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## A Better Approach To Debt Collection

I am president of the Commercial Lawyers Conference of New York, which is a New York Bar Association whose members make up the majority of law firms practicing collection law in the state of New York. The article by Johnson M. Tyler, "Exempt Income Protection Act Better Protects Strapped Debtors," (NYLJ, Jan. 27) presents a stilted view of the collection process. He poses a popular but unrealistic perception that all debt collectors are monsters whose sole purpose is to take the money of the desperately poor who cannot afford to pay the debts they incurred. Mr. Tyler's anecdotes capture the essence of his position, but do nothing to further the discussion of statutory constructs. Social security and other exempt funds are not subject to restraint. However, creditors and their attorneys have no way of knowing the composition of the funds in anyone's bank account. A judgment debtor does have that knowledge.

Another problem is that financial institutions, though prohibited from restraining identifiable exempt funds, often do so with the blame falling on judgment creditors. Despite Mr. Tyler's anecdotes (and the few cases which demonstrate the exception to the rule), most collection attorneys immedi-

ately release accounts when presented with minimal evidence that the funds in a restrained account are exempt.

The Exempt Income Protection Act (EIPA) is not a panacea. It is poorly crafted legislation that is creating confusion for creditors and debtors alike. For instance, language which is directed at bank account restraints is required to be included in income and property executions. (See CPLR §5230 (a) which references new CPLR §5205 (I)). Both federal and state minimum wages have to be calculated with the greater amount applying. The process for claiming an exemption is complicated at best. More importantly, a debtor's funds can still be restrained for a month or more, even if the funds are exempt. The EIPA places the burden of proof of exemption on the shoulders of the debtor who now has to comprehend, fill out and return two copies of the new Exemption Claim Form. Many people will have trouble completing the process. As noted, a debtor has 20 days to return the completed forms. That is 20 days the funds will be restrained. The review process will take additional days even if the exemption is not challenged. If the debtor fails to return the forms, all the funds in the account will most likely not be released. That's the reality even if the funds are exempt.

Our bar group has proposed a much simpler way to deal with this problem, the Income Exempt Account or IEA. All of a consumer's exempt funds would be electronically or directly deposited by the exempt funds payor into an IEA. An IEA would be similar to an IRA in that all funds in an IEA would be exempt from restraint, but unlike an IRA, the consumer would have full access and use of the funds without penalty. The burden of proof would be removed from the consumers' shoulders because all funds electronically or directly deposited in an IEA account would be deemed exempt. "If property or funds are easily identifiable as exempt, the judgment debtor does not have the burden of claiming the exemption in order to benefit from its application." *Balanoff v. Niosi*, 16 A.D.3d 53, 791 N.Y.S.2d 553 (2 Dept. 2005)

There are many other points made by Mr. Tyler with which we disagree. The Commercial Lawyers Conference has been meeting with the New York City Civil Court and Department of Consumer Affairs to try to alleviate some of the real problems facing debtors and creditors. We look forward to continuing those discussions and hope to meet with Mr. Tyler and his constituents to try to find common ground which will benefit debtors, creditors and the courts.

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