



David A. Paterson
Governor

NEW YORK STATE
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE
40 NORTH PEARL STREET
ALBANY, NY 12243-0001

David A. Hansell
Commissioner

Administrative Directive

Section 1

Transmittal:	09-ADM-07
To:	Local District Commissioners
Issuing Division/Office:	Center for Child Well-Being/ Division of Child Support Enforcement
Date:	May 4, 2009
Subject:	Property Execution Procedures for Mistake of Fact and/or Exempt Money Claims
Suggested Distribution:	CSEU Coordinators SCU Supervisors IV-D Attorneys
Contact Person(s):	Division of Child Support Enforcement at 1-800-343-8859 Office of Legal Affairs – Brian S. Wootan at 1-518-473-6188
Attachments:	Attachment 1 – Mistake of Fact and/or Exempt Money Claim Form Attachment 2 – Notice to Judgment Debtor/Obligor of Restraining Notice Pursuant to New York Civil Practice Law and Rules, Section 5222 (d) and (e) of Child Support Debt Attachment 3 – Restraining Notice Pursuant to New York Civil Practice Law and Rules, Section 5222 for Child Support Debt Attachment 4 – Child Support Enforcement Execution and Notice Attachment 5 – Order to Show Cause and Affirmation Attachment 6 – Notice to Vacate Restraining Notice or Execution Attachment 7 – Notice of Determination of Your Mistake of Fact and/or Exempt Money Claim
Attachment Available On – Line:	<input checked="" type="checkbox"/>

Filing References

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
		18 NYCRR 346.11	CPLR 5205, 5222, 5230, 5231, and 5232		

Section 2

I. Summary

This Administrative Directive (ADM) refines the child support enforcement program's Property Execution (PEX) process, restraining notice, and execution forms. It provides a new form and additional instructions for determining the merits of mistake of fact and/or exempt money claims. The ADM also provides information and forms regarding turn over proceedings and joint accounts.

II. Purpose

Recent legislative activity prompted a review of the PEX process and forms. This ADM introduces revised PEX documents designed to provide notices specifically tailored to child support judgment debtors/obligors. It provides a simplified and uniform process for asserting claims of mistake of fact or that money is exempt from restraint, levy, or execution. The ADM provides information about joint accounts and instructions regarding turn over proceedings.

III. Background

On September 25, 2008, the Governor signed Chapter 575 of the Laws of 2008. This bill, called the "Exempt Income Protection Act" (ACT), amended the Civil Practice Law and Rules (CPLR) in relation to restraint, execution, income execution, and levy procedures under Article 52 of CPLR. These amendments, effective January 1, 2009, afford low income judgment debtors additional protections and place additional requirements on judgment creditors. As a result of the ACT, effective December 31, 2008, the Division of Child Support Enforcement (DCSE) temporarily disabled the automated PEX process.

This ADM is being issued in advance of an anticipated amendment to Chapter 575 of the Laws of 2008 which will exempt certain debtors and creditors from the requirements of the ACT. We anticipate the amendment will be effective immediately upon its signature into law. If the amendments to the ACT are signed into law as anticipated, New York State, municipal corporations and their agencies, as well as child support creditors, including Support Collection Units (SCUs), will **not** need to comply with the Chapter 575 requirements. Until such amendments are enacted, the requirements of the ACT continue to apply to child support creditors, including SCUs.

As a result of the review of the PEX process, DCSE has amended the PEX forms and refined the process for making mistake of fact and/or exempt money claims. **The automated PEX process will resume as soon as the Chapter law is amended.**

IV. Program Implications

A. Mistake of Fact

The process for determining whether a mistake of fact or error in issuing a PEX has occurred has not changed. However, child support obligors will receive a new claim form to use in challenging the PEX [*Mistake of Fact and/or Exempt Money Claim Form*]

(Attachment 1)]. The claim form will be included with the *Notice to Judgment Debtor/Obligor of Restraining Notice Pursuant to New York Civil Practice Law and Rules, Section 5222 (d) and (e) of Child Support Debt* (Attachment 2), and a copy of the *Restraining Notice Pursuant to New York Civil Practice Law and Rules, Section 5222 for Child Support Debt* (Attachment 3).

B. Exempt Money

Upon the date the *Notice to Judgment Debtor/Obligor of Restraining Notice Pursuant to New York Civil Practice Law and Rules, Section 5222 (d) and (e) of Child Support Debt* (Attachment 2) is received, the noncustodial parent is afforded fifteen (15) days to claim that the money is exempt from restraint, levy, or execution.

1. Money that **is exempt** from restraint, execution, or levy for child support enforcement:
 - Supplemental Security Income (SSI);
 - public assistance, including employment earnings considered in calculating the public assistance grant; and
 - child support, spousal support, maintenance or, alimony payments.
2. Money that is **not exempt** from restraint, execution, or levy for child support enforcement:
 - Social Security Disability (SSD) benefits - SSD is not exempt from collection made through the child support enforcement program. Social Services Law §111-t and 42 U.S.C. 659(h).
 - Unemployment Insurance benefits and Workers' Compensation benefits – Social Services Law §111-j, §111-t; Labor Law §596(2); 42 U.S.C. 654(19) and 42 U.S.C. 666 (c)(1)(G);
 - Veterans' benefits - 42 U.S.C. 659(h) and Rose v. Rose, 481 U.S. 619, 107 S.Ct. 2029, 95 L.Ed.2d 599 (1987);
 - Federal Civil Service retirement benefits, and Federal Railroad retirement benefits - 42 U.S.C. 659;
 - Payments from pensions and retirement accounts - Social Services Law §111-t; 42 U.S.C. 659(h) and 666[c][1][G]; and
 - Black lung benefits - 42 U.S.C. 659(h).

