

Part 5

Income Withholding in Non IV-D Cases

62A-11-501 Definitions -- Application.

- (1) The requirements of this part apply only to cases in which neither the obligee nor the obligor is receiving IV-D services.
- (2) For purposes of this part the definitions contained in Section 62A-11-401 apply.

Amended by Chapter 232, 1997 General Session

62A-11-502 Child support orders issued or modified on or after January 1, 1994 -- Immediate income withholding.

- (1) With regard to obligees or obligors who are not receiving IV-D services, each child support order issued or modified on or after January 1, 1994, subjects the income of an obligor to immediate income withholding as of the effective date of the order, regardless of whether a delinquency occurs unless:
 - (a) the court or administrative body that entered the order finds that one of the parties has demonstrated good cause so as not to require immediate income withholding; or
 - (b) a written agreement which provides an alternative payment arrangement is executed by the obligor and obligee, and reviewed and entered in the record by the court or administrative body.
- (2) For purposes of this section:
 - (a) an action on or after January 1, 1994, to reduce child support arrears to judgment, without a corresponding establishment of or modification to a base child support amount, is not sufficient to trigger immediate income withholding;
 - (b) "good cause" shall be based on, at a minimum:
 - (i) a determination and explanation on the record by the court or administrative body that implementation of income withholding would not be in the best interest of the child; and
 - (ii) proof of timely payment of any previously ordered support;
 - (c) in determining "good cause," the court or administrative body may, in addition to any other requirement it considers appropriate, consider whether the obligor has:
 - (i) obtained a bond, deposited money in trust for the benefit of the dependent children, or otherwise made arrangements sufficient to guarantee child support payments for at least two months;
 - (ii) arranged to deposit all child support payments into a checking account belonging to the obligee, or made arrangements insuring that a reliable and independent record of the date and place of child support payments will be maintained; or
 - (iii) arranged for electronic transfer of funds on a regular basis to meet court-ordered child support obligations.
- (3) In cases where the court or administrative body that entered the order finds a demonstration of good cause or enters a written agreement that immediate income withholding is not required, in accordance with this section, any party may subsequently pursue income withholding on the earliest of the following dates:
 - (a) the date payment of child support becomes delinquent;
 - (b) the date the obligor requests;
 - (c) the date the obligee requests if a written agreement under Subsection (1)(b) exists; or
 - (d) the date the court or administrative body so modifies that order.

- (4) The court shall include in every child support order issued or modified on or after January 1, 1994, a provision that the income of an obligor is subject to income withholding in accordance with this chapter; however, if for any reason that provision is not included in the child support order, the obligor's income is nevertheless subject to income withholding.
- (5)
 - (a) In any action to establish or modify a child support order after July 1, 1997, the court, upon request by the obligee or obligor, shall commence immediate income withholding by ordering the clerk of the court or the requesting party to:
 - (i) mail written notice to the payor at the payor's last-known address that contains the information required by Section 62A-11-506; and
 - (ii) mail a copy of the written notice sent to the payor under Subsection (5)(a)(i) and a copy of the support order to the office.
 - (b) If neither the obligee nor obligor requests commencement of income withholding under Subsection (5)(a), the court shall include in the order to establish or modify child support a provision that the obligor or obligee may commence income withholding by:
 - (i) applying for IV-D services with the office; or
 - (ii) filing an ex parte motion with a district court of competent jurisdiction pursuant to Section 62A-11-504.
 - (c) A payor who receives written notice under Subsection (5)(a)(i) shall comply with the requirements of Section 62A-11-507.

Amended by Chapter 131, 2007 General Session

62A-11-503 Requirement of employment and location information.

- (1) As of July 1, 1997, a court, before issuing or modifying an order of support, shall require the parties to file the information required under Section 62A-11-304.4.
- (2) If a party fails to provide the information required by Section 62A-11-304.4, the court shall issue or modify an order upon receipt of a verified representation of employment or source of income for that party based on the best evidence available if:
 - (a) that party has participated in the current proceeding;
 - (b) the notice and service of process requirements of the Utah Rules of Civil Procedure have been met if the case is before the court to establish an original order of support; or
 - (c) the notice requirements of Section 62A-11-304.4 have been met if the case is before the court to modify an existing order.
- (3) A court may restrict the disclosure of information required by Section 62A-11-304.4:
 - (a) in accordance with a protective order involving the parties; or
 - (b) if the court has reason to believe that the release of information may result in physical or emotional harm by one party to the other party.

Repealed and Re-enacted by Chapter 232, 1997 General Session

62A-11-504 Procedures for commencing income withholding.

