

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

ANGEL DELGADO,

Defendant.

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CIVIL ACTION NO. 3:12-CV-1333-B

MEMORANDUM OPINION AND ORDER

Before the Court is the United States of America's Motion for Installment Payment Order, filed August 24, 2015. Doc. 11. The United States requests that the Court enter an order under 28 U.S.C. § 2304 requiring Defendant to make monthly installment payments to satisfy the default judgment entered against him on July 25, 2012. *See* Doc. 9, Order Granting Mot. for Default J. For the following reasons, the Court **DENIES** the motion without prejudice to the refiling of the same.

Section 2304 authorizes a court to order installment payments upon motion by the United States when a judgment debtor "is receiving or will receive substantial nonexempt disposable earnings from self employment that are not subject to garnishment," or "is diverting or concealing substantial earnings from any source, or property received in lieu of earnings." 28 U.S.C. § 2304(a). There is a method for calculating the amount of such installment payments under Section 2304, which is as follows:


"Nonexempt disposable earnings" is defined as twenty-five percent of disposable earnings. 28 U.S.C. § 3002(9). " 'Disposable earnings' means that part of earnings remaining after all deductions required by law have been withheld." 28 U.S.C. § 3002(5). Finally, " 'Earnings' means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program." 28 U.S.C.

§ 3002(6). Therefore, to determine the proper monthly installment amounts, the proper calculation is to determine the debtor's total income for a year, less federal income tax withholdings. Then, take twenty-five percent of that number and divide it by twelve in order to calculate the amount of each monthly payment installment.

Davis v. United States, No. 06-0158, 2011 WL 4712077, at *2 (W.D. La. Oct. 6, 2011), *aff'd*, 479 F. App'x 601 (5th Cir. 2012). In its Motion, the United States requests installment payments of \$500 per month, but it is not evident from the Motion how the United States arrived at this figure. Most importantly, the Motion does not indicate that the United States calculated the amount using the required method. The Court will therefore **DENY** the United States' Motion for Installment Payment Order at this time, but the Government may file another such motion that includes the proper installment amount calculation and supporting documentation.

SO ORDERED.

SIGNED: August 26, 2015.



JANE J. BOYLE
UNITED STATES DISTRICT JUDGE