

03-2 March 20, 2003

FINANCE MEMORANDUM

**Department of Finance Policy
To comply with
The Soldiers' and Sailors' Civil Relief Act
and the NYS Soldiers' and Sailors' Civil
Relief Act**

In order to comply with the Soldiers' and Sailors' Civil Relief Act (50 USC App §§ 501-590) and the New York State Soldiers' and Sailors' Civil Relief Act (Military Law Article 13), the Department of Finance adopts the following policy:

All active duty Military Personnel [or their representatives] who request relief from the Department will complete an affidavit. The affidavit includes the information about military service, and information about the requested relief from the Department of Finance including:

- a. The borough, block and lot of the applicable property.
- b. The individual's social security number, or employer identification number and the docketed tax warrants.
- c. The Environmental Control Board violation numbers and addresses.
- d. The individual's license plate numbers for vehicles. The license plate numbers will be used to locate the individual's parking judgments.

REAL PROPERTY

Real property tax liens will be removed from any in rem action or tax lien sale.

Whenever the real property tax is not paid when due, such tax shall bear interest until paid at the rate of 6 per cent per year from the date when such tax first became a lien.

50 USC App § 560; Military Law § 314.

TAX WARRANTS AGAINST THE INDIVIDUAL EXCISE TAXES

Whenever a tax is not paid when due, such tax shall bear interest until paid at the rate of 6 per cent per year from the date when such tax first became a lien. No other interest or penalty shall be incurred by reason of such nonpayment whether such penalty or interest shall have accrued prior or shall accrue subsequent to the commencement of the period of military service.

50 USC App § 560; Military Law § 314.

The Federal statute USC App § 560 (2) and Article 13 of the Military Law prohibit the sale of the debtor's property to enforce the collection of a tax without a court order. Therefore, the department will not execute on any docketed tax warrant against the individual.

If the Department already has garnished an individual's wages pursuant to an income execution to collect on a tax warrant, the Department may vacate the garnishment.

50 USC App § 523, Military Law § 306

TAX WARRANTS AGAINST THE INDIVIDUAL INCOME TAXES

Whether a charge was incurred before or during military service, all collection activities shall be deferred until six months after the termination of military service

50 USC App § 560; Military Law § 315.

State law provides that no interest shall accrue during this deferral period.

Military Law § 315

ENVIRONMENTAL CONTROL BOARD VIOLATIONS

Military Law Section 306 provides that any political subdivision of the state, on its own motion may decide that the ability of the individual to comply with the judgment is materially affected by reason of the military service and the department may:

1. Stay the execution of any judgment against the person;
and
2. vacate or stay any attachment or garnishment of property,
money or debt.

The Military Law contains provisions pertaining to the entry of a default judgment against the individual and also provides means for a covered individual to open the default judgment.

PARKING JUDGMENTS

RELIEF FROM JUDGMENT ENFORCEMENT

Military Law Section 306 provides that any political subdivision of the state, on its own motion may decide that the ability of the individual to comply with the judgment is materially affected by reason of the military service and the department may:

1. Stay the execution of any judgment against the person;
and
2. vacate or stay any attachment or garnishment of property,
money or debt.

The Department of Finance has determined that service in the Persian Gulf combat zone materially affects the ability to defend; therefore, stays will be granted. Seized property [bank accounts, vehicles, etc.] will be released and income executions will be terminated.

To open a default judgment [declare the judgment to be void] against a covered person, the judgment debtor must show:

1. That (s)he is a covered person, and
2. That the judgment was rendered during the time of service or within 30 days thereafter; and
3. That the motion to vacate the judgment is made not later than 90 days after the termination of service, and
4. That (s)he was prejudiced in making his/her defense by virtue of the military service, and
5. That (s)he has a meritorious legal defense.

GENERAL PROVISIONS

The following provisions apply to all of the above charges:

If the debtor fails to appear at any proceeding due to military service, the person may apply, not more than 90 days after the termination of military service, to have the judgment re-opened. Military Law § 303.

At any stage of any proceeding before DOF or before a court, any such proceedings shall be stayed. Military Law § 304.

Executions of any judgments recorded in court may be stayed and any attachments and garnishments may be vacated. 50 USC App § 523, Military Law § 306.

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF _____) ss.:

_____ being duly sworn deposes and says:

1 (a). I am the agent of _____ and
reside at _____
or

1 (b). I have the Power of Attorney for _____ (copy attached).
or

1 (c). I am _____ and I reside at
_____.

2. The Individual _____ is in active military service of the United States of America. Active military service means full time duty in the Army, Navy (including Marine Corp.), Air Force, or Coast Guard of the United States.

3. I have attached a copy of the Order or Commission of the United States Government Department of the _____ dated _____ instructing the Individual to report for military service.

4. In the military service of the United States, the Individual's rank is _____. The Individual's serial number is _____. The Individual's military service commenced on _____. The branch of service is _____.

5. I am making this Affidavit in support of my request to the City of New York to apply the provisions of the Soldiers' and Sailors' Civil Relief Act, and the New York State Military Law to the following:

[] **Real Property Tax**

BOROUGH _____ BLOCK _____ LOT _____

5 (a). The property is located at _____ in the Borough of _____, Block _____, Lot _____, ("property").

5 (b). The Individual _____ owns and occupies the property, for dwelling professional business or agricultural purposes or the property is occupied by his/her dependents or employees for such purposes during the period of the Individual's service.

Tax Warrants

5 (c). The Individual's social security number is _____ - _____ - _____

5 (d). The following New York City tax warrants have been docketed against the Individual:

| <u>Warrant Number:</u> | <u>Tax</u> | <u>Tax Period</u> | <u>Docket Date</u> |
|------------------------|------------|-------------------|--------------------|
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |

Environmental Control Board Judgments

5 (e). The following New York City Environmental Control Judgments have been docketed against the Individual.

| <u>Violation Number</u> | <u>Address</u> |
|-------------------------|----------------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

Parking Violation Judgments

5 (f). The Individual's License Plate Number(s) are:

6. I agree and I am aware that any intentional false statement on this Affidavit would subject the affiant [me] to criminal prosecution.

7. I acknowledge that the Department of Finance is acting in reliance on the statements that I have made in this affidavit in deciding whether to apply the benefits of the law to the enforcement of the judgments, to the applicable interest rates or to the real property tax in question.

SIGNATURE

On the _____ day of _____, 20_____, before me personally came _____ to me known, who, being by me duly sworn did depose and say that (s)he resides at _____ and that (s)he executed this Affidavit.

Sworn to before me this _____ day of _____, 20_____.

NOTARY PUBLIC