

Special Notice of Garnishment – Instructions to Garnishee form

INSTRUCTIONS TO GARNISHEE

Except as specifically provided in these instructions, you must complete and deliver the Garnishee Response within seven calendar days after you receive the notice of garnishment. If the notice does not comply with Oregon law, the notice is not effective to garnish any property of the Debtor, but you still must complete and deliver the Garnishee Response. You must complete and deliver the response even though you cannot determine from the notice whether you hold any property or owe any debt to the Debtor. If the seventh calendar day is a Saturday, Sunday or legal holiday, you must deliver your response on or before the next following day that is not a Saturday, Sunday or legal holiday.

The notice is not effective, and you need not make a Garnishee Response, if:

- You do not receive the notice within 60 days after the date of issuance shown on the face of the notice.
- You do not receive 1) a notice of garnishment and 2) a warrant or a true copy of a warrant. However, the Oregon Department of Revenue is not required to include a warrant or true copy of a warrant with its notice of garnishment. If the notice of garnishment is issued by the Oregon Department of Revenue, you must make a Garnishee Response even if you did not receive a copy of the warrant.

Statutes that may affect your rights and duties under the notice can be found in ORS 18.600 to 18.855.

NOTE: The agency issuing the notice of garnishment is the Garnishor and is identified on the notice of garnishment.

STEP 1. FILL OUT THE GARNISHEE RESPONSE.

All garnishees who are required to deliver a garnishee response must fill in Part I of the Garnishee Response. Garnishees who employ the Debtor must also fill in Part II of the response. You should keep a copy of the response for your records.

Completing Part I of the Garnishee Response. If you discover before you deliver your response that a bankruptcy petition has been filed by or on behalf of the Debtor, and the bankruptcy petition was filed after the date shown on the face of the notice as the date on which the warrant (or if multiple warrants, the date of any of the warrants) was entered against the Debtor, you must put a check by the appropriate statement in Part I. If a bankruptcy petition has been filed, you should not make any payments to the Garnishor unless a court orders otherwise. You need not complete any other part of this response, but you still must sign the response and deliver it in the manner described in Step 2 of these instructions.

In all other cases you must list in Part I all money and personal property of the Debtor that is in your possession, control or custody at the time of delivery of the notice. You must also list all debts that you owe to the Debtor, whether or not those debts are currently due (e.g., money loaned to you by the Debtor that is to be repaid at a later time).

If you are the employer of the Debtor at the time the notice is delivered to you, you must put a check by the appropriate statement in Part I. In addition, you must complete Part II of the response.

If you believe that you may hold property of the Debtor or that you owe a debt to the Debtor, but you are not sure, you must put a check by the appropriate statement and provide an explanation. When you find out what property you hold that belongs to the Debtor, or you find out whether you owe money to the Debtor and how much, you must prepare and deliver an amended response. You must do this even if you find out that you have no property of the Debtor or that you do not owe anything to the Debtor.

If you determine that the notice, on its face, does not comply with Oregon laws governing notices of garnishment, or if you are unable to determine the identity of the Debtor from the information in the notice, then the notice is not effective to garnish any property of the Debtor. You must put a check by the appropriate statement in Part I and provide an explanation. You still must complete the response and deliver the response in the manner described in Step 2 of these instructions.

If you have received an order to withhold income that applies to the income of the Debtor and that order has priority over this garnishment, and if, after complying with the order, the remaining money or property is insufficient to satisfy this notice of garnishment, you must put a check by the appropriate statement in Part I. If you employ the Debtor, you still must complete Part II of the response.

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If you receive notice of a challenge to the garnishment before you send your response, you must complete and deliver your response as otherwise required by these instructions. However, see Step 3 of these instructions regarding payment of money or delivery of property after receipt of notice of a challenge to the garnishment.

If you owe a debt to the Debtor and the Debtor owes a debt to the holder of an underlying lien on your property, you may be able to offset the amount payable to the underlying lienholder. See ORS 18.620. You must note that you have made the offset in Part I of the response (under "Other") and specify the amount that was offset.