V. Required Action

A. Determination of Mistake of Fact and/or Exempt Money Claims

The Child Support Management System (CSMS) issues the *Restraining Notice Pursuant to New York Civil Practice Law and Rules, Section 5222 for Child Support Debt* (Attachment 3) to a financial institution identified through the PEX process. CSMS

issues the noncustodial parent a copy of the restraining notice in addition to the *Notice to Judgment Debtor/Obligor of Restraining Notice Pursuant to New York Civil Practice Law and Rules, Section 5222 (d) and (e) of Child Support Debt* and the *Mistake of Fact and/or Exempt Money Claim Form*. Upon receipt of these documents, the noncustodial parent may claim a Mistake of Fact and/or that the money in the account is exempt.

1. Making a Mistake of Fact and/or Exempt Money Claim: The noncustodial parent must make a claim of mistake of fact and/or exempt money **in writing** within fifteen (15) days of the date of the *Notice to Judgment Debtor/Obligor of Restraining Notice Pursuant to New York Civil Practice Law and Rules Section 5222 (d) and (e) of Child Support Debt* (Attachment 2). The noncustodial parent **may** make a claim by completing and signing a *Mistake of Fact and/or Exempt Money Claim Form* (Attachment 1) or otherwise in writing.
2. Update the system: The SCU must update the PROP EXE CODE on IVDRPA from “02” (Restraining Notice Sent) to “15” (Mistake of Fact Claimed).
3. Responding to a Claim: The SCU must make a determination as to the validity of the claim, and notify the noncustodial parent, within forty-five days (45) of the date the *Notice to Judgment Debtor/Obligor of Restraining Notice Pursuant to New York Civil Practice Law and Rules Section 5222 (d) and (e) of Child Support Debt* (Attachment 2) was sent to the noncustodial parent. When the SCU denies a claim, the SCU must update IVDJRR – Respondent Remarks Screen – with the reason or reasons the claim was denied. The SCU is responsible for all matters pertaining to claims by the judgment debtor/obligor or other party (i.e., non-obligated joint account holder) as specified in this ADM.
4. Reviewing Documentary Proof: Upon receiving the written assertion or claim form, the SCU must review the documentary proof submitted by the noncustodial parent.
 - a) If the noncustodial parent claims that the money is from SSI, the SCU must review any documentation submitted to support the claim. The SCU may also check WMS to determine whether the noncustodial parent is receiving MA-SSI. If so, the SCU can then obtain the documentation from WMS. Please note that all recipients of SSI are typically MA eligible and, therefore, receipt of SSI can be validated through WMS. Because SSI is exempt from execution, the restraining notice or execution must be vacated if the financial account contains only funds from SSI. If the noncustodial parent is not a resident of New York State, he or she must submit documentation from the state in which the noncustodial parent resides and/or other appropriate proof of receipt of SSI.
 - b) If the noncustodial parent claims that the money is from public assistance, including employment earnings considered in calculating the public assistance grant, the SCU must review any documentation submitted to support the claim and must verify the claim using WMS. Public assistance is exempt from execution. The restraining notice and/or execution must be vacated if the financial account contains only public assistance or employment earnings considered in calculating the public assistance grant. If the noncustodial parent is not a resident of New York State, he or she must submit documentation from

the state that issued the public assistance and/or other appropriate proof of receipt of public assistance.

- c) If the noncustodial parent claims the money is from child support, the SCU must verify the claim by reviewing CSMS or, if a non-IV-D order, by reviewing documentation provided by the noncustodial parent that they receive child support (e.g., a copy of the court order of support and proof of payment; a statement from the financial institution that money deposited is child support paid). The restraining notice and/or execution must be vacated if the financial account contains only child support, spousal support, or maintenance (alimony) payments. If the noncustodial parent is not a resident of New York State, he or she must submit documentation from the state that issued the child support.
- d) If the noncustodial parent claims that the money is commingled (i.e., non-exempt money is deposited with exempt money or money belonging to a non-obligated spouse or party), the exempt money generally does not lose its exempt status. The judgment debtor/obligor must provide proof that the deposit is from a source that is exempt, as set forth above. To determine the part of the balance in the account that is exempt, find the lowest balance that existed between the date of deposit of the money in question and the date of the Restraining Notice. The lesser of the total amount of exempt funds deposited or the lowest balance is the amount that is deemed exempt.
- e) If the person is claiming a case of mistaken identity, the party should provide information that proves his or her identity. Acceptable proof includes: driver license, passport, Social Security card, or other government-issued documents.
- f) If the noncustodial parent claims that the court order has been modified, terminated, or vacated, the noncustodial parent must provide a copy of the court order or other documentation from the court.
- g) If the noncustodial parent is claiming an error in the computation of arrears or past-due support, the SCU must review the documents provided by the noncustodial parent and the CSMS records to verify the information and correct the account, if appropriate.

