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**April 4, 2017**

**The Exempt Income Protection Act**

To the Institution Addressed:

This letter provides guidance to all banking institutions doing business in the State of New York regarding the effect of the amended New York minimum wage law (“Minimum Wage Law”) on the New York Exempt Income Protection Act (“EIPA”) and the New York Civil Practice Law and Rules (the “CPLR”). EIPA, which became effective on January 1, 2009, amended Article 52 of the CPLR. Article 52 of the CPLR, which covers “Enforcement of Money Judgments”, limits the ability of judgment creditors and others to restrain certain exempt funds, including certain amounts of wages, contained in the bank account of an account holder.

Under §5222(i) of the CPLR, a restraining notice “shall not apply to an amount equal to or less than the greater of two hundred forty times the federal minimum hourly wage prescribed in the Fair Labor Standards Act of 1938 or two hundred forty times the state minimum hourly wage prescribed in section six hundred fifty-two of the labor law as in effect at the time the earnings are payable (as published on the websites of the United States department of labor and the state department of labor)”, except as otherwise provided therein.<sup>1</sup>

The Minimum Wage Law, which became effective on December 31, 2016, raised the minimum wage variably in different parts of the State and, in New York City, the minimum wage is now variable based on the size of an employer.<sup>2</sup>

Accordingly, the Department’s guidance has been requested with respect to a minimum wage that should be used for the purpose of calculating exempt wages under the EIPA. Given that banks may not have an account holder’s most current employment address, or knowledge of the size of an employer in New York City, guidance is sought to prevent an inadvertent violation of the EIPA by banking institutions.

Given the above, the Department provides the following guidance:

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<sup>1</sup> CPLR §5232(e) contains substantively similar provisions regarding exempt funds in the context of a levy on personal property.

<sup>2</sup> A more detailed description of the calculation of the New York State minimum wage is set forth on the Department of Labor’s web site: <https://labor.ny.gov/workerprotection/laborstandards/workprot/minwage.shtm>

- (i) If, after reasonable due diligence, a banking institution obtains the most current information regarding the employment address of an account holder and, if applicable, the most current information regarding the size of an account holder's employer located in New York City, the banking institution should calculate the amount of exempt wages based on such information.
- (ii) However, if, after reasonable due diligence, a banking institution is unable to obtain the most current information, as described under (i) above, the banking institution may use the highest minimum wage in effect in the State at the time of such calculation, thereby protecting the account holder's wages as required by law.

The Department believes that this guidance is consistent with the executive and legislative intent underlying the EIPA and the Minimum Wage Law in protecting consumers and will protect the interests of working New Yorkers.



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