

Company-Paid Personal Expenses May Be Income For Determining Child Support Obligations

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It is not uncommon for an employer or an owner of a closely-held business to provide an employee, company member, or corporate officer with residential housing; use of a company owned car and cellular telephone; and a credit card for entertainment, restaurant, or gas charges. While these costs may be considered valid business expenses and not income for income tax purposes, the North Carolina courts may label them as income for purposes of determining child support.

Income as Defined Under the North Carolina Child Support Guidelines

The North Carolina Child Support Guidelines ("Guidelines"), created and updated periodically by the Conference of Chief District Judges pursuant to a statutory mandate, create certain "rebuttable presumptions" in all legal proceedings involving a parent's child support obligations. The Guidelines currently in place became effective January 1, 2015 and apply to all child support actions heard on or after that date. The Guidelines are based on the "income shares" model, adopting the concept that child support is a shared parental obligation and that a child of a separated, divorced or never-married parents should receive the same proportion of parental income the child would have received if the parents were married and living together.

Under the Guidelines, the term "Income" means a parent's actual gross income from any source, including, but not limited to, income from employment or self-employment (salaries, wages, commissions, bonuses, dividends, severance pay, etc.); ownership or operation of a business, partnership, or corporation; rental of property; retirement or pensions; interest; trusts; annuities; capital gains; Social Security benefits; workers compensation benefits; unemployment insurance benefits; disability pay and insurance benefits; gifts; prizes; and alimony or maintenance received from other persons. When income is received on an irregular, non-recurring, or one-time basis, the court may average or prorate the income over a specified period of time to require the receiving parent to pay a percentage of the non-recurring income that is equivalent to the percentage of that parent's recurring income that is paid for child support.

The Guidelines also require a careful review of income and expenses from self-employment or the operation of a business so that the court can determine an appropriate level of gross income available to the receiving parent to satisfy the parent's child support obligation. In most cases, this amount will differ from a determination of income or expenses for income tax purposes.

Income as Determined by the North Carolina Courts Using the Guidelines

North Carolina courts interpreting the Guidelines have held that, for purposes of determining a parent's child support obligation, the calculation of the parent's total income includes not only wages, but also other financial support paid by, or received from, that parent's employer, company, or other payor. Thus, expense reimbursements or in-kind payments received in the course of employment, self-employment, or operation of a business should be counted as income if they are significant and reduce personal living expenses. When an obligor parent pays for personal expenses using a business account – including lease, maintenance, and tax payments on the parent's vehicle, fuel, meals, entertainment, rent, groceries, and cash advances – the courts have held that the parent is deemed to have additional income in the amounts so paid.

Use of a vehicle paid for by an employer or other person has often been held by the North Carolina courts to be income for child support purposes. In one recent case, the parent had use of a vehicle which was paid for by the parent's company. The court held that the parent had income in the form of the vehicle itself, the vehicle maintenance costs, and the insurance costs. In another case, the parent was employed by the parent's family's bonding business, and the business purchased a Jaguar automobile for defendant's use at the cost of \$1,106.00 per month. The court found that the amount paid by the business for the Jaguar the parent was using was income to that parent in determining the parent's child support obligation.

The North Carolina courts have repeatedly held that cost-free housing is a form of income that may be considered in determining the proper amount of child support to be ordered. The courts have held that a rent-free apartment supplied by a parent's employer was evidence of "additional income" from the parent's job beyond the parent's salary and that payment of a mortgage by a business owned by the parent's family was income to the parent for child support purposes.

Conclusion

A determination of income for child support obligation purposes may be significantly different from the determination of income for income tax purposes. If a company pays certain expenses or in-kind payments on a parent's behalf in the course of employment, self-employment, or operation of a business, it is likely that these amounts may be counted as income for child support purposes if they are significant and reduce the parent's personal living expenses.

Parents who are concerned about child support obligations, either their own or those of the other parent, should consult an attorney about how the appropriate amount to be paid as child support is determined using the Guidelines. Such advice will provide the parent with an opportunity to fully understand the obligations of each parent, and ultimately benefit not only the parents, who may be spared the expense and emotional trauma of a protracted legal dispute, but the child as well.

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