

137-055-4160

Contested Income Withholding

- (1) The only basis for contesting an order to withhold is a mistake of fact. A mistake of fact means either:
 - (a) An error in the amount due for current support or for arrears;
 - (b) An error in the identity of the obligor; or
 - (c) The order was entered prior to October 1, 1989, and does not include the immediate income withholding language.
- (2) Payment of all arrears will not, by itself, be a basis for not implementing withholding.
- (3) If the obligor is contesting the withholding on the basis of an error in the amount due for current support or arrears pursuant to subsection (1)(a) of this rule, the obligor's contest must be in writing. The process for contesting a withholding will be as described in ORS 25.405.
- (4) The administrator will notify all parties of the administrator's determination and of the right to appeal the determination.
- (5) If an obligor contests an order to withhold issued by the administrator the Division of Child Support (DCS) will hold any funds collected pursuant to the withholding order, and will not distribute such funds to the obligee, or other payee, subject to the following:
 - (a) If the obligor contests the withholding on the basis of an error in the identity of the obligor, DCS will hold all payments collected pursuant to the withholding order until the administrator has made its determination;
 - (b) If the obligor contests the withholding on the basis of an error in the amount due for current and/or past-due support, DCS will hold all payments collected for past-due support pursuant to the withholding order, except for those amounts the obligor does not contest are owed, until the administrator has made its determination;
 - (c) Once the administrator has made its determination, and regardless of whether or not the determination is appealed to the court, DCS will:
 - (A) Refund to the obligor, all amounts so held that are determined to have been collected in error;
 - (B) Disburse, to the obligee or as otherwise appropriate, all amounts so held that are determined to have been collected correctly.
- (6) Neither the initiation of proceedings to contest an order to withhold pursuant to this

rule, nor a motion or request to contest an order to withhold, nor an appeal of the decision of the administrator with regard to the obligor's contesting of the order to withhold, will stay, postpone, or defer ongoing withholding unless otherwise ordered by a court.

Stat. Auth.: ORS 25.427; 180.345

Stats. Implemented: ORS 25.405

Effective: January 3, 2006