

Cherokee Nation Code Annotated

Title 43: Marriage and Family

Chapter 6: Child Support Guidelines

§ 508B. Computation of gross income—Imputed income—Self-employment income—Fringe benefits—Social Security Title II benefits

Cite as: 43 CNCA § 508B

A. As used in this act:

1. **"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; and
- f. military pay.

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

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

- a. dividends;
- b. pensions;
- c. rent;
- d. interest income;
- e. trust income;
- f. support alimony being received from someone other than the other parent in this case;
- g. annuities;
- h. social security benefits;
- i. workers' compensation benefits;

j. unemployment insurance benefits;

k. disability insurance benefits;

l. gifts;

m. prizes;

n. gambling winnings;

o. lottery winnings; and

p. royalties.

B. Income specifically excluded is:

1. Actual child support received for children not before the Court;

2. Adoption assistance subsidy ;

3. Benefits received from means-tested public assistance programs including, but not limited to:

a. Temporary Assistance for Needy Families (TANF),

b. Supplemental Security Income (SSI),

c. food stamps, and

d. General Assistance and State Supplemental Payments for Aged, Blind and the Disabled;

4. The income of the child from any source, including, but not limited to, trust income and social security benefits drawn on the disability of the child;

5. Payments received by the parent for the care of foster children; and

6. Educational scholarships and grants used for tuition and related expenses.

C. 1. For purposes of computing gross income of the parents, gross income shall include for each parent whichever is the most equitable of:

a. all actual monthly income described in this section, plus such overtime and supplemental income as the Court deems equitable, or

b. the average of the gross monthly income for the time actually employed during the previous three (3) years, or

c. the minimum wage paid for a forty-(40) hour week, or

d. gross monthly income imputed as set forth in subsection (D) of this section.

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

D. Imputed income.

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

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

a. whether a parent has been determined by the Court to be willfully or voluntarily underemployed or unemployed for the purpose of affecting the child support computation, including whether unemployment or underemployment for the purpose of pursuing additional training or education is reasonable in light of the obligation of the parent to support his or her children and, to this end, whether the training or education will ultimately benefit the child in the case immediately under consideration by increasing the parent's level of support for that child in the future,

b. when there is no reliable evidence of income,

c. the past and present employment of the parent,

d. the education, training, and ability to work of the parent,

e. the lifestyle of the parent, including ownership of valuable assets and resources, whether in the name of the parent or the current spouse of the parent, that appears inappropriate or unreasonable for the income claimed by the parent,

f. the role of the parent as caretaker of a handicapped or seriously ill child of that parent, or any other handicapped or seriously ill relative for whom that parent has assumed the role of caretaker which eliminates or substantially reduces the ability of the parent to work outside the home, and the need of that parent to continue in that role in the future, or

g. any other factors deemed relevant to the particular circumstances of the case.

E. Self-employment income.

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

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

3. The District or Administrative Court shall deduct from self-employment gross income an amount equal to the employer contribution for F.I.C.A. tax which an employer would withhold from an employee's earnings on an equivalent gross income amount.

F. Fringe benefits.

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

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

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

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

G. Social Security Title II benefits.

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

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

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

a. If the child support award due after calculating the child support guidelines is less than or equal to the social security benefit received on behalf of the child, the child support

obligation of that parent is met and no additional child support amount must be paid by that parent.

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

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

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

b. The Court may determine if under the circumstances of the case, it is appropriate to credit social security benefits paid to the custodial person prior to a modification of child support against the past-due child support obligation of the noncustodial parent.

c. Any credit granted by the Court pursuant to subparagraph b of this paragraph shall be limited to the time period during which the social security benefit was paid, or the time period covered by a lump sum for past social security benefits.

Historical Data

LA 12–12, eff. May 18, 2012. Amended LA 05–17, eff. March 25, 2017.

2017 Legislation

LA 05–17, Section 2, provides:

"Section 2. Purpose. The purpose of this Act is to make amendments to the Cherokee Nation Child Support Guidelines, codified at 43 CNCA § 507 et seq."