

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #2

FILED

JUL 25 11 25 AM '96

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

AGENCY: Child Support Enforcement Division TITLE NUMBER: 97
RULE TYPE: Legislative; CITE AUTHORITY W.Va. Code 48A-2-16, 48A-2-15
AMENDMENT TO AN EXISTING RULE: YES X NO
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 78-12 97-3

TITLE OF RULE BEING AMENDED: Obtaining Support From Federal
and State Income Tax Refunds

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON Aug 26, 1996 AT 12:00 Noon. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

R. Jeffrey Johnson
Building 6, Room 817
State Capitol Complex
Charleston, WV 25305

THE ISSUES TO BE HEARD SHALL BE
LIMITED TO THIS PROPOSED RULE.



ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BUREAU FOR CHILDREN AND FAMILIES
-CHILD SUPPORT ENFORCEMENT DIVISION-

Gaston Caperton
Governor

Gretchen O. Lewis
Secretary

Jeffrey Johnson
8-0908

Sue H. Sergi
Commissioner

Martha J. Hill
Director

M E M O R A N D U M

TO: Judy Cooper, Director
Administrative Law Division
Secretary of State

FROM: Jeff Johnson, In-House Counsel
Child Support Enforcement Division

DATE: July 19, 1996

SUBJECT: Attached Rules

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

JUL 25 12 13 PM '96

FILED

Enclosed you will find four (4) proposed or amended legislative rules and one (1) emergency rule for filing. The rules are as follows:

1. Title 78, Series 6. Incorporation by Reference as a Legislative Rule of the Child Support Enforcement Division Policy and Procedural Manual.

This is an amendment to an existing rule. The amendment is technical in nature and provides for an update of the rule to meet current statutory language. More particularly, it provides for a change in the name of the agency which was done by statute in the 1995 session of the legislature.

2. Title 78, Series 11. Application of Statutory Interest Provisions.

This is being offered as an emergency rule pursuant to the emergency rule making authority of the West Virginia Support Enforcement Commission under West Virginia Code §48A-3-11 and §48A-5-3. This rule would repeal the former rule which pertained to Income Withholding. That rule is obsolete as all of its provisions have now been made a part of state code.

The rule provides that interest shall not accrue during the months when despite the legal compliance of an employer, the non-custodial parent's monthly support obligation is not met.

Judy Cooper, Director, Administrative Law Division
Secretary of State
July 19, 1996
Page 2

I have also enclosed the necessary paperwork to see that this rule becomes a legislative rule.

3. Title 78, Series 12. Obtaining Support From Federal and State Income Tax Refunds.

This rule is an amendment to the existing rule. However, the changes are so extensive that pursuant to Legislative Rule §153-6-5 I am asking that the former rule be repealed and this be offered as a new rule.

The changes to the rule are to meet current statutory requirements.

4. Title 78, Series 13. Interstate Income Withholding.

This is an amendment to an existing rule. The changes are to bring the rule into statutory compliance. More particularly, it provides for a change in the name of the agency which was done by statute in the 1995 session of the legislature.

5. Title 78, Series 14. Providing Information to Credit Reporting Agencies.

This is an amendment to an existing rule. The changes are to bring the rule into statutory compliance. More particularly, it provides for a change in the name of the agency which was done by statute in the 1995 session of the legislature.

I have provided the necessary cover forms for all rules. In addition, I have included a fiscal note on all of the rules. For the amendments to existing rules, I have provided three (3) copies to The Rule-Making Review Committee and one (1) to the Administrative Law Division of the Secretary of State. For the emergency rule, I have provided fourteen (14) copies to the Administrative Law Division of the Secretary of State and one (1) to Legislative Rule-Making Review Committee. For the rules that are to be repealed, I have included a copy of the current rule.

Please advise if you need anything additional. I look forward to hearing from you.

RJJ/rab

Attachments

DATE:

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM:

LEGISLATIVE RULE TITLE: Obtaining Support From Federal and State Income Tax Refunds

1. Authorizing statute(s) citation W. Va. Code 48A-2-16 & 48A-2-15

42 U.S.C. 666(a)(3) & 664, 45 CFR 303.102 & 303.72

2. a. Date filed in State Register with Notice of Hearing

b. What other notice, including advertising, did you give of the hearing?

N/A

c. Date of Hearing(s) N/A

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received _____

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

f. Name and phone number(s) of agency person(s) to contact for additional information:

R. Jeffrey Johnson

(304) 558-0908

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

- b. Date of hearing: _____

- c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

- d. Attach findings and determinations and reasons:

Attached _____

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Obtaining Support From Federal and State Tax Refunds

Type of Rule: X Legislative Interpretive Procedural

Agency Child Support Enforcement Division

Address 1900 Kanawha Blvd., East
Bldg. 6, Rm. 817
Charleston, WV 25305

1. Effect of Proposed Rule

	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	HEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$	\$	\$	\$	\$
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERNATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates:

N/A

3. Objectives of these rules:

To repeal the former rule and substitute in its place this version which contains recent statutory changes.

Rule Title: Obtaining Support From Federal and State Income Tax Refunds

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

N/A

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

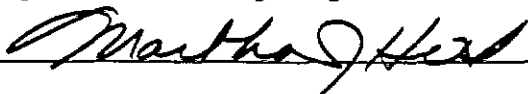
N/A. The rule does not change current agency practices.

C. Economic Impact on Citizens/Public at Large.

N/A

Date: 7-28-96

Signature of Agency Head or Authorized Representative



TITLE 78
LEGISLATIVE RULES
DEPARTMENT OF HUMAN SERVICES

SERIES 12
OBTAINING SUPPORT FROM FEDERAL AND
STATE INCOME TAX REFUNDS

\$78-12-1. General.

1.1. Scope. -- This legislative rule establishes procedures by which the Department of Human Services, Child Advocate Office will obtain support from federal and state income tax refunds.

1.2. Authority. -- W. Va. Code §48A-2-16, 42 U.S.C. §666 (a)(3), and 45 C.F.R. §303.102 as to state income tax; W. Va. Code §48A-2-15, 42 U.S.C. §664, and 45 C.F.R. §303.72 as to federal income tax.

1.3. Filing Date. --

1.4. Effective Date. --

\$78-12-2. Federal and State
Income Tax - Offset
Projects.

2.1. Section 2331 of Public Law 97-35, the Omnibus Budget Reconciliation Act of 1981, Section 21 of the Public Law 98-378, The Child Support Amendments of 1984, and Chapter 48A of the West Virginia Code authorize the CSED to collect past-due support from Federal and State income tax refunds in cases in which there is an assignment of support rights or an application for NON-PA IV-D services. Therefore, the CSED will utilize both the Federal and State income tax offsets for all appropriate AFDC and Foster Care cases and all Non-Public Assistance IV-D cases

which apply for this service.

2.2. The basic guidelines for submitting AFDC and Foster Care cases to the Federal and State Income Tax Offset Projects are very similar. All AFDC and Foster Care cases submitted to the Federal Project in which the obligor lives in the State of West Virginia will be automatically submitted for State Tax offset. Since in-state cases will be referred to both offset projects, there may be times when the CSED will collect more than the total arrearage owed. If this happens, the amount in excess of the debt due the CSED will be promptly refunded to the obligor.

