

**WHY A “NET INCOME” MODEL TO AN INCOME-SHARING
APPROACH FOR PURPOSES OF CHILD SUPPORT
GUIDELINES IN ILLINOIS IS PREFERABLE**

A core objective for changing the existing approach in Illinois on guidelines for child support awards (currently based on the “net income” of the payor), so as to utilize an income-sharing approach, is to create a more fair and equitable system. Such a change would factor into the “equation” the recipient’s income. A question presented, though, is whether a so-called “gross income” or a “net income” Model for the new statutory framework should be utilized. The key difference between the two Models, of course, is that a “net income” one takes into account federal and state income taxes for both payor and payee, whereas a “gross income” Model ignores such factors.

Notwithstanding that a number of other states have opted for a “gross income” Model – presumably on the basis of their perception that it is “simpler” than a “net income Model” – it is respectfully submitted that, for multiple reasons, a “net income” approach is the sounder choice for Illinois, such reasons including the following:

1. **A “Net Income” Approach is More Equitable**

A factor to always be borne in mind is that, any time a mechanical rule is statutorily employed in the family support area, there is a “trade-off” between the more streamlined system and fairness. Indeed, it is always the case that a system tailored to account for countless nuances in varying factual situations is theoretically “fairer.” There is, however, much to be said for a streamlined system, which, in actuality, is a virtual necessity in the child support guidelines area in light of the numbers of support cases state-wide, the potential costs for the judicial system (and/or for parties for privately-retained lawyers), and the number of *pro se* litigants, many of whom realize income at lower levels. Nevertheless, respect for the overall legal system and minimization of costs for the resolution process in each case would both be enhanced if mechanical rules, inherent in any guidelines approach, are generally perceived to be fair by the citizens most directly affected.

In this connection, a “net income” Model is axiomatically fairer than a “gross income” Model, as the former takes into account all relevant federal and state income tax attributes of both payor and payee. Such attributes are of greater or lesser significance in particular cases; but, since child support (as distinguished from alimony) has always been structured as being paid or received out of so-called “after-tax” dollars, there is a far greater potential for a “leveling of the field” attainable with a “net income” Model. Moreover, an “after-tax” approach takes into account more than just rates (which can, and do, change from time to time), but also other child-related income tax attributes, including head-of-household taxpayer status, child dependency exemptions, child care tax credits, and higher earned income credits for low-income working custodial parents.

2. **A “Net Income” Approach would Present a Simpler “Learning Curve”**

For decades in Illinois, child support guidelines under the IMDMA have been based on a statutory definition of “net income.” Correspondingly, decisional law entails many precedents that provide clarification or guidance as to countless issues. Irrespective of whether specific *ad hoc* changes to the key definition are, or are not, implemented at this time, an approach to the new system that still remains based on the “net income” concept would preserve the precedential significance of numerous court determinations, a result that should greatly reduce litigation – and costs to Illinois citizens and the judicial system – in the future.

3. **The Existing “Net Income” Definition is not Overly Complex**

The decades of experience with the “net income” approach of the existing child support guidelines rules in Illinois demonstrates that, in fact, the “after-tax” approach of current law is *not* unduly complex. Readily available standard withholding tables, charts as to effective tax rates, and commercially disseminated computer software products facilitate the carrying out of relevant computations, whenever necessary. Effectuation of the “after-tax” approach is also substantially enhanced by the fact that, in terms of most computational questions that can or do arise, mechanically determinable answers under applicable tax law exist. Thus, the notion that a “net income” Model should be viewed as a vehicle for complexity is simply off the mark. (To the extent that other states have opted for a “gross income” Model, on the basis of a perception that it is simpler, it is respectfully submitted that such perception is erroneous.)

For all of the above reasons, it is submitted that fairness and efficiency would both be enhanced if a new Model in Illinois, for child support guidelines entailing an “income sharing” element, is based on the existing “after-tax” concept currently employed in the IMDMA’s definition of “net income” for guidelines child support purposes.

Respectfully submitted,



David H. Hopkins, Esq.

Schiller DuCanto & Fleck LLP
311 South County Farm Road, Suite G
Wheaton, Illinois 60187-2477