5. Notification of Determination

- a) **If the claim is upheld**, the SCU must:
 - i. change the PROP EXE CODE from “15” to “86” (Release Restraint – Mistake of Fact Valid). With the proper use of property execution code “86,” CSMS will issue the *Notice to Vacate Restraining Notice or Execution* (Attachment 6) to the financial institution and a copy to the noncustodial parent.
 - ii. Print and complete the *Notice of Determination of Your Mistake of Fact and/or Exempt Money Claim* (Attachment 7) and mail it to the noncustodial parent.

b) **If the claim is denied**, the SCU must:

- i. change the PROP EXE CODE from “15” back to “02,” and reset the PROP EXE CODE DATE to the date the *Restraining Notice Pursuant to New York Civil Practice Law and Rules, Section 5222 for Child Support Debt* (Attachment 3) was issued. CSMS will issue a *Child Support Enforcement Execution and Notice* (Attachment 4) to the financial institution and a copy to the noncustodial parent.
- ii. Print and complete the *Notice of Determination of Your Mistake of Fact and/or Exempt Money Claim* (Attachment 7) and mail it to the noncustodial parent.

The PROP EXE CODES of “2,” “15,” and “86” will be used by CSMS regardless of whether the noncustodial parent files the claim for exempt money or for a claim of mistake of fact. Mistake of fact, unlike a claim of exempt money, means that the individual served with the *Notice to Judgment Debtor/Obligor of Restraining Notice Pursuant to New York Civil Practice Law and Rules, Section 5222 (d) and (e) of Child Support Debt* (Attachment 2) is asserting a case of mistaken identity, or the calculated arrears are erroneous, or the court order does not exist or has been vacated.

B. Joint Accounts and Special Proceedings for a “Turn Over” Order

1. Joint Accounts: New York law provides that each joint account owner is presumed the owner of one-half of the account (Banking Law §675). The presumption of one-half ownership is not conclusive but may be rebutted by competent evidence. The burden of proof is on the party trying to rebut the presumption. This means that the party who is challenging whether the account contains more or less than one-half belonging to the Judgment Debtor/Obligor has the burden of proving it in court.

Generally, the deposit of money into a joint account constitutes prima facie evidence of intent to create a joint tenancy. The presumption created by the Banking Law can be rebutted "by providing direct proof that no joint tenancy was intended or substantial circumstantial proof that the joint account had been opened for convenience only." (See Wacikowski v. Wacikowski, 93 AD2d 885, 461 NYS2d 888)

Facts that would demonstrate that all or a portion of the money in the account belongs to the non-obligated joint account holder include: the joint account was opened for the convenience of the non-obligated joint account holder; the money is traceable to money available only to him or her (death benefits, paychecks); or, the non-obligated joint account holder retains sole possession of the bank book and pays all taxes on interest accruing on the account and the obligor makes no deposits or withdrawals.

2. Turn Over Proceedings: If the financial institution refuses to honor an execution, the SCU must bring a special proceeding under (CPLR §5225 and §5227) to obtain a “turn over order” directing the financial institution to turn over the money contained

in the account. The proceeding must be commenced within 90 days of service of the Execution [CPLR §5232(a)].

3. Determining Whether to Initiate a Turn Over Proceeding: In all cases where the financial institution refuses to turn over money, the SCU should consider bringing a proceeding to compel surrender of the funds. If the financial institution mistakenly claims that the money is exempt or subject to the Exempt Income Protection Act, the SCU may contact the financial institution and provide information regarding the statutory exemption for child support obligations. If the money is exempt (i.e., SSI, public assistance, or child support), the SCU must release that portion of the account that is exempt.

If the financial institution refuses to turn over the money because there is a joint account, the SCU should first determine whether all or a portion of the money is subject to collection for the child support debt. If the SCU believes that the child support obligor owns more than one-half of the account, it will have the burden to prove what portion of the account is owned by the obligor.

If possible, the SCU should contact the obligor before bringing a turn over proceeding. The obligor or the non-obligated joint account holder should be given the opportunity to show the SCU that the joint account consists **entirely** of money belonging to the non-obligated joint account holder. If the obligor or the non-obligated joint account holder provides such satisfactory proof, the SCU cannot take the non-obligated joint account holder's money to apply to the obligor's child support debt. Satisfactory proof includes proof of direct deposit or other electronic deposit or transfer. In that case, the SCU must immediately issue to the financial institution the *Notice to Vacate Restraining Notice or Execution* (Attachment 6) and a copy to the noncustodial parent. If a portion of the account belongs to the obligor, the SCU may obtain a signed statement from both parties authorizing the release of that portion of the account to the SCU.

Each challenge should be reviewed independently based on the circumstances of that particular case and the documentation presented by the obligor or the non-obligated joint account holder, and in consultation with legal counsel for the local district. The SCU may utilize an Information Subpoena, a Child Support Subpoena (SSL §111-p), or other discovery methods (CPLR §§3106-3120, §§3122-a-3123, §§3130-3133) to gain the information necessary to determine the source and ownership of the money.