2.3. Guidelines for the submittal of Non-Public Assistance cases vary significantly from the AFDC and Foster Care Guidelines, therefore, policy applying to this type of cases has been separated.

2.4. The IRS and State Tax Department will offset any amount of the obligor's tax refund sufficient to satisfy the debt certified to them by the CSED. If the refund is equal to or less than the debt, the entire amount of the refund will be offset. If the refund is more than the amount certified, the remaining amount will be sent to the taxpayer. These projects can be the CSED's and the caretaker/obligee's easiest method of collecting past-due

support; therefore, all eligible cases should be submitted, including cases in which the past-due support is owed by an absent mother. It should be noted that other federal debts in addition to back taxes may be offset by interception of tax refunds. IRS debts have first priority over all other offsets. AFDC and Foster Care arrearages come next, followed by all other Federal debts, and non-AFDC child support arrearages are offset last.

2.5. Note: Obligors currently receiving AFDC benefits in the State of West Virginia for other minor children must not be referred to the offset projects.

\$78-12-3. Requirements for Submitting AFDC and Foster Care Cases to the Federal and State Income Tax Offset Projects.

3.1. AFDC and foster care cases submitted for the offset projects must meet all requirements established under Federal and State law. It is extremely important to the success of the projects that the CSED submit only those cases which qualify for potential offset of the obligor's tax refunds. All collections received from the offset projects must be applied to the original arrearage certified to the Internal Revenue Service and/or State Tax Department. The legal assistant and regional supervisor must ensure that each case meets the following requirements:

3.1.a. The support obligation must have been established by a court order or an order of an administrative process established by a state which

order has the same force and effect as a judicially established order within that state.

3.1.b. The amount of the support arrearage must be at least \$150.00 and may include past-due child, as well as spousal support amounts, if the parent and child are living together and if the child and spousal support obligations are included in the same court order.

3.1.c. The arrearage must be assigned to the State of West Virginia.

3.1.d. The amount of past-due support submitted for potential offset must be owed to the State of West Virginia.

3.1.e. The support must have been delinquent for three (3) months or longer. This requirement is met if the past due support will be delinquent for three (3) months as of January 1. This is the first day in which an offset may be made and is three (3) months after the last day (October 1) that the case can be submitted. Therefore, the arrearage may be calculated through September 30. Since the deadline for submissions to the Central Office Tax Offset Unit is September 1, supervisors should use their best judgment to determine if an arrearage amount should be calculated for September. If an obligor has not paid support for a year or more, it should be safe to assume that he/she will not pay in September. However, if the arrearage is calculated for September and he/she subsequently pays current support for that month, the total arrearage must be modified via the

Deletion/Modification/Refund
(TO-7) form.

3.1.f. The amount submitted for offset cannot include any amounts resulting from fees or court costs. Interest can be included in the amount certified only if it is included in the court order.

3.1.g. The legal assistant must verify the accuracy of the arrearage certified, the obligor's name and Social Security number.

3.1.h. Copies of all court orders (including any modifications) and judgments used to determine the arrearage must be filed in the CSED case record.

3.2. Responsibilities of the legal assistant and regional supervisor.

3.2.a. Each regional supervisor must assume responsibility for the accuracy of the cases submitted for the offset projects. It is vitally important that the obligor's name, social security number and the amount of arrearage owed to the CSED be verified before submittal of the case. This can be done by checking printouts of previous years, if the obligor was submitted, or by checking parent locate information which may be already in the case record.

3.2.b. Repayment amounts owed by the caretaker must be deducted from the arrearage amount. Also, Supervisors should use discretion in submitting any case in which the CSED has an agreement with the obligor and he/she is abiding by the agreement.

3.3. Interstate IRS and AFDC and Foster Care cases.

3.3.a. The request for offset in AFDC and Foster Care cases is to be made only by a state which has an assignment of support. The state submitting the case for offset must inform any other State involved in enforcing the support order when it submits an interstate case for offset and when it receives the offset amount from IRS.

3.3.b. In order to meet these requirements, it will be necessary for the legal assistant to notify the Central Office Tax Offset Unit of all cases which meet these criteria. The legal assistant is to make this notification via the TO-6 or by adding the information to the P1 when making the submittal.

3.3.c. Cases submitted in which it is known that any other state also has an assignment must be identified on the TO-6 or P1 at the time the case is submitted for offset. Tax offset collections for cases submitted based upon another state's court order must also be reported to the Central Office Tax Offset Unit via the TO-6 or the P1.

3.3.d. Additionally, it is required that for URESA cases, the submitting state inform the reciprocating state when the case is submitted for offset and when a collection is received. This requirement will be accomplished by notifying the Central Office Tax Offset Unit via the TO-6 or P1 that there is a URESA action and the name of the responding State and County. Upon notification from the legal assistant, the Tax Offset Unit will assume the

responsibility of notifying the appropriate States of submittals and collections.

3.3.e. When interstate information is received on cases in which West Virginia is the responding state, the Central Office Tax Offset Unit will notify the appropriate court.

3.4. Distribution of Tax Offset Collections in AFDC and Foster Care cases.

3.4.a. All collections from offsets received in AFDC and Foster Care cases must be applied to the original arrearage certified to the IRS and/or State Tax Department. If the amount collected from the offsets is more than the amount certified, the remaining amount will be refunded to the taxpayer. Additionally, if the obligor reduces the amount of the original arrearage and the offset exceeds this lower amount, the excess is to be returned to the taxpayer. It is permissible, however, for the legal assistant to negotiate with the obligor to apply excess amounts of offset for satisfaction of any additional arrearage owed. These negotiations, if used, must not delay a prompt refund to the taxpayer.

\$78-12-4. Federal and State Income Tax Offsets for Non-Public Assistance Cases.

4.1. Federal income tax refunds payable after December 31, 1985, and State Income Tax refunds payable after December 31, 1986, may be offset to satisfy all past due support amounts owed in Non-Public Assistance cases. (These past due amounts may include support owed on court orders

or judgments prior to the caretaker/obligee's application for NPA services.) The CSED will be responsible for processing the Tax Offset applications from Non-Public Assistance persons desiring to utilize this enforcement remedy. Once the initial application for offset has been made, the case may be referred for offset each new tax year without the caretaker/obligee having to reapply for offset services. The CSED staff must use their own discretion to determine whether or not the tax refund offset is the appropriate enforcement remedy for the case and automatically refer the case for offset if the offset requirements are met.

4.2. There are slight differences in the requirements for the State and Federal Tax Offsets for the NPA caretaker/obligee. Therefore, the legal assistant must pay particular attention to these differences when referring a case to both the IRS and State Tax Offsets to make sure all requirements are met and when referring a case to one (1) or the other offsets to make sure the proper procedures are followed and the proper requirements met.

