

# CPLR 5231: Employer Must Comply with Both Tax Levy and Income Execution

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It should also be noted that the courts seem to adopt an *ad hoc* approach in deciding cases of this nature. Thus, it may very well be that the resolution of a particular simultaneous deduction case may lie buried within its facts.

*CPLR 5231: Employer must comply with both tax levy and income execution.*

While CPLR 5231(h) provides a scheme of priorities where two or more income executions are levied against the wages of a judgment debtor, there is no priority provision as respects a tax levy and an income execution.

In *Royal Business Funds Corporation v. Rooster Plastics, Incorporated*,<sup>107</sup> a judgment creditor brought an action, pursuant to CPLR 5231(e), against a judgment debtor's employer to recover accrued unpaid installments of an income execution. Defendant-employer was deducting ten percent of the judgment debtor's weekly salary under a prior federal income tax levy and pursuant to an agreement with the Internal Revenue Service.

The Supreme Court, New York County, held that it was the duty of the employer to comply with the income execution notwithstanding the additional deductions being made pursuant to the federal tax levy.<sup>108</sup> If both deductions proved too burdensome for the judgment debtor, the court added, his remedy would be to move, under CPLR 5231(g), for modification of the income execution.<sup>109</sup>

*CPLR 5231: Morris Plan rule not applied.*

CPLR 5231 requires an income execution to be issued to the sheriff of the county of a judgment debtor's residence or employment and to be first served upon the debtor.<sup>110</sup> This requirement creates a problem when a judgment debtor neither resides nor is employed in New York.<sup>111</sup> Under previous legislation<sup>112</sup> the problem did not arise since provision was made for an order which initially would run against the employer.<sup>113</sup> Furthermore,

<sup>107</sup> 53 Misc. 2d 181, 278 N.Y.S.2d 350 (Sup. Ct. N.Y. County 1967).

<sup>108</sup> 53 Misc. 2d 181, 182, 278 N.Y.S.2d 350, 352 (Sup. Ct. N.Y. County 1967).

<sup>109</sup> CPLR 5231(g) provides: "At any time, the judgment creditor or the judgment debtor may move, upon such notice as the court may direct, for an order modifying an income execution." See, e.g., *First Westchester Nat'l Bank v. Lewis*, 42 Misc. 2d 1007, 249 N.Y.S.2d 537 (Westchester County Ct. 1964).

<sup>110</sup> 7B MCKINNEY'S CPLR 5231, commentary 161 (1963).

<sup>111</sup> 7B MCKINNEY'S CPLR 5231, commentary 162 (1963).

<sup>112</sup> CPA. § 684.

<sup>113</sup> 7B MCKINNEY'S CPLR 5231, commentary 163-64 (1963).