Completing Part II of the Garnishee Response (employers only) You must fill in Part II of the response if you employ the Debtor on the date the notice of garnishment is delivered to you, or if you previously employed the Debtor and still owe wages to the Debtor on the date the notice is delivered to you.

Wages affected under a special notice of garnishment. Except as provided below, the notice garnishes all wages that you owe to the Debtor for work performed on or before the date you received the notice, even though the wages will not be paid until a later date. Wages subject to garnishment under the notice include all amounts paid by you as an employer, whether on an hourly, weekly or monthly basis, and include commission payments and bonuses.

Example 1: Debtor A is employed by you and is paid a monthly salary on the first day of each month. You receive a notice of garnishment on July 17. The notice garnishes all wages that you owe to Debtor A for work performed on or before July 17. If Debtor A was paid on July 1 for services performed in the month of June, the notice garnishes Debtor A's salary for the period beginning July 1 and ending July 17, the date you received the garnishment.

The notice does not garnish any wages you owe to a Debtor for a specific pay period if:

- (a) The notice is delivered to you within two business days before the Debtor's normal payday for the pay period;
- (b) When the notice is delivered to you, the Debtor's wages are paid by direct deposit to a financial institution, or you use an independent contractor as payroll administrator for your payroll; and
- (c) Before the notice was delivered to you, you issued instructions to the financial institution or the payroll administrator to pay the Debtor for the pay period.

If any wages are not garnishable by reason of the issuance of instructions to a financial institution or a payroll administrator as described above, you must so note in the Garnishee Response. Thereafter, you must pay to the Garnishor all wages that are subject to garnishment that are attributable to services performed by the Debtor during the period of time specified in the notice.

Payment of amount subject to garnishment. You must make a payment to the Garnishor of all wages subject to garnishment at the time you next pay wages for that period to the Debtor.

Example 2: Using the facts given in Example 1, when you next make any payment of wages to Debtor A after you receive the notice on July 17, you must send all amounts determined to be subject to garnishment that are attributable to the period covered by the payment. If you pay Debtor A on August 1 for July wages, the payment will be for all wages attributable to the period beginning July 1 and ending July 17, the date you received the garnishment.

Processing fee. You may collect a \$2 processing fee for each week of wages, or fraction of a week of wages, for which a payment is made under the notice. The fee must be collected after you make the last payment under the notice. The fee must be withheld from the wages of the debtor, and is in addition to the amounts withheld for payment to the garnishor under the notice or under any other writ you have received.

If you receive more than one notice or writ of garnishment or receive a prior or priority order to withhold earnings. If you receive a notice or writ of garnishment for the same Debtor from another Garnishor, or an order to withhold earnings is received by you before you receive this special notice of garnishment, the earlier notice, writ, or order to withhold will have priority for wages. The priority of the first garnishment or order to withhold lasts for the period of time specified in that writ, notice, or order to withhold. In your response to this special notice of garnishment, you must put a check by the appropriate statement in Part II. You must also check that statement if, prior to your response, you receive a subsequent order to withhold earnings that has priority over this notice of garnishment.

In each of these cases, when wages are next payable to the Debtor, you must calculate the amount of wages due through the date this notice of garnishment was delivered. From that amount, you must subtract the amount payable on the notice, writ, or order to withhold that has priority over this notice for the period through the date this notice of garnishment was

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delivered. You must then forward to the Garnishor the remainder of the wages accrued through the date this notice of garnishment was delivered, or enough of those wages to satisfy this garnishment.

STEP 2. DELIVER THE GARNISHEE RESPONSE.

You must deliver your Garnishee Response and copies of the response in the manner provided in this step. The response and copies may be mailed or delivered personally.

You must complete and deliver the Garnishee Response within seven calendar days after you receive the notice of garnishment. If the seventh calendar day is a Saturday, Sunday or legal holiday, you must deliver your response on or before the next following day that is not a Saturday, Sunday or legal holiday.

- (a) Send the original of your Garnishee Response to the Garnishor at the address indicated on the notice under Important Addresses.
- (b) Send a copy of your Garnishee Response to the Debtor if an address is indicated on the notice under Important Addresses.

