

for which such exemption is claimed until the court determines whether the debtor has a substantial nonexempt interest in such property. The United States may not take possession of, dispose of, sell, or otherwise interfere with the debtor's normal use and enjoyment of an interest in property the United States knows or has reason to know is exempt.

(c) DEBTORS IN JOINT CASES.—Subject to the limitation in subsection (a), this section shall apply separately with respect to each debtor in a joint case.

(Added Pub. L. 101-647, title XXXVI, §3611, Nov. 29, 1990, 104 Stat. 4938.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective 180 days after Nov. 29, 1990, and applicable with respect to certain actions for debts owed the United States pending in court on that effective date, see section 3631 of Pub. L. 101-647, set out as a note under section 3001 of this title.

§ 3015. Discovery as to debtor's financial condition

(a) IN GENERAL.—Except as provided in subsection (b), in an action or proceeding under subchapter B or C, the United States may have discovery regarding the financial condition of the debtor in the manner in which discovery is authorized by the Federal Rules of Civil Procedure in an action on a claim for a debt.

(b) LIMITATION.—Subsection (a) shall not apply with respect to an action or proceeding under subchapter B unless there is a reasonable likelihood that the debt involved exceeds \$50,000.

(Added Pub. L. 101-647, title XXXVI, §3611, Nov. 29, 1990, 104 Stat. 4939.)

Editorial Notes

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (a), are set out in the Appendix to this title.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

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SUBCHAPTER B—PREJUDGMENT REMEDIES

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§ 3101. Prejudgment remedies

(a) APPLICATION.—(1) The United States may, in a proceeding in conjunction with the complaint or at any time after the filing of a civil action on a claim for a debt, make application under oath to a court to issue any prejudgment remedy.

(2) Such application shall be filed with the court and shall set forth the factual and legal basis for each prejudgment remedy sought.

(3) Such application shall—

(A) state that the debtor against whom the prejudgment remedy is sought shall be afforded an opportunity for a hearing; and

(B) set forth with particularity that all statutory requirements under this chapter for the issuance of the prejudgment remedy sought have been satisfied.

(b) GROUNDS.—Subject to section 3102, 3103, 3104, or 3105, a prejudgment remedy may be granted by any court if the United States shows reasonable cause to believe that—

(1) the debtor—

(A) is about to leave the jurisdiction of the United States with the effect of hindering, delaying, or defrauding the United States in its effort to recover a debt;

(B) has or is about to assign, dispose, remove, conceal, ill treat, waste, or destroy property with the effect of hindering, delaying, or defrauding the United States;

(C) has or is about to convert the debtor's property into money, securities, or evidence of debt in a manner prejudicial to the United States with the effect of hindering, delaying, or defrauding the United States; or

(D) has evaded service of process by concealing himself or has temporarily withdrawn from the jurisdiction of the United States with the effect of hindering, delaying, or defrauding the United States; or

(2) a prejudgment remedy is required to obtain jurisdiction within the United States and the prejudgment remedy sought will result in obtaining such jurisdiction.

(c) AFFIDAVIT.—(1) The application under subsection (a) shall include an affidavit establishing with particularity to the court's satisfaction facts supporting the probable validity of the claim for a debt and the right of the United States to recover what is demanded in the application.

(2) The affidavit shall state—

(A) specifically the amount of the debt claimed by the United States and any interest or costs attributable to such debt;

(B) one or more of the grounds specified in subsection (b); and

(C) the requirements of section 3102(b), 3103(a), 3104(a), or 3105(b), as the case may be.

(3) No bond is required of the United States.

(d) NOTICE AND HEARING.—(1) On filing an application by the United States as provided in this section, the counsel for the United States shall prepare, and the clerk shall issue, a notice for service on the debtor against whom the prejudgment remedy is sought and on any other person whom the United States reasonably believes, after exercising due diligence, has possession, custody, or control of property affected by such remedy. Three copies of the notice shall be served on each such person. The form and content of such notice shall be approved jointly by a majority of the chief judges of the Federal districts in the State in which the court is located and shall be in substantially the following form:

“NOTICE

“You are hereby notified that this [property] is being taken by the United States Government

(“the Government”), which says that [name of debtor] owes it a debt of \$ [amount] for [reason for debt] and has filed a lawsuit to collect this debt. The Government says it must take this property at this time because [recite the pertinent ground or grounds from section 3101(b)]. The Government wants to make sure [name of debtor] will pay if the court determines that this money is owed.

“In addition, you are hereby notified that there are exemptions under the law which may protect some of this property from being taken by the Government if [name of debtor] can show that the exemptions apply. Below is a summary of the major exemptions which apply in most situations in the State of [State where property is located]:

“[A statement summarizing in plain and understandable English the election available with respect to such State under section 3014 and the types of property that may be exempted under each of the alternatives specified in paragraphs (1) and (2) of section 3014(a), and a statement that different property may be so exempted with respect to the State in which the debtor resides.]

“If you are [name of debtor] and you disagree with the reason the Government gives for taking your property now, or if you think you do not owe the money to the Government that it says you do, or if you think the property the Government is taking qualifies under one of the above exemptions, you have a right to ask the court to return your property to you.

“If you want a hearing, you must promptly notify the court. You must make your request in writing, and either mail it or deliver it in person to the clerk of the court at [address]. 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 at [address], 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 after that as possible.

“At the hearing you may explain to the judge why you think you do not owe the money to the Government, why you disagree with the reason the Government says it must take your property at this time, or why you believe the property the Government has taken is exempt or belongs to someone else. You may make any or all of these explanations as you see fit.

“If you think you live outside the Federal judicial district in which the court is located, you may request, not later than 20 days after you receive this notice, that this proceeding to take your property be transferred by the court to the Federal 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 [address]. You must also send a copy of your request to the Government at [address], 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 assist-

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

(2) By requesting, at any time before judgment on the claim for a debt, the court to hold a hearing, the debtor may move to quash the order granting such remedy. The court shall hold a hearing on such motion as soon as practicable, or, if requested by the debtor, within 5 days after receiving the request for a hearing or as soon thereafter as possible. The issues at such hearing shall be limited to—

(A) the probable validity of the claim for the debt for which such remedy was granted and of any defense or claim of exemption asserted by such person;

(B) compliance with any statutory requirement for the issuance of the prejudgment remedy granted;

(C) the existence of any ground set forth in subsection (b); and

(D) the inadequacy of alternative remedies (if any) to protect the interests of the United States.

(e) ISSUANCE OF WRIT.—On the court’s determination that the requirements of subsections (a), (b), and (c) have been met, the court shall issue all process sufficient to put into effect the prejudgment remedy sought.

(Added Pub. L. 101-647, title XXXVI, § 3611, Nov. 29, 1990, 104 Stat. 4939.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

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§ 3102. Attachment

(a) PROPERTY SUBJECT TO ATTACHMENT.—(1) Any property in the possession, custody, or control of the debtor and in which the debtor has a substantial nonexempt interest, except earnings, may be attached pursuant to a writ of attachment in an action or proceeding against a debtor on a claim for a debt and may be held as security to satisfy such judgment, and interest and costs, as the United States may recover on such claim.

(2) The value of property attached shall not exceed the amount by which the sum of the amount of the debt claimed by the United States and the amount of interest and costs reasonably likely to be assessed against the debtor by the court exceeds the aggregate value of the nonexempt interest of the debtor in any—

(A) property securing the debt; and

(B) property garnished or in receivership, or income sequestered, under this subchapter.

(b) AVAILABILITY OF ATTACHMENT.—If the requirements of section 3101 are satisfied, a court shall issue a writ authorizing the United States to attach property in which the debtor has a substantial nonexempt interest, as security for such judgment (and interest and costs) as the United States may recover on a claim for a debt—