

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: ODJFS - Office of Child Support

Regulation/Package Title: OCS - Income Withholding Rules - ERF 96737

Rule Number(s): 5101:12-50-10, "Income withholding or income deduction."

Date: 8/27/2012

Rule Type:

New

5-Year Review

Amended

Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

According to the federal office of child support enforcement (OCSE) Action Transmittal 11-05, employers have been instructed to reject and return an Income Withholding for Support (IWO) that does not comply with the updated federal office of management and budget (OMB) approved IWO format. In order to comply with this requirement the office of child support (OCS) amended the JFS 04047, "Order/Notice to withhold income for child and spousal support" (Rev. 5/2012) to the new format. Rule 5101:12-50-10 has been amended to reflect the update that has occurred to the JFS 04047 and to introduce newly developed form JFS 04017, "Notice to deduct funds for child and spousal support" (5/2012). Prior to amendment, the JFS 04047 was utilized for both withholding income from a payor or to deduct funds from a financial institution account. Since financial account withholding is not a federal requirement but is Ohio specific, the JFS 04047 may no longer be utilized for withholdings to financial institutions. Therefore, OCS utilized language from the previous version

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of the JFS 04047 and created the JFS 04017, "Notice to Deduct Funds for Child and Spousal Support" (5/2012) to be used for financial institutions.

In updating the JFS 04047, OCS included reference to section 3121.371 of the Revised Code. This section was already cited in rule 5101:12-50-10 of the Administrative Code. Section 3121.371 of the Revised Code requires a child support enforcement agency (CSEA) to make a request for a court to order that a financial institution or payor comply with an income withholding notice. Failure to comply with the court order may result in the payor or financial institution to be found in contempt of court. Additionally, the JFS 04047 makes reference to section 3121.19 of the Revised Code notifying a payor with more than 50 employees, that they are required to submit withholding amounts to the state via electronic transfer and combine all of the payments to be forwarded in one payment.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

Sections 3125.25, 3121.01, 3121.0310, 3121.19, and 3121.371 of the Revised Code.

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

Yes. 45 CFR 303.100 requires that states establish procedures to implement collection of child support via income withholding. Pursuant to 45 CFR 302.70(a)(8) ongoing approval of Ohio's Title IV-D State Plan is conditioned on the establishment and implementation of these procedures.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

Electronic income withholding by a payor is not required by federal regulations; however, ORC section 3121.19 requires an employer with more than 50 employees to submit withholding amounts to the state via electronic transfer.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

The rule was promulgated pursuant to the requirements of the Revised Code to collect child support obligations from obligors who owe child support.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

Success is measured by collecting child support obligations from obligors.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

The rule and associated forms were made available for public comment by stakeholders (including CSEAs and child support professionals), payors and financial institutions, and the general public during the Ohio department of job and family services (ODJFS) policy clearance process from 7/19/2012 - 8/2/2012.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

No substantive comments were received while the rule and associated forms were in the clearance process.

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9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

Not applicable.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

The rule and associated forms were developed to comply with the Revised Code.

11. Did the Agency specifically consider a performance-based regulation? Please explain.

No, this rule was developed to comply with the Revised Code.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

This rule was developed specifically for the child support program and reviewed by our office, and the Office of Legal and Acquisition Services within ODJFS to ensure that duplication does not exist.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

The procedure for income withholding has been in continuous operation since 1987. The regulation that requires a CSEA to request for a court to order a financial institution or payor to comply with a withholding notice has been in existence prior to 2001. The regulation that an employer who employs more than 50 employees shall submit the entire amount withheld pursuant to a withholding notice by electronic transfer has been in existence since 2009.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community;

Any payor or financial institution is required to comply with the Revised Code requirements described in the rule.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance);

Affected entities are required to comply with the income withholding or be subject to court action which may result in the payor or financial institution to be found in contempt of court. A payor who employs more than 50 employees is required to submit payments via electronic transfer.

c. Quantify the expected adverse impact from the regulation.