4. Bringing a Turn Over Proceeding: The SCU should consult with its counsel to prepare the necessary documents to bring a turnover proceeding. A sample pleading, *Order to Show Cause and Affirmation* (Attachment 5), is provided. The documents must be served on the financial institution, the obligor and the non-obligated joint account holder and filed with either the supreme or county court.

VI. Systems Implications

Once the automated PEX process is restarted, local districts can anticipate a higher volume of restraining notices and executions being issued because of the time the process was suspended.

For example, documents normally issued during January and February, 2009 will be added to the volume generated during March, 2009, provided the accounts remain PEX eligible.

VII. Additional Information

Word versions of the *Mistake of Fact and/or Exempt Money Claim Form* (Attachment 1), the *Order to Show Cause and Affirmation* (Attachment 5), and the *Notice of Determination of Your Mistake of Fact and/or Exempt Money Claim* (Attachment 7) are available on ERS under Resources, Property Execution.

VIII. Effective Date

This Administrative Directive is effective with the start-up of the automated process. Districts will be notified under separate cover.

Issued By	_____
Name:	Scott E. Cade
Title:	Deputy Commissioner and Director
Division/Office:	Center for Child Well-Being/ Division of Child Support Enforcement

MISTAKE OF FACT AND/OR EXEMPT MONEY CLAIM FORM

DIRECTIONS: As explained in the *Notice to Judgment Debtor/Obligor*, you may claim a mistake of fact and/or that your account contains money that is exempt from restraint or levy. If you are claiming a mistake of fact, complete Section 1. If you are claiming that all or part of the money restrained is exempt from restraint or levy, complete Section 2. Check all appropriate boxes and enter the specific information requested. Return this form and any supporting documentation to the Support Collection Unit (SCU) that issued the *Notice to Judgment Debtor/Obligor* at the SCU address within fifteen (15) days from the day this notice was mailed to you. Remember to print your name, and sign and date the form.

SECTION 1: MISTAKE OF FACT CLAIM

☐ I assert a mistake of fact as follows (*check each box that applies to you*):

- ☐ The Support Collection Unit has made an error in the amount of child support debt that is owed.
- ☐ I am not the person identified as the Respondent (Judgment Debtor/Obligor).
- ☐ The order of support does not exist.
- ☐ The order of support has been vacated.

Provide an explanation of your claim: _____

☐ I am attaching the following documents to support my claim (examples: canceled checks, copies of orders terminating, vacating or modifying the support award, proof of identity, etc.):

SECTION 2: EXEMPT MONEY

☐ I state that my account contains the following type(s) of funds (*check all that apply*):

- ☐ Supplemental Security Income (SSI)
- ☐ Public assistance (welfare) or employment earning considered in calculating the public assistance grant
- ☐ Child support payments
- ☐ Spousal support or maintenance (alimony) payments

☐ I am attaching the following documents to support my claim (examples: court orders of support, an award letter from the government, pay stubs, copies of canceled checks, bank records showing the last two months of account activity, or other papers showing that the money in your bank account is exempt):

Completed and Submitted by:

Name of Claimant (Print)

Signature of Claimant

Date

New York Case Identifier: _____

SCU County Name: _____

NYS CHILD SUPPORT PROCESSING CENTER
PO BOX 15368
ALBANY NY 12212-5368

THE STATE OF NEW YORK, COUNTY OF

Petitioner (Judgment Creditor/Obligee)

against

**NOTICE TO JUDGMENT DEBTOR/OBLIGOR
OF RESTRAINING NOTICE
PURSUANT TO NEW YORK CIVIL PRACTICE
LAW AND RULES, SECTION 5222 (d) AND
(e) of CHILD SUPPORT DEBT**

Respondent (Judgment Debtor/Obligor)

Social Security Number:

New York Case Identifier:
Worker Code:

ATTENTION:

Respondent (Judgment Debtor/Obligor)

NOTICE TO JUDGMENT DEBTOR OR OBLIGOR

Money belonging to you may have been taken or held (restrained) in order to satisfy the debt or past-due support which is owed and unpaid from the support order(s) entered against you and noted in the enclosed "Restraining Notice". The money may be restrained legally due to your accumulation of debt at least equal to the amount directed by your court order to be paid for two (2) months [See 18 NYCRR 346.11(b)(1)]. **Read this carefully.**

YOU MAY ASSERT A MISTAKE OF FACT OR CLAIM THE MONEY IS EXEMPT

You may assert a mistake of fact if you think you **do not** owe the debt or past-due support which is unpaid. You may also claim that the money is exempt from collection. Mistake of fact means that you think that we have made an error in the amount of child support debt which is owed or, in the identity of the debtor or, that the order of support does not exist or, has been vacated. Exempt money is described on the next page. An execution will be served to seize your money unless you assert a mistake of fact or an exemption by writing to the Support Collection Unit. You may also use the enclosed "CLAIM FORM". You may write or mail the completed claim form to the Support Collection Unit at:

within **fifteen (15) days from the day this notice was mailed to you**. You should also submit documents and additional information or evidence by mail to support your assertion of a mistake of fact within the **fifteen (15) day period**. Examples of documents supporting your claim that the money is exempt includes: an award letter from the government; pay stubs; copies of checks; bank records showing the last two months of account activity; or other papers showing that the money in your financial account is exempt.