- (1) If income withholding has not been commenced in connection with a child support order, an obligee or obligor may commence income withholding by:
 - (a) applying for IV-D services from the office; or
 - (b) filing an ex parte motion for income withholding with a district court of competent jurisdiction.
- (2) The office shall commence income withholding in accordance with Part 4, Income Withholding in IV-D Cases, upon receipt of an application for IV-D services under Subsection (1)(a).

- (3) A court shall grant an ex parte motion to commence income withholding filed under Subsection (1)(b) regardless of whether the child support order provided for income withholding, if the obligee provides competent evidence showing:
 - (a) the child support order was issued or modified after January 1, 1994, and the obligee or obligor expresses a desire to commence income withholding;
 - (b) the child support order was issued or modified after January 1, 1994, and the order contains a good cause exception to income withholding as provided for in Section 62A-11-502, and a delinquency has occurred; or
 - (c) the child support order was issued or modified before January 1, 1994, and a delinquency has occurred.
- (4) If a court grants an ex parte motion under Subsection (3), the court shall order the clerk of the court or the requesting party to:
 - (a) mail written notice to the payor at the payor's last-known address that contains the information required by Section 62A-11-506;
 - (b) mail a copy of the written notice sent to the payor under Subsection (4)(a) to the nonrequesting party's address and a copy of the support order and the notice to the payor to the office; and
 - (c) if the obligee is the requesting party, send notice to the obligor under Section 62A-11-304.4 that includes:
 - (i) a copy of the notice sent to the payor; and
 - (ii) information regarding:
 - (A) the commencement of income withholding; and
 - (B) the opportunity to contest the withholding or the amount withheld due to mistake of fact by filing an objection with the court within 20 days.
- (5) A payor who receives written notice under Subsection (4)(a) shall comply with the requirements of Section 62A-11-507.
- (6) If an obligor contests withholding, the court shall:
 - (a) provide an opportunity for the obligor to present evidence supporting his claim of a mistake of fact;
 - (b) decide whether income withholding should continue;
 - (c) notify the parties of the decision; and
 - (d) at the obligor's option, return or credit toward the most current and future support payments of the obligor any amount mistakenly withheld plus interest at the legal rate.

Amended by Chapter 188, 1998 General Session

62A-11-505 Responsibilities of the office.

The office shall document and distribute payments in the manner provided for and in the time required by Section 62A-11-413 and federal law upon receipt of:

- (1) a copy of the written notice sent to the payor under Section 62A-11-502 or Section 62A-11-504;
- (2) the order of support;
- (3) the obligee's address; and
- (4) withheld income from the payor.

Enacted by Chapter 232, 1997 General Session

62A-11-506 Notice to payor.

- (1) A notice mailed or delivered to a payor under this part shall state in writing:

- (a) the amount of child support to be withheld from income;
 - (b) that the child support must be withheld from the obligor's income each time the obligor is paid, but that the amount withheld may not exceed the maximum amount permitted under Section 303(b) of the Consumer Credit Protection Act, 15 U.S.C. Section 1673(b);
 - (c) that the payor must mail or deliver the withheld income to the office within seven business days of the date the amount would have been paid or credited to the employee but for this section;
 - (d) that the payor may deduct from the obligor's income an additional amount which is equal to the amount payable to a garnishee under Rule 64D of the Utah Rules of Civil Procedure, as the payor's fee for administrative costs, but the total amount withheld may not exceed the maximum amount permitted under Section 303(b) of the Consumer Credit Protection Act, 15 U.S.C. Section 1673(b);
 - (e) that the notice to withhold is binding on the payor and on any future payor until further notice by the office or a court;
 - (f)
 - (i) that if the payor fails to mail or deliver withheld income to the office within the time period set in Subsection (1)(c), the payor is liable to the obligee for a late fee of \$50 or 10% of the withheld income, whichever is greater, for each payment that is late; and
 - (ii) that if the payor willfully fails to withhold income in accordance with the notice, the payor is liable to the obligee for \$1,000 or the accumulated amount the payor should have withheld, whichever is greater, plus interest on that amount;
 - (g) that the notice to withhold is prior to any other legal process under state law;
 - (h) that the payor must begin to withhold income no later than the first time the obligor's earnings are normally paid after five working days from the date the payor receives the notice;
 - (i) that the payor must notify the office within five days after the obligor terminates employment or the periodic income payment is terminated, and provide the obligor's last-known address and the name and address of any new payor, if known;
 - (j) that if the payor discharges, refuses to employ, or takes disciplinary action against an obligor because of the notice to withhold, the payor is liable to the obligor as provided in Section 62A-11-316 and the obligee for the greater of \$1,000 or the amount of child support accumulated to the date of discharge which the payor should have withheld plus interest on that amount; and
 - (k) that, in addition to any other remedy provided in this section, the payor is liable to the obligee or obligor for costs and reasonable attorneys' fees incurred in enforcing a provision in a notice to withhold mailed or delivered under Section 62A-11-502 or 62A-11-504.
- (2) If the obligor's employment with a payor is terminated, the office shall, if known and if contacted by the obligee, inform the obligee of:
- (a) the obligor's last-known address; and
 - (b) the name and address of any new payor.

