



GARNISHMENT POLICY

TAX ADMINISTRATION JAMAICA

THIS DOCUMENT PROVIDES GENERAL INFORMATION ON THE USE OF THE GARNISHMENT PROCESS BY TAX ADMINISTRATION JAMAICA (TAJ). IT EXPLAINS THE CONCEPT OF GARNISHMENT, THE RELEVANT PROVISIONS OF THE LAW AND THE BASIC RULES OF PROCEDURE FOR ENFORCING THE LAW. IT IS INTENDED FOR TAJ EMPLOYEES OF ALL CATEGORIES AND THE GENERAL PUBLIC.

I. WHAT IS GARNISHMENT?

Garnishment is a process which has always existed under the common law in Jamaica. In the Jamaican Civil Procedure Rules the concept is referred to as “attachment of debts”. Any creditor to whom money is owed, who is having trouble collecting from his debtor can go to Court and ask the Court to issue an Attachment of Debt Order. The creditor would then serve the Order on another person, (called a Third Party), who either has money which belongs to the debtor eg. a bank, or owes money to the debtor e.g. someone who has bought goods from the debtor but has not yet paid him. The Order would instruct the third party to pay some or all of the money to the Creditor instead of to the Debtor.

This concept has now been incorporated into the Tax Collection Act (the TCA) with certain differences. Where taxes are owed, Section 40B of the TCA now allows the Commissioner General of TAJ, instead of going to Court, to issue a Notice of Garnishment himself and have it served on a third party. As with common law garnishment, this will only be done when the Commissioner General is unable or unlikely to be able to collect from the tax debtor himself.

II. DEFINITIONS

In this document:

- “TAJ” refers to Tax Administration Jamaica;
- “Tax Debt” refers to principal taxes of any type and accompanying interest, penalties and surcharges;
- “Tax Debtor” refers to a person who owes a tax debt;
- “Third Party or Garnishee” refers to a person who holds, controls, or has custody of moneys belonging to a tax debtor and is required, by way of a Notice, to pay over those moneys to the Commissioner General.

III. HOW DOES GARNISHMENT WORK?

STATUTORY PROVISION 1

Section 40B (1) of the Tax Collection Act (TCA) reads as follows:

40B. – (1) Where the Commissioner General knows or has reasonable cause to believe that a person –

(a) holds, controls or has custody of moneys belonging to a tax debtor; or

(b) is, or will be within one year, liable to make a payment to a tax debtor,

the Commissioner General may in writing require the person to pay forthwith where the moneys are immediately payable, and in any other case as and when the moneys become payable, the moneys otherwise payable to the tax debtor in whole or in part to the Commissioner General on account of an amount owed by the tax debtor to the Commissioner General.

BASIC RULE

Garnishment can only lawfully be done in the following circumstances

1. PRE-CONDITIONS

The Tax Debtor

- a. A taxpayer (the tax debtor) owes taxes and has not paid them;
- b. The Commissioner General is unable to collect from the tax debtor; and
- c. The Commissioner General is unable to make a satisfactory arrangement with the tax debtor for the payment of his taxes.

The Third Party:

- a. The third party holds, controls or has custody of money belonging to the tax debtor; or
- b. The third party is liable to make a payment to the tax debtor; or
- c. The third party will, **within one year**, be liable to make a payment to the tax debtor

The Commissioner General

- a. The Commissioner General knows of the existence of the third party's present or future financial obligation to the tax debtor; or
- b. The Commissioner General has reasonable cause to believe that the third party has a present or future financial obligation to the tax debtor.

If these conditions have been met, the Commissioner General is empowered to do the following:

2. ACTION

- a. The Commissioner General can require the third party
 - i. to pay the money in question over to him
 - ii. to pay all or part of the money
 - iii. to make a single payment of money, payable by him to the tax debtor, which is immediately available
 - iv. to make a series of payments, as money payable by him to the tax debtor becomes available

- b. The request is to be made in writing (a Garnishment Notice)
- c. The third party is required to make payment within the time stipulated in the Garnishment Notice
- d. The money paid goes toward payment of the tax debtor's debt

IV. WHAT MONEYS ARE SUBJECT TO GARNISHMENT?

The moneys may be paid over in a single payment (lump sum) or over time. The statute describes the type of funds which may be paid over **periodically**.