Thereafter, the Support Collection Unit will determine the merits of your assertion and will notify you in writing of its determination within forty-five (45) days of the date of this notice. If the assertion is upheld you will also receive a copy of the *Notice to Vacate Restraining Notice or Execution* that is sent to the financial institution. If the assertion is denied, you will also receive a copy of the Child Support Execution and Notice that will be served upon the financial institution to seize the money.

IMPORTANT NOTICE ABOUT CHILD SUPPORT ENFORCEMENT AND EXEMPT MONEY

YOU MAY BE ABLE TO GET YOUR MONEY BACK

Money belonging to you may have been taken or held in order to satisfy a **child support** judgment or order which has been entered against you. **Read this carefully.**

State and Federal laws prevent certain money from being taken to satisfy judgments or orders. Such money is said to be "exempt." For your information, the following types of money are always exempt from the payment of a judgment or order for a **child support debt**:

1. Supplemental Security Income (SSI);
2. Public assistance (welfare); and
3. Spousal support, maintenance, alimony, or child support payments.

NOTICE TO JUDGMENT DEBTOR OWING OTHER THAN A CHILD SUPPORT DEBT

Money belonging to you may have been taken or held in order to satisfy a judgment or order which has been entered against you. **Read this carefully.**

YOU MAY BE ABLE TO GET YOUR MONEY BACK

State and Federal Laws prevent certain money from being taken to satisfy judgments or orders. Such money is said to be "exempt." **The following is a *partial* list of money that *may* be exempt:**

1. Supplemental Security Income (SSI);
2. Social Security;
3. Public assistance (welfare);
4. Spousal support, maintenance, alimony, or child support payments;
5. Unemployment benefits;
6. Disability benefits;
7. Workers' compensation benefits;
8. Public or private pensions;
9. Veterans benefits;
10. Ninety percent of your wages or salary earned in the last sixty days;
11. Two thousand-five hundred dollars (\$2,500) of any bank account containing statutorily exempt payments that were deposited electronically or by direct deposit within the last forty-five days, including, but not limited to, your Social Security, Supplemental Security Income, veterans benefits, public assistance, workers' compensation, unemployment insurance, public or private pensions, railroad retirement benefits, black lung benefits, and child support payments;
12. Railroad retirement benefits; and/or
13. Black lung benefits.

TO ALL DEBTORS: If you think that any of your money that has been taken or held is exempt, you must act promptly because the money may be applied to the child support judgment or order. If you claim that any of your money that has been taken or held is exempt, you must contact, in writing, the Support Collection Unit or you may complete the CLAIM FORM enclosed with this notice.

Also, **YOU MAY CONSULT AN ATTORNEY, INCLUDING ANY FREE LEGAL SERVICES ORGANIZATION, IF YOU QUALIFY.** You can also go to court without an attorney to get your money back. Bring this notice with you when you go. You are allowed to try to prove to a judge that your money is exempt from collections under New York Civil Practice Law and Rules, Sections 5222-a, 5239 and 5240. If you do not have an attorney, the clerk of the courts may give you forms to help you prove your account contains exempt money that the creditor cannot collect. New York Civil Practice Law and Rules, Article 4, and Sections 5239 and 5240, provide a procedure for determination of a claim to an exemption.

Dated:

Supervisor,
County Support Collection Unit

Enclosures: Restraining Notice and Claim Form

THE JUDGMENT CREDITOR IS THE STATE OF NEW YORK, OR ANY OF ITS AGENCIES OR MUNICIPAL CORPORATIONS, AND/OR THE DEBT ENFORCED IS FOR CHILD SUPPORT, SPOUSAL SUPPORT, MAINTENANCE OR ALIMONY.

THE STATE OF NEW YORK, COUNTY OF

Petitioner (Judgment Creditor/Obligee)

against

Respondent (Judgment Debtor/Obligor)

Social Security Number:

**RESTRAINING NOTICE
PURSUANT TO NEW YORK CIVIL
PRACTICE LAW AND RULES,
SECTION 5222
FOR CHILD SUPPORT DEBT**

New York Case Identifier:
Worker Code:

ATTENTION:

FEIN:

WHEREAS, in an action in the Supreme or Family Court of the State of New York, County, between the above named parties, in favor of , petitioner (judgment creditor/obligee) and against respondent (judgment debtor/obligor), the following order(s) were entered:

ENTRY DATE	PAYMENT/FREQUENCY
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ENTRY DATE	PAYMENT/FREQUENCY
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As of , the total child support debt that is due and unpaid is .

RESTRAINING NOTICE FOR CHILD SUPPORT DEBT

WHEREAS, it appears that you are in possession or in custody of property in which the judgment debtor/obligor has an interest or you owe a debt to the judgment debtor/obligor;

TAKE NOTICE that pursuant to New York Civil Practice Law and Rules (CPLR) Section 5222(b), you are hereby forbidden to make or suffer any sale, assignment or transfer of, or any interference with, any such property or pay over or otherwise dispose of any such debt except as therein provided until the expiration of one year after the notice was served upon you, or until the judgment or order is satisfied or vacated, whichever event first occurs.

TAKE NOTICE that this is a child support debt and, as such, the provisions of CPLR Section 5222 subdivisions (h), (i), (j) and Section 5222-a as added to CPLR by Chapter 575 of the Laws of 2008 DO NOT apply.

