

SB 2196

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THE STATE SENATE
Thursday, February 11, 2010

Senate Bill No. 2196
As Amended

SENATE BILL NO. 2196 - By: Russell of the Senate and Banz of the House.

[marriage and family - computation of income - prohibiting certain benefits as income - effective date]

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY Section 3, Chapter 407, O.S.L. 2008 (43 O.S. Supp. 2009, Section 118B), is amended to read as follows:

Section 118B. A. As used in this act:

1. "Gross income" includes earned and passive income from any source, except as excluded in this section;

2. "Earned income" is defined as income received from labor or the sale of goods or services and includes, but is not limited to, income from:

- a. salaries,
- b. wages,
- c. tips
- d. commissions,
- e. bonuses,
- f. severance pay, and

1 g. military pay, including ~~hostile fire or imminent~~
2 ~~danger pay, combat pay,~~ family separation pay, or
3 hardship duty location pay; and

4 3. "Passive income" is defined as all other income and
5 includes, but is not limited to, income from:

- 6 a. dividends,
- 7 b. pensions,
- 8 c. rent,
- 9 d. interest income,
- 10 e. trust income,
- 11 f. support alimony being received from someone other than
12 the other parent in this case,
- 13 g. annuities,
- 14 h. social security benefits,
- 15 i. workers' compensation benefits,
- 16 j. unemployment insurance benefits,
- 17 k. disability insurance benefits,
- 18 l. gifts,
- 19 m. prizes,
- 20 n. gambling winnings,
- 21 o. lottery winnings, and
- 22 p. royalties.

23 B. Income specifically excluded is:

- 1 1. Actual child support received for children not before the
2 court;
- 3 2. Adoption Assistance subsidy paid by the Department of Human
4 Services;
- 5 3. Benefits received from means-tested public assistance
6 programs including, but not limited to:
- 7 a. Temporary Assistance for Needy Families (TANF),
8 b. Supplemental Security Income (SSI),
9 c. Food Stamps, and
10 d. General Assistance and State Supplemental Payments for
11 Aged, Blind and the Disabled;
- 12 4. The income of the child from any source, including, but not
13 limited to, trust income and social security benefits drawn on the
14 disability of the child; and
- 15 5. Payments received by the parent for the care of foster
16 children.
- 17 C. 1. For purposes of computing gross income of the parents,
18 gross income shall include for each parent whichever is the most
19 equitable of:
- 20 a. all actual monthly income described in this section,
21 plus such overtime and supplemental income as the
22 court deems equitable,

- 1 b. the average of the gross monthly income for the time
2 actually employed during the previous three (3) years,
3 c. the minimum wage paid for a forty-hour week, or
4 d. gross monthly income imputed as set forth in
5 subsection D of this section.

6 2. If a parent is permanently physically or mentally
7 incapacitated, the child support obligation shall be computed on the
8 basis of actual monthly gross income.

9 D. Imputed income.

10 1. Instead of using the actual or average income of a parent,
11 the court may impute gross income to a parent under the provisions
12 of this section if equitable.

13 2. The following factors may be considered by the court when
14 making a determination of willful and voluntary underemployment or
15 unemployment:

16 a. whether a parent has been determined by the court to
17 be willfully or voluntarily underemployed or
18 unemployed, including whether unemployment or
19 underemployment for the purpose of pursuing additional
20 training or education is reasonable in light of the
21 obligation of the parent to support his or her
22 children and, to this end, whether the training or
23 education will ultimately benefit the child in the

- 1 case immediately under consideration by increasing the
2 parent's level of support for that child in the
3 future,
- 4 b. when there is no reliable evidence of income,
 - 5 c. the past and present employment of the parent,
 - 6 d. the education, training, and ability to work of the
7 parent,
 - 8 e. the lifestyle of the parent, including ownership of
9 valuable assets and resources, whether in the name of
10 the parent or the current spouse of the parent, that
11 appears inappropriate or unreasonable for the income
12 claimed by the parent,
 - 13 f. the role of the parent as caretaker of a handicapped
14 or seriously ill child of that parent, or any other
15 handicapped or seriously ill relative for whom that
16 parent has assumed the role of caretaker which
17 eliminates or substantially reduces the ability of the
18 parent to work outside the home, and the need of that
19 parent to continue in that role in the future, or
 - 20 g. any additional factors deemed relevant to the
21 particular circumstances of the case.
- 22 E. Self-employment income.

