

**OPINION NO. 95-007****Syllabus:**

The provisions of R.C. 3113.21(D)(1)(b)(x) require an employer who is subject to a withholding order to notify a child support enforcement agency of a pending lump-sum payment of any kind to be paid to a child support obligor whenever the amount of such lump-sum payment, as calculated prior to any employer withholding or deductions, equals or exceeds five hundred dollars.

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**To: Arnold R. Tompkins, Director, Department of Human Services, Columbus, Ohio**  
**By: Betty D. Montgomery, Attorney General, March 28, 1995**

You have requested an opinion regarding R.C. 3113.21(D)(1)(b)(x), which governs the responsibility of an employer to notify a child support enforcement agency (CSEA) of certain lump-sum payments made to an employee whose wages are being withheld for child support. Specifically you ask:

Do the lump-sum payments referred to in [R.C. 3113.21(D)(1)(b)(x)] qualify as payments that must be sent to a CSEA prior to the employer taking deductions, or, if the deductions cause the lump-sum payment to fall below the five hundred dollar amount, is the employer then relieved of the responsibility under the above referenced subsection?

#### **Statutory Scheme for the Withholding of Child Support Obligations**

R.C. 3113.21 governs the withholding of wages or other assets for purposes of child support. All court orders for child support must contain a general provision providing for withholding of child support payments from wages or other assets of the obligor. R.C. 3113.21(A). The requirements for various types of withholding or deduction orders are set out in R.C. 3113.21(D). *See also* R.C. 3113.21(H).

R.C. 3113.21(D)(1) governs withholding orders that are issued to an obligor's employer. The obligations imposed on an employer by a withholding order issued under R.C. 3113.21(D)(1) include

[a] requirement that, no later than the earlier of forty-five days before the lump-sum payment<sup>1</sup> is to be made or, if the obligor's right to the lump-sum payment is determined less than forty-five days before it is to be made, the date on which that determination is made, the employer notify the child support enforcement agency of any lump-sum payments of any kind of five hundred dollars or more that are to be paid to the obligor ... and, upon order of the court,

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<sup>1</sup> The term lump-sum payment is not defined in the Revised Code. 12 Ohio Admin. Code 5101:1-32-12(A) states:

Lump sum payments are benefits other than personal earnings that the obligor is receiving, or is eligible to receive, as a benefit to employment or as a result of termination of employment. Such benefits include, but are not limited to, unemployment compensation, workers' compensation benefits, severance pay, sick pay, sick leave, lump sum payments of retirement benefits or contributions, and bonuses or profit sharing payments or distributions. Vacation pay is not considered a lump sum payment....

*See also Black's Law Dictionary* 949 (6th ed. 1990) (a "lump-sum payment" is "[a] single payment in contrast to installments"); *Webster's New World Dictionary* 842 (2nd college ed. 1984) ("lump sum ... a gross, or total, sum paid at one time").

pay any specified amount of the lump-sum payment to the child support enforcement agency.

R.C. 3113.21(D)(1)(b)(x) (footnote added). Requirements to report "any lump-sum payment of any kind of five hundred dollars or more that is to be paid to the obligor" are also included in court orders for withholding child support payments from workers' compensation payments, R.C. 3113.21(D)(2)(b)(ix), from pension and annuity benefits, R.C. 3113.21(D)(3)(b)(viii), and from other sources of income, R.C. 3113.21(D)(4)(b)(viii). *See also* R.C. 3113.21(H)(3)(c)(i) (adding a requirement for reporting of lump-sum payments to orders for withholding issued prior to December 1, 1986).

When a CSEA receives notice of a lump-sum payment of five hundred dollars or more under one of the above provisions of R.C. 3113.21, it must notify the court of the receipt of the notice and its contents. R.C. 3113.21(G)(6)(b). Upon receipt of notice from the CSEA, the court is required to do one of two things: (1) order the lump-sum payment be transmitted to the CSEA if the obligor is in default or has any unpaid arrearages under the child support order, or (2) order the lump-sum payment paid to the obligor if the obligor is not in default or does not have any unpaid arrearages. R.C. 3113.21(H)(3)(a). The CSEA must use the amount of any lump-sum payment received under R.C. 3113.21(H)(3)(a) to discharge all of the obligor's arrearages and return any amount remaining to the obligor within two days. R.C. 3113.21(H)(3)(b).

**Issue: Should Employer's Duty to Provide Notice Be Based on Gross or Net Amount of Lump-Sum Payment?**

Pursuant to the above statutory scheme, an employer or other entity that is subject to a withholding order has a duty to provide advance notice to a CSEA of "any lump-sum payments of any kind of five hundred dollars or more that are to be paid to the obligor." This notice initiates a process that results in a court order specifying how much, if any, of the lump-sum payment is to be paid to the CSEA for child support. R.C. 3113.21(D)(1)(b)(x); R.C. 3113.21(D)(2)(b)(ix); R.C. 3113.21(D)(3)(b)(viii); R.C. 3113.21(D)(4)(b)(viii); R.C. 3113.21(H)(3)(c). The amount of five hundred dollars thus does not refer to an amount that must be paid to the CSEA but rather to the threshold amount that triggers a duty on the part of an employer to provide notice of a pending lump-sum payment. Your question essentially is whether the five hundred dollar figure that triggers the employer's notification requirement refers to the gross amount of a lump-sum payment or to the net amount of the payment remaining after any employer withholding or deductions. In addressing this question, it should be noted that "the state has a strong interest in ensuring the enforcement of child support obligations." *Cramer v. Petrie*, 70 Ohio St. 3d 131, 135, 637 N.E.2d 882, 885 (1994). Accordingly, the statute should be interpreted in a manner that maximizes the attachment of available assets of child support obligors.