No new impact. The Revised Code procedures and process described within this rule were implemented in 1987, and has proven to be successful in its approach leading to the collection of child support. The possibility for a payor or financial institution to be found in contempt for not complying with the notice has been in place since at least 2001. The regulation that an employer, who employs more than 50 employees, submit the entire amount withheld pursuant to a withholding notice by electronic transfer has been in existence since 2009.

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15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

This rule and referenced forms were developed to comply with the Revised Code. Any adverse impact to the business community is not related to this rule or its forms but rather the requirements of sections 3121.371 and 3121.19 of the Revised Code.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses?

No. Compliance is required by the Revised Code.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

Not Applicable.

18. What resources are available to assist small businesses with compliance of the regulation?

Local CSEAs are available to answer any questions that a payor or financial institution may have concerning compliance.

*** DRAFT - NOT YET FILED ***

5101:12-50-10 **Income withholding or income deduction.**

(A) This rule and its supplemental rules describe the requirements for a child support enforcement agency (CSEA) to implement income withholding or income deduction.

(B) The following definitions apply to this rule and other rules in Chapters 5101:12-50 and 5101:12-55 of the Administrative Code:

(1) "Income" means, pursuant to section 3121.01 of the Revised Code, any form of monetary payment, including personal earnings; workers' compensation payments; unemployment compensation benefits to the extent permitted by, and in accordance with, sections 3121.07 and 4141.284 of the Revised Code, and federal law governing the Ohio department of job and family services; pensions; annuities; allowances; private or governmental retirement benefits; disability or sick pay; insurance proceeds; lottery prize awards; federal, state, or local government benefits to the extent that the benefits can be withheld or deducted under the law governing the benefits; any form of trust fund or endowment; lump sum payments, including a one-time pay supplement of one hundred fifty dollars or more paid under section 124.183 of the Revised Code; and any other payment in money.

(2) "Financial institution" means a bank, savings and loan association, or credit union, or a regulated investment company or mutual fund.

(3) "Payor" means, pursuant to section 3121.01 of the Revised Code, any person or entity that pays or distributes income to an obligor, including an obligor if the obligor is self-employed; an employer; an employer paying an obligor's workers' compensation benefits; the public employees retirement board; the governing entity of a municipal retirement system; the board of trustees of the Ohio police and fire pension fund; the state teachers retirement board; the school employees retirement board; the state highway patrol retirement board; a provider, as defined in section 3305.01 of the Revised Code; the bureau of workers' compensation; or any other person or entity other than the Ohio department of job and family services with respect to unemployment compensation benefits paid pursuant to Chapter 4141. of the Revised Code.

(4) "Personal earnings" means compensation paid or payable for personal services, however denominated, and includes wages, salary, commissions, bonuses, draws against commissions, profit sharing, vacation pay, or any other compensation.

- (5) "Willfully" means an action taken voluntarily and intentionally with a specific intent to take an action or fail to take an action.
- (C) The CSEA shall use the JFS 04047, "~~Notice to Withhold/Deduct Income for Support~~Order/Notice to Withhold Income for Child and Spousal Support" (rev. ~~12/20025/2012~~), to implement income withholding ~~or deduction~~ to collect current support and arrears from a payor.
- (D) The CSEA shall use the JFS 04017, "Notice to Deduct Funds for Child and Spousal Support" (5/2012), to deduct funds from an account in a financial institution.
- ~~(D)~~(E) The responsibilities of a payor or financial institution in receipt of a JFS 04047 or JFS 04017 can be found in Chapter 3121. of the Revised Code.
- ~~(E)~~(F) When a payor or financial institution fails to comply with any requirement of a JFS 04047 or JFS 04017 issued by a CSEA, the CSEA shall bring an action under section 3121.371 of the Revised Code requesting the court to order the payor or financial institution to comply with the JFS 04047 or JFS 04017. If the payor or financial institution fails to comply with the court's order, such failure is contempt of court.

Effective:

R.C. 119.032 review dates:

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 3125.25
Rule Amplifies: 3121.01, 3121.0310
Prior Effective Dates: 1/1/87 (Emer), 3/20/87, 12/1/87, 3/18/91, 7/15/92,
12/31/93, 1/1/95, 6/21/96, 7/22/96, 1/1/98, 12/1/01,
9/1/05, 1/1/08