

HB13-1209

2014 Colorado Family Support Council

Robert Kurtz, Policy Specialist

303-866-4459

Robert.Kurtz@state.co.us

Bill Summary

- **Amended the Guidelines Statute**
 - What is/is not gross income, the Schedule, the Minimum Order, the Low-Income Adjustment, Credit for lump-sum past-due social security benefits
- **Amended the Modification Statute**
 - New grounds for the retroactive modification, termination and establishment of an order based on a change in physical care arrangement of a child
- **Amended the Child Support Enforcement Statute**
 - A new employer reporting obligation regarding New Hires

What is / is not Gross Income

§14-10-115 (5) (D) & (O), C.R.S.

- (D) Payments received as an independent contractor for labor or services, WHICH PAYMENTS MUST BE CONSIDERED INCOME FROM SELF-EMPLOYMENT;
- (O) Any moneys drawn by a self-employed individual for personal use THAT ARE DEDUCTED AS A BUSINESS EXPENSE, WHICH MONEYS MUST BE CONSIDERED INCOME FROM SELF-EMPLOYMENT;

Note: Not really new law, just a codification/clarification of existing law

What Does this Mean?

- Any money that a self-employed parent receives for his/her business is called “gross receipts”
- For self-employed, “Ordinary & Necessary Expenses” are then deducted from gross receipts
- Payments from those gross receipts to the parent are called personal draws; these draws are gross income to the parent
- Obtain documentation of all “Ordinary & Necessary Expenses” and draws that have been deducted from gross receipts
- Add the total amount of any personal draws back to gross receipts

What is / is not Gross Income

§14-10-115 (5) (W), C.R.S.

- (W) INCOME FROM GENERAL PARTNERSHIPS, LIMITED PARTNERSHIPS, CLOSELY HELD CORPORATIONS, OR LIMITED LIABILITY COMPANIES. HOWEVER, IF A PARENT IS A PASSIVE INVESTOR, HAS A MINORITY INTEREST IN THE COMPANY, AND DOES NOT HAVE ANY MANAGERIAL DUTIES OR INPUT, THEN THE INCOME TO BE RECOGNIZED MAY BE LIMITED TO ACTUAL CASH DISTRIBUTIONS RECEIVED.

What Does That Mean?

The Test:

- Is the parent a passive investor/owner of the business (what is a passive investor/owner)?
 - Is that ownership interest a “small interest” compared to other owners?
 - Does the parent have any duties running the day-to-day operations of the business?
 - Does the parent have any control (voting power or say so) on how the business is run?

If the answers are “yes”, “no” and “no” , the parent is a passive investor and you have the option to exclude such income until it is actually paid to that parent

What is / is not Gross Income

§14-10-115 (5) (E), C.R.S.

- (E) EARNINGS OR GAINS ON A RETIREMENT ACCOUNT, INCLUDING AN IRA, WHICH EARNINGS OR GAINS MUST NOT BE INCLUDED AS INCOME UNLESS OR UNTIL A PARENT TAKES A DISTRIBUTION FROM THE ACCOUNT. IF A DISTRIBUTION FROM A RETIREMENT ACCOUNT MAY BE TAKEN WITHOUT BEING SUBJECT TO AN IRS PENALTY FOR EARLY DISTRIBUTION AND THE PARENT DECIDES NOT TO TAKE THE DISTRIBUTION, THE COURT MAY CONSIDER THE DISTRIBUTION THAT COULD HAVE BEEN TAKEN IN DETERMINING THE PARENT'S GROSS INCOME IF THE PARENT IS NOT OTHERWISE EMPLOYED FULL-TIME AND THE RETIREMENT ACCOUNT WAS NOT RECEIVED PURSUANT TO THE DIVISION OF MARITAL PROPERTY

What Does this Mean?

- The Test
 - Has the parent's retirement account (IRA) increased in value (gain) and/or earned interest within the last year (establishment) or, since the last time the order was modified? If yes, cont., if no, stop (no gross income)
 - Has the parent taken a distribution (actually received) that increase or earnings? If yes, gross income. If no , cont.
 - Can that gain/interest be distributed without incurring an IRS penalty? If no, not gross income, if yes

Updated and Expanded “Schedule” of Basic Child Support Obligations

- §14-10-115 (7) (b), C.R.S.
- “The Schedule”; A chart of combined adjusted gross incomes (both parents) and dollar amounts of starting child support (MSO) ranging from \$1,100 per month up to \$30,000 per month.

What Does this Mean?

- All starting monthly combined support obligation amounts (what both parents owe) based solely on the combined adjusted gross income have increased about 10%
- Combined adjusted gross incomes between \$20,000 and \$30,000 per month now have a “scheduled” amount
- Cases with such incomes can now be handled using administrative process

New Minimum Order Threshold and Formula

- The new threshold amount is when the obligor's monthly gross income is below \$1,1000
- The new order amounts are:
 - \$50/month for one child
 - \$70/month for two children
 - \$90/month for three children
 - \$110/month for four children
 - \$130/month for five children
 - \$150/month for six or more children

What Does this Mean?

- More low-income obligors will qualify for a minimum order
- Obligor that qualify for a minimum order will pay an additional \$20 per month for each additional child

New Low-Income Adjustment Thresholds and Formula

- Obligor's with adjusted gross income of \$1,100 per month up to \$1,900 per month will qualify for application of the low-income adjustment formula
- As with prior law, the obligor will pay the lesser of the low-income adjustment formula or the Schedule formula
- The new formula is:
Obligor's monthly gross income minus \$1,100 plus \$50 for one child and an additional \$20 for each additional child up to six or more children

What Does this Mean?