4.3. Application process for NPA IRS and State Tax Offset.

4.3.a. During the NPA tax offset application process, the legal assistant must thoroughly explain the tax offset to the caretaker/obligee and make sure they understand the following:

4.3.a.1. That they must pay for the IRS tax offset (fee); no fee is

charged for the state tax offset;

4.3.a.2. That there is no guarantee that monies will be collected from IRS or state tax;

4.3.a.3 How long it may be before an offset is distributed, including the fact that in joint return cases the CSED can hold the money for six (6) months before sending it to the caretaker/obligee;

4.3.a.4. That in federal tax offset cases any child support debt owed to the state will be satisfied first; this priority is required by the Internal Revenue Code (26 U.S.C. 6402(c)) and applies to all cases regardless of the amount or the timing of the submittals;

4.3.a.5. That in state tax offset cases only the support collected will be sent to the family first;

4.3.a.6. That any payment the family receives may have to be returned to the CSED if there is an adjustment due the obligor's spouse who has filed an amended tax return within three (3) years following the end of the tax year;

4.3.a.7. That they will be required to sign an affidavit attesting to the amount of arrearage owed; and

4.3.a.8. That they are personally liable for the return of any amounts sent to them which were paid erroneously.

4.3.b. Before completing the actual application form for Federal Tax offset services, the legal

assistant is to make sure the case meets all of the requirements for offset. Also, prior to taking any NPA tax offset application, the legal assistant is to check the necessary records to determine whether an arrearage is owed by the obligor to the CSED.

4.3.c. To initiate the application for non-public assistance IRS and state tax offset, the TO-8, Application for Non-Public Assistance IRS and State Tax Intercept Services, must be completed in triplicate and signed by the caretaker/obligee. The original TO-8 is to be filed in the case record; a copy is to be given to the caretaker/obligee; and a copy is to be attached to the TO-6 (tax offset), along with a copy of the TO-9 and in IRS tax offset cases the twenty-five dollar (\$25) submittal fee, and sent to the Central Office Tax Offset Unit. It is imperative that the caretaker/obligee be given a copy of the TO-8 because it outlines the conditions for submittal to the Tax Offset Project.

4.4. Computing the arrearage for non-public assistance IRS and state tax cases.

4.4.a. The next step in the application process includes determining the amount of the arrearage owed and having the Affidavit signed by the caretaker/obligee attesting to the amount of arrearage owed. The arrearage for the IRS and State Tax NPA offset is to be computed using the court order or judgment and any verifications of payment the caretaker/obligee or the court (whether in-state or out-of-

state) may have.

4.4.b. It may be necessary to compute the arrears and have the affidavit signed on a date other than the date of application to allow the applicant time to gather this information, especially if the information must be requested from any out-of-state court. Then, using the verifications available and the formula below, the legal assistant is to verify the accuracy of the arrearage and file a copy of the payment record or verifications of payment, if it is possible to obtain such a record, in the CSED case record.

4.4.c. For those cases with verifications of payment a simple formula to be used in computing the arrearages in NPA Tax Offset cases only is to take the total amount owed according to the court order or judgment and subtract the total amount paid to date according to the verifications. The remainder is the amount of arrears still owed by the obligor and the amount which may be certified for offset. If the obligor contests the amount owed, the legal assistant may compute the arrearage in the same manner and for the same time period using the obligor's verifications.

4.4.d. If the caretaker/obligee or court have no verifications of payment, and the caretaker/obligee wishes to attest to the amount owed by the obligor without them, it is permissible to do so by signing the Affidavit (TO-9). However, the legal assistant must impress upon the caretaker/obligee the possible ramifications of doing this.

4.4.e. After determining the amount of the arrearage owed by the obligor, the legal assistant must complete and have the caretaker/obligee sign the TO-9, (Affidavit) attesting to the amount of the arrearage owed. Like the TO-8, this form must be completed in triplicate with one (1) copy given to the caretaker/obligee, one (1) copy attached to the TO-6 (along with the TO-8) and sent to the Central Office Tax Offset Unit, and the original filed in the case record.

4.5. Requirements for submitting non-public assistance cases to the Federal and State Income Tax Offset Projects.

4.5.a. In order to be eligible for the Federal and State Income Tax Offsets, Non-Public Assistance cases must meet the following criteria:

4.5.a.1. An application for IV-D services must be filed with the CSED. This includes payment of the twenty-five dollar (\$25) Non-Public Assistance application fee.

4.5.a.2. An additional fee of twenty-five dollars (\$25) will be charged to all NPA obligees who utilize the Federal Tax Offset process. The fee will be deducted by the CSED from the tax refund when it is intercepted. This fee is to cover the administrative costs incurred by the IRS and charged to the CSED on a per case offset basis. (The charge to the CSED fluctuates yearly according to the cost incurred by the IRS for the offset.) The fee to the obligee will be charged only if an offset is actually made.

4.5.a.3. There is no fee for referral to the State Tax Offset.

4.5.a.4. In IRS tax offset cases only, the past due support must be owed to or on behalf of a minor child. NPA referrals on behalf of an individual who is no longer a minor, even if the arrearage accrued while the person was a minor, may not be submitted for offset.

4.5.a.5. In IRS tax offset cases only, spousal support arrearages cannot be included in the amount certified for offset. Orders which include both child and spousal support must be prorated or otherwise adjusted to exclude arrearages which represent spousal support.

4.5.a.6. In State Tax offset cases only, the past due support includes both child and spousal support amounts, if the parent and child are living together and if the child and spousal support obligations are included in the same court order. The support arrearages also may include support on behalf of a child who has reached the age of majority.

4.5.a.7. The support obligation must have been established by a court order or an order of an administrative process established by a state which order has the same force and effect as a judicially established order within that state.

4.5.a.8. In Federal Tax Offset NPA cases, the amount of past due support owed must be at least five hundred dollars (\$500).

4.5.a.9. In State

Tax Offset NPA cases, the amount of past due support owed must be at least one hundred dollars (\$100).

4.5.a.10. Past due support may not include fees or court costs. However, interest may be included in the amount certified only if it is included in the court order.

4.6. Duties and responsibilities for the regional supervisor and legal assistant in Non-Public Assistance cases.

4.6.a. The legal assistant must check the IV-A and IV-D records to determine if an AFDC or Foster Care assigned arrearage exists on the case. In IRS cases where there is an assigned arrearage to the State, the applicant must be informed that any amount offset will first be applied to the assigned arrearages, the remainder of the refund, if any, will be paid to the applicant. In State Tax Offset cases, the amount offset will be sent to the family first.

4.6.b. The legal assistant must verify the accuracy of the name and social security number of the obligor.

4.6.c. The legal assistant must verify the accuracy of the arrears and there must be a copy of the payment record in the CSFD case record, if it is possible to obtain such a record.

4.6.d. Upon initial application for tax offset or NPA services, the custodial parent must sign an affidavit (TO-9) attesting to the amount of arrearage owed. This affidavit must be signed

whether the arrearage accumulated prior to the caretaker/obligee's application for NPA services or after their application for our services.

4.6.e. Copies of all court orders (including any modifications) and judgments used to determine the arrearage must be filed in the CSED case record.

4.6.f. The CSED must have the caretaker/obligee's current address.

4.6.g. A TO-6 submittal form must be completed for each NPA case submitted to the offset project. It is very important that it be clearly designated on the form that the case is NPA rather than AFDC or Foster Care. The legal assistant must also indicate whether there are assigned arrearages to the State.

4.6.h. Any decrease or elimination of the amount referred for offset must be reported to the Central Office Tax Offset Unit via the TO-7, Deletion/Modification/Refund form as in the AFDC and Foster Care cases.

4.6.i. The Federal OCSE will send pre-offset notices to inform the obligor that his/her past due support will be referred to IRS for collection.

4.6.j. The Central CSED will send pre-offset notices to inform the obligor that his/her past due support will be referred to the State Tax Department for collection.

