

**TENNESSEE DEPARTMENT OF HUMAN SERVICES  
CHILD SUPPORT DIVISION**

**EMPLOYER'S GUIDE TO INCOME WITHHOLDING ORDERS (IWO)**

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This document contains the procedures that employers and payers of income must follow to implement an Income Withholding Order (IWO) for an employee/income recipient.

**LEGAL BASIS**

These procedures are contained in the State Rules of the Department of Human Services 1240-2-2-.05 and in the Tennessee Code Annotated (T.C.A.) 36-5-501.

The Rules of the Department Of Human Services can be accessed on the Internet at <http://share.tn.gov/sos/rules/1240/1240.htm>. The Tennessee Code Annotated can be found on the Internet at <http://www.lexisnexis.com/hottopics/tncode/>.

Pursuant to T.C.A. § 36-5-501(k)(1) an “employer, person, corporation or institution,” who or which may be required to withhold income, includes the federal government, the State and any political subdivision thereof and any other business entity that has in its control funds due to be paid to a person who is obligated to pay child support.

Pursuant to State Rules of the Department of Human Services 1240-02-02-.04 INCOME WITHHOLDING FOR SUPPORT. (1) Required Uses. (a) The form, number OMB-0970-0154, and instructions are available in Adobe PDF or Microsoft Word at: <http://www.acf.hhs.gov/programs/cse/forms/> “Income Withholding for Support”. This form is required by the United States Department of Health and Human Services (HHS) to be used for income withholding. It shall be used in intrastate and interstate cases.

**DEDUCTION / REMITTANCE INFORMATION**

Whenever you receive an Income Withholding Order (IWO) for an employee/income recipient whose principal place of employment is Tennessee, you must begin the withholding no later than the first pay period **occurring fourteen (14) working days** after the date of the IWO.

Payments may be deducted from the employee's/income recipient's wages, or other income, either weekly, biweekly, or monthly to coincide with his/her pay periods; or at other intervals when income is paid. Payments must be sent to the address shown on page 2 of the Order within **seven (7) working days** of the date the employee/income recipient is paid.

All payments you send by mail must be made payable to **TENNESSEE CHILD SUPPORT** and sent to the following address:

**Tennessee Child Support  
State Disbursement Unit (SDU)  
P.O. Box 305200  
Nashville, TN 37229**

State law (T.C.A. § 36-5-120) requires you to provide the following information along with each payment you mail to the **State Disbursement Unit (SDU)**:

- Docket number
- Court identifier
- Employee's/obligor's name
- Employee's/obligor's Social Security number
- Employee's/obligor's return address

Payments can also be submitted using the following electronic payment methods.

- EFT/ EDI (Electronic Funds Transfer/ Electronic Data Interchange)

With EFT/ EDI, secure electronic payments are sent from the employer/income payer to the State via the ACH (Automated Clearing House) banking network. This process uses a file from the employer/income payer that identifies the employees/income recipients and the support payments being made

EFT/EDI requires an employer/income payer to make programming changes in their system to allow them to send payment and identification information in the federally required NACHA (National Automated Clearing House Association) format. Because of the long-term financial savings, reliability, and accuracy, this method is particularly advantageous to large employers/income payers who submit support payments for numerous employees/income recipients.

- SmartPay (Web Payments )

SmartPay web payments use the ACH (Automated Clearing House) network of financial institutions to electronically transfer support payments from an employer/income payer to the State. It allows smaller employers/income payers to securely submit child support payments without having to make programming changes in their system. Employers/income payers who use a manual payroll method can also use SmartPay.

SmartPay is ideal for smaller employers who generally withhold support payments for approximately 50 or fewer employees/income payers. It can be used to schedule either recurring or non-recurring payments. Once recurring payments are set up, it is the employer's income payer's responsibility to cancel them, if necessary.

Visit the Tennessee Child Support Payment website at <https://tn.smartchildsupport.com/> for more information about setting up EFT/ EDI or SmartPay electronic payments.

