

150-18.385

Oregon Department of Revenue Tax Garnishments and Orders to Withhold Child or Spousal Support

(1) The Department of Revenue is authorized to continuously garnish up to 25 percent of an employee's disposable earnings to recover delinquent state tax debt. Concurrently, a district attorney or the Division of Child Support of the Department of Justice is authorized to request the courts to order the withholding of delinquent and current child or spousal support from an employee's disposable earnings.

(2) Under ORS 18.385(4), the maximum disposable earnings subject to garnishment is reduced by an order to withhold wages for child or spousal support under ORS 25.378, 419B.408 or 419C.600 or ORS Chapter 110. Normally, any other existing garnishments would then be limited to 25 percent of disposable earnings after subtracting the order to withhold wages. However, ORS 18.385(6) specifies that, for garnishments to pay state tax debt, the provisions of ORS 18.385(4) do not apply. Therefore, a garnishment to pay state tax debt would be calculated upon disposable earnings and not reduced by an order to withhold child or spousal support.

Example 1:

Larry has \$4,000 per month of disposable earnings.

Larry owes delinquent child support totaling \$15,000. An order to withhold child support has been granted that requires Larry's employer to withhold a specified amount of \$1,400 from disposable earnings.

Larry also owes a state personal income tax debt totaling \$5,000. The department has garnished Larry's employer for 25 percent of disposable earnings. The employer would calculate and pay the order to withhold child support and the garnishment as follows:

Disposable earnings	\$4,000
Less: Order to Withhold specified amount of \$1,400 for child or spousal support	<u>-1,400</u>
Less: Personal Income Tax Garnishment at 25 percent (\$4,000 x .25)	<u>-1,000</u>
Net disposable earnings to Larry	<u>\$1,600</u>
Payment for Order to Withhold	<u>\$1,400</u>
Payment for Personal Income Tax Garnishment	<u>\$1,000</u>

(3) If for any reason orders to withhold wages for child or spousal support and garnishments for state tax debt exceed the disposable earnings of the taxpayer, any orders to withhold wages under ORS 25.378 will have priority over any other legal process, including all garnishments for state tax debt or otherwise (ORS 25.375). The employer will reduce payments pursuant to the department's garnishment as needed.

Example 2:

Renee's employer has been paying a specified amount of \$1,400 from Renee's disposable earnings under an order to withhold child support. The employer now has received a Special Notice of Garnishment from the department that causes a one-time garnishment of 100 percent of Renee's disposable earnings. Since more than 100 percent of Renee's disposable earnings has been attached, under ORS 25.375, the order to withhold now takes priority. The employer would compute and distribute payments under the order and garnishment as follows:

Disposable earnings	\$4,000
Less: Order to Withhold specified amount of \$1,400 for child or spousal support	<u>-1,400</u>
Less: Personal Income Tax Garnishment at 100 percent but limited to remainder of disposable earnings after order to withhold is paid (\$4,000 x 100% = \$4,000 less order of \$1,400)	<u>-2,600</u>
Net disposable earnings to Renee	<u>\$ 0</u>
Payment for Order to Withhold	<u>\$1,400</u>
Payment for Personal Income Tax Garnishment	<u>\$2,600</u>

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 18.385

150-18.385-(A)

Oregon Department of Revenue Other Agency Account Garnishments

(1) Under ORS 293.250, the Department of Revenue may render assistance to recover delinquent debts owed to any state officer, board, commission, corporation, institution, department or other state organization assigned by the agency to the Department of Revenue for collection, including actions to continuously garnish up to 25 percent of an employee's disposable earnings.

(2) Under ORS 18.385(4), nonexempt disposable earnings are reduced by an order to withhold child or spousal support under ORS 25.378, 419B.408 or 419C.600 or ORS Chapter 110. The maximum disposable earnings subject to garnishment for the period is determined by ORS 18.385(2)(a) through 18.385(2)(e) minus any amount required to be withheld from an individual's disposable earnings for the period pursuant to an order to withhold child or spousal support issued under ORS 25.378 and others. The order to withhold child or spousal support may reduce the amount available for garnishment to zero.

(3) Under ORS 18.385(2)(a) through 18.385(2)(e) the nonexempt disposable earnings subject to garnishment for the period is calculated by reducing the individual's disposable earnings for that period by the amount of disposable earnings exempt from garnishment. The amount of disposable earnings exempt from garnishment is the greater of 75 percent of the disposable earnings for the period under ORS 18.385(1) or the minimum exemption amount under ORS 18.385(2)(a) through 18.385(2)(e).

Example 1: Dick has \$1,000 per week of disposable earnings. Dick owes child support totaling \$15,000. An order to withhold for child or spousal support under ORS 25.378 has been issued to Dick's employer directing the employer to withhold a specified amount of \$218 from Dick's disposable earnings. Dick also owes a state agency for a delinquent student loan totaling \$5,000 (a state non-tax debt). The Department of Revenue has garnished Dick's employer for 25 percent of disposable earnings. The employer would calculate and pay the order to withhold for child or spousal support and the garnishment as follows:

\$1000 -- (A) Disposable earnings

\$183 – (B1) Minimum weekly exemption

\$750 – (B2) 75 percent of disposable earnings

\$750 – (B3) Earnings exempt from garnishment (greater of B1 or B2)

\$250 – (C) Nonexempt earnings subject to garnishment (A minus B3)

\$218 – (D) Order to withhold specified amount of \$218 for child or spousal support

\$32 – (E) Disposable earnings subject to garnishment (C minus D)

Although the Department of Revenue has issued a 25 percent garnishment that would normally return \$250, because of the order to withhold for child or spousal support, the amount available on the state non-tax debt garnishment is limited to \$32.

Example 2: Assume the same facts as in Example 1 except that the order to withhold child or spousal support is \$350. The employer would calculate the order to withhold child or spousal support and garnishment as follows:

\$1000 -- (A) Disposable earnings
\$183 – (B1) Minimum weekly exemption
\$750 – (B2) 75 percent of disposable earnings
\$750 – (B3) Earnings exempt from garnishment (greater of B1 or B2)
\$250 – (C) Nonexempt earnings subject to garnishment (A minus B3)
\$350 – (D) Order to withhold specified amount of \$350 for child or spousal support
(\$100) – (E) Disposable earnings subject to garnishment (C minus D)
Since line (D) is greater than line (C), resulting in a negative number, the amount available for the garnishment is zero.

Example 3: John has \$200 per week disposable earnings. John owes a state agency for a delinquent student loan totaling \$5,000 (a state non-tax debt). The Department of Revenue has garnished John's employer for 25 percent of disposable earnings. John is not under an order to withhold for child or spousal support. The employer would calculate and pay the garnishment as follows:

\$200 -- (A) Disposable earnings
\$183 – (B1) Minimum weekly exemption
\$150 – (B2) 75 percent of disposable earnings
\$183 – (B3) Earnings exempt from garnishment (greater of B1 or B2)
\$17 – (C) Nonexempt earnings subject to garnishment (A minus B3)
\$0 – (D) Order to withhold for child or spousal support
\$17 – (E) Disposable earnings subject to garnishment (C minus D)

[Publications: The publication(s) referred to or incorporated by reference in this rule is available from the Department of Revenue pursuant to ORS 183.360(2) and ORS 183.355(6).]

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 18.385