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GUIDANCE: ADVANCED PAYMENTS OF THE CHILD TAX CREDIT PROVIDED
PURSUANT TO THE AMERICAN RESCUE PLAN ACT OF 2021 ARE EXEMPT FROM
SEIZURE BY CREDITORS AND DEBT COLLECTORS

The Office of the Attorney General (AGO) issues the following guidance concerning advanced payments of the child tax credit by the U.S. Department of the Treasury to Massachusetts residents pursuant to recent federal legislation. This guidance relates to the AGO's enforcement of the Massachusetts Consumer Protection Act, G.L. c. 93A and the Attorney General Debt Collection Regulations, 940 CMR 7.00.

Background:

On March 11, 2021, President Biden signed into law the American Rescue Plan Act of 2021 ("the American Rescue Plan" or "the Act"). The American Rescue Plan provides for the automatic advanced payment of half of the federal child tax credit via monthly payments to taxpayers and non-filing families beginning July 15, 2021 through December 31, 2021. The remaining sum will be made available when tax forms are filed next year.

Section 9611 of the American Rescue Plan provides for direct cash assistance to families with qualifying children, subject to means-tested eligibility criteria. Pursuant to the Act, families with children below the age of six can qualify for periodic cash payments totaling up to \$3,600, and families with children between six and 17 can receive up to \$3,000 in payments. Specific payment amounts are dependent on income. Individuals with modified adjusted gross incomes that exceed \$150,000 in the case of a joint return, \$112,500 in the case of a head of household, or \$75,000 in any other case will receive smaller payments or no payment whatsoever.

Guidance:

Massachusetts law exempts certain income and property from garnishment or attachment by creditors. *See* G. L. c. 235, § 34 (listing property exempt from seizure by judgment creditors); G. L. c. 223, § 42 (describing property exempt from attachment). Specifically, "the full amount owing or paid to a person as public assistance" is exempt from garnishment or attachment by creditors. G. L. c. 235, § 34, cl. 15. The term "public assistance" encompasses a broad range of state and federal programs, including those that provide cash assistance or in-kind benefits to individuals and families on a means-tested basis. A broad construction of this term advances the purpose of the exemption statutes, which is to ensure that individuals have sufficient income and property to

provide for basic necessities. The courts have long construed these exemption laws liberally to effectuate the underlying public purpose of protecting individuals with low to moderate household income. *See, e.g., Dwyer v. Cempellin*, 424 Mass. 26, 29 (1996).

It is the Attorney General's view that, under Massachusetts law, all advanced payments of the child tax credit provided to Massachusetts residents under Section 9611 of the American Rescue Plan, Pub. L. No. 117-2, constitute "public assistance" under G.L. c. 235, § 34. Accordingly, the advanced payments of the child tax credit are exempt from seizure, including garnishment under G. L. c. 235, § 34 and attachment under G. L. c. 223, § 42, and remain exempt after payment regardless of the manner in which the funds are deposited or thereafter held.

Because advanced payments of the child tax credit under Section 9611 are exempt under state law, any action, or threat to take action, to garnish, attach or otherwise seize these funds to collect or attempt to collect a debt violates the Attorney General's Debt Collection Regulations, which prohibit the compulsory collection of funds or property that are exempt by law. 940 CMR 7.07(18)-(19). Any person, including his or her agents, servants, employees, or attorneys, collecting or attempting to collect a debt that threatens to take or takes action to garnish, attach, or otherwise seize funds paid to individuals under Section 9611 of the American Rescue Plan is engaged in conduct that violates the Attorney General Debt Collection Regulations.

This guidance addresses only the application of the Attorney General's Debt Collection Regulations to collection or attempts to collect a "debt" as defined by 940 CMR 7.03 against "public assistance," as that term appears in G. L. c. 235, § 34. The guidance does not express an opinion regarding the meaning of that term as used in any other statute or regulation. Finally, this guidance is inapplicable to any actions taken by the Massachusetts Department of Revenue, including, but not limited to, any actions taken to collect past due child support pursuant to G. L. c. 119A.

Dated: July 16, 2021