

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

FILED

JUL 11 1 55 PM '00

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Department of Health and Human Resources
Bureau for Child Support Enforcement TITLE NUMBER: 97

RULE TYPE: Legislative; CITE AUTHORITY 48A-2-9

AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 11

TITLE OF RULE BEING AMENDED: Termination of 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 August 16, 2000 AT 4:30 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Bureau for Child Support Enforcement

Attn: General Counsel

350 Capitol Street, Room 147

Charleston, WV 25301-3703

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

Joan E. Owl
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Department of Health and Human Resources
Bureau for Child Support Enforcement
Title 78 Series 11

Termination of Income Withholding

Title 78 Series 11

Brief Summary of this Rule

This rule is being repealed. Legislative Rule §78-6-1, which was effective February 26, 1988, makes the Policy Manual of the Bureau for Child Support Enforcement a legislative rule. The topic of termination of income withholding is covered within the Policy Manual of the Bureau for Child Support Enforcement in Section 05000.40. Therefore, the subject matter covered in Legislative Rule §78-11-1 is also covered in the Policy Manual, and is covered in more depth and clarity in the Policy Manual. The Policy Manual is available in the Secretary of State's Office, as are the Legislative Rules, so the subject matter remains available to the public.

Additionally, since Legislative rule §78-11-1 was promulgated in 1989, the laws of West Virginia concerning termination of income withholding have changed slightly. The rule in its present form contains incorrect information, as West Virginia law does not now allow for voluntary termination of income withholding unless the appropriate court has entered an order granting permission for the termination.

Department of Health and Human Resources
Bureau for Child Support Enforcement
Title 78 Series 11

Termination of Income Withholding

Title 78 Series 11

STATEMENT OF CIRCUMSTANCES

Since Legislative Rule §78-11-1 was promulgated in 1989, West Virginia's laws concerning the termination of income withholding have changed. Current law does not allow a voluntary termination of income withholding. Therefore, Legislative Rule § 78-11-1 contains incorrect information.

Our agency has chosen to repeal this rule instead of proposing modifications to it. The modifications that would be necessitated by the changes in state law are reflected in the Policy Manual of the Bureau for Child Support Enforcement, Section 05000.40. The information in our agency Policy Manual has the force and effect of a Legislative Rule (see Legislative Rule § 78-6-1) and the Policy Manual is available to the public at our offices and at the office of the Secretary of State.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Termination of Income Withholding

Type of Rule: x Legislative Interpretive Procedural

Agency: Department of Health & Human Resources

Address: State Capitol Complex, Building 3

Regulatory Development Room

Charleston, WV 25305

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of Above Estimates:

N/A

3. Objectives of These Rules:

This proposed Rule change will revoke Legislative Rule 78-11-1. The issues related to this change are covered in more depth and detail in the Bureau for Child Support Enforcement Policy and Procedure Manual which has the force and effect of a Legislative Rule. (See Legislative Rule 78-6-1)

Rule Title: Termination of Income Withholding

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

No Change

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

No Change

C. Economic Impact on Citizens/Public at Large.

No Change

Date: July 11, 2000

Signature of Agency Head or Authorized Representative:

Joan E. Owl

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JUL 11 1 55 PM '00

~~_____~~ TITLE 78
~~_____~~ LEGISLATIVE RULES
~~_____~~ DEPARTMENT OF HUMAN SERVICES

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

~~_____~~ SERIES 11
~~_____~~ TERMINATION OF INCOME WITHHOLDING

~~§78-11-1. General.~~

~~_____~~ 1.1. Scope. — This legislative rule establishes procedures whereby the Department of Human Services Child Advocate Office will terminate income withholding for support obligors.

~~_____~~ 1.2. Authority. — W. Va. Code §48A-5-3(s), 42 U.S.C. §666(b)(10), 45 C.F.R. §303.100(a)(9)

~~_____~~ 1.3. Filing Date. — June 5, 1989.

~~_____~~ 1.4. Effective Date. — June 15, 1989.

~~§78-11-2. Termination of Income Withholding.~~

~~_____~~ 2.1. The Child Advocate Office may petition the court for an order to terminate income withholding upon the written request of both the obligor and obligee when the following conditions exist:

- ~~_____~~ 1. Both the obligor and obligee agree to the termination;
- ~~_____~~ 2. The obligor has owed no arrearage to the obligee, the State of West Virginia, or any other state for at least eighteen (18) months, and
- ~~_____~~ 3. Both the obligor and obligee can demonstrate to the Child Advocate Office a reliable alternative method by which the obligor will make the ordered support payments.

~~2.2. In the event income withholding is not terminated in accordance with the provisions of subsection 2.1. of this section, the Child Advocate Office shall not terminate withholding until:~~

~~1. The child has reached the age of eighteen (18) or is otherwise emancipated, and all arrearages have been paid.~~

~~2. The obligor has legal custody of the child, and all arrearages have been paid.~~

~~3. The child has been adopted, and all arrearages have been paid.~~

~~2.3. The Child Advocate Office shall adequately document the reason for the termination of the withholding.~~

~~2.4. Upon receipt of proper documentation, the Child Advocate Office shall mail a notice of withholding termination to the employer and a copy to the obligor.~~