STATUTORY PROVISION 2

Section 40B (2)

..... moneys otherwise payable by the person to the tax debtor as interest, rent, remuneration, a dividend, an annuity or other periodic payment,

Examples of funds subject to garnishment whether by lump sum or periodic payment are:

- Salary, wages, commissions, bonuses, or similar amounts;
- Amounts due to a contractor or subcontractor for labour, goods or services;
- Rent or lease payments;
- Fees or other amounts owed by clients to professionals such as lawyers, accountants, consultants, dentists and architects;
- Annuity payments;

- Interests payments;
- Dividend payments;
- Sales revenue & accounts receivable;
- Proceeds of an insurance claim;
- Proceeds from the sale of an asset;
- Proceeds of investments;
- Amounts on deposit in a bank or financial institution; or
- Any other funds held by a third party for the benefit of a tax debtor.

STATUTORY PROVISION 3

FUTURE PAYMENTS

It should be remembered that even moneys not yet due to be paid to the tax debtor by the third party are still susceptible to garnishment, **if they will become due within a year**. As noted in the basic rule, the obligation is imposed on any person who...

Section 40B (1)

- (a) holds, controls or has custody of moneys belonging to a tax debtor; or*
- (b) is, or will be within one year, liable to make a payment to a tax debtor,*

STATUTORY PROVISION 4

GOVERNMENT

The Government of Jamaica itself may be a third party required to pay over moneys, belonging or due to a tax debtor, to the Commissioner General. A Ministry, Department or Agency of government for example, may be required to pay a tax debtor for work done or goods supplied or they may be the employer of a tax debtor. In such a case, the Commissioner General may issue a garnishment notice to the Ministry, Department, Agency or other public authority, requiring that the money or some portion of it be paid over to the Revenue instead of to the tax debtor. Amounts falling due for payment within a year may also be garnished from government sources.

Section 40B (7)

(7) The provisions of this section apply to the Government of Jamaica in respect of –

- (a) any moneys belonging to a tax debtor that the Government holds, controls or has custody of; and
- (b) any payment that the Government is, or will be within one year, liable to pay to a tax debtor.

V. WHAT MONEYS ARE **NOT** SUBJECT TO GARNISHMENT?

There are two situations mentioned in the law in which, although someone may hold or control money which belongs or is due to a tax debtor, that money is exempt from garnishment.

EXEMPTION 1

THE COMMISSIONER GENERAL

STATUTORY PROVISION 5

Section 40D (2)

“(2) The amount in respect of which action may be taken by the Commissioner General under section 40B or 40C shall not include any amounts, as determined by the Commissioner General, that are payable to the tax debtor by the Commissioner General.”

Garnishment will not be used when the person holding or controlling money belonging or due to a tax debtor is the Commissioner General himself. This situation may arise for example when a person owes on one type of tax but has overpaid on another. In such a situation, the refund due will be paid to the taxpayer's bank account in the normal way. The CG may then choose to issue a Garnishment Notice against that bank to recover the amount owed to the Revenue.

EXEMPTION 2

WITHHOLDING TAX

STATUTORY PROVISION 6

Section 40D (3)

(3) This section does not apply with respect to –
(a) any amount that is required to be deducted or withheld, and required to be remitted or paid, under any enactment; or
(b) any penalty or interest payable in respect of an amount referred to in paragraph (a).

Garnishment will not be used for the collection of outstanding withholding tax. Withholding tax is tax which a person making a payment to another person is required by the law to deduct and pay over to the Revenue. One example of this is where a Jamaican resident looks after the local business of a non-resident and sends the profits abroad to the owner. Before sending those profits away, the local representative must deduct the required amount of tax and pay it over to the Commissioner General.

