

# Insights

## Indiana Supreme Court Orders Partial Protection of CARES Act Recovery Rebates Payments

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In a procedurally-unusual 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 order will 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”.

The Coronavirus Aid, Relief and Economic Security Act, S. 3548 (“CARES Act”), signed by the President on March 27, 2020, provides (in Division B, “Relief for Individuals, Families, and Businesses”, Title I, “Rebates and Other Individual Provisions”, Section 2101), for expedited direct payments of as much as \$1,200 to individuals (\$2,400 in the case of a joint return), with an additional \$500 for each qualifying child, which are treated as advance refunds of a 2020 tax credit. These “recovery rebates” are phased-out for taxpayers with adjusted gross income over \$75,000 (\$150,000 for joint filers), with complete phase-out for taxpayers with adjusted gross incomes exceeding \$99,000 (\$198,000 for joint filers). Taxpayers do not have to take any affirmative action to obtain the payment; the IRS apparently will use a taxpayer’s 2019 tax return, and if the 2019 return has not been filed, the IRS will use the 2018 return.

The Indiana Supreme Court’s April 20 Order was issued in response to an April 14, 2020 *Petition to the Indiana Supreme Court to Engage in Emergency Rulemaking to Protect CARES Act Stimulus Payments from Attachment or Garnishment* by Creditors filed by Indiana Legal Services, Prosperity Indiana, the Neighborhood Christian Legal Clinic, and the Indiana Institute for Working Families (collectively, “ILS”). ILS noted in its *Petition* that Congress had not explicitly provided protection for the CARES Act recovery rebates payments from nongovernmental creditors in state courts, but that these payments nonetheless should be so protected to further the purposes of the CARES Act. Accordingly, ILS had requested that the Indiana Supreme Court enter a broad order under the Court’s emergency rule-making authority mandating that Indiana trial courts issue (1) no orders placing a hold on or attaching judgment debtors’ accounts in depository institutions for the duration of the public health emergency in Indiana, and (2) no orders requiring judgment debtors to turn over their CARES Act stimulus payment funds, or any portion thereof, pursuant to a court order requiring the debtor to pay his or her tax refund(s) towards a judgment, for the duration of the public health emergency in Indiana. The breadth of ILS’ requested relief was opposed by several briefs.



Rejecting ILS' request to impose a blanket ban on all garnishment orders (whether directed to consumer or commercial deposit accounts and regardless of whether these accounts contained CARES Act recovery rebates payments), a majority of the Indiana Supreme Court nonetheless found that it "could invoke its rulemaking authority to suspend issuance of all hold, attachment, or garnishment orders during this emergency—although that relief would sweep far too broadly in impeding legitimate collection efforts", so that the Court "does not overstep the judicial role to order a much narrower and more carefully tailored subset of that relief during the period of this national and state public health emergency". As noted above, the Court's April 20 Order protecting CARES Act recovery rebates payments remains in effect until expiration of the COVID-19 public health emergency as declared by the Governor, or until the Court may earlier order.

The Court's April 20 Order was accompanied by a dissent from Justice Slaughter, who – while expressing sympathy "to Hoosiers who face severe financial challenges in these difficult and uncertain times" – nonetheless lamented that the Court's Order "overstep[s the Court's] limited role under Indiana's constitution—which is to interpret law, not make it, and to leave to the political branches the prerogative of deciding and implementing policy", noting that he was "aware of no law—federal or state—exempting these stimulus payments from garnishment and attachment [, a]nd the Court cites none".

Takeaway: In the wake of the Court's April 20 Order and for the period of its duration, Indiana financial institutions should proceed cautiously when considering any creditor claims against consumer debtor deposit accounts that may contain CARES Act recovery rebates payments.

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