

**SUPERSEDES**

CS 507.5, "Lottery Liens," October 4, 1999

**REFERENCES**

MCA § 23-7-312

**Introduction**

In 1993 the Montana Legislature created a process to allow the CSED to exert a lien over a child support debtor's lottery winnings. This lien is different from the child support lien discussed in section CS 507.1, Support Liens--Overview. Unlike other child support liens, the lottery lien does not require an adjudicated or sum-certain debt. Also, the debt owed need not be for "child support." For example, a repayment debt owed by an obligee can be collected by lottery lien enforcement. Any person who owes a debt to the CSED, or owes a debt that the CSED is collecting, may have lottery winnings intercepted under this process.

**Policy**

**Liens Limited to Direct-Pay Winnings**

The PROCEDURES in this section apply only to lottery winnings paid directly to the winner by the Montana Lottery (the Lottery). Winnings paid by the retailer that sold the lottery ticket are not subject to lien or seizure by the CSED. (Winning tickets under \$250 (for "instant" games) or \$600 (for "on-line" games) can be redeemed by the retailer; winning tickets of \$250 or \$600 (or more), respectively, must be presented directly to the Lottery--either in person or by mail--for payment.)

**Interagency Agreement**

To implement the statutory authority for seizing direct-pay winnings, the CSED and the Lottery entered into an Agreement standardizing lien operations. Under the Agreement the two agencies work together to identify child support debtors and to intercept direct payments to these debtors by creating, perfecting, and enforcing CSED liens within short time frames. The statute limits the CSED's opportunity to collect under this process to cases where (1) the winnings exceed \$600, (2) the CSED perfects the necessary lien within a set amount of time after the winner is identified as a child support debtor, and (3) the CSED initiates an enforcement or "garnishment" action against the winnings within 30 days of perfecting the lien.

**Debt Status: Criteria for Perfecting the Lien**

The CSED may proceed to perfect a lien against lottery winnings (to prevent immediate payment to the debtor) only if the debt is either (1) reduced to a sum-certain (adjudicated) amount by judicial or administrative order, or (2) based on a Montana district court judgment. The judgment in (2) is created whenever an obligor subject to a support order issued or registered in Montana and abstracted to the district court fails to pay support as ordered.

Because the seizure instruments for lottery liens are case-specific (see Seizure Steps below), the CSED must perfect a separate lien for each case in which the debtor owes a debt.

**Due Process Characteristics**

The notice used to perfect a lien against the lottery winnings does not include an opportunity for hearing. However, the CSED issues a notice of seizure later in the enforcement process that informs the debtor of his or her right to request a hearing to claim an exemption in the property or, in the case of an adjudicated debt, to

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contest the unpaid amount of the debt. The hearing is held within a short time after the actual seizure. The debtor is informed in the notice of seizure that lottery winnings are not exempt from execution under Montana law.

#### Seizure Steps

Once the lien is perfected the CSED may seize the winnings by warrant for distraint or writ of execution, depending on the status of the debt (see PROCEDURES). The Lottery does not deliver the winnings, and the CSED does not collect them, by interagency "no-warrant transfer."

#### PROCEDURES

PLEASE NOTE: The following PROCEDURES include actions taken by the Montana Lottery. These actions represent only the CSED's general understanding of the Lottery's operations and are not intended to prescribe specific steps or policies for that agency.

#### SEARCHS

1. Monthly identifies cases meeting all of the following criteria:
  - 1) There is a debt owed to or collected by the CSED; the debtor may be the obligor or the obligee.
  - 2) The amount of the debt exceeds \$20.
  - 3) The case is not suppressed for federal tax offset.

Produces a report to be delivered to the Montana Lottery (the Lottery) listing the name and social security number of the debtor in each identified case.

#### Montana Lottery (Lottery)

2. Prior to direct payment of any winnings in excess of \$600, checks the most recent report provided by the CSED. If the winner owes a CSED debt, holds the payment and immediately faxes a request for certification of the amount of the debt to the CSED central office, and makes a reasonable attempt to notify the CSED central office by telephone.

