

IN THE UNITED STATES DISTRICT COURT FOR

THE \_\_\_\_\_ DISTRICT OF \_\_\_\_\_

_____	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.
	)	
_____	)	
	)	
Defendant.	)	
_____	)	

NOTICE

You are hereby notified that an installment payment order is being sought against you pursuant to 28 U.S.C. § 3204 by the United States Government, which has a court judgment against you in Case Number \_\_\_\_\_, in the United States District Court for the \_\_\_\_\_ District of \_\_\_\_\_ in the amount of \$\_\_\_\_\_, plus interest [and penalties] accruing after the date[s] of assessment pursuant to law for [specify type of tax(es) and tax period(s)].

In addition, you are hereby notified that there are exemptions under the law which may protect some of your income from being subject to Court-ordered installment payments if you can show that the exemptions apply. Below is a summary of the major exemptions which apply in most situations in the State of [specify name of State where debtor resides]:

Under 28 U.S.C. § 3014 you have the choice of electing to exempt certain types of income from the collection efforts of the United States in a motion for installment payments.

You may elect to exempt one of the following two types of property:

(1) the type of property specified in § 522(d) of the Bankruptcy Code (11 U.S.C.), which generally provides exemptions for:

- \$7,500 in equity in a residence;
- \$1,200 in equity in a motor vehicle;
- \$ 500 in jewelry;
- \$4,000 in personal property;
- In addition, a debtor who does not own a residence or who has less than \$7,500 in equity in a residence may exempt an additional \$3,750 in personal property. Additional exemptions or limited exemptions apply to such items as insurance contracts, pensions and various benefits such as Social Security;

**OR**

(2) any property that is exempt under any other Federal nonbankruptcy law, or State or local law that is applicable and any property in which you had, immediately prior to the filing of the application for an installment payment order, an interest as a tenant by entirety or joint tenant, or an interest in a community estate, to the extent such an interest is exempt from process under applicable nonbankruptcy law. Note that the law of the state where you have been domiciled for at least 180 days governs your rights. Under the laws of the State of [Kansas] the following exemptions may apply:<sup>1</sup>

<u>TYPE</u>		<u>STATUTE SECTION</u>
Public Assistance	-All exempt.	-Kan. Stat. Ann. §§ 39-717 and 60-2313(a)(2)
Unemployment Compensation	-Exempt as long as not commingled	-Kan. Stat. Ann. §§ 44-718 and 60-2313(a)(3)
Wages	-Exempt, except for	-Kan. Stat. Ann.

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<sup>1</sup> The following list of specific exemptions pertains to the State of Kansas, and is provided here merely as an example. The trial attorney must specify the specific exemptions that are appropriate for the state where the debtor resides. That information should be readily available in the debt collection unit of each United States Attorney's office.

	the lesser of, per week, 25% of the debtor's weekly disposable earnings or amounts by which such earnings exceed 30 times the federal minimum wage, whichever is less.	§ 60-2310
Workers Compensation	-All Exempt	-Kan. Stat. Ann. §§44-514 and 60-2313(a)(3)
Pension, Retirement, Disability, Death or Other Benefits	-Benefits under various employee retirement systems are exempt	-Kan. Stat. Ann. §§ 60-2308, 60-2313(a)(1) and provisions cited therein
Insurance	-Exempt (subject to exemptions).	-Kan. Stat. Ann. §§ 40-414 and 60-2313(a)(8)
Crime Victims' Compensation Awards	-Exempt (with Exemptions.)	-Kan. Stat. Ann. §§ 74-7313 and 60-2313(a)(6)
Fraternal Benefit Society	-All exempt.	-Kan. Stat. Ann. §§ 40-748, 40-711, and 60-2313(a)(10)

If you are [name of judgment debtor], you have a right to ask the court to exclude income that you believe qualifies under one of the above exemptions<sup>2</sup> [or to explain to the court that you think you do not owe the money to the United States Government that it says you do.]]

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<sup>2</sup> Add the following only in the case of a default judgment.

If you want a hearing, you must notify the court within 20 days after you receive this notice. You must make your request in writing, and either mail it or deliver it in person to the Clerk of the Court at [specify address of clerk of court]. If you wish, you may use this notice to request the hearing by checking the box below and mailing this notice to the court clerk. You must also send a copy of your request to the Government addressed to [name of trial attorney], United States Department of Justice, Tax Division, P.O. Box \_\_\_\_, Washington, D.C. 20044, so the Government will know you want a hearing. The hearing will take place within 5 days after the clerk receives your request, if you ask for it to take place that quickly, or as soon thereafter as possible.