STEP 3. DELIVER THE FUNDS OR OTHER PROPERTY.

As long as the notice is in effect, you may be liable to the Creditor if you pay any debt or turn over any property to the Debtor except as specifically allowed by law. If you have any money or property of the Debtor in your possession, control or custody at the time of delivery of the notice, or owe any debt to the Debtor, you must pay the money or hold the property as required by this step. Exceptions to this requirement are listed below.

IF YOU ARE HOLDING MONEY FOR THE DEBTOR OR OWE A DEBT THAT IS CURRENTLY DUE, you must pay the money to the Garnishor with your response. You must send your payment to the Garnishor at the address indicated on the notice under Important Addresses. Make your check payable to the Garnishor.

IF YOU OWE A DEBT TO THE DEBTOR THAT WILL BECOME DUE WITHIN 45 DAYS AFTER THE DATE YOU RECEIVED THE NOTICE, you must send your payment directly to the Garnishor at the address provided in the notice when the debt becomes due. Make your check payable to the Garnishor.

IF YOU ARE HOLDING PROPERTY THAT BELONGS TO THE DEBTOR, OR OWE A DEBT TO THE DEBTOR THAT WILL NOT BECOME DUE WITHIN 45 DAYS AFTER THE DATE YOU RECEIVED THE NOTICE, you must keep the property or debt in your possession, control or custody until you receive notice from the Sheriff. The notice will tell you what to do with the property or debt. If you have followed all of the instructions in the notice and you receive no notice from the Sheriff within 30 days after the date on which you delivered your Garnishee Response, you may treat the notice of garnishment as being of no further force or effect.

EXCEPTIONS:

1. Challenge to garnishment and specific directions from a court. If you are making any payments under the garnishment and before making a payment you receive notice of a challenge, you must continue to send or deliver the payments directly to the Garnishor unless you receive an order from a court directing you to deliver money to the court. The time for making the payment is not affected by either the challenge or the order from the court. If required to make a payment to the court, and you make payment by check, make the check payable to the State of Oregon. Because you may be liable for any payment that does not reach the court, it is better not to send cash by mail.

A challenge to the garnishment does not affect your duty to follow the instructions you receive from the Sheriff for property that belongs to the Debtor and debts that you owe to the Debtor that do not become due within 45 days.

2. Previous notice or writ of garnishment. If you receive a second notice or writ of garnishment for the same Debtor from another Garnishor, the first notice or writ will have priority and you need not make payments or deliver property under the second notice or writ to the extent that compliance with the first notice or writ will reduce or eliminate the payment of money or delivery of property that you would otherwise make under the garnishment. You must still deliver a Garnishee Response to

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the second notice or writ, and must commence payment under the second notice or writ as soon as the first notice or writ is satisfied or expires.

3. Offset for payment of underlying lien. If you owe a debt to the Debtor and the Debtor owes a debt to the holder of an underlying lien on your property, you may be able to offset the amount payable to the underlying lienholder. See ORS 18.620.

4. Subsequent events:

(a) Bankruptcy. If you make your response and then discover that a voluntary or involuntary bankruptcy petition has been filed by or on behalf of the Debtor after the date shown on the face of the notice as the date on which the warrant (or if multiple warrants, the date of any of the warrants) was entered against the Debtor, you may not make any further payments or delivery of property under the notice unless a court orders otherwise. If you have not delivered all property that is subject to garnishment under this notice when you discover that a bankruptcy petition has been filed, you must mail the Supplemental Garnishee Response notice (attached to these instructions) to the Garnishor and to the Debtor.

(b) Order to withhold income. If you make your response and then receive an order to withhold income that has priority over the notice, you may make payments or deliver property under the notice only after payment of the amounts required under the order to withhold income. If you have not delivered all property that is subject to garnishment under this notice when you receive an order to withhold income that has priority, you must mail the Supplemental Garnishee Response notice (attached to these instructions) to the Garnishor and to the Debtor.

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SUPPLEMENTAL GARNISHEE RESPONSE

Debtor:

TO: The Garnishor and the Debtor

RE: Notice of garnishment received _____ 2__ (date) from the [insert NAME OF AGENCY].