If the debtor is present in the Lottery office, advises the CSED of this fact in the faxed request.

#### CSED Administrative Support Unit

3. Upon receiving a request for certification from the Lottery in step 2, immediately informs the appropriate CSED regional office of the request, and forwards the request by fax to the region.

#### Caseworker

4. Upon receiving a request for certification from the Lottery, immediately checks the status and amount of the debt on SEARCHS, and proceeds in step 5 or 6 below:
  - **Within one hour** after the CSED received the request, if the debtor is present in the Lottery office, or
  - **Within two working days** after the CSED received the request, if the debtor is not present in the Lottery office.

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5. If there is no debt on SEARCHS for any of the debtor's unsuppressed accounts, prepares and faxes to the Lottery form CS-507.5C, Notice of Release of Lien against Lottery Winnings. Sends the original by regular mail, retaining a copy for the case file.

**NOTE:**

**Release of Lien with Debt Still Owning.** In very unusual situations the CSED may elect to release a lien in a case with a remaining debt balance if doing so would be beneficial to the overall enforcement of the case, or for other compelling reasons. In the following examples release of lien **may** be appropriate, depending on other case facts and regional policy:

- 1) The winnings represent the debtor's only means of obtaining or regaining reliable transportation to a job, and there is evidence that income withholding from that job (for an amount toward the debt) would be successful.
  - 2) The winnings represent the only opportunity for the debtor or the debtor's dependent to obtain needed but previously unaffordable medical treatment.
6. If there is a debt on SEARCHS for any of the debtor's unsuppressed accounts, proceeds in step 6a, 6b, or 6c as appropriate. (See Debt Status, POLICY, for definitions of adjudicated debt and district court judgment.) If the debtor has more than one case, issues a separate notice for each case.

- a. If the debt has been adjudicated, prepares and issues form CS-507.5A, Notice of Lien Against Lottery Winnings, for the amount of the adjudicated debt; faxes the notice to the Lottery within one hour (or two days--see step 4) after the CSED received the request for certification. Sends the original notice to the Lottery by regular mail, with a copy to the debtor; retains a copy for the case file. (For full or partial release of lien after the notice is issued, see step 7.)

Enters a SEARCHS case note and proceeds to enforce the lien according to instructions in section CS 507.6, Service of the Warrant for Dstraint by Acknowledgment. Returns to this section only if a release of lien in step 7 applies.

**NOTE:**

**Debtor is no the obligor.** If the debtor is not the obligor in the case, changes "obligor" to "debtor" in the warrant for dstraint documents, and adapts other terminology as necessary.

- b. If the debt has not been adjudicated but is based on a Montana district court judgment, prepares and issues form CS-507.5A, Notice of Lien against Lottery Winnings, for the amount of the judgment. (For uncertain amounts see the NOTE at the end of this substep (6b.)

Faxes the notice to the Lottery within one hour (or two days--see step 4) after the CSED received the request for certification. Sends the original notice to the Lottery by regular mail, with a copy to the debtor; retains a copy for the case file. (For full or partial release of lien after the notice is issued, see step 7.)

Enters a SEARCHS case note and sets a tickler for 20 calendar days after the date of the notice. Proceeds to enforce the judgment according to instructions in section CS 504.1, Writ of Execution, and according to the instructions in step 10 below.

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#### NOTE:

**Uncertain Amounts.** If the debt on SEARCHS includes (1) amounts not substantiated by CSED payment records (such as amounts from the obligee's affidavit), or (2) amounts involved in a pending (informal) CSED investigation, the caseworker must weigh the possible outcomes of asserting the whole debt versus the lesser amount. If certified amounts are later found to be incorrect, actions will be required to release the lien, recall the writ or warrant, refund the money, and/or pursue voluntary repayment with the obligee. (Note that the ability to release the lien in step 7 does not remove or relax the requirement for due diligence in certifying the debt.) Conversely, if uncertified amounts are later found to be correct, the CSED will have lost a chance to collect the debt.