At the hearing you may explain to the judge why you think certain income is exempt<sup>3</sup> [or why you think you do not owe the money to the Government.]

If you think you live outside the Federal judicial district in which the court is located, you may request, no later than 20 days after you receive this notice, that this proceeding to obtain court-ordered installment payments be transferred by the court to the judicial district in which you reside. You must make your request in writing, and either mail it or deliver it in person to the clerk of the court at [specify address of clerk of court]. You must also send a copy of your request to the Government addressed to [name of trial attorney], United States Department of Justice, Tax Division, P.O. Box \_\_\_\_, Washington, D.C. 20044, so the Government will know you want the proceeding to be transferred.

Be sure to keep a copy of this notice for your own records. If you have any questions about your rights or about this procedure, you should contact a lawyer, an office of public legal

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<sup>3</sup> Add the following only in the case of a default judgment.

assistance, or the clerk of the court. The clerk is not permitted to give legal advice, but can refer you to other sources of information.

[Seal of Court]

Dated: \_\_\_\_\_

\_\_\_\_\_  
Clerk, U.S. District Court

\_\_\_ I hereby request a court hearing to decide the validity of my claims. Notice of the hearing should be given to me by mail at the address below. I [check one] \_\_\_do \_\_\_do not want the hearing to take place within five days after the clerk receives my request for a hearing.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Address

\_\_\_\_\_  
Phone No.

\_\_\_\_\_  
Debtor's printed  
or typed name

\_\_\_\_\_  
Signature of Debtor

\_\_\_\_\_  
Date

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_____	)	
	)	
v.	)	Case No.
	)	
_____	)	
	)	
Defendant.	)	
_____	)	

MOTION FOR INSTALLMENT PAYMENT ORDER

The United States of America moves for an order pursuant to 28 U.S.C. § 3204 directing the [plaintiff] [defendant]/judgment debtor, [name of judgment debtor], to make [monthly] [weekly] [bi-weekly] installment payments in the amount of \$[specify amount of periodic payment sought] to the United States of America until the total judgment debt of \$\_\_\_\_\_ (including accrued interest [, penalties,] as of \_\_\_\_\_, plus costs and additional interest [and penalties] accruing after \_\_\_\_\_, plus the ten-percent surcharge imposed by 28 U.S.C. § 3011) has been satisfied.

In support of this motion, the United States relies on the attached Declaration of trial attorney \_\_\_\_\_ and the exhibits attached thereto. The United States requests a hearing on this matter pursuant to 28 U.S.C. § 3204(a). A memorandum of law further explaining the basis for this motion is submitted herewith.

[Name of US Attorney]  
United States Attorney

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[Attorney Name]  
Trial Attorney  
Tax Division  
U.S. Department of Justice  
P.O. Box  
Washington, D.C. 20044  
Telephone: (202) -

IN THE UNITED STATES DISTRICT COURT FOR

THE \_\_\_\_\_ DISTRICT OF \_\_\_\_\_

_____	)		
	)		
v.	)	Plaintiff,	
	)		Case No.
	)		
_____	)		
	)	Defendant.	
_____	)		

MEMORANDUM IN SUPPORT OF MOTION  
FOR INSTALLMENT PAYMENT ORDER

The United States submits this memorandum in support of its motion for an installment payment order pursuant to 28 U.S.C. § 3204.

On \_\_\_\_\_, 200\_\_, judgment in the amount of \$ \_\_\_\_\_, plus interest accruing after the date(s) of assessment [specify date(s)], was entered against the [plaintiff] [defendant] [specify full name of judgment debtor]. The amount due as of [specify current date or date on which motion will be considered], is \$ [specify amount due as of that date, including all accrued interest, [penalties,] costs, etc.].

Pursuant to Rule 69 of the Federal Rules of Civil Procedure post-judgment interrogatories were propounded to [last name of judgment debtor] by the United States. A copy of the interrogatory answers is attached as Exhibit 1. [Describe what other financial information has been ascertained through discovery or otherwise.]



In response to the interrogatories, [last name of judgment debtor] stated that [describe in detail what is known about the judgment debtor's income from self-employment or about the judgment debtor's diversion or concealment of earnings such that the Government is entitled to an order under 28 U.S.C. § 3204.] [In addition the Government has learned through [depositions] [describe other information learned and how it was learned] that....]

Although it has been \_\_\_\_\_ months since entry of judgment, [last name of judgment debtor] has refused to satisfy the judgment voluntarily or to agree to make periodic payments pursuant to a payment schedule. Therefore, the United States requests that the Court grant an installment payment order, pursuant to 28 U.S.C. § 3204, requiring [last name of judgment debtor] to make monthly payments to the United States in the amount of \$\_\_\_\_\_. Monthly payments of \$\_\_\_\_\_ are reasonable considering the substantial income earned by [last name of judgment debtor], [his] [her] reasonable living expenses, and the size of the judgment.

