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DEPARTMENT OF JUSTICE
CIVIL ENFORCEMENT DIVISION

July 23, 2007

Lynne J. Wehrle
Administrative Law Judge
Office of Administrative Hearings
1905 Lana Avenue NE
Salem, OR 97314-0100

Re: In re ESA NW, Inc.
OAH Case No. 135694

Dear Judge Wehrle:

I have enclosed the Department of Revenue's Motion for Summary Determination for your consideration. A hearing has been scheduled for August 23, 2007 on the debtor's challenge to garnishment. Thank you.

Sincerely,

Michael W. Grant
Assistant Attorney General

MXG:clc/CEDU0079
Enclosure

✓ cc: ESA NW, Inc. c/o Chet Davis (w/Enc.)

1 Oregon Laws of 2001 Ch. 249 to reflect the fact that issues other than claims of exemption can
2 be presented through this process.¹

3 C. Challenge to Garnishment Procedure May Not be Used to Challenge Validity of Debt.

4 The debtor **may not** use a Challenge of Garnishment to make a collateral attack on the
5 validity of the underlying debt. ORS 18.700(5) states: “A challenge to garnishment may be used
6 only for the purposes specified in this section and ORS 18.725.” A Challenge to Garnishment
7 form required by ORS 18.850 specifically states “THIS FORM MAY NOT BE USED THE
8 CHALLENGE TO GARNISHMENT FORM TO CHALLENGE THE VALIDITY OF THE
9 DEBT.”

10 The Court of Appeals has specifically held that “ORS 18.700(5) makes clear that a
11 challenge to garnishment is available only for the purposes articulated in ORS 18.700 and ORS
12 18.725; it expressly prohibits its use for any other purpose.” *Emmons v. Tyrrell*, 208 Or App
13 466, 469 (2006). ORS 18.700 permits the debtor to raise three issues.²

14 1. “[T]o claim such exemptions from garnishment as are permitted by law.”

15 ORS 18.700(1).

16 2. “To assert that the amount specified in the garnishment as being subject to
17 garnishment is greater than the total amount owed by the debtor to the creditor.”

18 ORS 18.700(1)(a).

19 3. “[T]o assert that property is not garnishable property.” ORS 18.700(1)(b).

20 D. Debtor is Improperly Attempting to Challenge Validity of Debt.

21 The debtor, through its challenge to garnishment, is attempting to attack the validity of
22 the underlying debt. This is not a valid basis for challenging the garnishment. Accordingly, the
23 debtor’s challenge must be denied.

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25 ¹ See e.g., Garnishment Revision Overview Report, pg. 7, section 30, adopted by the Oregon Law Commission on
November 17, 2000).

26 ² ORS 18.725 addresses challenges asserted by persons other than the debtor. This statute is not implicated in this
case which solely involves a challenge by the debtor.

1 The debtor claims to be making a separate challenge to a federal tax assessment in the
2 U.S. tax court. Based upon this separate federal tax court proceeding, the debtor asserts that the
3 state tax debt is invalid because “the DOR cannot make an assessment when the validity of the
4 information you received from the IRS is under challenge in court.” Thus, he claims that the
5 total amount owed is “\$0.00.”

6 As discussed above, ORS 18.700 only allows a Challenge to Garnishment for three
7 limited purposes. Challenging the validity of the state tax debt is not one of these purposes. The
8 garnishment statutes and the Challenge to Garnishment form prescribed by statute are very clear
9 that a Challenge to Garnishment may not be used to challenge the validity of the debt.
10 Therefore, the debtor’s challenge must be denied.

11 E. OAH Lacks Jurisdiction to Rule Upon Validity of Tax Debt.

12 In addition to the inherent limitations of ORS 18.700, the Office of Administrative
13 Hearings does not have jurisdiction to consider the validity of the state tax debt because this debt
14 is a Department of Revenue tax. With limited exceptions for the determination of lien priority
15 and validity of transfers as well as judicial review by the Supreme Court, the exclusive
16 jurisdiction with respect to tax issues is with the tax court. ORS 305.410.


17 The debtor’s assertions that the DOR tax assessment is premature and invalid cannot be
18 considered by the Office of Administrative Hearings because this argument is within the
19 exclusive jurisdiction of the Oregon Tax Court. This is not to say whether or not the debtor is
20 able to challenge the validity of the tax debt in a different forum. Instead, DOR is simply

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1 pointing out that a challenge to garnishment proceeding is not the proper forum for the debtor to
2 do this. Accordingly, the debtor's challenge to garnishment must be denied.

3 DATED this 23rd day of July, 2007.

4 HARDY MYERS
5 Attorney General


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1 CERTIFICATE OF SERVICE BY MAIL

2 I certify that on July 23, 2007, I served the foregoing Motion for Summary
3 Determination upon the parties hereto by mailing, regular mail, postage prepaid, a true, exact and
4 full copy thereof to:

5 ESA NW, Inc.
6 c/o Chet Davis
7 P. O. Box 2110
8 Clackamas, OR 97015

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12 Michael W. Grant #98240
13 Assistant Attorney General
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