- c. If the debt has not been adjudicated and is not based on a Montana district court judgment, reviews the facts of the case and applies the following questions:
  - 1) Can the CSED obtain a Montana district court judgment by registering the foreign support order in Montana and abstracting the registered order to the district court?
  - 2) Do the amount of the potential collection and the enforcement status of the case justify the CSED effort required to register and abstract the order?

If the answer to both questions is "yes," proceeds to step 8. If the answer to either question is "no," proceeds as in step 5; also if applicable, contacts the debtor directly to discuss repayment of the debt, in light of the windfall he or she has just received.

In questionable cases consults a staff attorney.

7. If after a lien is perfected but before winnings are seized (step 6) the CSED receives payment toward the debt by another collection method, or if some other reason arises for releasing part or all of the perfected lien, obtains the approval of the CSED staff attorney for release of the appropriate amount. Upon approval, issues form CS-507.5C, Notice of Release of Lien against Lottery Winnings; if applicable, adjusts the form to specify a partial release. Sends the original notice of release to the Lottery by regular mail, with a copy to the debtor; retains a copy for the case file, and enters a SEARCHS case note. If necessary, recalls or amends any seizure action already in progress.
8. Expedites the processing of a foreign support order according to the time frames in steps 8a through 8c below.
  - a. **Concurrently** takes actions in substeps i through iii.
    - i. Perfects the lien: Issues a Notice of Lien against Lottery Winnings according to the procedures in step 6b.
    - ii. Registers the foreign support order: Issues form CS-500.2C, Notice of Registration of Support Order for Enforcement, according to the procedures in section CS 500.2, Registration of Support Orders for Enforcement Only.
    - iii. Initiates action in district court: Requests that the Office of the Administrative Law Judge (OALJ) abstract the registered order to the district court. (The court will assign a cause number and send the OALJ a certified copy of the filed abstract with the cause number.)

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- b. Upon receipt of a cause number in step 8a(iii) above, proceeds as in step 6b; in a non-public assistance or interstate responding case returns to step 8c below for disbursement of the collection.

CAUTION: It may take up to 2 weeks to abstract the order and obtain a cause number from the district court. Meanwhile, the Lottery can release the payment to the winner 30 days after receiving the CSED's notice of lien, if a seizure action is not initiated. Therefore, it is important that the caseworker proceed with the writ of execution as soon as the cause number is available.

- c. In a non-public assistance or interstate responding case, if the opportunity for or determination from a registration hearing is still pending, places a hold on the collection received from the writ of execution. Releases the collection for disbursement to the obligee only when the amount of the debt is confirmed in the registration process.

#### Lottery

9. Upon receiving a notice of lien issued in step 6, segregates and holds the required amount from the debtor's net winnings. (Net winnings are gross winnings less any state and federal taxes withheld according to Lottery policy.) Pays the segregated amount to the sheriff or other levying officer (for a writ), or to the CSED (for a warrant), at the time of execution.

#### Caseworker

10. Following issuance of a writ of execution in step 6b, monitors for seizure of the winnings. If informed of an actual seizure (by the sheriff or other levying officer directly, or by receipt of the returned service) within 20 days after the notice of lien was issued, enters a SEARCHS case note and processes the return of service. Returns to step 8c if applicable.

If not informed of an actual seizure within 20 days, contacts the Lottery to determine the status of the seizure action. If the sheriff or other levying officer has not yet executed the writ, asks the Lottery to continue to hold the winnings until seizure occurs; sends the Lottery an informational copy of the issued writ, showing action has been initiated.

Contacts the sheriff or other levying officer as necessary to confirm the officer intends to seize the winnings in the near future. In cases where delay in execution may result in loss of collection, consults the CSED staff attorney to identify possible courses of action.

#### NOTE:

**Return-of-Proceeds Time Frames Not Affected.** Once the sheriff or levying officer has seized the winnings, the collection is secured; the officer may hold the proceeds for the maximum time allowed by law before making the return to the CSED, as in all other (non-lottery) seizure actions.

#### Lottery

11. Upon receipt of a CSED notice of release of lien, or upon failure of the CSED to initiate a seizure action within 30 days after issuing a notice of lien, releases the payment to the winner in accordance with Lottery policy.