

KANSAS DEPARTMENT OF CORRECTIONS

	INTERNAL MANAGEMENT POLICY AND PROCEDURE	SECTION NUMBER 04-111A	PAGE NUMBER 1 of 4
		SUBJECT: FISCAL: Processing of Offender Income Withholding Orders	
Approved By:  Secretary of Corrections		Original Date Issued: 12-30-14	Replaces Version Issued: N/A
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APPLICABILITY:	<input checked="" type="checkbox"/> ADULT Operations Only	<input type="checkbox"/> JUVENILE Operations Only	<input type="checkbox"/> DEPARTMENT-WIDE
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POLICY STATEMENT

An Income Withholding Order issued by any court of competent jurisdiction which seeks to withhold income to satisfy an order for support, or to defray an arrearage in support, shall be processed by facility business office personnel in accordance with this policy and applicable law, and shall be answered within seven (7) business days from the date the Income Withholding Order is received.

DEFINITIONS

Arrearage: The total amount of unpaid support which is due and unpaid under an order for support.

Business Day: A day on which Kansas state governmental offices are open for regular business.

Income: Any form of periodic payment to an individual, regardless of source including, but not limited to, wages, salary, trust, royalty, commission, bonus, compensation as an independent contractor, annuity and retirement benefits, workers compensation and any other periodic payments made by any person, private entity or federal, state or local government or any agency or instrumentality thereof. "Income" does not include: (1) Any amounts required by law to be withheld, other than creditor claims, including but not limited to federal and state taxes, social security tax and other retirement and disability contributions; (2) any amounts exempted by federal law; (3) public assistance payments; and (4) unemployment insurance benefits except to the extent otherwise provided by law. Any other state or local laws which limit or exempt income or the amount or percentage of income that can be withheld shall not apply. Workers' compensation shall be considered income only for the purposes of child support and not for the purposes of maintenance.

Income Withholding Act: The Kansas statutory scheme set forth at K.S.A. 23-4,105 through 23-4,123.

Income Withholding Order: An order or notice, regardless of how denominated, issued under the Income Withholding Act which requires a payor to withhold income to satisfy an order for support or to defray an arrearage.

Interstate Income Withholding Act: The Kansas statutory scheme set forth at K.S.A. 23-4,125 through 23-4,137.

Obligee: Any person or entity to whom a duty of support is owed.

Obligor: Any person who owes a duty to make payments under an order for support.

Order for Support: Any order of a court, or of an administrative agency authorized by law to issue such an order, which provides for payment of funds for the support of a child, or for maintenance of a spouse, or ex-spouse and includes an order which provides for modification or resumption of a previously existing order.

Payor: Any person or entity owing income to an obligor or any self-employed obligor.

PROCEDURES

I. Service of Income Withholding Orders on KDOC Correctional Facilities

- A. All service of Income Withholding Orders on KDOC correctional facilities, whether personally served or served by certified or first class mail, shall be directed to the business manager of the banking section who shall receive service of the Income Withholding Order.
- B. Upon receipt of service of the Income Withholding Order, the business manager or designee shall indicate the service of the Income Withholding Order in a log book.
 - 1. The information logged concerning the Income Withholding Order shall include, at a minimum:
 - a. The name and number of the offender who is the subject of the Income Withholding Order;
 - b. The date and time the Income Withholding Order was served;
 - c. The date an answer to the Income Withholding Order is due;
 - d. The date and time the answer to the Income Withholding Order is made;
 - e. The date the answer to the Income Withholding Order is mailed; and,
 - f. The amount the Income Withholding Order seeks to obtain.
- C. Under Kansas law, an Income Withholding Order, once served, is binding on the Payor and requires continued withholding of income from each periodic payment of income until further order of the court or agency that issued the Income Withholding Order.
- D. Under Kansas law, an Income Withholding Order shall have priority over any other legal process under state law against the same income, and withholding of income under an Income Withholding Order shall be made without regard to any prior or subsequent garnishments, attachments, wage assignments or other claims of creditors.

