

Form #2

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

5.3.4 D

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES APPLICATION OF STATUTORY INTEREST PROVISIONS IN SPECIFIED INCOME WITHHOLDING CIRCUMSTANCES

Rule Title: _____

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: DHHR - CHILD SUPPORT ENFORCEMENT DIVISION

Address: 1900 KANAWHA BLVD., EAST

BUILDING 6, ROOM 817

CHARLESTON, WV 25305

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERNATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates:

THERE WOULD BE NO FINANCIAL IMPACT IF THIS LEGISLATIVE RULE WERE PASSED.

3. Objectives of these rules:

IS TO DETERMINE WHEN NOT TO CALCULATE AND COLLECT INTEREST ON SUPPORT ARREARAGES IN SPECIFIC INSTANCES.

Rule Title: APPLICATION OF STATUTORY INTEREST PROVISIONS IN SPECIFIED
INCOME WITHHOLDING CIRCUMSTANCES

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

NONE

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

NONE

C. Economic Impact on Citizens/Public at Large.

NONE

Date: AUGUST 8, 1997

Signature of Agency Head or Authorized Representative

B. Larry Johnson

FILED

TITLE 97
LEGISLATIVE RULES
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

AUG 12 1 22 PM '97

SERIES 16
APPLICATION OF STATUTORY INTEREST PROVISIONS
IN SPECIFIED INCOME WITHHOLDING CIRCUMSTANCES

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§97-16-1. General.

1.1. Scope. -- This legislative rule establishes procedures for the Department of Health and Human Resources, Child Support Enforcement Division (CSED) not to calculate and collect interest on support arrearages in specific instances.

1.2. Authority. -- W. Va. Code §48-2-37, W. Va. Code §48A-5-3(n), W. Va. Code §48A-3-11, W. Va. Code §56-6-31, 42 U.S.C. §666(b)(9), and 45 C.F.R. §303.100(f).

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Repeal of Former Rule - This Legislative Rule repeals the following West Virginia Legislative Rule: Department of Human Services, Series II, Termination of Income Withholding filed June 6, 1989.

§97-16-2. Definitions.

2.1. Arrearages - the total unpaid and overdue support obligation owed by a legally responsible person. Arrearages include interest which has accrued on the unpaid and overdue obligation.

2.2. Bi-monthly - support is due every two weeks resulting in 26 pay periods per year.

2.3. Child Support Enforcement Division - the agency intended by the Legislature to be the single and separate organizational unit of state government administering programs of child and spousal support enforcement and meeting the staffing and organizational requirements of the Secretary of the Federal Department of Health and Human Services. W. Va. Code §48A-1A-7.

2.4. Court of Competent Jurisdiction - a circuit court within this state or a court or administrative agency of another state having jurisdiction and due legal authority to deal with the subject matter of the establishment and enforcement of support obligations. Whenever reference is made to an order of a court of competent jurisdiction, or similar wording, such language shall be interpreted so as to include orders of an administrative agency entered in a state where enforceable orders may by law be properly made and entered by such administrative agency. W. Va. Code §48A-1A-12.

2.5. Decretal Judgment - a judgment amount included in an order.

2.6. Federal Consumer Credit and Protection Act - sets the percentage limitations

which can be withheld from an individual's wages for garnishment purposes. 15 U.S.C. 1673.

2.7. Income Withholding - the mechanism used for the automatic deduction of support from wages which start as soon as the order for support is established. W.Va. Code §48-2-15(b) and W. Va. Code §48A-5-3.

2.8. Interest - interest is the compensation allowed by law on unpaid and overdue support obligation.

2.9. Judgment - the official decision or finding of a court upon the respective rights and claims of the parties to an action.

2.10. Noncustodial Parent - a parent of a child with respect to whom custody has been adjudicated with the result that such parent has not been granted custody of the child. W. Va. Code §48A-1A-13.

2.11. Source of Income - an employer or successor employer or any other person who owes or will owe income to a noncustodial parent. W. Va. Code §48A-1A-27.

2.12. Support Order - a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a court or an administrative agency of competent jurisdiction, for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing state, or a child and the parent with whom the child is living, which provides for

monetary support, health care, arrearage, or reimbursements, and which may include related costs and fees, interest and penalties, income withholding, attorneys' fees, and other relief. W. Va. Code §48A-1A-30.

§97-16-3. Interest Payments on Support Arrears.

3.1. Every support order entered by a circuit court of this state shall provide that the income of a noncustodial parent be subject to income withholding.

3.2. The total of any matured, unpaid installments of child support required to be paid by an order entered or modified by a court of competent jurisdiction, or by the order of a magistrate court of this state under the prior enactments of the West Virginia Code, stand as a decretal judgment against the noncustodial parent owing the support obligation. Every judgment or decree for the payment of money shall bear interest from the date of entry unless otherwise provided.

3.3. Sources of income which are subject to income withholding are not required to vary the normal pay cycle to accommodate the provisions of the income withholding. Therefore, in certain instances, the full monthly support obligation may not be met each and every month. This places the noncustodial parent in arrears despite compliance by the source of income with legal withholding requirements.

3.4. In those months despite compliance with legal

withholding requirement the full monthly support amount is not met prior to the end of the month, interest shall not accrue. These situations include:

3.4.a. The pay cycle of a source of income which is not bi-monthly or monthly;

3.4.b. Benefit payments which are awarded for a month, but distributed in the subsequent month;

3.4.c. Other occurrences deemed appropriate by the CSED.

3.5. If, during the period from January 1 to December 31 of any year, the frequency with which the noncustodial parent receives income changes, the obligation to pay the interest which otherwise would have accrued may be reinstated.

3.6. Nothing in this rule should be construed to apply in instances when the full monthly support amount is not collected as a result of application of the Federal Consumer Credit and Protection Act.



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

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Governor

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Joan E. Ohl
Secretary

August 11, 1997

The Honorable Ken Hechler
Secretary of State
State Capitol
Building 1, Suite 157K
Charleston, West Virginia 25305

FILED
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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

RE: Legislative Rule § 97-16

Dear Secretary Hechler:

Please accept the attached proposed rule for filing.

Thank you for your attention to this matter. If you should have any questions, please contact Ilene Schnall, Deputy In-House Counsel for the Bureau for Child Support Enforcement, at 558-0907.

Sincerely,


Joan E. Ohl
Secretary

Attachments