If you are unable to deduct the full amount stated in the IWO due to the fifty percent (50%) limitation (see **Withholding Limit** below), the payment you remit should specify the following information for each obligor:

- The amount of the individual's net income (after taxes, FICA, and health insurance premiums to cover the child/ren have been deducted).
- Whether you have received prior Income Withholding Orders that prevent you from fully complying with this order.

## **ELECTRONIC INCOME WITHHOLDING (E-IWO)**

In partnership with Federal Office of Child Support Enforcement (OCSE), Tennessee participates in the e-IWO program. e-IWO is a paperless method for employers/income payers and states to exchange Income Withholding Orders (IWO), notifications of employee/income recipient termination, and lump sum payments made by employers/income payers. As of December 1, 2015, 48 states, including Puerto Rico and the District of Columbia, use e-IWO and the remaining 2 states are in the development stage.

For both employers/income payers and states, e-IWO saves time, money, and resources. It also increases the speed with which IWOs are issued and implemented and the accuracy and reliability of the information being exchanged. In addition, families receive needed support payments more quickly.

Two e-IWO methods are available to employers, a System-to-System method and No Programming Options (NPO). For more information, see the e-IWO information Guide in the Employer Services section of the Tennessee Child Support Services webpage: [http://www.tn.gov/humanserv/cs/cs\\_main.html](http://www.tn.gov/humanserv/cs/cs_main.html). Information is also available at the OCSE website <http://www.acf.hhs.gov/programs/css>. Click on the EMPLOYERS link near the top of the page.

## **WITHHOLDING LIMIT**

For the purpose of income withholding, an employee's/income recipient's net income is defined as the amount remaining after deductions for FICA, withholding taxes, and health insurance premiums that cover the child/ren have been made. The amount withheld for support may not exceed fifty percent (50%) of the employee's/income recipient's net wages or other income. (T.C.A. § 36-5-501(a)(1)) It is the employer's responsibility to determine when the 50% level is met.

## **EFFECTIVE PERIOD OF THE ORDER**

An Income Withholding Order (IWO) is binding upon an employer/payer of income fourteen (14) days after it is transmitted to them and remains in effect until further notice by the office that issued it. In Tennessee, only the IV-D child support agency, contractors of the child support agency, and court clerks have the authority to issue an IWO.

## **EMPLOYER LIABILITY AND PENALTIES**

Per T.C.A. §36-5-501(p), if you fail or refuse to withhold income in accordance with the provisions of the Income Withholding Order (IWO) you are liable for any amount up to the accumulated amount that should have been withheld from the income of the employee/income recipient. Your compliance with this Order shall discharge your liability to the affected employee/income recipient as to that portion of the employee's/income recipient's income affected by the Order.

You will also be subject to a fine for a Class C misdemeanor if you fail to withhold from the employee's/income recipient's income, or if you fail to pay such amounts to the clerk of court or to the Department of Human Services as directed.

Per T.C.A. § 36-5-501(i) It is unlawful for an employer to use the IWO as a basis for discharge or for any disciplinary action against the employee. An employer/payer of income shall be subject to a fine for a Class C misdemeanor if the income withholding is used as a basis to refuse to employ a person, or to discharge the employee/income recipient, or for any disciplinary action against the employee/income recipient.

### **PRIORITY OF THE INCOME WITHHOLDING ORDERS (IWO)**

Withholding support in accordance with the Income Withholding Order (IWO) shall have priority over any other legal process under state law against the same wages or other income for debts other than child support.

### **EMPLOYER'S FEE**

You may, at your discretion, charge the employee or other recipient of income an amount of up to five percent (5%), not to exceed five dollars (\$5) per month, for your costs in complying with this order.

### **COMBINING PAYMENTS**

If you are required to withhold support for more than one person, you may combine withheld amounts in a single payment to each appropriate court or other entity ordering the assignments. However, you must provide a list that specifies which portion of the single payment is attributable to each individual.

