

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

AGENCY: Child Support Enforcement Division TITLE NUMBER: 897

RULE TYPE: Legislative; CITE AUTHORITY W.Va. Code 48A-2-23

AMENDMENT TO AN EXISTING RULE: YES ☒ NO ☐

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 78-13 97-4

TITLE OF RULE BEING AMENDED: Interstate Income Withholding

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

FILED
JUL 25 12 13 PM '96
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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 That rule is obsolete as all of its provisions have now been made a part of state code.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: Interstate Income Withholding

1. Authorizing statute(s) citation 48A-2-23, 42 U.S.C. 666(b)(9)
45 CFR 303.100 (h)

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

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: Interstate Income Withholding

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: Child Support Enforcement Division

Address: Building 6, Room 817
State Capitol Complex
Charleston, WV 25305

1. Effect of Proposed Rule

	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<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 amend the existing rule to bring it into statutory compliance and to update the name of the agency.

Rule Title: Interstate Income Withholding

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

C. Economic Impact on Citizens/Public at Large.

N/A

Date:

7-23-96

Signature of Agency Head or Authorized Representative

Martha J. Hest

TITLE 78
LEGISLATIVE RULES
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

SERIES 13
INTERSTATE INCOME WITHHOLDING

§78-13-1. General.

1.1 Scope - This legislative rule establishes procedures to extend the ~~Department of Human Services Child Advocate Office~~ Department of Health and Human Resources, Child Support Enforcement Division system of income withholding to income derived within this State where applicable support orders were issued in other states to assure that child support owed by obligors in this state or any other state will be collected regardless of the residence of the child or its custodial parent.

1.2 Authority - W. Va. Code §48A-2-23, 42 U.S.C. §666(b)(9), 45 C.F.R. §303.100 (h).

1.3 Filing Date -

1.4 Effective Date -

§78-13-2. Interstate Income Withholding.

2.1 Interstate wage withholding is available to enforce an existing order for support cases without proceeding through the URESA or UIFSA process.

2.2 The ~~Child Advocate Office~~ Child Support Enforcement Division will be involved in interstate withholding in ~~two (2)~~ three

(3) situations:

1. An obligee resides in the State of West Virginia and the obligor is in another state.

2. An obligor resides in West Virginia and the obligee resides in another state.

3. Both parties reside outside of West Virginia but the obligor's employment or source of income is located in West Virginia.

2.3 Procedures for interstate income withholding when the obligee resides in West Virginia.

If the obligee is not currently receiving IV-D NPA services, an application for IV-D NPA or income withholding only services and the twenty-five dollar (\$25.00) application fee are is required prior to processing the withholding. During the interview with the caretaker/obligee, the ~~paralegal~~ legal assistant must determine the following:

1. The obligor's name, address and social security number;

2. The name and address of the obligor's employer or source of income;

3. Where the support

order originated;

4. The ~~paralegal~~ legal assistant will determine from the Interstate Withholding Directory the information that the other state requires to process the withholding;

5. The ~~paralegal~~ legal assistant will obtain and assemble the required documentation. This may involve obtaining certified copies of documents from other states if the support order was not issued in West Virginia, and complete the Interstate Transmittal form, OSCE-107-U4, from the automated system to send to the other state.

6. The ~~paralegal~~ legal assistant will send the original package to the state in which the obligor resides, a copy to the ~~Central Child Advocate Office~~ Child Support Enforcement Division Central Registry and place a copy in the ~~Child Advocate Office~~ Child Support Enforcement Division record.

2.4 Procedures to implement an income withholding request from another state;

West Virginia requires the following documentation from the other state IV-D agency to initiate withholding for an obligor residing in this state:

1. A certified copy of the support order with all modifications;

2. A certified copy of an income withholding order/notice, if any, still in effect;

3. A copy of the portion

of the income withholding statute of the jurisdiction which issued the support order which states the requirements for obtaining income withholding under the law of that jurisdiction;

4. A sworn statement of the caretaker or certified statement of a court or governmental entity of the arrearages and the assignment of support rights, if any;

5. A statement of:

a. The name, address, and Social Security Number of the absent parent, if known;

b. The name and address of the absent parent's employer or of any other source of income of the absent parent earned in this state against which income withholding is sought;

c. The name and address of the agency or person to whom support payments collected by income withholding shall be transmitted.

2.5. The income withholding request will be sent by the other state to the ~~Central Child Advocate Office~~ Central Registry of the Child Support Enforcement Division and then forwarded to the appropriate regional ~~Child Advocate Office~~ Child Support Enforcement Division office.

2.6. The ~~Central Child Advocate Office~~ Child Support Enforcement Division Central Registry shall examine the documentation from the requesting state to determine

whether or not it conforms to West Virginia requirements.

