

TRUSTEE'S MEMORANDUM TO DEBTOR'S EMPLOYER UNDER A WAGE WITHHOLDING ORDER

This Memorandum is issued to provide information to any employer that has an employee that has filed a Chapter 13 bankruptcy in which I have been appointed as Trustee to administer and the Bankruptcy Court has entered a Wage Withholding Order directed to the employer to make a payroll deduction from that employee's payroll check and forward these deductions to my office to administer. If you are viewing this Memorandum, you, of all likelihood, have such an employee and I have forwarded to you a letter advising you of the entry of such Wage Withholding Order along with a copy of the Wage Withholding Order included in my letter.

In that I am the Trustee duly appointed by the Bankruptcy Court to administer this Chapter 13 bankruptcy proceeding, I do not represent you, the employee, or the employee's creditors and I cannot give anyone legal advice on that party's rights in this bankruptcy. I may change or revise this Memorandum at any time without further notice to you or any other party.

Purpose of a Chapter 13 Bankruptcy: Presumably, your employee is experiencing financial problems which prompted his or her filing this bankruptcy. Chapter 13 of the Bankruptcy Code allows your employee to propose a Chapter 13 plan that will allow your employee to repay his or her creditors in an organized manner as set forth in his or her Chapter 13 plan. The plan requires your employee to pay monthly payments to my office as the Chapter 13 Trustee duly appointed to administer his or her case. I, in turn, distribute these payments to your employee's creditors pursuant to the terms of that plan once such is approved/confirmed by the Bankruptcy Court. The term of these plans generally take three to five years for your employee to complete.

Contrast Chapter 13 of the Bankruptcy Code where the individual attempts to repay his or her creditors pursuant to the terms of his or her proposed Chapter 13 Plan to a Chapter 7 of the Bankruptcy Code where the individual is attempting to discharge his or her debts without any attempt to repay his or her creditors.

Purpose of the Entry of a Wage Withholding Order: A large portion of Chapter 13 bankruptcies that are filed fail each year due to the individual's failure to make plan payments to the Trustee pursuant to the terms of his or her Chapter 13 plan. The success rate of the individual actually completing his or her case goes up substantially where the Bankruptcy Court enters a Wage Withholding Order directing that individual's employer to deduct from the individual's paycheck as a payroll deduction an amount equal to the individual's plan payments and forwarding these deductions to the Trustee to be administered pursuant to the Chapter 13 plan.

Authority to Issue Such a Wage Withholding Order: The Bankruptcy Court has the authority to issue a Wage Withholding Order pursuant to the provisions of 11 U.S.C. 1325(c) after the confirmation of the employee's proposed Chapter 13 Plan. The Bankruptcy Court has the authority to issue a Wage Withholding Order prior to the confirmation of a proposed Chapter 13 Plan by the consent of the employee.

Payroll Deduction: Upon receipt of notice of the entry of such a Wage Withholding Order, you should immediately proceed to deduct the appropriate amount of the plan payment from the employee's paycheck. The plan payment amount is set forth in the copy of the Wage Withholding Order that I forwarded to you. The Wage Withholding Order may indicate that there are future step-ups in plan payments which will require your adjustment of the amount being deducted from the employee's paycheck on the dates as set forth in the Wage Withholding Order. There may be future Court orders entered adjusting the amount of these deductions due to modifications of the terms of the employee's Chapter 13 plan. You should continue to make the payroll deduction until such time as you hear further from my office or the Bankruptcy Court that the Wage Withholding Order has been terminated.

Forward Payment to Trustee: Once you have deducted the payment from the employee's paycheck, you should forward a check to my office made payable to the "Standing Chapter 13 Trustee" to the following address:

John J. Talton, Trustee
P. O. Box 734
Tyler, TX 75710

You should identify the employee's name and case number on each check that you forward to me.

