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June 20, 2017

OPINION NO. 2017-07

CONTROLLER; GARNISHMENT;
DEBT COLLECTION: The
Controller may, by affording proper
notice and making demand pursuant
to NRS 353C.210, take possession of
bank-held assets of a debtor whose
debt to the State is past due. Any
such action must be taken with
proper regard for the due process
rights of the debtor arising under
NRS 353C.210(9) and the Nevada
and federal constitutions.

The Honorable Ronald L. Knecht, State Controller
Office of the State Controller
101 N. Carson St.
Carson City, Nevada 89701-4786

Mr. Knecht:

You have asked the Attorney General for an opinion addressing the Controller's debt-collection authority with respect to depository institutions in possession of assets of a debtor.

QUESTION

Whether NRS 353C.210 authorizes the Controller to employ a non-judicial garnishment process for the purpose of satisfying outstanding debts to the State with the proceeds of a debtor's bank-held assets.

ANSWER

Nevada's statutes designate the Controller as the official responsible for collecting debts¹ owed to the State. NRS 353C.195(1). The Controller's authority to collect debt includes the ability to recover assets belonging to the debtor but held by a third party. Specifically, the Controller is authorized to require payment over of deposits held by banking institutions on behalf of the debtor. This is accomplished by delivering notice and demand to the bank branch at which the debtor's assets are held:

1. Notwithstanding any specific statute to the contrary, the State Controller may, in addition to any other remedy provided for in this chapter, give *notice* of the amount of a debt owed to this State and a *demand* to transmit to any person, including, without limitation, any officer, agency or political subdivision of this state, who has in his or her possession or under his or her control any credits or other personal property belonging to the debtor or who owes any debts to the debtor that remain unpaid. . . .

7. If the *notice and demand* to transmit is intended to prevent the transfer or other disposition of a deposit in a bank or other depository institution, or of any other credit or personal property in the possession or under the control of the bank or depository institution, the notice must be delivered or mailed to any branch or office of the bank or depository institution at which the deposit is carried or the credit or personal property is held.

NRS 353C.210(1) and (7) (emphasis added).

To reach a debtor's assets in the possession of a third party, a creditor must typically obtain a writ of garnishment and/or writ of attachment, documents issued in judicial proceedings either before or after the issuance of a final judgment against the debtor. *See* NRS 31.240 *et seq.* Post-judgment, NRS 31.450 provides for a writ of garnishment to issue without application to the court.

¹ "Debt" is defined as "a tax, fee, fine or other obligation: (1) that is owed to an agency or the State of Nevada; and (2) [t]he payment of which is past due." NRS 353C.040. Additionally, "debt is past due if the debt has not been remitted and paid to an agency or the State of Nevada as required by law, or as agreed upon by the debtor and the agency or the State of Nevada, as appropriate." NRS 353C.100.

However, the Controller has the authority under NRS 353C.210 to deliver notice and demand to third parties independently of judicial proceedings. Because this authority exists “[n]otwithstanding any specific statute to the contrary” (NRS 353C.210(1)), it is an *additional* means for collection given to the Controller by the legislature. *Cf.* NRS 353C.230 (providing in part that “[t]he remedies of this state provided for in this chapter are intended to supplement existing remedies applicable to the collection of debts”).

There is thus no conflict between NRS 353C.210 and other provisions of statute governing judicial collection remedies. *See e.g.* NRS 31.240 to 31.460. A judgment is sufficient but not necessary for the Controller’s use of notice and demand authority. Under NRS 353C.210(1), the Controller’s notice and demand authority must be exercised within four years measured from either the date the overdue debt became due; or from the date of recording an abstract of judgment or a certificate of liability. NRS 353C.210(1)(a) and (b).²

The Controller’s procedures are non-judicial in nature, since they do not require either a judgment or a writ. Nonetheless, due process is required in order to protect the interests of the debtor. *See generally*, Linda Beale, Note, *Connecticut v. Doebr and Procedural Due Process Values: The Sniadach Tetrad Revisited*, 79 Cornell L. Rev. 1603 (1994), Diana Gribbon Motza and Andrew H. Baida, *The Due Process Rights of Postjudgment Debtors and Child Support Obligors*, 45 Md. L. Rev. 61 (1986). *See also Yagman v. Garcetti*, 852 F.3d 859 (9th Cir. 2017).

Although due process is required, the law is not clear on the precise requirements. *Duranceau v. Wallace*, 743 F.2d 709, 712-13 (9th Cir. 1984) (observing that courts considering the issue have reached varying results). Given the variability of potential debt collection scenarios, the legislature has directed individual state agencies to promulgate regulations establishing the procedures by which a debt may be formally verified or adjudicated:

A debtor who owes a debt to an agency for which the State Controller delivers a notice and demand to transmit concerning the debtor pursuant to this section is entitled to an administrative hearing before that agency to challenge the collection of the debt pursuant to the demand to transmit. Each agency may adopt such regulations as are necessary to provide an administrative hearing for the purposes of this subsection.

² These predicate events are analogous to those established for the Department of Taxation for collection of unpaid taxes. *See* NRS 360.510(1)(a) and (b).

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NRS 353C.210(9). While a creditor agency “may adopt such regulations,” *id.*, for the conduct of a due process hearing, it is not necessary that the agency do so. In the absence of regulations for that purpose, the agency must nonetheless conduct a hearing for the purpose of allowing the debtor to argue points in contravention of the State’s asserted rights to the assets. Conduct of the hearing must be guided by the minimum due process requirements established by the State and U.S. Constitutions. NEV. CONST. art. 1, § 8, U.S. CONST. amend. 14.

CONCLUSION

The Controller may, by affording proper notice and making demand pursuant to NRS 353C.210, take possession of bank-held assets of a debtor whose debt to the State is past due. Any such action must be taken with proper regard for the due process rights of the debtor arising under NRS 353C.210(9) and the Nevada and federal constitutions.

Sincerely,

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By:



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CWH/JLC