the fact that no federal or state statutes exist exempting the income tax refunds of seamen and masters from garnishment, the federal income tax refund of seamen and masters can be garnished to satisfy an income tax liability. Therefore, the Department can garnish the federal income tax refund of seamen or masters who are Louisiana residents.

Based on the above cited statutes and jurisprudence, it is the position of the Louisiana Department of Revenue that the Department is authorized to garnish a federal income tax refund of a seaman or master whose state of residency is Louisiana in order to satisfy a past due state tax liability.

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A Revenue Ruling is written to provide guidance to the public and to Department of Revenue employees. It is issued under Section 61:III.101(C) of the Louisiana Administrative Code to apply principles of law to a specific set of facts. A Revenue Ruling does not have the force and effect of law and is not binding on the public. It is a statement of the department's position and is binding on the department until superseded or modified by a subsequent change in statute, regulation, declaratory ruling, or court decision.