

**Sec. 52-362e-2. Withholding of federal income tax refunds**

**(a) When appropriate**

The withholding of an obligor's federal income tax refund for the collection of past-due support is appropriate provided, in IV-D assistance cases, the criteria of subdivisions (1) and (2) of this subsection are met, and, in IV-D non-assistance cases, the criteria of subdivisions (1) and (3) of this subsection are met.

**(1) General criteria**

The following criteria shall be met in all cases submitted to OCSE for withholding:

(A) A notice of action shall be mailed to the obligor prior to submittal.

(B) The obligor shall be given an opportunity for a fair hearing prior to submittal.

(C) BCSE or a cooperating agency shall have in its records a payment record and a copy of the support order and any modifications upon which the amount submitted for withholding is based which documents specify the date of issuance and the amount of support.

(D) Before submittal, BCSE or a cooperating agency shall verify the accuracy of the name and social security number of the obligor and the accuracy of the past-due support amount; provided, if such information was verified previously, it need not be reverified.

**(2) Criteria for assistance cases**

The following criteria shall be met in assistance cases submitted to OCSE for withholding:

(A) The combined amount of past-due support for all accounts shall be at least \$150.00, regardless of the status of payments on any court-ordered pay plan to reduce such past-due support.

(B) The support shall be past-due for three months or longer.

**(3) Criteria for non-assistance cases**

The following criteria shall be met in non-assistance cases submitted to OCSE for withholding:

(A) The support shall be owed to or on behalf of a qualified child, or a qualified child and the parent with whom the child is living if the same support order includes support for the child and the parent.

(B) The combined amount of past-due support for all accounts shall be at least \$500.00, regardless of the status of payments on any court-ordered pay plan to reduce such past-due support.

(C) BCSE or a cooperating agency shall have in its record the custodial party's current address.

(D) If an assistance arrearage exists with respect to the non-assistance individual or family, such arrearage shall be submitted for withholding if the criteria in subdivision (2) of this subsection are met.

**(b) Procedure**

**(1) Notice of action**

At least three months prior to final submittal to OCSE, the department shall mail a notice of action to all obligors identified for potential withholding.

**(2) Prehearing review**

The obligor's name shall not be submitted for IRS withholding if the results of a

prehearing review indicate that the case is not appropriate for such action.

(3) Fair hearing

(A) Intrastate cases

If a fair hearing is not requested, the obligor's name shall be submitted for IRS withholding no earlier than three months after the mailing date of the notice of action. If a fair hearing is requested, submittal shall not be made unless the fair hearing is denied or dismissed, or a decision which upholds the proposed withholding is rendered prior to the department's submittal to OCSE.

(B) Interstate cases

In interstate cases where the obligor resides in another state, the obligor may request a fair hearing from this state or from the state with the order upon which the referral for withholding is based. Requests for a hearing from the state with the order must be made through this state.

(4) Submittal to OCSE

The department shall submit to OCSE no later than the deadline specified in OCSE program instructions the names of all obligors whose cases are appropriate for submittal. The submittal to OCSE shall be accompanied by a certification of the director of BCSE and all other information required by OCSE.

(5) Distribution of withheld amounts

(A) Payment to state

Amounts withheld shall be applied first to satisfy past-due support assigned to the state and certified for withholding.

(B) Payment to family

Any excess after payment to the state shall be applied to satisfy past-due support certified for withholding and owed to the non-assistance family. A fee of \$15.00 for each name certified in non-assistance cases shall be deducted from such excess prior to distribution to the family, provided there is a successful withholding. The custodial party shall be obligated to repay the state for any withheld amounts received that are subsequently found to be erroneous, in excess of the amount owed at time of distribution, or refunded by the IRS to a non-obligated spouse in cases where the withholding is based on a joint return.

(C) Refund to obligor

If the amount withheld is in excess of the amount owed at time of distribution, the excess shall be refunded to the obligor, or jointly to the parties filing a joint return.

(D) Special rule for joint returns

If withholding is made to satisfy non-assistance past-due support from a refund based on a joint return, the department may delay distribution until notified that the non-obligated spouse's proper share of the refund has been paid or for a period not to exceed six months from notification of withholding, whichever is earlier.

(Effective November 28, 1994; Amended June 8, 1998)