Calculation of the Amount to be Deducted from the Employee's Check: You should deduct from each of the employee's payroll checks an amount sufficient to pay the employee's Chapter 13 monthly plan payment as set forth in the Wage Withholding Order. In order to accurately determine the amount to be deducted from your employee's paycheck, you should follow these two steps:

Step 1: "Annualize" the withholding amount: Multiply the monthly plan payment as set forth in the Wage Withholding Order by 12 to come up with the annualized amount for plan payments for your employee.

For example, assume that the plan payment is \$500.00 per month. This needs to be converted to an annualized amount by multiplying it by 12. $\$500.00 \times 12 = \$6,000.00$ is the annualized amount.

Step 2: Convert the annualized amount of plan payments for your employee to the amount to be withheld based upon the frequency your employee is paid.

If the Employee is paid monthly: Divide the annualized amount by 12 (in other words, the full amount of plan payment as set forth in the Wage Withholding Order should be deducted from each monthly paycheck).

In the example above, if the annualized amount is \$6,000.00, this amount would be divided by 12 to compute the amount to be taken out of each check. $\$6,000.00 / 12 = \500.00 .

If the Employee is paid twice a month (semi-monthly): Divide the annualized amount by 24 (in other words, one-half of the monthly plan payment as set forth in the Wage Withholding Order will be deducted from each of the two paycheck issued each month).

In the example above, if the annualized amount is \$6,000.00, this amount would be divided by 24 to compute the amount to be taken out of each check. $\$6,000.00 / 24 = \250.00 .

If the Employee is paid every two weeks (bi-weekly): Divide the annualized amount by 26 (the number of paychecks issued to the employee in a year).

In the example above, if the annualized amount is \$6,000.00, this amount would be divided by 26 to compute the amount to be taken out of each check. $\$6,000.00 / 26 = \230.76 .

If the Employee is paid every week (weekly): Divide the annualized amount by 52 (the number of paychecks issued to the employee in a year).

In the example above, if the annualized amount is \$6,000.00, this amount would be divided by 52 to compute the amount to be taken out of each check. $\$6,000.00 / 52 = \115.38 .

Unlike certain garnishments under Texas state law, the Bankruptcy Code does not impose any type of limits of the amount that may be deducted from an employee's paycheck for the payment of Chapter 13 plan payments other than the actual monthly plan payment amount as set forth in the Wage Withholding Order.

For example, Texas state law limits the total amount of garnishment for child and spousal support to 50% of an employee's "disposable earnings" as that term is defined in the Texas Family Code. There is no such limitation contained in the Bankruptcy Code.

Employee no longer works for you: In the event the employee under a Wage Withholding Order ceases to work for you prior to your receipt of a notice from my office or the Bankruptcy Court that the Wage Withholding Order has been terminated, you should notify my office in writing at the following address that the employee in question no longer works for you:

John J. Talton, Trustee
110 N. College, 12th Floor
Tyler, TX 75702

In such a notice, you should identify the employee's name and case number so that my staff may proceed to request the Bankruptcy Court to enter a Court Order terminating such a Wage Withholding Order.

Note: Pursuant to the provisions of 11 U.S.C. 525(b), no private employer may terminate the employment of or otherwise discriminate against any employee that files for relief under the Bankruptcy Code.

Termination of the Payroll Deduction: I or the Bankruptcy Court will forward to you a notice of the termination of the Wage Withholding Order. This Wage Withholding Order may be terminated by the Bankruptcy Court for a number of reasons: the employee successfully made all of his or her plan payments to my office pursuant to the terms of his confirmed Chapter 13 plan; the Chapter 13 bankruptcy was terminated early prior to the employee's completion of plan payments either by dismissal of the bankruptcy by the Bankruptcy Court or the conversion of the case by the employee to a different Chapter of the Bankruptcy Code; the employee is no longer employed by you; or such other reason that the Bankruptcy Court may have to terminate the payroll deduction.

Thank you for your cooperation and your assistance in helping your employee reorganize his or her finances.

John J. Talton
Chapter 13 Trustee
Eastern District of Texas
Marshall, Tyler, Lufkin, and Beaumont Divisions