### **REQUIREMENT TO REPORT TERMINATION OF EMPLOYMENT**

Per T.C.A. §36-5-501(g)(2), you are required to notify the office that issued the Income Withholding Order (IWO) when the employee terminates employment, or if income payments are terminated. You are also required to provide to that office the last known address of the employee/income recipient and the name and address of his/her new employer, or new source of income, if that is known.

### **DISTRIBUTING PAYMENTS WHEN MORE THAN ONE ORDER FOR IWO IS RECEIVED**

You must honor all withholdings to the extent that the total amount withheld from wages does not exceed fifty percent (50%) of the employee's wages or a recipient's income after FICA, withholding taxes, and a health insurance premium which covers the child/ren are deducted.

If you receive more than one Income Withholding Order (IWO) for one individual and the amount you can withhold his/her income is not enough to pay the amount due on all of the IWOs, you must prorate the amount withheld to determine how much to allocate to each order. Detailed instructions for prorating and allocating the withheld income can be found in the following sections.

### **PRORATING MULTIPLE IWOS FOR ONE EMPLOYEE/INCOME RECIPIENT**

According to federal law, the amount of income withheld for an Income Withholding Order (IWO) must first be used to pay the employee's/income recipient's current support obligations (the

required support obligation for the month in which the support is being collected). If any of the withheld amount is left after all current support is paid, you must use the remaining amount to pay arrears obligations (the required support obligation for previous months).

If you receive two or more Income Withholding Orders (IWO) for one individual and the amount you can withhold his/her income is not enough to pay the support due on all of the IWOs, you must prorate the withheld amount to determine how much to allocate to each order. The procedures for doing so are as follows.

**Calculate the amount of current support to allocate before allocating any amount to any arrearages.** An example of the calculation follows this section.

1. Determine the total amount of all current child support that is ordered to be withheld by all IWOs received for the employee/income recipient.
2. Calculate the percentage that each order for current child support represents of the total amount that is ordered.
3. Using these percentages, calculate how much of the employee's/income recipient's available net income (after FICA, withholding taxes, and a health insurance premium which covers the child/ren are deducted) should be deducted and applied to each of the orders for current child support.
4. If all current child support obligations are met from the IWOs, and child support arrearages exist in more than one case, but there is not sufficient income to pay the full amount of all ordered child support arrearages, you shall allocate the child support arrearages following the steps in # 1 – 3, above.

Whenever you prorate an employee's/income recipient's income to comply with more than one Income Withholding Order (IWO), you must provide the following information for each case involved with each payment:

- Docket number
- County name and state
- The full ordered amount for the case
- The date the amount is deducted from the employee's/income recipient's income.
- The percentage that each current support order represents of the total ordered amounts from all IWOs for this employee/income recipient

#### **EXAMPLE OF A PRORATION FOR MULTIPLE IWOS**

Assume an employee's/income recipient's net income (after taxes, FICA, and a health insurance premium to cover the child/ren is deducted) is \$900. Because of the 50% limit, the available income for use in the income withholding is \$450 ( $\$900 \times 50\%$ ).

The employee/income recipient is ordered to pay the following amounts:

\$250.00 per month for support order A  
\$200.00 per month for support order B  
\$150.00 per month for support order C

\$600.00 = the total amount of all income assignments.

This total exceeds the \$450.00 income available for income withholding. Therefore, you must pay the amount of the available income that each income withholding represents as a percentage of the total of all IWOs as follows:

Order A =  $\$250/\$600$ , or 42%, x \$450 = \$189.00

Order B =  $\$200/\$600$ , or 33%, x \$450 = \$148.50

Order C =  $\$150/\$600$ , or 25%, x \$450 = \$112.50

If the employee/income recipient has sufficient available income to satisfy all current child support orders, but not all ordered child support arrearages, you would apply the same proration procedure as shown above to the child support arrearage payment.