4.6.k. For interstate NPA IRS submittals, the legal assistant must follow the procedures for proper

notification to the Central Office Tax Offset Unit. The submitting state must inform any other state involved in enforcing the support order when it submits the case for offset and when it receives the offset amount from IRS, just as it does in AFDC and Foster Care cases.

4.7. Complaint and hearings procedures for Non-Public Assistant Cases.

4.7.a. Complaint and hearings procedures for NPA cases will follow the same guidelines as the AFDC and Foster Care cases.

4.8. Distribution of IRS and State Tax Offset Collections in NPA cases.

4.8.a. In IRS cases, all collections received as a result of a refund offset must be used to satisfy past due support. All amounts offset must first be applied to any past due support assigned to the State. Amounts collected which are in excess of past due support assigned to the State must be paid to the family.

4.8.a.1. In NPA State Tax Offset cases, all collections received as a result of the offset must be used to satisfy past due support owed to the family first. Amounts collected which are in excess of past due support owed to the family may be applied to any past due support assigned to the State.

4.8.a.2. If the amount collected from either tax offset is in excess of the amount of past due support owed the State and the family, the excess must be promptly refunded to the obligor whose refund was offset or jointly

to parties filing a joint return.

4.8.b. Distribution of offset collections from joint returns.

4.8.b.1. In cases where the CSED is notified that an offset has been made based on a refund from a joint return, the collection will not be distributed for six months from the date of notification of offset or until notified that the non-obligated spouse's proper share of the refund has been paid, whichever is earlier. This procedure allows the injured spouse time to claim his/her share of the tax refund prior to the collection being paid to the family. This is done in order to avoid payment being made to the family which would have to be recovered from the NPA caretaker/obligee by the CSED and forwarded to the taxpayer.

4.8.b.2. Note: Non-PA IRS and State Tax Offset applicants must be informed at the time of application that they will be responsible for the repayment of any past due support they receive through the Tax Offset Project which at some later date is claimed by the IRS or State Tax Department to return to the obligor's injured spouse.

4.8.c. Collections from offset may be applied only against the past-due support which was certified to the IRS and/or the State Tax Department for offset.

4.8.d. Amounts offset which are in excess of the amounts owed to the State and/or family must be promptly refunded to the obligor or jointly to the obligor and spouse if a joint return were

filed.

\$78-12-5. Common Procedures and Requirements Applicable to Submitting All Cases for Offset (AFDC, Foster Care and Non-Public Assistance).

5.1. There are several common requirements and procedures which are the same for the submittal of all cases for offset, the AFDC, Foster Care cases, as well as the NPA cases.

5.2. These requirements are:

5.2.a. An arrearage amount in excess of \$20,000.00 must not be submitted for the offset projects. Any amount which exceeds \$20,000.00 must be disregarded and the arrearage submitted as \$20,000.00.

5.2.b. In the AFDC or Foster Care interstate cases, the request for offset is to be made by any state which has an assignment of support. If there are multiple assignments, the IRS will accept claims from more than one State on the same obligor. However, the state which submits the case first is the State which will receive first priority for collection. If there is a refund remaining after satisfaction of the initial claim, priority of other submittals is based on the amount of the arrearage (from highest to lowest). An assigned arrearage claim takes priority over a NPA claim even if the latter claim was submitted first.

This requirement applies only to the IRS Tax Offset Project.

5.2.c. Notification of the liability of past due support (submitted for offset) must be received by the IRS and the State Tax Department. It is necessary that the CSED submit notification to the Federal OCSE by September 24 and to the State Tax Department by January 1 of each year.

5.3. Preparation of all cases for submittal to the offset projects.

It is important that each region begin preparing their intercept cases for submittal to the Central Office Tax Offset Unit well in advance of all deadlines. Accuracy and timing are important to the success of the project.

5.3.a. An updated arrearage computation sheet must be completed on each case submitted for offset. The CAO-25 is to be filed in the CSED case record. The amount of the arrearage must include spousal support in AFDC and Foster Care cases, if appropriate.

5.3.b. Prior to submitting a case for offset, the legal assistant must make sure the case is open for collection in the APDS (if active AFDC), the arrearages in the APDS are correct, and the amount of the obligation and court order are entered correctly in the APDS.

5.3.c. The arrearage for cases submitted for offset on the basis of another state's support order should be verified with the state which has the order. Also, the offset laws of the other state should be followed in order to prevent wrongful interception.

5.3.d. The TO-6 must be completed on each case. However, it is permissible to use the P1 instead of the TO-6 after all of the necessary updates are made on the case and the information is transferred from the P2 to the P1. On cases on which there is still an outstanding arrearage, make a copy of the necessary page on the P1, highlight the case information for the case being submitted and send to the Tax Offset Unit for processing.

5.3.e. Each region's worksheets or P1's are to be reviewed and signed by the supervisor and forwarded to the Central Office Tax Offset Unit on a regular basis.

5.3.f. All cases must be submitted to the Central Office by September 1 of each year in order to be included in either or both offset projects.

5.3.g. The case status must be clearly indicated on the TO-6 or P1, the TO-7 and the TO-8 - Status "A" for open or closed AFDC or foster care cases and status "N" for NPA cases.

5.4. Submitting IRS test cases to the federal OCSE.

5.4.a. State agencies are given the opportunity to submit a test tape to the Federal OCSE to test the accuracy of the case records and to correct errors prior to the September 1 submission deadline for certifying cases for offset. This one-time test submission helps to ensure that cases will not be lost during offset processing due to errors.

5.4.b. The test tape deadline is during the month

of July and the day of the deadline may vary with each year's offset project according to the federal deadline dates. Therefore, each year the Central Office Tax Offset Unit will inform the field staff of the year's deadline date for test tape submittals.

5.4.c. After the test tape is run, a Test Tape Rejection Report will be sent to the state indicating the matching errors at IRS due to problems with the obligor's name or social security number. Any errors in cases submitted must be corrected before the final submittal date of September 1.

5.5. Other responsibilities of the legal assistant and regional supervisor.

5.5.a. The legal assistant and regional supervisor will maintain contact with the Central Office Tax Offset Unit as needed in order to implement all requirements of the intercept projects. Requests for refunds, hearings, general case inquiries and correspondence are the responsibility of the field staff.

5.6. Interstate referrals of NPA, AFDC and Foster Care to the West Virginia State Tax Offset.

5.6.a. The IV-D agencies in other states may submit to the Central CSED IV-D cases from their states, whose obligors live or work in the State of West Virginia, for referral to the West Virginia State Tax Department for offset. The other state must abide by West Virginia's requirements, as they apply to

all cases, in submitting cases to the CSED for offset. Additionally, the other state must submit the following to the Central CSED:

5.6.1.a. A completed OSCE-107-U4 (Interstate Transmittal Form); and

5.6.1.b. A certified copy of the court order and/or judgment.

5.6.2. It is very important that the other state verify the accuracy of the name and social security number of the obligor and the arrears. Also, the status of the case (AFDC, NPA or Foster Care) must be clearly designated on the form.

5.6.3. The appropriate notices, pre-offset and offset notices, will be sent to the obligor by the CSED and the West Virginia State Tax Department. Monies collected for past due support in these cases will be forwarded by the CSED to the appropriate state IV-D agency

5.6.4. Any hearing requested by an obligor in an interstate referral will be handled by the supervisor of the appropriate regional CSED office in the same manner as the Interstate Administrative Review in an IRS Tax Offset case.