2.7. The Central Child Advocate Office Child Support Enforcement Division Central Registry will remedy any defect it can without the assistance of the requesting state. If the Child Advocate Office Central Registry is unable to make such correction, the requesting state shall immediately be notified of the necessary additions or corrections. In neither case shall the documentation be returned. The Central Child Advocate Office Child Support Enforcement Division Central Registry will forward the documentation to the regional office Child Support Enforcement Division regional office if it appears that there is enough required information to proceed with the withholding, to proceed with any other action that may be necessary while awaiting the necessary information from the other state.

The West Virginia immediate income withholding extends to these cases as well, therefore, once all of the information is obtained, within 15 calendar days of locating the absent parent's employer or source of income, the withholding is to begin using the same timeframes as are required for State cases.

If an arrearage trigger is required on the case, the meeting with the Child Support Enforcement Division and the hearing before the Family Law Master will be scheduled at the regional office of the Child Support Enforcement Division and before the Family Law

Master in the county where the absent parent lives or where the absent parent's source of income is located.

If an arrearage trigger is required on the case, within 15 calendar days of location of the absent parent and his or her employer or source of income, the notice of withholding must be sent to the absent parent.

The same timeframes required in in-state cases for notice to the employer/source of income applies in these cases.

If the requesting state does not forward a certified copy of the support order with all modifications because the order is a West Virginia order, the Legal Assistant will be expected to obtain a copy of the appropriate order and any modifications from the proper court clerk.

2.8. The regional Child Advocate Office office of the Child Support Enforcement Division will:

1. if only an income support order or support order with a conditional order of withholding (i.e., the trigger must be met in the future) is received from another state, determine if the trigger amount for income withholding has been reached UNDER THE LAW OF THE STATE WHICH ENTERED THE ORDER, NOT THE LAW OF WEST VIRGINIA. (This is why it is necessary to have a copy of the other state's income withholding law.) If the individual is behind in an amount to trigger income withholding under the other

state's law, the paralegal legal assistant sends the notice to the obligor and proceed exactly as in Section 7121, Intrastate Withholding Procedures; is to send the notice to Withholding Request from Another State the absent parent and then proceed exactly as in the Child Support Enforcement Division Policy Manual section on withholding procedures for in-state cases, or;

2. If an active income withholding order is received (i.e., the trigger was met in the other state and income withholding begun), the paralegal legal assistant will immediately send the notice to the obligor and then proceed exactly as in the Child Support Enforcement Division Policy Manual section on withholding procedures for in-state cases.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

JAN CASTO
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 558-6000
Corporations: (304) 558-8000
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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
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Charleston, WV 25305-0770

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

PENNEY BARKER
Supervisor, Corporations

(Plus all the volunteer
help we can get)

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

JUL 17 9 01 AM '97

FILED

TO: R JEFFREY JOHNSON

AGENCY: CHILD SUPPORT ENFORCEMENT

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: July 14, 1997

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 4 TITLE: 97 CHILD SUPPORT ENFORCEMENT

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: R. Jeffrey Johnson

TITLE OF PERSON SIGNING: In House Counsel

DATE: 7/15/97

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.

**TITLE 97
LEGISLATIVE RULE
DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

**SERIES 04
INTERSTATE INCOME WITHHOLDING**

§97-04-1. General.

1.1. Scope. -- This legislative rule establishes procedures to extend the Department of Health and Human Resources, Child Support Enforcement Division system of income withholding to income derived within this State where applicable support orders were issued in other states. The purpose is to assure that child support owed by obligors in this state, or any other state, will be collected regardless of the residence of the child or its custodial parent. This rule is proposed to bring the Child Support Enforcement Division in compliance with 42 U. S. C. §666(b)(9), 45 C. F. R. §303.100.

1.2. Authority. -- W. Va. Code §§48A-2-23, 48A-2-10, 48A-2-9 and 48A-2-11.

1.3. Filing Date. -- August 30, 1996.

1.4. Effective Date. -- July 1, 1997.

1.5. Definitions.

Absent Parent (AP): Any individual who is absent from the home and is legally responsible for providing financial support for a dependent child. This term is used interchangeably with non-custodial parent.

Arrearage Trigger: An amount that may be required by court order prior to institution of a wage withholding.

IV-D Agency: A single and separate organizational unit in a State that has the responsibility for administering the State Plan under Title IV-D of the Act. The Child Support Enforcement Division.

IV-D of the Social Security Act: This section of federal law ^{requires} states to have a Child Support Enforcement program if a state participates in the Aid to Families with Dependent Children Program. Child Support Enforcement programs are referred to as IV-D programs.

Non-Public Assistance (NPA): Child support cases where the custodial parent is not receiving public assistance.

Obligor: The person or the estate of the decedent who owes or is alleged to owe a duty of support; who is alleged, but has not been adjudicated, to be a parent of a child; or who is liable under a support order; also known as the absent parent, non-custodial parent or payor.

RURESA: Revised Uniform Reciprocal Enforcement of Support Act. (See URESA)

UIFSA: Uniform Interstate Family Support Act. An interstate child support enforcement Act designed to replace the original URESA Act. Under UIFSA, only one order is in effect and enforceable at a time.