TAKE NOTICE that if you withhold the payment of money belonging or owed to the judgment debtor or obligor in an amount equal to twice the amount due on the child support debt, judgment, or order, the restraining notice is not effective as to other property or money.

TAKE FURTHER NOTICE that this Restraining Notice also covers all property in which the judgment debtor/obligor has an interest hereafter coming into your possession or custody, and all debts hereafter coming due from you to the judgment debtor/obligor.

TAKE FURTHER NOTICE that disobedience of this Restraining Notice is punishable as a contempt of court.

SPECIAL INSTRUCTIONS: This notice shall not be effective when Supplemental Security Income (SSI), public assistance (welfare) including employment earnings considered in calculating the public assistance grant, or spousal support, maintenance (alimony) or child support payments are the sole basis for the property in your possession or custody; or when the account is closed and there are no other open and/or active accounts belonging to the judgment debtor/obligor in your possession or custody. If any of these conditions apply, please complete the applicable statement at the bottom of this page and return this notice to the Support Collection Unit at the address indicated at the top left-hand corner of the first page of this notice.

Dated: _____

Issued by: _____

Supervisor

County Support Collection Unit

Your Reply to the Special Instructions (Check the appropriate box):

- ☐ The sole basis for the property in our possession is Supplemental Security Income (SSI), public assistance (welfare) including employment earnings considered in calculating the public assistance grant, or spousal support, maintenance (alimony) or child support payments and, therefore, we have not restrained the property pursuant to your instructions.
- ☐ The account is closed and there are no other open and/or active accounts belonging to the judgment debtor/obligor in our possession or custody.

(signed) _____
Compliance Officer or Designee

Date: _____

Print Name _____

THE JUDGMENT CREDITOR IS THE STATE OF NEW YORK, OR ANY OF ITS AGENCIES OR MUNICIPAL CORPORATIONS, AND/OR THE DEBT ENFORCED IS FOR CHILD SUPPORT, SPOUSAL SUPPORT, MAINTENANCE OR ALIMONY.

THE STATE OF NEW YORK, COUNTY OF

Petitioner (Judgment Creditor/Obligee),

CHILD SUPPORT
ENFORCEMENT
EXECUTION AND NOTICE

against

Respondent (Judgment Debtor/Obligor)

Social Security Number:

ATTENTION GARNISHEE:

New York Case Identifier:
Worker Code:

WHEREAS, in an action in the SUPREME or FAMILY COURT of the State of New York, County, between the above named parties, in favor of , petitioner (judgment creditor/obligee) and against respondent (judgment debtor/obligor), the following order(s) were entered:

ENTRY DATE	PAYMENT/FREQUENCY
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ENTRY DATE	PAYMENT/FREQUENCY
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As of , the total child support debt which is due and unpaid is .

YOU ARE HEREBY DIRECTED to satisfy the said judgment or order out of the real and personal property in which the above named judgment debtor/obligor who is not deceased has an interest, or the debts owed to the named judgment debtor/obligor, and that only the property in which the judgment debtor/obligor, who is not deceased, has an interest, or the debts owed to such judgment debtor/obligor shall be levied upon or sold thereunder. You are directed further to return a copy of this execution with the transfer or payment. If the amount of the payment or transfer to be made to the Support Collection Unit is less than \$25, do not send payments, please check the box at the end of this page and return this execution to the Support Collection Unit at the address indicated at the top left-hand corner of page 1 of this notice.

The last known address of the judgment debtor/obligor is:

A Restraining Notice in the form required by CPLR Section 5222(e) has been duly served upon the judgment debtor/obligor within the past year.

NOTICE TO GARNISHEE:

WHEREAS, it appears that you are indebted to the judgment debtor/obligor and/or in possession or custody of specific property not capable of delivery in which the judgment debtor/obligor has an interest.

NOW, THEREFORE, YOU ARE REQUIRED by CPLR section 5232(a) to transfer forthwith to the Support Collection Unit all personal property not capable of delivery in which the judgment debtor/obligor is known or believed to have an interest now in or hereafter coming into your possession or custody, including any property specified in this execution; and to pay to the Support Collection Unit, upon maturity, all debts now due or hereafter coming due from you to the judgment debtor/obligor, including any debts specified in this execution; and to execute any documents necessary to effect such transfer or payment.

AND TAKE NOTICE that until such transfer or payment is made or until the expiration of ninety (90) days after the service of this execution upon you or such further time as is provided by any order of the court served upon you, whichever event first occurs, you are forbidden to make or suffer any sale, assignment or transfer of, or any interference with, any such property, or to pay over or otherwise dispose of any such debt, to any person other than the Support Collection Unit, except upon direction of the Support Collection Unit or pursuant to an order of the court.

AND TAKE FURTHER NOTICE that at the expiration of ninety (90) days after a levy has been made by service of this execution, or such further time as the court upon motion of this judgment creditor has provided, this levy shall be void except as to property or debts which have been transferred or paid to the Support Collection Unit or as to which a proceeding under CPLR Sections 5225 or 5227 has been brought.