In such a case, if the withholding and payment is not done, garnishment from a third party will not be the solution. The Commissioner General will call upon the local representative for payment.

VI. GARNISHMENT NOTICES

A Garnishment Notice informs a third party that he is required to pay over to the Commissioner General, (in whole or in part) moneys belonging or due to a tax debtor, for the satisfaction of the tax debtor's debt.

The Notice shows the tax debtor's

- name
- address
- telephone number
- TRN and
- the amount of tax owed.

A Garnishment Notice does not require a court order to be effective. It is a document issued by virtue of the law i.e. the Tax Collection Act and the person receiving it is obligated to comply with it. This includes banks and financial institutions.

VII. TO WHOM MAY A GARNISHMENT NOTICE BE ISSUED?

A garnishee (the person to whom the Notice is issued) may be any third party who is the holder, controller or custodian of moneys belonging to a tax debtor. Examples are:

- Third parties involved in trading or contractual relations with the taxpayer;
- Lawyers;
- Banks and financial institutions;
- Lessees and tenants;
- Employers.

VIII. SERVING A GARNISHMENT NOTICE

A Garnishment Notice may be served on any person, whether an individual, company, partnership or other type of entity. The statute sets out special rules for serving notices on certain entities.

BUSINESS NAMES

STATUTORY PROVISION 7

Section 40B (5)

(5) Where a person carries on business under a duly authorized name or style other than the person's own name, notification to the person of a requirement under this section may be addressed to the name or style under which the person carries on business and, in the case of personal service, in addition to any other lawful means of service, shall be deemed to be validly served if it is left with an adult person employed at the place of business of the addressee.

WHO TO SERVE

- If a person conducts business under a name other than his own eg. Ansel Powell trading as "CG Foods". (In some cases the name of the operator of the business may not be known).
- A garnishment notice may be addressed to him as
 - Ansel Powell; or
 - CG Foods

HOW TO SERVE

- Personal Service:
 - Upon the named third party;
- or
- Left with an adult employee
 - At the third party's place of business
- Other lawful methods eg. registered mail.

PARTNERSHIPS

STATUTORY PROVISION 8

Section 40B (6)

(6) Where persons carry on business in partnership, notification to the persons of a requirement under this section may be addressed to the partnership name and, in the case of personal service, in addition to any other lawful means of service, shall be deemed to be validly served if it is served on one of the partners or left with an adult person employed at the place of business of the partnership.

WHO TO SERVE

- A garnishment notice may bear the name of the partnership itself

HOW TO SERVE

- Personal Service:

- Upon any partner;
- or
- Left with an adult employee
- At the partnership's place of business
- Other lawful methods eg. registered mail

IX. COMMENCEMENT OF THE GARNISHMENT PROCEDURE

STATUTORY PROVISION 9

Section 40D (1)

40D. – (1) The Commissioner General may not take any action under section 40B or 40C in respect to an amount owed by a tax debtor unless –

(a) the tax debtor has acknowledged in writing the amount owed, including by way of filing a return of tax, and has not paid the amount;

(b) the time for making any objection or appeal in respect of the amount owed has expired, and the amount has not been paid;

Garnishment proceedings can only be initiated if ONE of the following sets of conditions has been met:

1. Taxpayer assesses himself-

- The tax debtor has provided written acknowledgement of the amount owed (This usually takes the form of a return).
- Commissioner General has accepted the taxpayer's assessment
- Collection date has passed
- Taxpayer has not paid the tax due.

2. Commissioner General assesses the taxpayer -

- The audit has been settled
- An assessment has been raised and issued
- The prescribed time for objection, appeal and collection has expired.
- The decision arising from any objection or appeal filed has been confirmed.
- The Collection date has passed

X. LEGAL EFFECTS OF GARNISHMENT

The Third Party

STATUTORY PROVISION 8

Section 40B (2)

..... the requirement –

(a) applies to all such payments to be made by the person to the tax debtor until the amount owed by the tax debtor is satisfied; and
(b) operates to require payments to the Commissioner General, out of each such payment, of such amount as is stipulated by the Commissioner General in the requirement.