5.7. Responsibilities of the Central Office Tax Offset Unit.

5.7.a. The Central Office Tax Offset Unit is responsible for coordinating all efforts on the Federal and State Income Tax Projects. These duties include overseeing or performing the follow functions:

5.7.a.1. Compiling the information from all cases submitted by the CSED staff into a computer tape which will be received by the Federal OCSE no later than September 24, and by the State Tax Department by January 1 of each year.

5.7.a.2. Compiling information from the CSED field staff on all changes in the status of each offset case. This includes notifying the Federal OCSE of all case deletions and modifications throughout the year.

5.7.a.3. Initiating and approving refunds to obligors when notified by field staff of offset amounts which should be returned.

5.7.a.4. Notifying the Federal OCSE of all refunds issued to obligors.

5.7.a.5. Notifying all staff of collections received from the projects.

5.7.a.6. Serving as the offset liaison with other states and agencies.

5.7.a.7. Keeping controls on and making the required notifications on interstate cases in which hearings are requested both (1) for other states when the court orders are in the State of West Virginia, and, (2) for our cases when the court orders are out-of-state.

5.7.a.8. Answering offset inquiries from field staff and others.

5.7.a.9. Preparing reports as needed on the status of the offset projects.

5.8. Monitoring and updating of cases submitted

for offset.

5.8.a. Monitoring of cases.

5.8.a.1. The legal assistant is responsible for monitoring all cases once they are submitted to the offset projects. Records must be kept of all payments received on each case which would affect the amount of arrearage submitted for offset. Monitoring of cases also includes crediting the obligor with all offset collections received by the CSED.

5.8.a.2. To assist the legal assistant in the monitoring process, each Area will receive a printout, "Office of Child Support Enforcement Tax Offset Cases" (Report Number WEYR5306P1), referred to as the "P1", listing all of the obligor's referred to IRS and State Tax Offsets by FIPS Code and alphabetically by caretaker/obligee case name. Cases referred to the Federal Tax Offset only will have a "Y" in the "Fed Only" column, Column 12.

5.8.a.3. Another printout entitled "Office of Child Support Enforcement Tax Offset Cases" (Report Number WEYR5306P2), referred to as the "P2", will be sent to the areas on a monthly basis. It will contain only those cases on which there was a collection, refund or adjustment during that month.

5.8.a.4. The format for both reports is the same. The following is an explanation of the headings on the printouts in Table 78-12A found at the end of this regulation.

5.8.b. Deletions and

modifications.

5.8.b.1. Any decrease in the amount of the arrearage must be reported to the Tax Offset Unit via the T O - 7 Deletion/Modification/Refund Form. Cases in which the obligor pays his debt in full or in which the arrearage falls below one hundred fifty dollars (\$150) (five hundred dollars (\$500) for NPA IRS cases and one hundred dollars (\$100) for NPA State Tax Offset cases) must be deleted from the intercept process. In cases in which an arrearage agreement is made after the case is submitted for offset, a decision must be made as to whether to delete the case from the offset process.

5.8.b.2. The legal assistant may delete the case if, after careful consideration, it is believed that the obligor will abide by the agreement and make his/her scheduled payments. IRS will accept deletions and downward modifications throughout the processing year. Staff should submit updates on a regular basis. Even though IRS updates can be submitted throughout the year, it is important that all possible changes be submitted prior to November 30, in order for IRS to update their files prior to processing the bulk of the tax returns.

5.8.b.3. The State Tax Department does not presently have the capability of altering amounts submitted for offset. Therefore, any modifications or deletions submitted after January 1 will not affect the State Tax Cases.

5.8.b.4. In cases where the arrearage is one

thousand dollars (\$1000) or less, all decreases in the arrearage must be submitted. If the arrearage is in excess of one thousand dollars (\$1000), the supervisor is to decide whether the change is significant. It is suggested that any decrease in excess of twenty-five dollars (\$25) is significant.

5.8.b.5. A deletion or modification also may be necessary for cases transferred to the State with the order for an administrative review (hearing). There are specific time frames required for reporting updates in these cases, and an update is required regardless of the magnitude of the reduction in the amount referred for offset. Any deletions or decreases will be reported to the Federal OCSE by the Central Office Tax Offset Unit. The same timeframes for reporting apply to intrastate cases in which a hearing has been held and the results require a deletion or modification of the amount submitted for offset.

5.8.b.6. For updates submitted after November 30, IRS will notify the taxpayer if a deletion has been processed. However, IRS will issue no notice on modifications.

5.9. Refunds and joint returns.

5.9.a. Refunds.

5.9.a.1. The CSFD is required to promptly refund to the taxpayer any amounts improperly offset (other than amounts offset due to the filing of a joint return). T h e T O - 7 , Deletion/Modification/Refund

form, is to be used when requesting a full or partial refund of an obligor's intercepted income tax refund or when notifying the Central CA Office of any reduction to the arrearage. To expedite refunds, the refund request must be accompanied by a copy of the IRS or State Tax Notification of Offset letter or a notation that the obligor's name and offset amount have appeared on the PA Cut-off, NPA Cut-off, or the P2.

5.9.a.2. Any monies collected by the CSED through the IRS and State Tax refund offset process must be applied only to the original arrearage which was certified. Arrearage amounts accumulated after the submittal for intercept may not be satisfied by offset of the income tax refund, since the taxpayer has not received notice on such amounts, and consequently, has not had the opportunity to contest the offset of these monies. For example, if the obligor is certified for five hundred dollars (\$500) and pays two hundred dollars (\$200), the remaining certified amount of three hundred dollars (\$300) is all that can be satisfied by the tax refund offset. Any excess must be refunded to the obligor, i.e., if the CSED intercepts five hundred dollars (\$500), the obligor is due a refund of two hundred dollars (\$200). However, even though the obligor may accumulate an additional arrearage of two hundred dollars (\$200) after being submitted for offset, the amount in excess cannot be used to satisfy the past due support obligation. This does not preclude the State from negotiating with the obligor for permission to apply excess

amounts paid for the satisfaction of any additional arrearages owed.

5.9.a.3. A refund must be made if the obligor has made payments, provided proof of payment, the case was submitted in error, a deletion was not made prior to offset or the wrong obligor was intercepted. The CSED staff should carefully consider any request for a refund which is not absolutely necessary. If possible, the refund should be issued the same way the return was filed, i.e., if the return was filed in the name of John and Jane Doe, the refund should be issued to John and Jane Doe, rather than to John Doe. This information can be obtained from the Offset Notification Letter from IRS or the State Tax Department.

5.9.b. Joint returns.

5.9.b.1. The IRS will offset a tax refund from a joint income tax return if either spouse is certified as being legally responsible for providing support. The State Tax Department will offset a joint return when the obligor's social security number matches the social security number they have on file. While the IRS can match cases by either spouse's social security number, the State Tax Department can match only by the social security number of the first spouse's name in their file.