- More obligors will qualify for application of the low-income adjustment formula
- Some obligors will still benefit from support calculated pursuant to the Schedule instead of the low-income adjustment formula
- The new threshold and formula lessens the “cliff effect” for some obligors

The Lump-Sum Past-Due SSDI Credit at Order Establishment

- (11) Extraordinary adjustments to the schedule of basic child support obligations - periodic disability benefits. ... **See handout for the complete amendment language**

What Does this Mean?

- An obligor **must** obtain a credit against accrued unassigned arrears and/or a judgment for retroactive support for a lump- sum past-due payment of certain social security (SSA) benefits on behalf of the child
- Such benefits **shall** only be credited if:
 - The SSA benefit and the arrears/retroactive support are for the same month, and
 - The monthly credit amount will not exceed the monthly arrears/ retroactive support amount

What Types of SSA Benefits are Effected?

- Past due benefits under the “Old-age, Survivors, and Disability Insurance Act based on the disability of the obligor (SSDI), **or**
- Retirement benefits from the federal government (retirement), **and**
- Such benefits are paid on behalf of the child to the CP as the Representative Payee, **and**
- The benefits are based on the obligor’s disability or retirement

What Does this Mean?

- At order **establishment**
 - It creates a credit in the calculation of any retroactive support claim
- During **enforcement** of the order
 - It is a credit (payment) towards any non – public assistance arrears balance and/or judgment for retroactive support that accrued during the period of the obligor's disability

How is the Credit Calculated?

- The credit is only applied to periods of time that the obligor was found to be disabled by the social security administration, and
- Only up the amount of the arrears or retroactive support claim for a given month (any payment for a period of time that precedes the obligors disability or that is in excess of the MSO for that month, is a gratuity to the child)
- **See the handout on how to calculate the credit**

Retroactive Modification & Establishment

- Section 14-10-122 (5), C.R.S.
- Notwithstanding the provisions of subsection (1) of this section, when a COURT-ORDERED, VOLUNTARY, OR mutually agreed upon change of physical care occurs, the provisions for child support of the obligor under the existing child support order, if modified pursuant to this section, will be modified OR TERMINATED as of the date when physical care was changed.

What Does that Mean?

- Court may modify, terminate and/or establish support if
- **Mutually Agreed** Post-Order Change in Physical Care
(does not have to be in writing; *In re Marriage of Paige* 282 P.3d 506 (Colo. App. 2012)).

And now, also for

- **Unilateral** Post-Order Change in Physical Care, or
- **Court Ordered** Post-Order Change in Physical Care

Again, What Does that Mean?

- **Unilateral** change of physical care:
 - The change occurs because of the actions/decisions of just one person, with no discussion with anyone else
 - Example: Mother is CP of 15 year old son. She decides she can no longer handle her son so she drops him off at his dad's home.
- **Court ordered** change of physical care:
 - Some court orders the change even if no one else agrees
 - Example: A four year old some of CO mother is removed by child welfare. The D&N judge orders the child to be placed with grandmother. CP mother objects but it happens anyway.

Retroactive Establishment of an Order following a Post-Order Change of Physical Care

- Modification statute; Section 14-10-122 (5), C.R.S.
- THE PROVISIONS FOR THE ESTABLISHMENT OF A CHILD SUPPORT ORDER BASED ON A COURT-ORDERED, VOLUNTARY, OR MUTUALLY AGREED UPON CHANGE OF PHYSICAL CARE MAY ALSO BE ENTERED RETROACTIVELY TO THE DATE WHEN THE PHYSICAL CARE WAS CHANGED

Retroactive Modification / What Can be Done?

- If the same obligor, just a lower /higher amount (?),
- If the existing order is retroactively terminated,
- If there is a new obligee/CP and a new obligor/NCP,

See the Post-Order Change of Physical Care Desk Aid on adjudicating arrears, handling over payments, etc.

Contact Mike Erickson, Enforcement specialist or
Tammy Judd, Financial specialist

New Hire Reporting Requirements

- Section 26-13-125, C.R.S. of the Child Support Enforcement Act was amended to require employers to not only report new hires but also the employees first date of “remuneration” (the day he/she first worked for pay).
- There is nothing for county or state staff to do, it is all on the employer.

Federal Child Care Tax Credit

- Not part of HB13-1209
- ACSES was enhanced effective 1/1/14 so that this credit on the Colorado child support worksheets matched federal tax law; County CSEU's may now apply the credit to the mother's or father's column
- Under federal tax law, only the parent with the majority of overnights can obtain the tax credit.
- This may be the obligee or the obligor on a child support worksheets. Enter the number of qualified children for the correct parent.
- **See the handout**

Additional Handouts

Sign up to receive any/all of these handouts:

- HB13-1209 (The Final Act)
- Training Handout – Anne Seymore & Robert Kurtz
- Enforcement Training Handout – Mike Erickson
- IV-D Administrator Letter – 2014 ACSES calculator
- IV-D Administrator Letter – 2013 Excel calculator
- Federal Child Care Tax Credit and ACSES
- IV-D Administrator Letter – Informal AG opinion



Questions?

and

Thanks!

Robert Kurtz

Robert.kurtz@state.co.us

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