Amended by Chapter 161, 2000 General Session

62A-11-507 Payor's procedures for income withholding.

- (1)
 - (a) A payor is subject to the requirements, penalties, and effects of a notice mailed or delivered to him under Section 62A-11-506.

- (b) A payment of withheld income mailed to the office in an envelope postmarked within seven business days of the date the amount would have been paid or credited to the obligor but for this section satisfies Subsection 62A-11-506(1)(c).
- (2) If a payor fails to comply with the requirements of a notice served upon him under Section 62A-11-506, the obligee, or obligor may proceed with a civil action against the payor to enforce a provision of the notice.
- (3) If the obligor's child support is owed monthly and the payor's pay periods are at more frequent intervals, the payor, with the consent of the office or obligee, may withhold an equal amount at each pay period cumulatively sufficient to pay the monthly child support obligation.
- (4) A payor may combine amounts which he has withheld from the income of multiple obligors into a single payment to the office. If such a combined payment is made, the payor shall specify the amount attributable to each individual obligor by name and Social Security number.
- (5) In addition to any other remedy provided in this section, a payor is liable to the obligee or obligor for costs and reasonable attorneys' fees incurred in enforcing a provision of the notice mailed or delivered under Section 62A-11-506.
- (6) Notwithstanding this section or Section 62A-11-506, if a payor receives an income withholding order or notice issued by another state, the payor shall apply the income withholding law of the state of the obligor's principal place of business in determining:
 - (a) the payor's fee for processing income withholding;
 - (b) the maximum amount permitted to be withheld from the obligor's income;
 - (c) the time periods within which the payor must implement income withholding and forward child support payments;
 - (d) the priorities for withholding and allocating withheld income for multiple child support obligees; and
 - (e) any terms or conditions for withholding not specified in the notice.

Enacted by Chapter 232, 1997 General Session

62A-11-508 Termination of income withholding.

- (1)
 - (a) At any time after the date income withholding begins, a party to the child support order may request a court to determine whether income withholding should be terminated due to:
 - (i) good cause under Section 62A-11-502; or
 - (ii) the completion of an obligor's support obligation.
 - (b) An obligor's payment of overdue child support may not be the sole basis for termination of income withholding.
 - (c) After termination of income withholding under this section, a party may seek reinstatement of income withholding under Section 62A-11-504.
- (2)
 - (a) If it is determined that income withholding should be terminated under Subsection (1)(a)(i), the court shall order written notice of termination be given to each payor within 10 days after receipt of notice of that decision.
 - (b) The obligee shall give written notice of termination to each payor:
 - (i) when the obligor no longer owes child support to the obligee; or
 - (ii) if the obligee and obligor enter into a written agreement that provides an alternative arrangement, which may be filed with the court.
- (3) A notice to withhold income is binding on a payor until the court or the obligee notifies the payor that his obligation to withhold income has been terminated.

Enacted by Chapter 232, 1997 General Session

62A-11-509 Payor's compliance with income withholding.

- (1) Payment by a payor under this part satisfies the terms for payment of income under any contract between a payor and obligor.
- (2) A payor who complies with an income withholding notice that is regular on its face may not be subject to civil liability to any person for conduct in compliance with the notice.

Enacted by Chapter 232, 1997 General Session

62A-11-510 Violations by payor.

- (1) A payor may not discharge, refuse to hire, or discipline any obligor because of a notice to withhold under this part.
- (2) If a payor violates Subsection (1), the payor is liable to the obligor as provided in Section 62A-11-316 and the obligee for the greater of \$1,000 or the amount of child support accumulated to the date of discharge which should have been withheld plus interest on that amount and costs incurred in collecting the amount, including reasonable attorneys' fees.

Enacted by Chapter 232, 1997 General Session

62A-11-511 Priority of notice or order to withhold income.

The notice to withhold under this part is prior to all other legal collection processes provided by state law, including garnishment, attachment, execution, and wage assignment.

Enacted by Chapter 232, 1997 General Session