5.9.b.2. When an offset for delinquent support is made against a joint tax refund, the non-obligated spouse may file a request for an allocation of a joint return (IRS Form 1040X) with the IRS to recoup his or her portion of any refund due. All inquiries on IRS refunds

in joint returns must be referred to the IRS Service Center that issued the Notice of Offset to the obligor. Inquiries on State Tax joint refunds must be referred to the State Tax Department by the Central Office Tax Offset Unit and must be accompanied by a copy of the State Tax Return, the W-2 form of the injured spouse, and the Notification of Offset Letter from the State Tax Department. These agencies will determine if under applicable federal and state laws the non-obligated spouse is due a portion of the refund amount intercepted by the CSED.

5.9.b.3. Under No circumstances will the CSED issue refunds to the non-obligated spouse on IRS joint returns. IRS will issue these refunds and will bill the CSED for the amount refunded. The State Tax Department will notify the CSED of refunds due the non-obligated spouse in joint State returns in State Tax cases, and the CSED will issue the appropriate refunds to the non-obligated spouse.

5.9.b.4. When amounts are refunded to the non-obligated spouse, the CSED must add the refunded amount to the obligor's arrearage (this amount will be reflected as an adjustment on the P2), and notify the obligor that his/her arrearage has been adjusted. The case, then, can be set up for offset the next year, unless the amount owed falls below one hundred fifty dollars (\$150) for AFDC and Foster Care cases, five hundred dollars (\$500) for NPA IRS cases or one hundred dollars (\$100) for NPA State Tax Offset cases.

\$78-12-6. Notification of Offset.

6.1. Pre-offset notice.

6.1.a. It is a requirement under federal and state law that the obligor receive adequate notice of the potential offset of his income tax refunds. Advance notices and notices of actual offset will be sent to the obligor's by regular mail. Advance notices will be issued by October 30 of each year to allow the obligor adequate time to respond before his/her case is actually submitted for offset. The Federal OCSE will send the notices to the obligors submitted to them for referral to the IRS Project, and the State CSED will issue pre-offset notices to those submitted to the State Project. For the State Pre-offset notice, the obligor's absent parent number, social security number and his/her complete and current address must be accurate in the APDS.

6.1.b. Both the IRS and state tax pre-offset notices will include the name, address and phone number of the regional CSED offices, as well as the amount of the arrearage certified for offset. Additionally, the notice will include the following:

- the right to contest the fact that the past due support is owed, procedures for contesting, and the amount of the past due support submitted;

- in IRS cases, the right to a hearing (administrative review) in the submitting State or at the obligor's request the State with the order upon which the referral for offset is based;

-the procedures and timeframe for contacting the IV-D agency in the submitting State to request a hearing; and

-that in the case of a joint return in State Tax Offset cases, the procedures for obtaining the share of the refund which may be payable to the non-obligated spouse.

6.2. Notice of offset.

6.2.a. At the time of offset, the IRS and the State Tax Department will issue a Notice of Offset informing the obligor of the amount of the refund which has been applied to past due support and the name, address and phone number of the local CSED office. The IRS notice will advise the obligor to contact the local office to correct any errors or to obtain answers to any other questions, and the notice will contain the social security number of both the primary and secondary tax filers. This notice will also inform the non-obligated spouse of the obligor the steps to take in order to secure a proper share of the refund which may be payable to the spouse.

6.2.b. Because a taxpayer can file returns for more than one (1) tax year, there is the possibility of multiple offsets in one (1) processing year. Therefore, IRS will identify the appropriate tax year for each offset.

\$78-12-7. Confidentiality.

7.1. IRS and State Tax Information received by the CSED is of a confidential nature. According to 26 U.S.C. 6103 (a) and Chapter 48A of the West Virginia Code,

this information "may be disclosed only for the purpose of, and to the extent necessary, in establishing and collecting child support obligations from, and locating, individuals owing such obligations". Therefore, any offset information received by the CSED may be used for IV-D purposes only. Information, including address information, may not be released to the IV-A agency or other persons not connected with the administration of the IV-D program.

\$78-12-8. Hearings Process and Judicial Appeal.

8.1. Obligors whose names are submitted to the IRS and/or State Income Tax Offset Projects for possible attachment of their refunds must be afforded the opportunity to challenge the CSED's action at all steps of the intercept process. Therefore, the hearing may be requested by the obligor any time after receipt of the pre-offset notice or after receipt of the offset notice.

8.2. IRS and State Income Tax Pre-Offset and Offset letters provide State and local Child Advocate Office telephone numbers so that the obligor can contact the CSED with any questions or concerns he/she may have. Inquiries received by the Central Office will be referred to the appropriate local office for disposition.

8.3. At the time the obligor contacts the CSED, if he/she is not satisfied with the response received to his/her questions, he/she will be offered the opportunity to have an informal review of his/her case and/or a formal hearing. Following such a

contact, if the obligor indicates a hearing or an informal review is desired, the legal assistant is to send the TO-1 to him/her, along with the TO-1a (the form on which he/she is to formally request the hearing or informal review).

8.4. If requested, both federal and state income tax offset hearings may be held at the same time.

8.5. Obligor in IRS and State Tax Offset cases have the recourse of a judicial appeal in Circuit Court. Any decision of the Circuit Court, of course, may be appealed further to the Supreme Court of Appeals of the State of West Virginia.

8.6. Informal review.

8.6.a. If the obligor requests an informal review of his/her case, the regional supervisor will schedule the review with the obligor and the legal assistant. A notice of the informal review will be sent to the obligor (TO-1b). The supervisor, legal assistant and obligor will meet and review the evidence presented by the obligor, as well as the CSED's arrearage calculations. After considering the original arrearage amount and any new evidence presented, a corrected amount may be determined. The supervisor and legal assistant will arrive at a decision regarding the obligor's protests based on evidence presented at the informal review. The supervisor will then send the obligor a letter informing him/her of the decision. If he/she is not satisfied with the decision, the obligor may request a formal hearing via the TO-1a, which must be

attached to the decision letter.

8.6.b. It is not mandatory that the obligor have an informal review of his/her case before requesting a formal hearing. However, it is to the benefit of the obligor as well as the agency to attempt to resolve the matter on a local level. If the obligor does not want an informal review conducted, but desires to proceed to a formal hearing, an TO-1a must be sent to him/her at once so that he/she may request the hearing in writing.

8.7. Formal hearing process.

8.7.a. Intrastate cases.

8.7.a.1. Any formal hearing requested will be held by a member of the Department of Human Services State Board of Review. The Board is composed of a Chairperson and as many State Hearing Officers as needed to conduct prompt hearings. The Hearings Officer is an impartial officer who has not been directly involved in any determination of the action in question. He is authorized to conduct hearings and to make decisions on behalf of the Board. The hearing will follow procedures outlined in Chapter 700 of the Department of Human Services Common Chapters Manual.

8.7.a.2. Forwarding the request to the State Hearings Officer.

8.7.a.2.A. If the obligor returns the TO-1a and indicates that he/she wants a formal hearing, the supervisor will immediately forward the TO-1a along with completed

copies of the IG-BR-29 to the State Hearings Officer who services the appropriate area office.

8.7.a.2.A. The basic purpose of the IG-BR-29 is to assure that adequate and concise information is available on each hearing. In addition to providing information for the hearing record, it provides the Hearings Officer with necessary data for federal reports. The top portion and Item A are to be completed by the legal assistant upon receipt of the hearing request. The Hearing request must be attached to this form and submitted promptly (within forty-eight (48) hours) to the State Hearings Officer. Complete the form in quadruplicate with the original and two (2) copies for the State Hearings Officer, and a copy for the case record. Section B of the form will be completed by the State Hearings Officer and the form will become a permanent part of the hearing record.

