



TAX TRENDS AND DEVELOPMENTS

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THIS MONTH'S COLUMN: Court of Appeals Approves Trial Court's (1) Disallowance of Some Business Expenses and (2) Imputation of Income to H in Determining His Income for Support – *Bridge*, No. 335453 (8/15/2017)

Facts

- H and W were divorced in 2016 reaching a settlement with the assistance of a “conciliator.”
- In 2015, H was an employee earning \$300,000 as a salesperson.
- But, in 2016, as an independent contractor, his income declined substantially to, H claimed, around \$75,000.
- Thus, he petitioned the court to reduce his spousal and child support obligations, and to do so retroactively.
- The trial court acknowledged the steep decline of H's income and that such was involuntary.
- But the court disallowed some of H's claimed business expenses and, further, imputed income to him based on what his partner, with whom he split commissions, was

making, in deciding that his income was \$132,000 for support purposes.

- The reduction was not applied retroactively to extent petitioned by H.
- H appealed.

Court of Appeals (COA/Court) Decision

- The COA upheld the trial court decision.
- Regarding business expenses disallowed, the COA cited the 2017 Michigan Child Support Formula Manual 2.01(E)(4)(e) which provides:

For a variety of historical and policy reasons, the government allows considerable deductions for business-related expenses before taxes are calculated. Those same considerations are not always relevant to monies a parent should have available for child support. Therefore, some deductions should be added back into a parent's income for purposes of determining child support

- In this regard, the Court stated that H did not explain how expenses paid for a conference in Wyoming related to his Lansing based business.
- There was also not an adequate allocation of his auto expenses to personal use.
- The Court noted that “the trial court must add back into a parent's income insurance, utility, entertainment, and automobile expenses, as well as travel expenses, unless they are ‘inherent in the nature of the business or occupation,’ even if those expenses are tax deductible. See 2017 MC-SFM 2.01(E)(4)(e)(iv).”

- The COA also upheld the trial court’s imputation of \$132,000 annual income to H. His partner, with whom he split commissions, testified that he made \$76,604 for the first 7 months of the year – a monthly average of \$10,943, and an annual total of \$131,322.
- Finally, the Court also ruled that modification of a support order that is part of a judgment of divorce may apply only for the period during which there is a pending petition for modification.

the IRS may find the expenses reasonable is not determinative.”

- With automobile and cell phone expenses, it is important to have a reasonable allocation to personal use.
- And, for travel and entertainment expenses, it is required for tax purposes that documentation of date, business purpose, and expense is maintained. The same information should be on hand if requested for determining income for support.

Comments on the Case

- Money spent on necessary business expenses is not available for support.
- But, if such expenses are not demonstrated as “inherent in the nature of the business or occupation” they may be added back to income available for support.
- Further, as noted in 2017 MCSFM 2.01(E)(4)(e), “That

About the Author

Joe Cunningham has over 25 years of experience specializing in financial and tax aspects of divorce, including business valuation, valuing and dividing retirement benefits, and developing settlement proposals. He has lectured extensively for ICLE, the Family Law Section, and the MACPA. Joe is also the author of numerous journal articles and chapters in family law treatises. His office is in Troy, though his practice is statewide.