URESAs: Uniform Reciprocal Enforcement of Support Act. A law which was enacted at the State level and which provides a mechanism for establishing and enforcing support obligations when the non-custodial parent lives in one state and the custodial parent and child(ren) live in another. The URESA model was an early attempt to provide the states with a universal child support tool that worked across state lines. URESA was developed before the passage of Title IV-D of the Social Security Act and before IV-D Agencies existed.

§97-04-2. Interstate Income Withholding.

2.1. Interstate wage withholding is available to enforce an existing order for support cases without proceeding through the URESA or UIFSA process.

2.2. The Child Support Enforcement Division will be involved in interstate withholding in three (3) types of situations:

1. An obligee resides in the State of West Virginia and the obligor is in another state.
2. An obligor resides in West Virginia and the obligee resides in another state.
3. Both parties reside outside of West Virginia but the obligor's employment or source of income is located in West Virginia.

2.3. Procedures for interstate income withholding when the obligee resides in West Virginia.

If the obligee is not currently receiving IV-D NPA services, an application for IV-D NPA or income withholding only services is required prior to processing the withholding. During the interview with the caretaker/obligee, the legal assistant must determine the following:

1. The obligor's name, address and social security number;
2. The name and address of the obligor's employer or source of income;
3. Where the support order originated;
4. The legal assistant will determine from the Interstate Withholding Directory the information that the other state requires to process the withholding;
5. The legal assistant will obtain and assemble the required documentation. This may involve obtaining certified copies of documents

from other states if the support order was not issued in West Virginia, and complete the Interstate Transmittal form, from the automated system to send to the other state.

6. The legal assistant will send the original package to the state in which the obligor resides, a copy to the Child Support Enforcement Division Central Registry. The Legal Assistant will also place a copy in the Child Support Enforcement Division record.

2.4. Procedures to implement an income withholding request from another state:

[Should be a period]

The following documentation from the other state IV-D agency to initiate withholding for an obligor residing in this state is required:

1. A certified copy of the support order with all modifications;

2. A certified copy of an income withholding order/notice, if any, still in effect;

3. A copy of the portion of the income withholding statute of the jurisdiction which issued the support order which states the requirements for obtaining income withholding under the law of that jurisdiction;

4. A sworn statement of the caretaker or certified statement of a court or governmental entity of the arrearages and the assignment of support rights, if any;

5. A statement of:

a. The name, address, and Social Security Number of the absent parent, if known;

b. The name and address of the absent parent's employer or of any other source of income of the absent parent earned in this state against which income withholding is sought;

c. The name and address of the agency or person to whom support payments collected by income withholding shall be

transmitted.

2.5. The income withholding request will be sent by the other state to the Central Registry of the Child Support Enforcement Division and then forwarded to the appropriate regional Child Support Enforcement Division office.

2.6. The Child Support Enforcement Division Central Registry shall examine the documentation from the requesting state to determine whether or not it conforms to West Virginia requirements.

2.7. The Child Support Enforcement Division Central Registry will remedy any defect it can without the assistance of the requesting state. If the Central Registry is unable to make such correction, the requesting state shall immediately be notified of the necessary additions or corrections. In neither case shall the documentation be returned. The Child Support Enforcement Division Central Registry will forward the documentation to the Child Support Enforcement Division regional office and the regional office is to proceed with any other action that may be necessary while awaiting the necessary information from the other state.

West Virginia immediate income withholding extends to out of state cases as well, therefore, once all of the information is obtained, within 15 calendar days of locating the absent parent's employer or source of income, the withholding is to begin using the same timeframes as are required for State cases.

required

If an arrearage trigger is required on the case, the meeting with the Child Support Enforcement Division and a hearing before the Family Law Master will be scheduled at the regional office of the Child Support Enforcement Division and before the Family Law Master in the county where the absent parent lives or where the absent parent's source of income is located.

If an arrearage trigger is required on the case, within 15 calendar days of location of the obligor and his or her employer or source of income, the notice of withholding must be sent to

the absent parent.

The same timeframes required in in-state cases for notice to the employer/source of income applies in these cases.

If the requesting state does not forward a certified copy of the support order with all modifications because the order is a West Virginia order, the Legal Assistant shall obtain a copy of the appropriate order and any modifications from the proper court clerk.

2.8. The regional Office of the Child Support Enforcement Division will:

1. If only an income support order or support order with a conditional order of withholding (i.e., the arrearage trigger must be met in the future) is received from another state, determine if the trigger amount for income withholding has been reached under the law of the state which entered the order, not the law of West Virginia. If the individual is behind in an amount to trigger income withholding under the other state's law, the legal assistant is to send the notice to Withholding Request from Another State to the absent parent and then proceed exactly as in the Child Support Enforcement Division Policy Manual section on withholding procedures for in-state cases, or;

2. If an active income withholding order is received (i.e., the trigger was met in the other state and income withholding begun), the legal assistant will immediately send the notice to the obligor and then proceed exactly as in the Child Support Enforcement Division Policy Manual section on withholding procedures for in-state cases.