- A third party in receipt of a Garnishment Notice must pay within the time stipulated.
- A third party may inform the tax debtor of the Garnishment Notice; however, a copy of the Notice is also sent to the tax debtor.
- If a tax debtor claims to have made arrangements to pay the debt, the third party must comply with the Garnishment Notice and pay all moneys as instructed unless advised (in writing) that the Garnishment Notice has been withdrawn.
- The amount that a third party has to withhold from a tax debtor and pay over is within the discretion of the Commissioner General and can be:
 - (a) A fixed amount;
 - (b) A fixed amount from all amounts paid within a stated period (e.g. six months); or
 - (c) A percentage from each payment.

until the required amount has been paid in full.

The Tax Debtor

STATUTORY PROVISION 9

Section 40B (3)

(3) The receipt of the Commissioner General for moneys paid by a person as required under this section is a good and sufficient discharge of the liability of that person to the tax debtor, to the extent of the payment

- If a third party pays an amount to the Commissioner General in response to a Garnishment Notice, the tax debtor cannot legally pursue the third party to recover the amounts paid over to the Commissioner General.
- The amount that is owed to the tax debtor by the third party is reduced by the amount the third party pays over to the Commissioner General.

A Secured Creditor

- If a secured creditor has a prior claim against the amount belonging or owed to the tax debtor, that claim ranks in priority over that of the Commissioner General.

XI. LIABILITY OF THIRD PARTIES UNDER GARNISHMENT

The third party who has been served with a garnishment notice becomes liable for the amount not paid as instructed, and the Commissioner General will take action to collect that amount from him.

STATUTORY PROVISION 10

Section 40B (4)

(4) Every person who, having been required under subsection (1) to pay moneys to the Commissioner General –

a) fails to pay to the Commissioner General all or any part of such moneys (in this subsection referred to as the “unpaid amount”); or

b) pays all or any part of such moneys to any person other than the Commissioner General (in this subsection referred to as “the diverted amount”),

shall remain liable to pay to the Commissioner General a sum that is equal to the unpaid amount or the diverted amount, as the case may be, and the Commissioner General shall be entitled to recover that sum from the first-mentioned person as a civil debt owing to the Commissioner General.”.

A third party/garnishee becomes liable if:

- a. The amount owed to the tax debtor is not paid over to the Commissioner General;
- b. The garnishee continues to pay to the tax debtor the amounts legally required to be paid to the Commissioner General;
- c. The garnishee pays the money to someone else, such as a relative or another creditor, for the benefit of the tax debtor.

If a third party diverts or fails to pay over any moneys as directed under the Garnishment Notice he becomes liable to pay a penalty (equivalent to the unpaid or diverted amount) as a civil debt.

XII. GOVERNMENT AS THIRD PARTY

STATUTORY PROVISION 11

Section 40 B (7)

(7) The provisions of this section, except subsection (4), apply to the Government of Jamaica

Subsection 40B (4) refers to situations where a third party does not comply with the Commissioner General's request and becomes liable himself for the unpaid amount. The Commissioner General then has the right to take legal action against the third party to recover that unpaid amount.

Subsection (7) makes it clear that where the third party is a government entity, subsection (4) does not apply. The Commissioner General will not have the power to take legal action against that government entity. The matter will be otherwise dealt with in keeping with the rules governing the operations of government.

XIII. TERMINATION OF OBLIGATIONS UNDER GARNISHMENT

The Notice remains in force until the Garnishee is released.

This occurs when:

- The total amount which the garnishee owes to the tax debtor has been paid over to the Commissioner General; or

- The total amount which the garnishee has paid over to the Commissioner General is equal to the full amount shown on the Garnishment Notice; or
- The debt has been otherwise extinguished; or
- The garnishee does not hold, control or have custody of any money belonging or due to the tax debtor.

