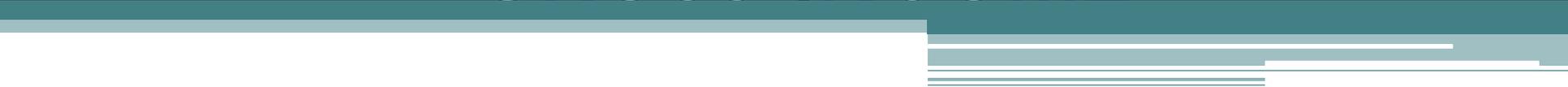


GROSS INCOME



Child Support Advisory Committee
October 19, 2011

Advantages of Using Gross Income

- **Simplicity and Ease of Use**
 - A gross income calculation for employer-paid obligors is simple and easy. For most IV-D cases, there would be only the one gross income figure inputted into worksheets.
 - *Pro se* litigants
 - Courts
- **Time**
 - Determining gross income takes much less time than calculating net income.

Advantages of Using Gross Income

- **Transparency**
 - Gross income is transparent – it is what it is.
- **Resistant to Manipulation by Obligators**
 - Gross income cannot be as easily manipulated as net income.
 - For example, section 505(a)(3)(a) of the IMDMA allows for a deduction of only properly calculated federal and state income tax withholding. Many obligors try to manipulate a larger deduction by claiming too few exemptions for withholding purposes.

Advantages of Using Gross Income

- **Less Information Needed**
 - Gross income obviates the need to discover information about the parties' federal and state tax payments, FICA payments, mandatory retirement contributions, and union dues.
- **Self-Employed and Business Owner Obligor**
 - Calculating child support for these obligors must be handled differently regardless of whether gross or net income is used.

Advantages of Using Gross Income

- According to Dr. Venohr, gross income guidelines treat similarly situated parents with identical incomes equally. (Pg. 73 of the Illinois Child Support Guidelines Review).
- Dr. Venohr provides this example:
 - Two obligors who both earn \$7,000 gross per month
 - 1 child
 - Custodial parent has no income
 - No other factors considered
 - One obligor rents
 - The other obligor owns a home and has a mortgage interest

Advantages of Using Gross Income

- **Dr. Venohr concluded:**
 - The obligor with the mortgage interest deduction will have more after-tax income available for child support.
 - If the net income calculation takes into account the mortgage interest deduction, the obligor with the mortgage has a higher order amount than would the obligor who rents.

Advantages of Using Gross Income

- **Time and Cost Saving for HFS' Child Support Program**
 - **In Fiscal Year 2011, Illinois' child support program had:**
 - 52,802 new support orders
 - 13,903 modification orders
 - 66,705 child support orders total

Advantages of Using Gross Income

- Of these 66,705 orders in Fiscal Year 2011, child support was set *per month* as follows:

<u>Range</u>	<u>Total Number of Orders</u>
• \$0 - \$49.99	8,968
• \$50 - \$99.99	4,274
• \$100 - \$149.99	5,627
• \$150 - \$199.99	5,380
• \$200 - \$249.99	11,544
• \$250 - \$299.99	5,272
• \$300 - \$399.99	9,036
• \$400 - \$499.99	6,582
• \$500 or greater	10,022

Advantages of Using Gross Income

- For fiscal year 2011, the Title IV-D program had a total of 56,683 orders that had child support set at less than \$500 per month. There were only 10,022 orders with child support set at \$500 or more per month.
- Bottom line: there are many more low income obligors in the Title IV-D program than high income obligors. *See also Turner v. Rogers*, 131 S.Ct. 2507, 2518 (2011) (explaining that 70% of child support arrears nationwide are owed by parents with either no reported income or income of \$10,000 per year or less).

Advantages of Using Gross Income

- A gross income approach seems to make the most sense for most low income, employer paid, obligors.
- An unusual tax situation could be a factor in the court deviating from the guidelines.

Advantages of Using Gross Income

- **Most of the case law in Illinois deals with:**
 - **What constitutes income**
 - *i.e.*, what goes in, *not* what comes out
 - **Production of income deduction in section 505(a)(3)(h) of the IMDMA**
- **The income case law will be preserved with a gross income approach.**
- **As for the production of income deduction, self-employed and business income obligors will be covered by a separate provision.**

Advantages of Using Gross Income

- Draft language from Workgroup 1:
- Gross income from the operation of a business (including but not limited to a sole proprietorship, partnership, or corporation) or from self-employment, rent, or royalties, is defined as gross receipts minus cost of goods sold minus ordinary and necessary expenses required to operate the business.
- Specifically excluded from ordinary and necessary expenses are amounts allowable by the Internal Revenue Service for the accelerated component of depreciation expenses, investment tax credits, and business losses.

Advantages of Using Gross Income

- **Draft language from Workgroup 1 continued:**
- **Any other business expenses determined judicially or administratively to be inappropriate or excessive for determining gross income for purposes of calculating child support shall not be considered ordinary and necessary expenses.**
- **Self-employed parents shall be permitted to deduct as a ordinary and necessary expense that portion of their FICA tax payment that exceeds the FICA tax that would be paid by an employee earning the same Gross Income.**