

IN THE SUPREME COURT OF FLORIDA

**IN RE: AMENDMENTS TO
THE FLORIDA FAMILY LAW
RULES OF PROCEDURE**

CASE NO. SC10-1468

**FLORIDA DEPARTMENT OF REVENUE’S COMMENTS IN
RESPONSE TO THE AMENDMENTS TO THE FAMILY LAW
RULES OF PROCEDURE**

The Florida Department of Revenue respectfully submits these comments in response to the Amendments to the Family Law Rules of Procedure that were adopted by the Court on September 23, 2010.

Form 12.995(a), Income Deduction Order.

Paragraph four of page one of the Instructions for Florida Family Law Rules of Procedure Form 12.996(a), Income Deduction Order, states “[i]f the payments are to be payable through the State Disbursement Unit. . . .”

Florida law requires all child support cases in which the initial support order was issued in this state on or after January 1, 1994, and in which the child support obligation is being paid through income deduction, to be paid through the State Disbursement Unit (SDU). *See* Sections 61.13(1)(d) and 61.1824(1)(b), Fla. Stat. (2010). The Instructions should be changed to reflect this requirement.

The proposed income deduction order form does not follow the uniform format prescribed by the Secretary of the U.S. Department of Health and Human Services and required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) for all entities ordering income withholding for child support for both Title IV-D and non-Title IV-D cases. Section 466(b)(6)(A)(ii) of the Social Security Act, 42 U.S.C. §666(b)(6)(A)(ii), requires that the income withholding notice given to employers for income withholding in Title IV-D cases shall be in a standard format prescribed by the Secretary of the Department of Health and Human Services. Pursuant to section 466(a)(8)(B)(iii) of the Act, the use of standard federal form adopted by the Secretary under section 466(b)(6)(A)(ii) of the Act is also required for non-IV-D income withholding. The federal form combines the income deduction order and the notice to payor in one form. It is designed to provide for income deduction of current and past-due child support, current and past-due spousal support, current and past-due cash medical support, and other deductions.

The United States Department of Health and Human Services, Office of Child Support Enforcement (OCSE), is currently in the process of revising the federal withholding form (Appendix A). In addition, OCSE recently solicited comments from the directors of the state and tribal IV-D

agencies with regards to a new proposed approach for improving the income withholding process (Appendix B). The federal proposal addresses the issue of income deduction orders not issued on the federal form as well as income withholding orders not directed to a state disbursement unit.

Effective December 31, 2011, OCSE is proposing to instruct employers to reject income withholding orders issued after November 1, 2010, and return the orders to the sender if the order is not on the federal approved form. (See Appendix B) Employers will be instructed to continue to honor income withholding orders issued prior to October 31, 2010, unless there are additional withholding problems.

OCSE also proposes to instruct employers to reject income withholding orders issued after November 1, 2010 if payments under the order are not directed to the state disbursement unit (Appendix B). The proposed revisions to the federal form instruct employers and other payors of income to return the income withholding notice to the sender if payments are not directed through a state disbursement unit unless the initial child support order was entered before January 1, 1994 or the payments are made in a Tribal child support enforcement case. (See Appendix A)

The federal proposed approach for income withholding orders will have a potential negative impact in Florida IV-D and non-IV-D cases, as noted in the Department of Revenue's comments to the federal request for proposal. (See Appendix C) If OCSE implements its proposed approach for income withholding orders not issued on the federal form or not directed to the State Disbursement Unit, the failure of Florida courts to use the federal form or require child support payments through the SDU when income withholding is ordered could result in employers rejecting Florida income deduction orders.

Respectfully submitted this 22nd day of November, 2010.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing comments was furnished by regular U.S. Mail to Steven Patrick Combs, 3217 Atlantic Boulevard, Jacksonville, Florida 32207-8901, on this 22nd day of November, 2010.

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