1 1. Income from self-employment includes income from, but not
2 limited to, business operations, work as an independent contractor
3 or consultant, sales of goods or services, and rental properties,
4 less ordinary and reasonable expenses necessary to produce such
5 income.

6 2. A determination of business income for tax purposes shall
7 not control for purposes of determining a child support obligation.
8 Amounts allowed by the Internal Revenue Service for accelerated
9 depreciation or investment tax credits shall not be considered
10 reasonable expenses.

11 3. The district or administrative court shall deduct from self-
12 employment gross income an amount equal to the employer contribution
13 for F.I.C.A. tax which an employer would withhold from an employee's
14 earnings on an equivalent gross income amount.

15 F. Fringe benefits.

16 1. Fringe benefits for inclusion as income or in-kind
17 remuneration received by a parent in the course of employment, or
18 operation of a trade or business, shall be counted as income if they
19 significantly reduce personal living expenses.

20 2. Such fringe benefits might include, but are not limited to,
21 company car, housing, or room and board.

1 3. Basic Allowance for Housing, Basic Allowance for
2 Subsistence, and Variable Housing Allowances for service members are
3 considered income for the purposes of determining child support.

4 4. Fringe benefits do not include employee benefits that are
5 typically added to the salary, wage, or other compensation that a
6 parent may receive as a standard added benefit, such as employer
7 contributions to portions of health insurance premiums or employer
8 contributions to a retirement or pension plan.

9 G. Social Security Title II benefits.

10 1. Social Security Title II benefits received by a child shall
11 be included as income to the parent on whose account the benefit of
12 the child is drawn and applied against the support obligation
13 ordered to be paid by that parent. If the benefit of the child is
14 drawn from the disability of the child, the benefit of the child is
15 not added to the income of either parent and not deducted from the
16 obligation of either parent.

17 2. Child support greater than social security benefit.

18 If the child support award due after calculating the child
19 support guidelines is greater than the social security benefit
20 received on behalf of the child, the obligor shall be required to
21 pay the amount exceeding the social security benefit as part of the
22 child support award in the case.

1 3. Child support equal to or less than social security
2 benefits.

3 a. If the child support award due after calculating the
4 child support guidelines is less than or equal to the
5 social security benefit received on behalf of the
6 child, the child support obligation of that parent is
7 met and no additional child support amount must be
8 paid by that parent.

9 b. Any social security benefit amounts which are greater
10 than the support ordered by the court shall be
11 retained by the caretaker for the benefit of the child
12 and shall not be used as a reason for decreasing the
13 child support order or reducing arrearages.

14 c. The child support computation form shall include a
15 notation regarding the use of social security benefits
16 as offset.

17 4. a. Calculation of child support as provided in subsection
18 F of this section shall be effective no earlier than
19 the date on which the motion to modify was filed.

20 b. The court may determine if, under the circumstances of
21 the case, it is appropriate to credit social security
22 benefits paid to the custodial person prior to a

1 modification of child support against the past-due
2 child support obligation of the noncustodial parent.

3 c. The noncustodial parent shall not receive credit for
4 any social security benefits paid directly to the
5 child.

6 d. Any credit granted by the court pursuant to
7 subparagraph b of this paragraph shall be limited to
8 the time period during which the social security
9 benefit was paid, or the time period covered by a lump
10 sum for past social security benefits.

11 H. Notwithstanding any other provision of law, the Department
12 shall neither make application to the Veterans Administration for
13 garnishment or assignment of wages from any type of service related
14 injury compensation or combat related disability compensation for
15 purposes of assisting in the care of a child, nor shall the
16 Department include such pay as income defined pursuant to this
17 section when calculating child support payment obligations.

18 SECTION 2. This act shall become effective November 1, 2010.

19 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-9-10 - DO PASS,
20 As Amended and Coauthored.