PRIORITY AMONG EXECUTION CREDITORS PURSUANT TO CLPR 5234(b). Where two or more executions or orders of attachment are issued against the same judgment debtor/obligor and delivered to the same enforcement officer or issued by the Support Collection Unit, they shall be satisfied out of the proceeds of personal property or debt levied upon by the officer or by the Support Collection Unit in the order in which they were delivered. However, SUCH EXECUTIONS FOR CHILD SUPPORT SHALL HAVE PRIORITY OVER ANY OTHER ASSIGNMENT, LEVY OR PROCESS. Where two or more executions or orders of attachment are issued against the same judgment debtor/obligor and delivered to different enforcement officers, and personal property or debt is levied upon within the jurisdiction of all the officers, the proceeds shall be first applied in satisfaction of the execution or order of attachment delivered to the officer who levied, and thereafter shall be applied in satisfaction of the executions or orders of attachment delivered to those of the other officers who, before the proceeds are distributed, make a demand upon the officer who levied, in the order of such demands, EXCEPT THAT SUCH EXECUTIONS FOR CHILD SUPPORT SHALL HAVE PRIORITY OVER ANY OTHER ASSIGNMENT, LEVY OR PROCESS. WHERE THERE IS MORE THAN ONE PAST-DUE CHILD SUPPORT ORDER, THE PROCEEDS SHALL BE APPLIED TO THE ORDERS IN PROPORTION TO THE AMOUNT EACH ORDER'S CLAIM BEARS TO THE COMBINED TOTAL. Nothing herein shall be deemed to defeat or impair the rights of any secured party as such term is defined in Uniform Commercial Code Section 9-105(1)(m). An execution or order of attachment returned by an officer before a levy or delivered to him after the proceeds of the levy have been distributed shall not be satisfied out of those proceeds.

SPECIAL INSTRUCTIONS: This notice shall not be effective when Supplemental Security Income (SSI), public assistance (welfare) including employment earnings considered in calculating the public assistance grant, spousal support, maintenance (alimony), or child support payments are the sole basis for the property in your possession or custody. If the property in your possession is from one of these sources, please complete the applicable statement at the bottom of this page and return this notice to the Support Collection Unit at the address indicated at the top left-hand corner of the first page of this notice.

Instructions for Use of Enclosed Coupons:

Please enclose one coupon for each payment for the specified judgment debtor/obligor ("Respondent") and mail it to the address indicated on the coupon. This document requires that you remit with each payment: the name and Social Security number of the respondent, the account number provided on this document, and the date and amount of each withholding of the respondent's real or personal property.

Dated:

Issued by:
Supervisor

County Support Collection Unit

☐ The amount of the payment or transfer would be less than \$25, therefore, no payment or transfer is being issued.

☐ The sole basis for the property in our possession is Supplemental Security Income (SSI), public assistance (welfare) including employment earnings considered in calculating the public assistance grant, spousal support, maintenance (alimony) or child support payments and, therefore, no payment or transfer is being issued.

(signed) _____
Compliance Officer or Designee

Date: _____

Print Name _____

YOU MUST RETURN THIS COUPON WITH YOUR PAYMENT TO THE ADDRESS BELOW
(Do not fold or staple.)
For each payment sent, record the amount on this coupon.

TO: NYS CHILD SUPPORT PROCESSING CENTER
PO BOX 15363
ALBANY NY 12212-5363

DO NOT SEND CASH

53

Respondent Name Respondent SSN Garnishee Name New York Case Identifier FEIN	
AMOUNT ENCLOSED:	

YOU MUST RETURN THIS COUPON WITH YOUR PAYMENT TO THE ADDRESS BELOW
(Do not fold or staple.)
For each payment sent, record the amount on this coupon.

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PO BOX 15363
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PO BOX 15363
ALBANY NY 12212-5363

DO NOT SEND CASH

53

Respondent Name Respondent SSN Garnishee Name New York Case Identifier FEIN	
AMOUNT ENCLOSED:	

(COUNTY)(SUPREME) COURT OF THE STATE OF NEW YORK
COUNTY OF

.....

In the Matter of a Proceeding under Article 4
of the Family Court Act and CPLR 5225 and 5227

Docket No.

Petitioner

ORDER TO SHOW CAUSE

- against -

Respondents

.....

Upon the affirmation of _____ verified the
day of _____, _____, annexed hereto, whereby the _____ County Support
Collection Unit moves the Court for an order directing the financial institution, _____,
to pay over to the Support Collection Unit so much of the sum of money in its possession as is
sufficient to satisfy the arrear/past due child support, to wit: _____ (\$_____))
Dollars, pursuant to CPLR 5225 and 5227, it is

ORDERED that the Respondents show cause before this Court at
_____ New York, on the _____ day of _____, at _____ o'clock in the
(morning)(afternoon) of that day, or as soon thereafter as the parties can be heard, why an order
should not be made directing the financial institution, _____, to pay over to the
Support Collection Unit so much of the sum of money in its possession as is sufficient to satisfy the
arrear/past due child support, to wit: _____ (\$_____) Dollars to the
County Support Collection Unit

and why such other and further relief should not be granted as the Court may determine, and it is
further

ORDERED that service by first class mail of a copy of this order together with the papers
upon which it is granted upon _____ on or before the _____ day of _____, _____,
be deemed sufficient service; and it is further

ORDERED that the financial institution shall not release the funds or property held for or in
the name of the Respondent _____ until further order of this court.