8.7.a.3. Scheduling the hearing.

8.7.a.3.A. The State Hearings Officer will schedule a formal hearing and notify the obligor and Central Office Tax Offset Unit and in N P A c a s e s , t h e caretaker/obligee, of the date, time and place of the hearing, and, also, the name, address and telephone number of the person to contact if the obligor cannot attend the hearing. The Central Office Tax Offset Unit will contact the appropriate supervisor and advise him/her of the hearing.

8.7.a.4. Hearing request withdrawn.

8.7.a.4.A. An obligor may withdraw his/her request for a hearing by submitting a signed statement requesting such withdrawal. When his/her request for withdrawal is verbal, the legal assistant receiving the request shall confirm receipt of the request in writing to the obligor, file a copy in the case record and forward one (1) to the Hearings Officer.

8.7.a.5. Preparation of the case for a hearing.

8.7.a.5.A. Proper preparation of a case for a hearing is vital -it can mean the difference between being upheld in the hearing or losing on a technicality. The legal assistant may wish to use the expertise of the Hearings Representative in preparing for the hearing.

8.7.a.5.B. The first step in preparing for the hearing is reviewing the case record to be sure it is in proper order and to be sure the action on the case was correct. Once the legal assistant and regional supervisor are confident that the decision was correct, the legal assistant is to proceed with the steps outlined below.

-Prepare an outline of the information you intend to present at the hearing. This information must include such documents as:

(1) a copy of the court order;

(2) a copy of the Acknowledgement of the Assignment of Support Rights (ES-AP-1);

(3) the arrearage computation sheets;

(4) a printout of the obligor's payments;

(5) copies of pertinent correspondence to the obligor;

(6) any other documentation; and

(7) cites or copies of the appropriate manual sections involved.

- Number all documents you are going to present in proper order, such as Department Exhibit #1, or D-1, D-2, etc., in the upper right hand corner -this includes appropriate manual sections.

-An original and two (2) copies of all documents to be presented at the hearing are required, one (1) for the claimant, one (1) for the State Hearings Officer and one (1) for the legal assistant.

-Be sure the evidence documents the action you have taken on the case.

-Prepare any witnesses in advance and, if needed, have the caretaker/obligee available to testify.

-The supervisor will be responsible for meeting with the appropriate staff member on the day prior to the hearing and review the evidence to be presented at the hearing to ensure that all documents and recordings relevant to the issue are included in the packet prepared for the Hearings Officer and claimant.

8.7.a.6. The formal hearing.

8.7.a.6.A. Who may attend the hearing.

-A representative from the area (legal assistant and/or regional supervisor) must attend the hearing to present or help present any evidence the CSED may have to support the agency's position on the case. In area offices which have a hearing representative, the representative may present the Department's case or serve in an advisory capacity. In NPA cases, it is recommended that the caretaker/obligee be present at the hearing.

-The obligor must attend to present his evidence or point of view. The obligor is allowed to bring a representative to speak for him/her, if so desired. Also, he/she is allowed to bring witnesses in his/her own behalf. Witnesses may be sequestered where requested by any party or at the discretion of the State Hearings Officer.

-The State Hearings Officer shall have the authority to determine who may attend the hearing. In the event of undue conflict between individuals at a hearing, the Hearings Officer may dismiss the responsible person(s) or continue the entire hearing and reconvene at a later time as necessary.

-For the purpose of the hearing process, information from the case record regarding the action taken by the CSED will be released to the obligor or, with his/her authorization, to his/her attorney or representative. The manual sections involved in the

action should be made available to the obligor or representative.

8.7.a.6.B. State Hearings Officer's introduction.

-In opening a hearing, the State Hearings Officer will appropriately introduce the purpose of the meeting, the individuals and roles of those in attendance, and generally "set the stage" to assure the obligor of his/her right to be heard and that he/she is, in fact, going to have a fair hearing. The Hearings Officer has the authority and may administer oaths or obtain affirmations from all witnesses and parties presenting testimony at the hearing.

8.7.a.6.C. CSED's presentation.

-The State Hearings Officer will call upon the legal assistant involved in the case and/or the CSED designee, to make the CSED's presentation concerning the proposed change or action, the reason for it and the policy related thereto. Copies of case record information related to the issue are to be presented as part of the CSED's presentation.

-Be sure to present all documents (evidence) at the hearing. Describe the purpose of each document being presented; do not just refer to the number. When called upon to make the CSED's presentation, give the Hearings Officer and the claimant a copy of the packet of documents as evidence.

-If they so request, allow the claimant or his/her representative the

opportunity to review the information to be presented. This will save time in the hearing.

-In the hearing, it is the responsibility of the CSED to present sufficient evidence to document the action they are taking or have taken. The hearings process should be confined to the issue at hand. However, should the claimant raise another issue, and is permitted to do so by the presiding Hearings Officer, the legal assistant is to ask for a continuance, if necessary, in order to prepare sufficient evidence regarding the new issue.

8.7.a.6.D. Obligor's case presentation.

-After the CSED's presentation, the obligor or his/her representative will present his/her case. In some instances, the obligor or representative may request that he/she present his/her statements and case first. This request may be granted at the direction of the Hearings Officer.

8.7.a.6.E. Cross-examination.

-Both the obligor or his/her representative and the CSED shall have the right to confront and cross-examine any witnesses appearing on behalf of the other party during the hearing.

8.7.a.6.F. Rebuttal.

-After both initial presentations have been made, both the obligor and the CSED will be invited to make rebuttal or present additional arguments on the issue or

issues. —

8 . 7 . a . 6 . G .
Consideration of evidence
presented at a hearing.

-It is the responsibility of the State Hearings Officer to determine and rule on the admissibility of any evidence presented by the obligor or his/her representative. It is important for the legal assistant to remember that only evidence presented by the CSED during the hearing is considered by the Hearings Officer in making his decision. If the legal assistant finds that he/she has evidence that he/she did not bring to the hearing, then he/she is to request a continuance of the hearing so that evidence may be introduced.

8.7.a.7. The State Hearings Officer shall weigh the evidence and testimony presented and render a decision based solely on proper evidence given at the hearing. His/her decision, also, must be based on the facts as they existed at the time of the action or proposed action at issue and related policies.

8.7.a.7.A. If the CSED failed to apply the policy correctly, the State Hearings Officer will rule in the obligor's favor.

8.7.a.7.B. If the policy was properly and correctly followed, the State Hearings Officer will uphold the CSED's action.

8.7.a.7.C. The State Hearings Officer may find it necessary in some cases to take a hearing under advisement. If it is

agreeable with all present, it will not be necessary to reconvene the hearing.

8.7.a.7.D. Also, a hearing may be continued by the State Hearings Officer if additional information or evidence is necessary to make a proper decision. For example, the obligor, legal assistant or Hearings Officer may request that additional information be secured. In situations of this nature, the State Hearings Office shall have the authority to continue the hearing until the additional information is secured. It will be necessary to reconvene the hearing at a future time suitable to all present; however, if at all possible, it should be reconvened within a thirty (30) day period.

