# WEST VIRGINIA CODE: §48-18-118

**§48-18-118. Obtaining support from state income tax refunds.**

(a) The Tax Commissioner shall establish procedures necessary for the Bureau for Child Support Enforcement to obtain payment of past-due support from state income tax refunds from overpayment made to the Tax Commissioner pursuant to the provisions of article twenty-one, chapter eleven of this code.

(b) The Commissioner for the Bureau for Child Support Enforcement shall establish procedures necessary to enforce a support order through a notice to the Tax Commissioner which will cause any refund of state income tax which would otherwise be payable to an obligor to be reduced by the amount of overdue support owed by such obligor.

(1) The procedures shall, at a minimum, prescribe:

(A) The time or times at which the Bureau for Child Support Enforcement shall serve on the obligor or submit to the Tax Commissioner notices of past-due support;

(B) The manner in which such notices shall be served on the obligor or submitted to the Tax Commissioner;

(C) The necessary information which shall be contained in or accompany the notices;

(D) The amount of the fee to be paid to the Tax Commissioner for the full cost of applying the procedure whereby past-due support is obtained from state income tax refunds; and

(E) Circumstances when the Bureau for Child Support Enforcement may deduct a $25 fee from the obligor's state income tax refund. This procedure may not require a deduction from the state income tax refund of an applicant who is a recipient of assistance from the Bureau for Children and Families in the form of temporary assistance for needy families.

(2) Withholding from state income tax refunds may not be pursued unless the Bureau for Child Support Enforcement has examined the obligor's pattern of payment of support and the obligee's likelihood of successfully pursuing other enforcement actions, and has determined that the amount of past-due support which will be owed, at the time the withholding is to be made, will be $100 or more. In determining whether the amount of past-due support will be $100 or more, the Bureau for Child Support Enforcement shall consider the amount of all unpaid past-due support, including that which may have accrued prior to the time that the Bureau for Child Support Enforcement first agreed to enforce the support order.

(c) The Commissioner of the Bureau for Child Support Enforcement shall enter into agreements with the Secretary of the Treasury and the Tax Commissioner, and other appropriate governmental agencies, to secure information relating to the Social Security

WV Legislature

number or numbers and the address or addresses of any obligor, and the name or names and address or addresses of any employer or employers, in order to provide notice between such agencies to aid the Bureau for Child Support Enforcement in requesting state income tax deductions and to aid the Tax Commissioner in enforcing such deductions. In each such case, the Tax Commissioner, in processing the state income tax deduction, shall notify the Bureau for Child Support Enforcement of the obligor's home address and Social Security number or numbers. The Bureau for Child Support Enforcement shall provide this information to any other state involved in processing the support order;

(d) For the purposes of this section, "past-due support" means the amount of unpaid past-due support owed under the terms of a support order to or on behalf of a child, or to or on behalf of a minor child and the parent with whom the child is living; regardless of whether the amount has been reduced to a judgment or not.

(e) The Bureau for Child Support Enforcement may, under the provisions of this section, enforce the collection of past-due support on behalf of a child who has reached the age of majority.

(f) The procedure shall, at a minimum, provide that prior to notifying the Tax Commissioner of past-due support, a notice to the obligor as prescribed under subsection (a) of this section shall:

(1) Notify the obligor that a withholding will be made from any refund otherwise payable to such obligor;

(2) Instruct the obligor of the steps which may be taken to contest the determination of the Bureau for Child Support Enforcement that past-due support is owed or the amount of the past-due support; and

(3) Provide information with respect to the procedures to be followed, in the case of a joint return, to protect the share of the refund which may be payable to another person.

(g) If the Bureau for Child Support Enforcement is notified by the Tax Commissioner that the refund from which withholding is proposed to be made is based upon a joint return, and if the past-due support which is involved has not been assigned to the Department of Human Services, the Bureau for Child Support Enforcement may delay distribution of the amount withheld until such time as the Tax Commissioner notifies the Bureau for Child Support Enforcement that the other person filing the joint return has received his or her proper share of the refund, but such delay shall not exceed six months.

(h) In any case in which an amount is withheld by the Tax Commissioner under the provisions of this section and paid to the Bureau for Child Support Enforcement, if the Bureau for Child Support Enforcement subsequently determines that the amount certified as past due was in excess of the amount actually owed at the time the amount withheld is to be distributed, the agency shall pay the excess amount withheld to the obligor thought to have

WV Legislature

owed the past due support or, in the case of amounts withheld on the basis of a joint return, jointly to the parties filing the return.

(i) The amounts received by the Bureau for Child Support Enforcement shall be distributed in accordance with the provisions for distribution set forth in 42 U.S.C. §657.

WV Legislature