**Duty of Court to Determine Amount of Lump-Sum Payment Available for Child Support**

An obligation to transmit all or part of the lump-sum payment to a CSEA arises only upon issuance of a court order specifying the amount of the lump-sum payment that should be transmitted. R.C. 3113.21(D)(1)(b)(x); R.C. 3113.21(D)(2)(b)(ix); R.C. 3113.21(D)(3)(b)(viii); R.C. 3113.21(D)(4)(b)(viii); R.C. 3113.21(H)(3)(c). The purpose of the advance notice

requirement, when read in this context, is to afford the court the opportunity to determine whether the child support obligor is in default or has any unpaid arrearages, and if so, what portion of any lump-sum payment of any kind of five hundred dollars or more is available for satisfaction of the amount of the default or arrearages, and to issue an order accordingly. If an employer is allowed to "net out" deductions or withholdings in determining whether the five hundred dollar reporting threshold has been met, however, the court is deprived of the opportunity to determine whether such withholdings or deductions have legal priority over the obligor's child support obligations. This is particularly true in situations where the deductions would cause the net amount of the lump-sum payment to fall below five hundred dollars, thus resulting in no notice to the CSEA at all. Such an interpretation might encourage an employee to circumvent the child support system by minimizing his net income from a lump-sum payment through a variety of withholding and deduction options. *See generally Colwell v. Jones*, No. CA 14528, slip op. at 5, 1990 Ohio App. LEXIS 3189, at \*6 (Summit County Aug. 1, 1990) (disapproving an interpretation of another part of the statute that would produce such a result), *juris. motion overruled sub nom. State v. Jones*, 62 Ohio St. 3d 1422, 577 N.E.2d 1105 (1991). Individual employers would then be faced with the duty of determining which withholdings or deductions have priority over child support obligations. Not only would this result in inconsistent application of the statute throughout the state, it would impose a large and impractical burden on employers that clearly was not intended by the General Assembly. The language of the statute indicates that it is the duty of the court, not the employer, to determine how much of the lump-sum payment is to be paid for child support.<sup>2</sup> This determination logically must include a determination of whether amounts to be withheld for other purposes have priority over child support obligations. Accordingly, the reporting threshold of five hundred dollars refers to the gross amount of the lump-sum payment.

#### **Meaning of Phrase "To Be Paid to the Obligor"**

To the extent that there may be any ambiguity in the statute in this regard, it arises from the phrase "to be paid to the obligor." There is nothing in the statute, however, that reasonably suggests that this language should be interpreted as excluding amounts that are withheld or deducted by an employer from a lump-sum payment. Withholding and payroll deductions are mechanisms by which an employer remits part of an employee's gross earnings or other compensation to a third party, often a creditor of the employee or a taxing authority. *See, e.g., Black's Law Dictionary* 1602 (6th ed. 1990) (defining withholding as "[d]eductions from salaries

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<sup>2</sup> A number of cases have addressed how much actual discretion a court has under R.C. 3113.21(H)(3)(b)(i) in determining what part of a lump-sum payment should be transmitted to a CSEA. Issues include whether lump-sum payments are subject to the limitations on withholding imposed by the Consumer Protection Act, 15 U.S.C. § 1673(b) (1988), *see e.g., Calhoun v. Tucker*, No. CA-8698, 1992 Ohio App. LEXIS 2588 (Stark County May 18, 1992); *Colwell v. Jones*, No. CA 14528, 1990 Ohio App. LEXIS 3189 (Summit County Aug. 1, 1990), *juris. motion overruled sub nom. State v. Jones*, 62 Ohio St. 3d 1422, 577 N.E.2d 1105 (1991), and whether a lien for attorney fees has priority over the CSEA's lien for child support, *see, e.g., Rowan v. Rowan*, No. 93-L-044, 1993 Ohio App. LEXIS 6072 (Lake County Dec. 17, 1993), *juris. motion granted*, 69 Ohio St. 3d 1489, 635 N.E.2d 43 (July 13, 1994) (No. 94-328); *Minor Child of Zentack v. Strong*, 83 Ohio App. 3d 332, 614 N.E.2d 1106 (Cuyahoga County 1992). None of these cases, however, address the issue of whether a gross or net lump-sum payment of five hundred dollars triggers the reporting requirement under R.C. 3113.21(D)(1)(b)(x) or similar subdivisions of the statute.

or wages, usually for income taxes and social security contributions, to be remitted by the employer, in the employee's name, to the taxing authority"). Although the employee is never in physical possession of amounts withheld or deducted by the employer, it is nonetheless the employee's money that is being withheld or deducted. The money is "paid to" the employee, but directed to another source on the employee's behalf. Amounts that are to be withheld or deducted are as much a part of "any lump-sum payments ... that are to be paid to the obligor" as are the net amounts actually received by the employee.

Accordingly, the language of the statute does not permit the exclusion of any amounts that might be deducted or withheld from the lump-sum payment when determining whether the reporting threshold has been met. Rather, the threshold amount of five hundred dollars that triggers the employer's duty to provide notice to the CSEA refers to the gross amount of the lump-sum payment, and not to the net amount remaining after the employer has withheld or deducted certain amounts from an employee's gross compensation.

### **Conclusion**

It is, therefore, my opinion, and you are advised that the provisions of R.C. 3113.21(D)(1)(b)(x) require an employer who is subject to a withholding order to notify a child support enforcement agency of a pending lump-sum payment of any kind to be paid to a child support obligor whenever the amount of such lump-sum payment, as calculated prior to any employer withholding or deductions, equals or exceeds five hundred dollars.