Dated: _____, _____.

ENTER

Court Judge

(COUNTY)(SUPREME) COURT OF THE STATE OF NEW YORK
COUNTY OF

.....

In the Matter of a Proceeding under CPLR 5225 and 5227

Docket No.

Petitioner

AFFIRMATION

- against -

Respondents

.....

, an attorney duly admitted to practice law before the courts of the State of New York, affirms under penalty of perjury as follows:

1. I am Counsel for the _____ County Support Collection Unit (the "SCU"). I make this affirmation in support of the SCU's motion for an order directing the _____ (the "financial institution"), to pay over to the SCU so much of the sum of money in its possession as is sufficient to satisfy the arrear/past due child support owed by _____ (the "debtor"), to wit: _____ (\$_____) Dollars pursuant to CPLR 5225 and 5227.

2. SCU records indicate that the debtor is subject to the following orders requiring payment of child support or combined child/spousal support:

Order Date	Docket No.	Name of Court	Amount of past due child support	Interest (if reduced to money judgment)	Total Due

3. Any arrears/past due support is treated as a judgment by operation of law and is enforceable in the same manner as a judgment. See 42 USC 666(a)(9)(A); CPLR 5101. The SCU is authorized to restrain and seize personal property of child support debtors, including bank accounts. CPLR 5222; SSL 111-t, 42 USC 666 (a)(4), (c)(1)(G)(2).

4. A restraining notice was served upon the debtor and the financial institution on the _____ day of _____, 20__, pursuant to CPLR 5222. The financial institution is holding funds jointly the names of the debtor and respondent _____ (the "joint account holder").

5. On _____, _____, an execution was issued to the financial institution, pursuant to CPLR 5230. A copy of the execution was mailed to the debtor. The financial institution has (failed)(refused) to pay over the funds in the bank account to satisfy the arrears/past due child support.

6. The arrears/past due child support are unpaid and unsatisfied.

Attachment 5

7. No previous application for the relief herein prayed for has been made.

WHEREFORE, deponent respectfully asks for an order directing the financial institution to pay over to the SCU so much of the sum of money in its possession as is sufficient to satisfy the arrears/past due child support, to wit: _____ (\$_____) Dollars.

DATED: _____, _____,

Counsel for the _____ County
Support Collection Unit

(Address and Phone Number)

TO:

Financial Institution

(Address)

Child Support Debtor

(Address)

Joint Account Holder

(Address)

THE STATE OF NEW YORK, COUNTY OF

Petitioner,

**NOTICE TO VACATE
RESTRAINING NOTICE OR
EXECUTION**

against

**Respondent (Judgment Debtor/Obligor)
Social Security Number**

**New York Case Identifier:
Worker Code:**

ATTENTION GARNISHEE:

On _____, the _____ County Support Collection Unit served upon you a Restraining Notice or Execution, for the above-named Judgment Debtor/obligor.

Please be advised that the Support Collection Unit has determined that the Restraining Notice or Execution shall be vacated.

THEREFORE, YOU ARE HEREBY DIRECTED to IMMEDIATELY vacate any action which has been taken to restrain or pay to the Support Collection Unit any property of which you are in possession or custody and in which the judgment debtor/obligor has or is believed to have an interest.

Dated:

SCU Supervisor

Support Collection Unit

[SCU letterhead]

Date: _____

New York Case Identifier: _____

<p align="center">NOTICE OF DETERMINATION OF YOUR MISTAKE OF FACT AND/OR EXEMPT MONEY CLAIM</p>
--

Dear _____:

The review of your Mistake of Fact and/or Exempt Money Claim for the New York State Case Identifier above has been completed. Based on our review of the case and supporting documentation provided:

☐ Your claim has been **upheld**.

Service of the *Notice to Vacate Restraining Notice or Execution* will be made upon the person in possession or custody of the money belonging to you. You will receive a copy of the *Notice to Vacate Restraining Notice or Execution*.

☐ Your claim has been **denied**.

☐ Insufficient documentation was provided to us to determine the validity of your claim.

☐ You did **not** demonstrate that:

- ☐ the Support Collection Unit has made an error in the amount of child support debt that is owed;
- ☐ you are not the person identified as the Respondent (Judgment Debtor/Obligor);
- ☐ the order of support does not exist;
- ☐ the order of support has been vacated/terminated; or
- ☐ the account contains exempt funds.

Based on the review we have verified that there is an amount past-due and owing as indicated in your *Notice to Judgment Debtor/Obligor of Restraining Notice Pursuant to New York Civil Practice Law and Rules, Section 5222 (d) and (e) of Child Support Debt*.

Therefore, pursuant to Section 5232 of the Civil Practice Law and Rules, the amount of past-due support that has been indicated will be satisfied by service of a *Child Support Enforcement Execution Notice* upon the person in possession or custody of the money belonging to you. You will receive a copy of the *Child Support Enforcement Execution Notice*.

This is our final determination on this matter. If you do not believe that our final decision is correct, you may seek review of this decision by bringing a legal proceeding authorized by Article 78 of the Civil Practice Law and Rules within four months of the date of this notice. You should see an attorney about how to bring an Article 78 proceeding. If you have no attorney or cannot afford to hire one, you should call your local legal services organization for help.

Supervisor,
Support Collection Unit