8.7.a.7.E. If the State Hearings Officer determines that the testimony of other witnesses are necessary to arrive at a fair decision or that the interest of other parties or persons may be affected by the hearing process, the Hearings Officer may continue the hearing and request the appearance of the appropriate individuals. Continuance would not be granted where the obligor would suffer undue harm or inconvenience as a result of the delay.

8 . 7 . a . 7 . F .
Notification of the hearing
decision.

-The obligor will receive a written report of the hearing and the decision, generally within ten (10) working days from the date of the hearing. The report of the hearing will contain Form IG-BR-29, "Hearing Record Information", a hearing

summary and a decision letter signed by the State Hearings Officer as a member of the State Board of Review.

-If the hearing is held before January 10, the decision will be reported to the CSED in the normal manner within the regular time period. If the hearing is held after January 10, and if the decision results in a deletion of the case from offset or a change in the amount submitted, the Hearings Officer will notify the CSED of the decision via memorandum at the time he/she arrives at the decision, and within no more than five (5) working days from the date of that decision, and will send the formal decision letter within ten (10) days from the date of the decision.

-The Tax Offset Unit must then report the update to the Federal OCSE within ten (10) working days from the date of that decision. Therefore, when the memorandum from the Hearings Officer is received by the Central Office Tax Offset Unit, the necessary notifications will be made immediately.

8.7.a.7.G. All hearings will be recorded on a mechanical recording device. The hearing tapes will be held for six (6) months from the date of the decision; however, they will not be transcribed unless the decision is appealed to the courts.

8.7.a.7.H. Any obligor who is not satisfied with the decision of the Hearings Officer may pursue further appeal of the case within a reasonable period of time from receipt of the hearing decision. For Federal

or State Tax Offset, appeal may be made to Circuit Court. Either may be appealed from the Circuit Court to the Supreme Court of Appeals of the State of West Virginia.

8.7.b. IRS interstate cases.

8.7.b.1 In IRS interstate cases, the obligor may request a hearing in either the submitting state or in the state where the court order is located, i.e., he/she has the right to elect which place he/she wants to have the hearing. If he/she chooses to have the hearing in the submitting state, the decision of the Hearings Officer is binding, and the obligor cannot at that point request and be granted a hearing in the state with the order. (However, the obligor would be able to appeal that decision to the Circuit Court.) Conversely, should the obligor elect to have the hearing in the state with the order, the submitting state would be bound by the decision of that state.

8.7.b.2. Submitting state is West Virginia.

8.7.b.2.A. In those cases in which West Virginia is the submitting state, should the obligor request a hearing in West Virginia, the same procedures as set forth for the intrastate cases are to be followed. If it should happen that the Hearings Officer cannot come to a decision because of insufficient information or some other reason, the obligor still would have the option of having the hearing in the state with the order.

8.7.b.2.B. If the complaint cannot be resolved by West Virginia, and the obligor requests a hearing in the state with the order, the case will be transferred to the state with the order. The legal assistant must prepare a packet of all the necessary information on the case to be sent to the other state. This information includes:

- a copy of the order and any modifications;

- a copy of the payment record and, if a NPA case, a copy of the caretaker/obligee's signed affidavit;

- a copy of the assignment, if an AFDC or Foster Care case;

- the arrearage computation sheets (the arrearage amount certified for offset is to be provided, not the current arrearage amount);

- copies of pertinent correspondence to the obligor;

- any other documentation;

- the caretaker/obligee's address; and

- a copy of the hearing request.

8.7.b.2.C. This information is to be attached to the completed Interstate Transmittal Form (OCSE-107-U4) and sent to the Central Office Tax Offset Unit within five (5) days of the obligor's request for the out-of-state hearing.

8.7.b.2.D. The Tax Offset Unit must then provide

the other state with this information within ten (10) days from the date of the obligor's request. At the same time the information is forwarded to the other state, the Tax Offset Unit must send an update to the Federal OCSE notifying them that the case is being transferred to the other state for a hearing and which state that is.

8.7.b.2.E. The hearing must be held and a decision made in the state with the order within forty-five (45) days from receipt of the request and information. The state with the order must notify the Federal OCSE of the results, deletions of or decreases in the amount referred for offset, within the same time frames as set out for interstate cases. The Federal OCSE will notify the submitting state when the state with the order deletes or modifies a case due to the hearing. The submitting state is bound by the decision of the state with the order. If the offset has already occurred, the state with the order will notify the submitting state of its decision so that the refund can be made, if necessary.

8.7.b.2.F. Incentive payments will be made to both states on cases in which collections were made and the hearing was held by another state. If at a later date an adjustment is made on the case, the adjustment will be reported to both states. The submitting state is liable to IRS for the adjustment, and both states must reflect the adjustment when reporting collections to the regional Office of Child Support Enforcement.

8.7.b.3. West Virginia is the state with the order.

8.7.b.3.A. In those cases in which West Virginia is the state with the order and another state is the submitting state, if the obligor requests a hearing in the state with the order, the case will be transferred, along with the necessary information to West Virginia. The Central Office Tax Offset Unit will initially receive the request and immediately forward it and the information to the State Hearings Officer who services the appropriate Area Office (presumably the Child Support Office where the order is located or the office closest to the obligor, whichever the obligor chooses). A copy of this same information will be sent to the regional supervisor in the appropriate Area Office.

8.7.b.3.B. The regional supervisor or his/her appointed representative will prepare the case for the hearing and represent IV-D at the hearing. In preparation for the hearing, the supervisor should check the appropriate court records for additional orders and the court's payment record on the case to determine whether the court has any pertinent information the submitting state did not have.

8.7.b.3.C. The case should be prepared using the information forwarded by the submitting state, plus any new information discovered in the court records. An outline with this information, similar to the one used for intrastate cases, should be used and the documents numbered in a like manner.

8.7.b.3.D. The Hearings Officer will schedule the hearing and notify the Central Office Tax Offset Unit, the obligor, and in NPA cases the caretaker/obligee of the date, time and place of the hearing. The Central Office Tax Offset Unit will contact the appropriate supervisor and advise him/her of the hearing.

8.7.b.3.E. The hearing will be conducted by the Hearings Officer using the same procedures as is used in the intrastate hearings proceedings. The hearing must be held and a decision made within forty-five (45) days from receipt of the request from the submitting state. Once the hearing is held, the regional supervisor is to send the packet of information back to the Central Office Tax Offset Unit, who will place the information in a holding file and establish a control on the case. The Hearings Officer will return his/her decision directly to the Central Office Tax Offset Unit who will make the necessary notification to the Federal OCSE and the submitting state. If deletions or modifications in the amount submitted for offset are necessary, these will be made within the required timeframes outlined in the intrastate hearings section. The submitting state is bound by the decision of the Hearings Officer.

8.8. Judicial appeal (for both federal and state tax offset projects).

8.8.a. Upon a decision of the State Hearings Officer, the claimant will be advised that he/she may bring a petition in Circuit Court within a reasonable period of time from receipt of the

hearing decision.

8.8.b. The court may grant an appeal and may determine anew all questions submitted to it on appeal from the decision or determination of the State Hearings Officer. In such appeals, a certified copy of the hearing determination or decision is admissible and may constitute prima facie evidence of the hearing determination or decision. Furthermore, the decision of the Circuit Court may be appealed by the client or petitioner to the Supreme Court of Appeals of the State of West Virginia.