The Garnishee will receive a written withdrawal from the Commissioner General indicating that the Garnishment Notice is no longer in effect

XIV. WITHDRAWAL OF GARNISHMENT NOTICE

The Commissioner General may withdraw the Garnishment Notice if:

1. An offset or assessment results in a nil or credit balance.
2. Other sources have paid the tax debt in full.
3. Bankruptcy and insolvency proceedings have been initiated or are in progress.
4. Undue hardship exists
5. Extenuating circumstances exist which, in the discretion of the Commissioner General, warrant a withdrawal (e.g. illness or closure of business).

XV. THE DECISION TO GARNISH

In addition to the statutory conditions set out in the law, before initiating the garnishment process, the Commissioner General will take account of certain other considerations. He will ensure that:

- There are no outstanding transactions with the Revenue that may affect the debt amount;
- The tax debtor's information has been duly verified using internal and external sources;
- Reasonable attempts have been made to contact the debtor;
- All attempts to negotiate a mutually acceptable payment arrangement have failed;
- The debt is not eligible for write-off;
- The debtor has not filed an application under the Bankruptcy and Insolvency Act;
- The potential for financial hardship has been considered;
- The 3rd party source (e.g. bank, employer or accounts receivable) has been verified and confirmed.

XVI. ABILITY TO PAY

The main factor which the Commissioner General will consider in deciding which enforcement method to apply is ability to pay.

Ability to pay is the tax debtor's current and future capacity to pay or borrow funds.

By garnishing income before it is received, the Commissioner General forces payment. He must therefore consider the practical effects of the contemplated action on the tax debtor.

The main factors to be examined are:

In the case of a company or other business entity:

1. Projected cash flow
2. Assets and liabilities
3. Receivables
4. Payables
5. Possibility of closure
6. Possibility of loss of salary or employment
7. Loss of necessary services eg. Hospital, daycare, school

In the case of an individual:

1. Household income
2. Expenses
3. Assets
4. Liabilities
5. Ability to borrow against large assets
6. Ability to sell assets to raise funds for payment.

In determining a tax debtor's ability to pay, allowance must be made for:

1. Necessary expenses such as
 - Food
 - Lodging
 - Utilities

- Transportation
 - Health care;
 - Dependents e.g. children, parents;
 - Other debt obligations
2. Reasonable discretionary expenses; and
 3. Ability to honour payment terms without undue hardship.

XVII. HARDSHIP

Garnishment of moneys which the tax debtor had been expecting to receive may give rise to hardship. A tax debtor who is experiencing hardship should provide the Commissioner General with the financial information needed to prove his case.

If the Commissioner General is satisfied with the proof presented he may change the terms of the garnishment notice so as to prevent the continuation of hardship for the tax debtor while continuing to collect the outstanding tax.

XVIII. SPECIAL CONSIDERATIONS

The following should be noted.

Wages & Salaries

When a wage garnishment occurs, the employer (the Garnishee) will be sent a Garnishment Notice requesting him to re-direct a percentage or a fixed amount of a taxpayer's earnings to the Commissioner General.

Where there is an existing Court Order relating to wages of the tax debtor, such as a maintenance order, the Commissioner General will respect such orders and may adjust the terms of the garnishment notice so as to prevent hardship.

Financial Institutions

A bank or financial institution may receive a Garnishment Notice in connection with a tax debt owed by a person who also owes money to them in the form of a demand loan. The bank or financial institution then has the right to recover the funds owed to them from funds belonging or owed to the tax debtor, before making the required payment to the Commissioner General.

XIX. OTHER ENFORCEMENT METHODS

STATUTORY PROVISION 12

Section 40F

40F. The provisions of sections 40B, 40C and 40E are without prejudice to any other provisions of this Act or any other enactment for recovery of tax owed by a tax debtor.

The Commissioner General is not required to use his garnishment powers to collect unpaid tax. He may use any of the existing enforcement methods such as liens or seizures and will base his decision on the circumstances of each case.