The undersigned Garnishee furnished a Garnishee Response to this notice of garnishment on _____ 2__ (date).
Since that time (check appropriate statement):

___ I have discovered that a voluntary or involuntary bankruptcy petition has been filed by or on behalf of the Debtor after the date shown on the face of the notice as the date on which the warrant (or if multiple warrants, the date of any of the warrants) was entered against the Debtor.

___ I have received an order to withhold income of the Debtor by reason of a support obligation. Under ORS 25.375, the order to withhold income has priority over any other legal process under Oregon law against the same income. The withholding of income pursuant to the order to withhold income might reduce subsequent payments under the garnishment. (Provide details, including the name of the agency serving the order to withhold, the date the order was served on you and the amounts to be withheld.)

Date: _____ 2__

Name of Garnishee

Signature

Street Address

City, State, Zip

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SPECIAL INSTRUCTIONS FOR BANKS
AND OTHER FINANCIAL INSTITUTIONS

Unless a Notice of Right to Garnish Federal Benefits from the United States Government or from a state child support agency is attached to or included in the garnishment, you must conduct a garnishment account review for each account that you hold for the debtor. If a Notice of Right to Garnish Federal Benefits from the United States Government or from a state child support enforcement agency is attached to or included in the garnishment, you should not conduct a garnishment account review, and should proceed upon the garnishment in the normal manner.

If you hold an account for the debtor, and any of the payments listed below has been deposited in the account by direct deposit or electronic payment during the lookback period described in ORS 18.784 (2) (the period that begins on the date preceding the date of your garnishment account review and that ends on the corresponding date of the month two months earlier, or on the last day of the month two months earlier if the corresponding date does not exist), an amount equal to the lesser of the sum of those payments or the total balance in the debtor's account is not subject to garnishment, and you may not deliver that amount to the garnishor:

- (a) Federal benefit payments as defined in ORS 18.600 (payments from the United States Social Security Administration, the United States Department of Veterans Affairs, the United States Office of Personnel Management or the Railroad Retirement Board);
- (b) Payments from a public or private retirement plan as defined in ORS 18.358;
- (c) Public assistance or medical assistance payments, as defined in ORS 141.025, from the State of Oregon or an agency of the State of Oregon;
- (d) Unemployment Compensation payments from the State of Oregon or an agency of the State of Oregon;
- (e) Black lung benefits payments from the United States Department of Labor; and
- (f) Workers' compensation payments from a workers' compensation carrier.

If the Garnishor fails to pay the search fee required by ORS 18.790 and you do not employ the Debtor, you are not required to deliver a Garnishee Response and you may deal with any property of the Debtor as though the garnishment had not been issued.

If the Debtor owes a debt to you that was due at the time you received the notice of garnishment, you may be able to offset the amount of that debt. See ORS 18.795. You must note that you have made the offset in Part I of the Garnishee Response (under "Other") and specify the amount that was offset.

Before making a payment under the notice, you may first deduct any processing fee that you are allowed under ORS 18.790. If you are required to conduct a garnishment account review, you may not charge or collect a processing fee against any amount that is not subject to garnishment, and may not charge or collect a garnishment processing fee against any amounts in the account after the date that you conduct the review.

You need not deliver any property contained in a safe deposit box unless the Garnishor pays you in advance for the costs that will be incurred in gaining entry to the box. See ORS 18.792.

If you are required to conduct a garnishment account review and you determine from the review that one or more of the payments listed in ORS 18.784 (3) have been deposited into the debtor's account by direct deposit or electronic payment during the lookback period described in ORS 18.784 (2), and that there is a positive balance in the account, you must issue a notice to the account holder in substantially the form set forth in ORS 18.847. The notice must be issued directly to the account holder or to a fiduciary who administers the account and receives communications on behalf of the account holder. The notice must be sent separately to the account holder and may not be included with other materials being provided to the account holder that do not relate to the garnishment. You must send the notice to the account holder within three business days after you complete the garnishment account review. You may issue one notice with information related to multiple accounts of a single account holder.