In addition, there is nothing about [last name of judgment debtor]'s financial situation that indicates that monthly payments of \$\_\_\_\_\_ would impose an undue financial hardship on [him][her].

The Federal Debt Collection Procedures Act of 1990, 28 U.S.C. § 3000, et seq., was enacted to provide a comprehensive statutory framework for the collection of debts owed to the United States. It was meant to improve the Government's speed and efficiency in collecting debts. H.R. Rep. No. 736, 101st Cong., 2d Sess. (1990 U.S. C.C.A.N. 6630). § 3204 of the Act (28 U.S.C. § 3204) specifically authorizes a district court to order a judgment debtor with "substantial" earnings from self-employment to "make specified installment payments to the

United States." Pursuant to § 3204(b) the Court can subsequently order an increase or decrease in the installment amount upon a showing that the judgment debtor's financial circumstances have changed. As Exhibit 1 reveals, [last name of judgment debtor] is [receiving substantial non-exempt disposable earnings from self-employment that are not readily subject to garnishment because ...] [diverting or concealing substantial earnings from [specify source of earnings]] and is not subject to any present writ of garnishment. [Last name of judgment debtor] has a legal obligation to pay to the United States the amount of the judgment, plus interest [, penalties,] and costs, entered in this action. [last name of judgment debtor] has to date chosen to ignore that obligation. Court-ordered installment payments are a fair, efficient, statutorily authorized means to ensure that [last name of judgment debtor] begins to meet [his] [her] legal obligation to the United States.

CONCLUSION

For the foregoing reasons, the motion for an installment payment order should be granted and the judgment debtor ordered to pay over to the United States the amount of \$\_\_\_\_\_ per month until the judgment (including interest [and penalties] accruing pursuant to law, and the ten-percent surcharge imposed by 28 U.S.C. § 3011) is satisfied.

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[Attorney Name]  
United States Attorney

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[Attorney Name]  
Trial Attorney  
Tax Division  
U.S. Department of Justice  
P.O. Box  
Washington, D.C. 20044  
Telephone: (202) -

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	)	
v.	)	Case No.
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_____	)	
	)	
Defendant.	)	
_____	)	

DECLARATION IN SUPPORT OF MOTION FOR INSTALLMENT PAYMENT ORDER

1. The United States of America is the judgment creditor in the above-cited action.
2. On \_\_\_\_\_, judgment in the amount of \$\_\_\_\_\_, plus interest accruing after the date[s] of assessment ([specify date(s)]) and costs, was entered by this Court in favor of the United States against the [plaintiff][defendant], [specify full name of judgment debtor]
3. [last name of judgment debtor] submitted interrogatory answers containing financial information. A true copy of the interrogatory answers is attached hereto as Exhibit A.
4. To date, [last name of judgment debtor] has made no payments on the judgment debt and as of [current date], there is due and owing the sum of \$\_\_\_\_\_, including all accrued interest and [penalties].
5. No previous application has been made for an installment payment order and no writ of garnishment is in effect under 28 U.S.C. § 3205 in this action.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

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[Attorney Name]  
Trial Attorney  
Tax Division  
U.S. Department of Justice  
P.O. Box  
Washington, D.C. 20044  
Telephone: (202) -

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Plaintiff,	)	
	)	
_____	)	
	)	
Defendant.	)	
_____	)	

ORDER FOR INSTALLMENT PAYMENTS

This matter having come on for hearing on the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, upon consideration of the motion and supporting exhibit[s] and memorandum of law, this Court finds that the judgment debtor, [full name of judgment debtor] [is receiving or will receive substantial nonexempt disposable earnings from self employment that are not subject to garnishment] [is diverting or concealing substantial earnings from [specify source]]. Accordingly it is ORDERED pursuant to 28 U.S.C. § 3204 that the judgment debtor, [full name of judgment debtor], pay from [his] [her] nonexempt disposable earnings to the United States of America, the sum of \$ \_\_\_\_\_ per \_\_\_\_\_ beginning \_\_\_\_\_, to be applied to [name of judgment debtor]'s judgment debt in this action until the judgment debt (including all accrued interest, [penalties], costs, and the ten-percent surcharge imposed by 28 U.S.C. § 3011) is fully satisfied.

The payments shall be delivered to [specify full name and address of the IRS office (generally Special Procedures) that will be responsible for monitoring and receiving payments] by the [specify the day of week or date of month on which payments must be made].

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE