

Insights

Indiana Supreme Court Further Extends Partial Protection of CARES Act Recovery Rebates

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By: C. Daniel Motsinger

As noted in prior *Alerts*, in its order issued April 20, 2020, the Indiana Supreme Court exercised its emergency rule-making authority to order that all Indiana trial courts “shall issue **no new orders** placing a hold on, attaching, or garnishing funds in a judgment-debtor’s account in a depository institution as defined in the Depository Financial Institutions Adverse Claims Act, I.C. § 28-9-1-1, et seq., if those funds are attributable to a stimulus payment, except that this prohibition shall not apply to judgments or orders for payment of child support,” and “[a]s for any **previously issued court orders** placing a hold on a judgment-debtor’s account in a depository institution, the judgment-debtor shall be entitled, upon request, to a hearing (either in-person or remotely, as local circumstances permit), within two business days of the court’s receipt of said request, to determine what funds in the account are attributable to a stimulus payment and for the judgment-debtor to assert any exemption(s) under state or federal law”, with the Court further directing that trial courts “shall treat such hearings as ‘essential’ and ‘urgent’ under this Court’s (prior emergency) orders of March 16 and 23, 2020” (**emphasis** in original). The Court’s April 20, 2020 order provided that the order would remain in effect “[u]ntil expiration of the COVID-19 public health emergency as declared by Governor Holcomb, or until this Court may earlier order”.

By its May 29, 2020 *Order Extending Trial Courts’ Emergency Tolling Authority and Setting Expiration of Other Emergency Orders*, the Indiana Supreme Court ordered that “notwithstanding any contrary provision of any previous order granting local or statewide relief under [its emergency rule-making authority] . . . [u]nless further extended by order of this Court, the orders issued in . . . this case, regarding attachment and garnishment of CARES Act stimulus funds . . . shall expire at **12:01 a.m. on January 1, 2021**” (**emphasis** in original).

Now, by its November 10, 2020 *Order on Continued Emergency Actions*, the Indiana Supreme Court has ordered that “[t]he orders issued in . . . this case, regarding attachment and garnishment of CARES Act stimulus funds . . . shall expire on **July 1, 2021**, unless this Court orders otherwise” (**emphasis** in original).

Takeaway: In the wake of the Court’s April 20 Order, May 20 Order and November 10 Order, Indiana financial institutions should continue to proceed cautiously, until at least July 1, 2021, when considering any creditor claims against consumer debtor deposit accounts that may contain recovery rebates issued by the Internal Revenue Service, Department of the Treasury, pursuant to The Coronavirus Aid, Relief and Economic Security Act, S. 3548 (“CARES Act”), signed by the President on March 27, 2020.

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