

Commissions, Wages, and Accounts Receivable

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An individual [filing for bankruptcy](#) protection may have an asset in the form of compensation not yet received for work done before the filing. It can be wages, sales commissions, or accounts receivable for a self-employed filer. It can even be work in progress but not yet billed.

The items are really the same thing: Compensation which hasn't been paid yet for work already performed on the filing date. They are assets for bankruptcy purposes. And they all should all be protected up to 75% of net compensation after taxes if state exemptions are used, which also permit use of applicable nonbankruptcy law.

In its most simple form, a wage earner who gets paid every week on Fridays filed a bankruptcy petition on Thursday. She is owed 4/5 of her usual paycheck on the filing date. (Rarely does this appear as a scheduled asset, but I digress.)

A sales person is in the same position where a sale is completed but the commission check hasn't yet been paid. There might be twist if 100% of the work done for the sale hasn't all been completed, or where there's a remaining event like a real estate closing. Courts have had little problem in prorating the commission between the work done before and after the filing, and mostly disregard a discount for the future event.

The logic is consistent if applied to a self-employed contractor or professional, who has outstanding accounts receivable in the form of billing statements, and even to prorating work in progress (although this could be more of a problem, as work in progress by a self-employed solo debtor usually has no value if it's not completed).

We then get to the protection this asset. The "applicable nonbankruptcy law" of the federal Consumer Credit Protection Act, 15 U.S.C. sections 1671 – 1673, protects 75% of net pay from garnishment. There is a 1974 Supreme Court decision, *Kokoszka v. Belford*, which ruled that a tax refund accrued from pre-filing earnings was not protected. However, a serious argument can be made that *Kokoszka* is limited to tax refunds and not to unpaid earnings as of the filing.

Some states have identical statutes, and their courts may have interpreted the statute to protect earnings which were already paid by the filing but still traceable to be protected earnings. See, for example, *In re Meyer*, 211 B.R. 203 (Bankr.E.D.VA. 1997). A Utah case also included protection of real estate commissions. The logic, again, would apply where the federal wage garnishment protection statute is used: 75% of earnings net of taxes, whether wages or commissions or accounts receivable or work in progress, should be protected if not paid or if paid but still traceable