

2019 Revisions to the Pennsylvania Support Guidelines

Due to the federal tax changes brought about by enactment of the Tax Cuts and Jobs Act (P.L. 115-97) on December 22, 2017, the PA Rules of Civil Procedure regarding the calculation of child/spousal support were revised to address the tax impact. These changes to the Rules are effective January 1, 2019, when the federal tax law changes are also effective. Although BCSE is in the process of creating a 'worksheet' that will assist with the calculations, this summary is being shared with you now, so you are aware of the major changes.

Essentially, alimony/APL/spousal support is no longer deductible by the payor or includable by the payee for federal tax purposes, for all new orders entered after 1/1/19. If there is a modification of a pre-2019 order for alimony/APL/spousal support after 1/1/19, then the alimony/APL/spousal remains deductible/includable, unless the parties agree that the new tax law applies. Additionally, if an APL/spousal support order terminates after 1/1/19, and an alimony order is entered, then the new tax law applies.

Finally, the changes in the rules may not be a reason for modification, since all modifications are done pursuant to the previous calculation (see explanation under Rule 1910.16-4, below).

Rule 1910.16-2(a) & (c)(ii) – Gross and Net Monthly Income

A Note was added to the Rule in subsection (a), stating that the Court must consider the tax liability associated with alimony income. Where the alimony/APL/spousal support is not includable in the party's gross income for federal tax purposes (post-2018 tax consequences), the Court may add the alimony amount to the payee's net income. The Note to subsection (c) explains further that the Court must consider the reasons for the alimony payment to determine whether to include the alimony as income (e.g., alimony paid towards educational expenses of a former spouse may not be includable; alimony paid towards general living expenses may be includable).

Rule 1910.16-2(f) – Dependency Exemption/Child Tax Credit

The court is authorized to allocate the child tax credit (there is no longer a dependency exemption) to a non-custodial parent or 50/50 parent by ordering the other parent to sign an IRS Form 8332.

The dependency exemption for children (\$4,050 per child in 2017) has been reduced under federal tax law to \$0 for the years 2018 through 2025. By default under federal tax law, the child's dependency exemption was awarded to the custodial parent, or in 50/50 custody cases, to the parent with higher income. The Pennsylvania guidelines previously authorized the court to allocate the child's dependency exemption to achieve the maximum tax savings.

The child tax credit (\$2,000 per child in 2018) is allocated to a parent if: (a) the child is 16 years old or less (but there is a \$500 credit for older children); and (b) the parent has primary custody, or has 50/50 custody and earns more than the other parent. The child tax

credit starts to phase out at \$200,000 for single and separated parents, or \$400,000 for parents filing jointly.

This is a significant change that might reduce child support for many low-income child support recipients. The old dependency exemption would reduce a parent's taxable income by \$4,050 per child in 2017, so if that parent paid tax at the 10%, 12% or 15% rate, the parent would receive a benefit of \$405 to \$608 per child. With the child tax credit, the parent will receive a full \$2,000 benefit per child because the credit reduces tax (not taxable income).

Rule 1910.16-4 – Support Formulas

This is the most significant change to the support guidelines, because the new rule creates two distinct formulas for calculating support—one to be used for post-2019 alimony/APL/spousal support calculations and the other to be used for pre-2019 modifications (which is essentially the formula PACSES currently uses). The new formula calculates spousal support FIRST, followed by a calculation of the child support; completely opposite of how Pennsylvania calculated support in the past.

When modifying a pre-2019 APL/spousal support/alimony obligation that was tax-deductible, the modified order will remain tax-deductible. The previous formula, which is now contained in Rule 1910.16-4(a)(2), is utilized for the modification. This "old" formula applies to all cases where the court is modifying a pre-2019 order or agreement. Child support is calculated first, and then APL/spousal support is calculated at 30% of the difference in incomes. If there are no children, the calculation is 40% of the difference in incomes.

One important item to note is that when a pre-divorce APL/spousal support order transitions to a post-divorce alimony order after 1/1/19, then the new formula must be used for the child support calculation. One caveat, there are no IRS regulations or court decisions yet to tell us whether that would constitute a modification of the order (which would remain tax-deductible under the old formula) or a new obligation (which is not tax-deductible under the new formula).

The Supreme Court has eliminated rule 1910.16-2(f), which authorized the courts to enter into an unallocated order; and subsection (3)(unallocated orders shall terminate upon the death of the payee). Rule 1910.19(h)(5) restores the court's discretion to issue an unallocated modification order and terminates an unallocated order upon the payee's death. The rule authorizes the court to exercise its discretion to deviate due to tax consequences.

The "new" formula, contained in Rule 1910.16-4(a)(1) is very different. Spousal support is calculated first. If there are NO dependent children, multiply payor's net income by 33%, and payee's income by 40%. Calculate the difference and the resultant amount is the APL/spousal support owed. It is neither taxable nor deductible by either party.

If there is child support involved, calculate the APL/spousal support amount first, by multiplying payor's net income by 25%, and payee's income by 30%. Recalculate each parent's income by subtracting/adding the amount of APL/spousal support to each respective

party, then express as the proportionate share of the combined incomes. Determine the amount of child support due from the guideline grid for the combined incomes. Calculate each parent's share of the guideline amount by using the recalculated proportionate shares.

Note: When calculating Part B. APL/spousal support with dependent children, stop at Line 13. Part E Additional Expenses will be considered after Part C and D (if applicable).

Rule 1910.16-4(e) – Custodial Parent Owes Spousal Support

These cases will become easier because, like under the "new" formula, calculate APL/spousal support first, then recalculate each parent's income before applying child support guidelines. The only change is subsection (5), which authorizes the Court to deviate in order to compensate for tax consequences.

Rule 1910.16-6 – Allocation of Other Expenses

In child support only cases, expenses are allocated in proportion to the parents' unadjusted net monthly incomes. In cases where there is an alimony/APL/spousal obligation, the parties' net incomes must be recalculated, and the recalculated proportionate share used to determine the allocation of additional expenses. This change in the Rule should be utilized for all cases calculated under the new formula, and this recalculated proportionate share is applied to all expenses in Rule 1910.16-6, except for the mortgage payment (Rule 1910.16-6(e)), and where the payor is paying 90% or more of the health insurance premium (Rule 1910.16-6(b)(4)).

Rule 1910.18 – Modification

This rule confirms what the new tax law provides, that a modification of a pre-2019 order or agreement shall remain tax-deductible, unless the order or agreement expressly states otherwise.

Rule 1910.19(h) - New Rule replacing rescinded Rule 1910.16 re allocation

Rule 1910.19(h) is a new rule that attempts to address the allocation of spousal/APL and child support orders, when modifying an order entered prior to 1/1/19. Section (2) requires that the Court clearly indicate in the support order whether it is allocated or not, since the formula assumes an unallocated order. The section also directs the Court to consider federal tax consequences should the order become allocated.

Section (4) specifies that if payee's monthly net income is equal to/greater than payor's monthly net income, the guideline amount is the same as for child(ren) only.

Section (5) directs that unallocated child and spousal/APL orders terminate upon the payee's death.

Finally, Section (6) requires the Court to allocate an order when the payor defaults on an unallocated order, for FTROP enforcement purposes and when registering the order in another jurisdiction.