II. Processing of Income Withholding Order from a Kansas Court by KDOC Correctional Facilities

- A. With regard to Income Withholding Orders issued by a Kansas court, if it is determined after the Income Withholding Order is logged that the offender obligor that is the subject of the Income Withholding Order is not incarcerated in a correctional facility serviced by the receiving banking section, the business manager or designee shall execute an answer to the Income Withholding Order using the "Answer of Payor for Non-Resident Offender Obligor" Form (Attachment A).
- B. With regard to Income Withholding Orders issued by a Kansas court, if it is determined after the Income Withholding Order is logged that the offender obligor that is the subject of the Income Withholding Order is incarcerated in a correctional facility serviced by the receiving banking section, a further determination shall be made by the business manager or designee as to whether the offender obligor receives "income" as defined above. For purposes of Income Withholding Orders, the "reward" pay set forth in K.S.A. 75-5211(a), also known as stipend or "incentive pay", shall be considered "income." If it is determined that the offender obligor **does not** receive "income", the business manager or designee shall execute an answer to the Income Withholding Order using "Answer of Payor for Resident Offender Obligor that Does not Receive Income" Form (Attachment B).
- C. With regard to Income Withholding Orders issued by a Kansas court, if it is determined after the Income Withholding Order is logged that the offender obligor who is the subject of the Income Withholding Order is incarcerated in a correctional facility serviced by the receiving banking section, a further determination shall be made by the business manager or designee as to whether

the offender obligor receives "income" as defined above. For purposes of Income Withholding Orders, the "reward" pay set forth in K.S.A. 75-5211(a), also known as stipend or "incentive pay", shall be considered "income." If it is determined that the offender obligor **does** receive "income", the business manager or designee shall execute an answer to the Income Withholding Order using "Answer of Payor for Resident Offender Obligor that Does Receive Income" Form (Attachment C) or other similar form provided by the court.

III. Processing of Income Withholding Order from a Court Outside of Kansas by KDOC Correctional Facilities

- A. With regard to Income Withholding Orders issued by a court outside of Kansas, the procedures set forth at Section II. above shall be generally adhered to as to substance, except that the answer to the Income Withholding Order shall be on any form(s) provided by the issuing court outside of Kansas; or, in the event no such form(s) is provided, by utilizing the appropriate Attachment A, B or C hereto, substituting the name of the relevant court outside of Kansas at the appropriate location, or similar forms provided by the issuing court.

IV. Service of Income Withholding Orders on KDOC Central Office

- A. In the event an Income Withholding Order is served on KDOC at its Central Office, the Fiscal Division in Central Office shall determine whether the obligor identified in the Income Withholding Order is in KDOC custody. If not, the Fiscal Division shall answer the Income Withholding Order in a format similar to Attachment A hereto, advising that the obligor is not in KDOC custody. If so, the Fiscal Division shall promptly forward the Income Withholding Order to the KDOC banking section and that banking section will then process the Income Withholding Order pursuant to this policy.

V. Notification of Offender Obligor of Income Withholding Order

- A. In the event a trust fund account of an offender obligor is encumbered as being subject to an Income Withholding Order, the offender obligor shall be notified of the answer filed to the Income Withholding Order.
- B. A copy of the answer to the Income Withholding Order shall be retained in the offender obligor's central file and a copy shall be delivered to the offender obligor through the Unit Team.

VI. Transfer or Release of an Offender Obligor Under Income Withholding Order

- A. In the event that an offender obligor is transferred, and his/her inmate trust fund account shall be serviced by another banking section while all or a portion of his/her inmate trust account is encumbered due to an Income Withholding Order, the business manager or designee of the receiving banking section shall be notified.
1. Upon forwarding the trust account funds of such offenders obligors, the business manager or designee of the sending banking section shall ensure that copies of both the Income Withholding Order(s) and the sending banking section's answer(s) thereto are included with any funds so transferred.
 - a. The business manager or designee of the sending facility shall contact the receiving banking section to verify the documents were received.
 2. The business manager or designee of the sending banking section shall also notify the court or agency that issued the Income Withholding Order of the offender obligor's transfer and the new location of the encumbered funds.
- B. In the event that an offender obligor is released while all or a portion of his/her inmate trust fund account is encumbered due to an Income Withholding Order, the amount of the offender obligor's account subject to the Income Withholding Order shall be retained by the banking section in an encumbered account.

1. At the time of release, the offender obligor shall be given all unencumbered funds from his/her inmate trust fund account.
2. The amount subject to the Income Withholding Order shall be retained by the banking section as an encumbered balance within the facility's inmate trust fund.
 - a. The business manager or designee shall notify the court or agency that issued the Income Withholding Order that the offender obligor has been released from custody, and request a speedy disposition as to the final disbursement of the encumbered funds.

