



CCPA-53

February 5, 1971

This is in reply to your letter of October 13, 1970, requesting an exemption from the provisions of section 303(a) of Title III, Restrictions on Garnishment, of the Consumer Credit Protection Act for garnishments issued under the laws of the State of Utah.

A notice of the application was published in the Federal Register of November 25, 1970, and a period of 30 days was allowed for comments from interested persons. The comments received were considered together with the application.

The salient features of Utah law are found in sections 70B-5-105 and 78-23-1(7), Utah Code Annotated, 1953. The limits prescribed in section 70B-5-105, although adequate, apply only to garnishments to enforce payments of judgments arising from consumer credit sales, consumer leases, or consumer loans. However, the garnishment restrictions of Title III apply to all garnishments with the exception of the three narrow exemptions listed in section 303(b). Also, section 70B-5-105 does not define "earnings" so that it is not known whether it applies to "earnings" as defined in Title III.

Garnishments which do not result from the three types of consumer credit transactions listed in section 70B-5-105(2), Utah Code Annotated, are within the purview of section 78-23-1(7), U.C.A. This section provides an exemption from execution for "one-half of the earnings of the judgment debtor for his personal services rendered at any time within thirty days next preceding the levy of execution or attachment by garnishment or otherwise, when it appears by the debtor's affidavit or otherwise that he is a married man, or head of family, and that such earnings are necessary for the use of his family residing in the state and supported wholly or in part by his labor, provided, that a married man or head of family shall be entitled to an exemption of not less than \$50 per month". The limits on garnishment prescribed in section 78-23-1(7) are clearly less restrictive than the garnishment restrictions of Title III. Also, this section does not protect earnings prior to the 30 day period next preceding the garnishment, but the garnishment restrictions of Title III apply without limitation as to when wages were earned. The protection of Title III does not depend upon whether earnings are necessary for family support but under this section there is no restriction on garnishment where earnings are not necessary for family support.

Furthermore, "garnishment" and "earnings" are not defined in section 78-23-1(7), U.C.A. Therefore, it is not clear that section 78-23-1(7), applies to all garnishments which are beyond the purview of section 70B-5-105 or that these two sections taken together would apply to all garnishments which are within the purview of the Title III definition of "garnishment". It is not known whether section 78-23-1(7) applies to "earnings" as defined in Title III without a definition of this term. Also, the exemption available under section 78-23-1(7) must be affirmatively claimed, but under Title III there is no such requirement.

The procedural law concerning garnishments is found in Rule 64D and Rule 69(b) of the Utah Rules of Civil Procedure. Under section (d) of Rule 64D, which prescribes the contents of the garnishment writ, the garnishee is commanded "not to pay any debt due or to become due to the defendant but to retain possession and control of all personal property, effects and choses in action of such defendant until further order". Rule 69(b) (not submitted by the State for our review although it is also pertinent to the garnishment writ) appears to be consonant with section (d) of Rule 64D. Thus, the garnishee is ordered to withhold the whole pay (100 per cent) until further court order. Such a garnishment writ is itself a "garnishment" within the meaning of section 302(c) to which the restrictions of section 303(a) would be applicable. Under Title III, a garnishment writ may never cause any withholding of any earnings in excess of that subjected to garnishment under section 303(a). Accordingly, it should be clear under State law that any employer (or garnishee) shall pay any employee (or defendant) the amount of his exempt disposable earnings on the regular pay day for the pay period in which the wages were earned.

We have considered your Opinion No. 70-058 which indicates that Title III preempts any provision of State law which is not as restrictive as the Federal garnishment limitations. However, such preemption may not be considered as qualifying State laws for exemption under section 305. If this could be done every State would qualify for an exemption regardless of its laws, and section 305 would be a nullity. As indicated in section 301 of Title III, the purpose of this Title is to "regulate commerce and to establish uniform bankruptcy laws" based upon a Congressional finding that the "great disparities among the laws of the several States relating to garnishment have, in effect, destroyed the uniformity of the bankruptcy laws and frustrated the purposes thereof in many areas of the country".

In view of these differences between the Utah law and the Federal law and in applying Subpart C of Title 29, Part 870, Code of Federal Regulations (35 F.R. 8226), I conclude that the Utah law does not provide restrictions on garnishment which are substantially similar to those provided in section 303(a) of Title III of the Consumer Credit Protection Act. The application for exemption is, therefore, denied.

Sincerely,

Robert D. Moran
Administrator