VII. Payment of the Income Withholding Order

- A. The business manager or designee shall expend from the offender obligor's account the amount required by the Income Withholding Order to pay and mail the same to the entity identified in the Income Withholding Order to receive such funds.
- B. A copy of the Income Withholding Order shall be retained in the offender obligor's master file and a copy sent to the offender obligor through the unit team.

NOTE: The policy and procedures set forth herein are intended to establish directives and guidelines for staff and offenders and those entities that are contractually bound to adhere to them. They are not intended to establish State created liberty interests for employees or offenders, or an independent duty owed by the Department of Corrections to employees, offenders, or third parties. Similarly, those references to the standards of various accrediting entities as may be contained within this document are included solely to manifest the commonality of purpose and direction as shared by the content of the document and the content of the referenced standards. Any such references within this document neither imply accredited status by a Departmental facility or organizational unit, nor indicate compliance with the standards so cited. The policy and procedures contained within this document are intended to be compliant with all applicable statutes and/or regulatory requirements of the Federal Government and the state of Kansas. This policy and procedure is not intended to establish or create new constitutional rights or to enlarge or expand upon existing constitutional rights or duties.

REPORTS REQUIRED

None.

REFERENCES

K.S.A. 23-4,105 through 23-4,137; K.S.A. 75-5211(a).

ATTACHMENTS

Attachment	Title of Attachment	Page Total
A	Answer of Payor for Non-Resident Offender Obligor	2 pages
B	Answer of Payor for Resident Offender Obligor that does not Receive Income	2 pages
C	Answer of Payor for Resident Offender Obligor that does Receive Income	2 pages

ANSWER OF PAYOR FOR NON-RESIDENT OFFENDER OBLIGOR

In the District Court of _____ County, Kansas

_____)	
Plaintiff)	
vs.)	
_____)	Case No.: _____
Defendant)	
_____)	
Payor)	

ANSWER OF PAYOR

State of Kansas)
) SS
 County of _____)

I, _____, being first duly sworn, say that on the ____ day of _____, 200____, I was served with an Income Withholding Order pertaining to the above-named defendant as obligor.

I further state that the defendant, offender _____, #_____, was on the date first above mentioned no longer an offender of this facility and, consequently, neither this facility nor any employee thereof now holds money or other personal property of any description or kind owing to, or belonging to, the defendant.

I further state that the defendant, offender _____, #_____, to the best of my knowledge, is living at the following location: _____.

Name: _____
 Title: _____
 Facility: _____
 City, State: _____

Subscribed and sworn to before me this _____ day of _____, _____.

Notary Public

My Commission Expires:

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing Answer of Payor for Non-Resident Offender Obligor was placed in the U.S. Mail, postage prepaid, to: Clerk of the District Court, _____ County, _____, KS _____ on this _____ day of _____, _____.

Name:

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing "Answer of Payor for Resident Offender Obligor that does not Receive Income" was placed in the U.S. Mail, postage prepaid, to: Clerk of the District Court, _____ County, _____, KS _____ on this ____ day of _____, _____.

Name:

**ANSWER OF PAYOR FOR RESIDENT OFFENDER OBLIGOR THAT
DOES RECEIVE INCOME**

In the District Court of _____ County, Kansas

_____)	
Plaintiff)	
vs.)	
_____)	Case No.: _____
Defendant)	
_____)	
Payor)	

ANSWER OF PAYOR

State of Kansas)
County of _____) SS

I, _____, being first duly sworn, say that on the ____ day of _____, _____, I was served with an Income Withholding Order pertaining to the above-named defendant as obligor.

I further state that the defendant, offender _____, #_____, was on the date first above mentioned an offender of this facility; further, said offender currently receives "income" as defined at K.S.A. 23-4,106. Accordingly, your Payor is withholding the following amount pursuant to the previously mentioned Income Withholding Order: \$_____; and Payor is now forwarding those funds to the clerk of the ordering court pursuant to the Income Withholding Order.

Name: _____
Title: _____
Facility: _____
City, State: _____

Subscribed and sworn to before me this ____ day of _____, 200____.

Notary Public

My Commission Expires:

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing "Answer of Payor for Resident Offender Obligor that does Receive Income" was placed in the U.S. Mail, postage prepaid, to: Clerk of the District Court, _____ County, _____, KS _____ on this _____ day of _____, _____.

Name: