

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS
ON REFERRAL BY THE COMMISSIONER OF REVENUE**

In the Matter of:)

R. P. J.)

) OAH No. 10-0048-CSS

) CSSD No. 001015791

DECISION AND ORDER

I. Introduction

This matter involves an appeal by the custodian, L. J. W., of a revised Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in Mr. J.' case on December 18, 2009. The obligee children are S., born in 1987; and T., born in 1989. S. died in 2005 and T. emancipated in 2007.

The formal hearing was held on March 8, 2010, and April 5, 2010. Both parties appeared by telephone for each hearing session. Mr. J. is represented by Rhonda F. Butterfield. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on April 5, 2010.

Based on the record as a whole and after careful consideration, Ms. W.'s request to cease the underlying default review because Mr. J. untimely submitted his income information is denied. Mr. J.' child support obligation has been recalculated, primarily because he supported prior children in the home, and the calculations are set forth below.

II. Facts

A. Procedural History

In October 1990, CSSD issued Mr. J.' original child support order of \$846 per month based on the former AFDC needs standards.¹ Apparently the order was not appealed, nor was it ever modified. On December 16, 2008, Mr. J. filed a Motion to Vacate Default Order.² CSSD granted the motion and issued a revised Administrative Child Support and Medical Support Order on December 18, 2009.³ The revised order reduced Mr. J.' total arrears to \$1,557.72 for

¹ Exh. 1.

² Exh. 3.

³ Exhs. 26-28.

the period from November 1988 through June 2007.⁴ On February 1, 2010, Ms. W. filed an appeal and requested a formal hearing.⁵

B. Material Facts

1. General overview

Mr. J. and Ms. W. are the parents of S., born September 26, 1987; and T., born February 16, 1989. S. died on July 24, 2005, two months short of his 18th birthday. T. emancipated in February 2007.

In addition to S. and T., Mr. J. has two children who were born before S. and T. They are C., born August 28, 1982; and K., born February 3, 1984. C. and K. were born to Mr. J. and his ex-wife, L. J., who were married in 1982. They divorced in Utah in 1986, after which Ms. J. had custody of C. and K. In June 1988, she sent the children to Alaska for summer visitation with Mr. J. She joined them for a visit in August 1988, at which time she and Mr. J. reconciled and have remained together “90% of the time” since then.⁶ C. and K. lived primarily with Mr. J. for the remainder of their minority – Ms. J. and Mr. J. were not together all of the time – but four months was the longest stretch the children were away from the obligor’s home.⁷ Even when they were not living with him, Mr. J. provided C. and K.’s financial support.⁸

2. Yearly child support calculations

In **1988**, Mr. J. had 1099-Misc income totaling \$19,402, in addition to the PFD of \$826 and a dividend from his Native corporation of \$82, all of which totals \$19,860.⁹ The IRS determined Mr. J.’ tax liability was \$2,511, and his self-employment taxes were \$2,526, for total tax liability of \$5,037.¹⁰ After auditing Mr. J.’ tax return for 1988, the IRS charged him penalties and interest totaling \$4,620.¹¹

Mr. J. supported C. and K. in his home beginning in June 1988, prior to the date this obligation to support S. and T. arose. The deduction for supporting prior children in the home is figured using Civil Rule 90.3 and, based on Mr. J.’ income, it is \$344 per month for two

⁴ Exh. 28 at pg. 2.

⁵ Exh. 29.

⁶ Testimony of L. J.

⁷ *Id.*

⁸ *Id.*

⁹ Exh. 5 at pg. 6.

¹⁰ *Id.*

¹¹ Exh. 5 at pg. 7.

children.¹² Inserting this additional deduction into a child support calculation yields a support amount for S. of \$186 per month.¹³

In **1989**, Mr. J. received wages of \$13,126; and 1099-Misc income from other sources of \$36,805, plus the permanent fund dividend of \$873. After subtracting fishing expenses of \$3,871 and the personal exemption and standard deduction, Mr. J.' total taxable income was \$42,333.¹⁴ The IRS calculated Mr. J.' income tax at \$10,084 and the self-employment tax at \$4,288, for total tax liability of \$14,372.¹⁵ Based on his tax liability, the IRS charged him penalties and interest totaling \$8,258 for 1989.¹⁶

Based on Mr. J.' income, the deduction for supporting two prior children in the home in 1989 is \$710 per month.¹⁷ Inserting this additional deduction into a child support calculation yields a support amount of \$518 per month for two children and \$384 per month for one child.¹⁸ T. was born in February 1989, so the two-child amount is effective as of March 1989.

In **1990**, Mr. J. had 1099-Misc and fish ticket income totaling \$27,161, in addition to the PFD of \$952.¹⁹ After subtracting fishing expenses of \$442 and the personal exemption and standard deduction, Mr. J.' total taxable income was \$21,008.²⁰ The IRS determined Mr. J.' tax liability was \$3,778, and the self-employment taxes were \$3,775, for total tax liability of \$7,553.²¹ The IRS charged him penalties and interest totaling \$4,140 for 1990.²²

The deduction from income for supporting two prior children is \$453 per month for two children in 1990.²³ Inserting this additional deduction into a child support calculation yields a support amount of \$330 per month for S. and T..²⁴

¹² See Exh. 30 at pg. 2.

¹³ Attachment 1. The figures inserted into the calculation worksheet do not necessarily coincide with the figures reflected on the IRS audit sheets. This is because the information from the tax audits has to be adjusted to fit within the correct categories on the child support worksheets.

¹⁴ Exh. 6 at pg. 6.

¹⁵ *Id.*

¹⁶ Exh. 6 at pg. 7.

¹⁷ See Exh. 31 at pg. 2 and n.11, above.

¹⁸ Attachment 2.

¹⁹ Exh. 6 at pg. 6.

²⁰ *Id.*

²¹ *Id.*

²² Exh. 6 at pg. 7.

²³ See Exh. 32 at pg.1 and n.11, above.

²⁴ Attachment 3.

In **1991**, Mr. J. received 1099-Misc, fish ticket and other income totaling \$65,052.²⁵ After subtracting fishing expenses of \$2,014 and the personal exemption and standard deduction, Mr. J.' total taxable income was \$55,043.²⁶ The IRS calculated his tax liability at \$13,621 and his self-employment tax at \$6,801, for total tax liability of \$20,422.²⁷ His penalties and interest totaled \$8,505.²⁸ The 1991 deduction from income for supporting two prior children in the home is \$968 per month.²⁹ Inserting this additional deduction into a child support calculation yields a support amount of \$707 per month for S. and T.³⁰

In **1992**, Mr. J. received 1099-Misc and fish ticket income totaling \$20,926.57, plus a taxable Native corporation dividend of \$210.81,³¹ and the PFD of \$915.84. After subtracting fishing expenses and a cannery debt totaling \$1,405.11,³² Mr. J.' total taxable income was \$20,648.11.³³ Adding a non-taxable Native corporation distribution of \$1,793³⁴ results in total gross income of \$22,441.11.³⁵ When these figures are inserted into CSSD's child support calculator and the income and self-employment taxes are deducted, the calculation yields a deduction for supporting two children in the home of \$422 per month. Inserting this deduction into a child support calculation for S. and T. yields a support amount of \$308 per month.³⁶

In **1993**, Mr. J. received 1099-Misc, fish ticket and voucher income totaling \$22,032.03, plus a taxable Native corporation dividend of \$117.09,³⁷ and the PFD of \$949.46. After subtracting fishing expenses of \$738.19,³⁸ Mr. J.' total taxable income was \$22,360.39.³⁹

²⁵ Exh. 7 at pg. 6. It does not appear from these tax documents that Mr. J. received a PFD in 1991.

²⁶ *Id.*

²⁷ *Id.*

²⁸ Exh. 7 at pg. 7.

²⁹ *See* Exh. 33 at pg.1 and n.11, above.

³⁰ Attachment 4.

³¹ Exh. 8 at pgs. 6-10. A 1099-Misc. issued in the name of L. J. for \$2,350.95 is not Mr. J.' income and should not be attributed to him. *See* Exh. 8 at pg. 9.

³² Exh. 8 at pgs. 8 & 10. For purposes of the 1992 calculation, Mr. J. is not entitled to deduct the interest No Name Seafoods charged him in 1993 and 1994. *See* Exh. 8 at pg. 8.

³³ Exh. 34.

³⁴ Exh. 8 at pg. 6.

³⁵ Exh. 34.

³⁶ Attachment 5.

³⁷ Exh. 9 at pgs. 6-10.

³⁸ Exh. 9 at pg. 9.

³⁹ Exh. 35.

Adding a non-taxable Native corporation distribution of \$1,800⁴⁰ results in total gross income of \$24,160.39.⁴¹ When these figures are inserted into CSSD's child support calculator and the income and self-employment taxes are deducted, the calculation yields a child support amount of \$586 per month for two children, the deduction for supporting prior children in the home. Adding it to the child support calculation yields a support amount of \$294 per month for S. and T.⁴²

In **1994**, Mr. J. realized net business income of \$10,079, plus a taxable Native corporation dividend of \$135; for total taxable income of \$10,214.⁴³ He did not receive a PFD that year.⁴⁴ He also received a non-taxable Native corporation distribution of \$1,900,⁴⁵ all of which results in total gross income of \$12,114. When these figures are inserted into CSSD's child support calculator and the income and self-employment taxes are deducted, the calculation yields a deduction for supporting two prior children in the home of \$243 per month.⁴⁶ Adding this deduction to a child support calculation for S. and T. yields a support amount of \$178 per month.⁴⁷

In **1995**, Mr. J. received wages of \$1,920.63; form 1099-Misc income totaling \$21,247.88; a taxable Native corporation dividend of \$297.23, and the PFD of \$949.46; for total taxable income of \$24,456.04.⁴⁸ Adding a non-taxable Native corporation distribution of \$10,112⁴⁹ results in total gross income of \$34,568.04.⁵⁰ When these figures are inserted into CSSD's child support calculator and the income and self-employment taxes are deducted, the calculation yields a deduction for supporting two prior children in the home of \$677 per month.⁵¹

40 Exh. 9 at pg. 7.

41 Exh. 35.

42 Attachment 6.

43 Exh. 10 at pg. 6.

44 *Id.*

45 Exh. 10 at pg. 8.

46 Exh. 36.

47 Attachment 7.

48 Exh. 11 at pgs. 6-8.

49 Exh. 11 at pg. 6.

50 Exh. 37.

51 *Id.*

Inserting it into the child support calculation yields a support amount of \$495 per month for S. and T.⁵²

In **1996**, Mr. J. received wages of \$173.58; and form 1099-Misc income totaling \$19,487.39.⁵³ Adding the PFD of \$1,130.68 results in total gross income of \$20,791.65.⁵⁴ When these figures are inserted into CSSD's child support calculator and the income and self-employment taxes are deducted, the calculation yields a deduction for supporting two prior children in the amount of \$402 per month.⁵⁵ When added to the child support calculation, it yields a support amount of \$293 per month for S. and T.⁵⁶

In **1997**, Mr. J. had business income of \$9,957; taxable dividend income of \$259,76; the PFD of \$1,296.54; and a non-taxable Native corporation distribution of \$1,884.⁵⁷ His income tax liability was zero,⁵⁸ but his self-employment tax was \$1,407.⁵⁹ Placing all of these figures into CSSD's child support calculator yields a deduction for supporting two prior children in the home of \$286 per month.⁶⁰ Using this additional deduction in the child support calculation results in a support amount of \$208 per month for S. and T.⁶¹

In **1998**, Mr. J. received fishing income of \$21,722.13; a taxable Native corporation dividend of \$438.84; and the PFD of \$1,540.88, for total taxable income of \$23,701.85.⁶² Adding a non-taxable Native corporation distribution of \$1,924⁶³ results in total gross income of \$25,625.85.⁶⁴ When these figures are inserted into CSSD's child support calculator and the income and self-employment taxes are deducted, the calculation yields a deduction for supporting two prior children in the home in the amount of \$483 per month.⁶⁵ Inserting this

52 Attachment 8.

53 Exh. 12 at pgs. 6-9

54 Exh. 38.

55 *Id.*

56 Attachment 9.

57 Exh. 13 at pg. 6.

58 *Id.*

59 One-half of the self-employment tax has already been deducted via an adjustment to income, so Mr. J. may also deduct \$704 (\$58.66 per month) in the child support calculation. *See* Exh. 13 at pg. 6.

60 Attachment 10.

61 Attachment 11.

62 Exh. 14 at pg. 11.

63 *Id.*

64 Exh. 37.

65 Exh. 39.

deduction into a child support calculation for S. and T. yields a support amount of \$353 per month.⁶⁶

In **1999**, Mr. J. received fishing income of \$38,634.47; taxable Native corporation dividends of \$2,627.85; and the PFD of \$1,769.84, for total gross income of \$43,032.16.⁶⁷ When these figures are inserted into CSSD's child support calculator and the income and self-employment taxes are deducted, the calculation yields a deduction for supporting two prior children in the home of \$751 per month.⁶⁸ Inserting the deduction into a child support calculation yields a support amount of \$549 per month for S. and T.⁶⁹

In **2000**, Mr. J. received fishing income of \$5,638.23; a taxable Native corporation dividend of \$135.63; and the PFD of \$1,963.86, for total taxable income of \$7,737.72.⁷⁰ He also received a non-taxable Native corporation distribution of \$52,812, for total gross income of \$60,549.72. When these figures are inserted into CSSD's child support calculator and the income and self-employment taxes are deducted, the calculation yields a deduction for supporting prior children in the home in the amount of \$1,351 per month for two children and \$1,001 per month for one child.⁷¹

The oldest of Mr. J.' prior children, C., emancipated in August 2000, so there were two prior children in the home from January through August 2000, then one prior child in the home as of September 2000. As a result, Mr. J.' support obligation is \$986 per month for S. and T. from January 2000 through August 2000,⁷² then \$1,081 per month from September through December 2000.⁷³

In **2001**, Mr. J. received net fishing income of \$3,236; taxable Native corporation dividends of \$18,856.44;⁷⁴ and the PFD of \$1,850.28; for total gross income of \$23,942.72.⁷⁵ When these figures are inserted into CSSD's child support calculator and the income and self-

⁶⁶ Attachment 12.

⁶⁷ Exh. 15 at pgs. 6-8.

⁶⁸ Attachment 13. CSSD's calculation contains a \$27 error: the division incorrectly recorded a \$30.85 1099-Misc as income of \$3.85. *See* Exh. 15 at pg. 7. The support amounts were not affected by this minor clerical error.

⁶⁹ Attachment 14.

⁷⁰ Exh. 16 at pgs. 9-18.

⁷¹ Exh. 41.

⁷² Attachment 15.

⁷³ Attachment 16.

⁷⁴ Exh. 17 at pgs. 6-13.

⁷⁵ Attachment 17.

employment taxes are deducted, the calculation yields a deduction for supporting one prior child in the home in the amount of \$364 per month.⁷⁶ Inserting this deduction into a child support calculation yields a support amount of \$393 per month for S. and T.⁷⁷

In **2002**, Mr. J. received net fishing income of \$10,664; taxable Native corporation dividends of \$3,195.60;⁷⁸ and the PFD of \$1,540.76; for total gross income of \$15,400.36.⁷⁹ When these figures are inserted into CSSD's child support calculator and the income and self-employment taxes are deducted, the calculation yields a deduction for supporting one prior child in the home in the amount of \$232 per month.⁸⁰ Inserting this additional deduction into a child support calculation yields a support amount of \$250 per month for S. and T.⁸¹

The 2002 calculated child support amount is effective only during the months of January and February, as K., the younger of Mr. J.' prior children, emancipated in February 2002. Therefore, effective March 2002, the support amount for S. and T. is calculated without taking into consideration a deduction for supporting any prior children, and it results in a child support amount of \$313 per month for two children.⁸²

In **2003**, Mr. J. received net fishing income of \$3,584; taxable Native corporation dividends of \$8,311;⁸³ and the PFD of \$1,107.56; for total gross income of \$13,002.56.⁸⁴ When these figures are inserted into CSSD's child support calculator and the income and self-employment taxes are deducted, the calculation yields a support amount of \$281 per month for S. and T.⁸⁵

In **2004**, Mr. J. received net fishing income of \$6,439; taxable Native corporation dividends of \$12,083.07;⁸⁶ and the PFD of \$919.84; for total gross income of \$19,441.91.⁸⁷ When these figures are inserted into CSSD's child support calculator and the income and self-

⁷⁶ Attachment 17.

⁷⁷ Attachment 18.

⁷⁸ Exh. 18 at pgs. 6-16.

⁷⁹ Exh. 28 at pg. 21.

⁸⁰ Attachment 19.

⁸¹ Attachment 20.

⁸² Attachment 21.

⁸³ Exh. 19 at pgs. 6-15.

⁸⁴ Attachment 21. CSSD's calculation is \$1,000 too high, apparently because of a clerical error in recording Mr. J.' Native corporation dividends. *See* Exh. 28 at pg. 22; and Mr. J.' Hearing Brief/Objections at pg. 5.

⁸⁵ Attachment 22.

⁸⁶ Exh. 20 at pgs. 6-14.

⁸⁷ Exh. 28 at pg. 23.

employment taxes are deducted, the calculation yields a support amount of \$416 per month for S. and T.⁸⁸

In **2005**, Mr. J. received net fishing income of \$9,820; taxable Native corporation dividends of \$3,355.83;⁸⁹ and the PFD of \$845.76; for total gross income of \$14,021.59.⁹⁰ When these figures are inserted into CSSD’s child support calculator and the income and self-employment taxes are deducted, the calculation yields a support amount of \$292 per month for two children.⁹¹ S., the older child in this case, died in July 2005. Therefore, effective August 2005, Mr. J. is liable for paying support only for T. in the amount of \$216 per month.⁹²

In **2006**, Mr. J. was not gainfully employed – he developed psoriatic arthritis in 2005 and became unable to work in his usual vocation as a fisherman.⁹³ His doctor recommended that Mr. J. pursue vocational rehabilitation on the basis that his affliction is “a significantly debilitating condition that will worsen with time.”⁹⁴ Mr. J. lived with a family member he described as an “adult daughter,”⁹⁵ but it was probably K., who would have been in her early 20’s by that time. For 2006, Mr. J. received taxable Native corporation dividends of \$3,512.86⁹⁶ and the PFD of \$1,106.96; for total income of \$4,619.82.⁹⁷ These figures yield a support amount of \$77 per month for one child.⁹⁸

In **2007**, Mr. J. received only Native corporation dividends totaling \$4,045.13⁹⁹ and the PFD of \$1,654, for total income of \$5,699.13.¹⁰⁰ These figures yield a child support amount of \$95 per month for one child, T.¹⁰¹ He is obligated to pay support only for the months of January and February that year, as T. emancipated in February 2007.

88 Attachment 23.
89 Exh. 21 at pgs. 8-18.
90 Exh. 28 at pg. 24.
91 Attachment 24.
92 *Id.*
93 Exh. 24 at pgs. 3-4.
94 Exh. 24 at pg. 3.
95 Exh. 22 at pg. 2.
96 Exh. 22 at pgs. 10-16.
97 Exh. 28 at pg. 25.
98 *Id.*
99 Exh. 25 at pg. 1.
100 Exh. 28 at pg. 26.
101 Exh. 28 at pg. 26.

III. Discussion

The person who filed the appeal, in this case, Ms. W., has the burden of proving by a preponderance of the evidence that the agency's new Administrative Child Support and Medical Support Order is incorrect.¹⁰² The custodian's chief argument is that the default review should be denied because Mr. J. took so long to provide his income information.

A. *CSSD May Conduct Mr. J.' Default Review*

Under Alaska law, an obligor parent may request that CSSD vacate and reissue a child support order previously calculated from a default income amount, not the person's actual income and ability to pay.¹⁰³ He or she must provide the financial information necessary to determine the child support obligation for each year at issue.¹⁰⁴ After Mr. J. completed the process and provided income information, CSSD recalculated his child support obligation and issued a new Administrative Child Support and Medical Support Order to replace the child support order issued in 1990.¹⁰⁵

Ms. W. is correct in pointing out that Mr. J.' income information has been a long time coming. CSSD first established his child support obligation in 1990.¹⁰⁶ He did not document his income at that time, so CSSD was forced to set his ongoing child support at \$846 per month, the monthly amount of public assistance paid to Ms. W. on behalf of the children at that time.¹⁰⁷ Had Mr. J. provided his income information, CSSD would have been able to accurately calculate his child support amount in 1990.

Mr. J. also has been slow to document his income for purposes of a default review, which he has been pursuing since October 2005.¹⁰⁸ It was not until February 26, 2009, that Mr. J. documented his income.¹⁰⁹

Ms. W. requested an additional 250 days to gather more information about Mr. J.' past income, but her request was denied. It is doubtful she would be successful in that endeavor. Some of his records are no longer available because of cannery closures, and Mr. J.' attorney

¹⁰² 15 AAC 05.030(h).

¹⁰³ AS 25.27.195(b).

¹⁰⁴ 15 AAC 125.121(b).

¹⁰⁵ Exh. 28.

¹⁰⁶ Exh. 1.

¹⁰⁷ *Id.*

¹⁰⁸ *See* Exh. 2 at pg. 4.

¹⁰⁹ Exhs. 4-25.

asserted that any and all available records pertaining to the obligor's income during the years at issue have been filed in this appeal.

Ms. W.'s frustration is understandable, but denying Mr. J.' default review because his income documents were untimely is not required. CSSD's regulations indicate a default review will cease if the obligor parent fails to file the necessary income information.¹¹⁰ Likewise, CSSD's preprinted inquiry form tells obligors they must file the necessary income information within 45 days of qualifying for a default review.¹¹¹ But these guidelines simply keep CSSD's workload flowing more smoothly by allowing caseworkers to cease working on requests that have become stagnant because the information has not been timely received. The guidelines do not bar an obligor from obtaining a default review – if it is cancelled, the obligor merely has to file another request after compiling his or her income information.¹¹² Ultimately, the purpose of a default review is to provide parents the opportunity to obtain accurate child support orders based on their actual income. Since Mr. J. did eventually file his income information, nothing prevented CSSD from completing his default review.

B. Child Support Calculations

Civil Rule 90.3(a)(1) provides that an Obligor's child support amount is to be calculated based on his or her "total income from all sources." A parent who supports an older child in the home is entitled to an additional deduction from his or her income.¹¹³ The amount of the deduction is determined under Civil Rule 90.3 as though the parent were paying support for that child.¹¹⁴

The calculations Mr. J. filed did not utilize a deduction for supporting his prior children in the home prior to July 1995,¹¹⁵ the effective date of the amendment first creating the deduction for prior children.¹¹⁶ Mr. J. mistakenly believes that he is not entitled to the deduction prior to the effective date of the amendment creating it. The Commentary to Civil Rule 90.3 addresses the question regarding the applicability of amendments to the Rule and fortuitously is directly on point in Mr. J.' case:

¹¹⁰ 15 AAC 125.121(c).

¹¹¹ See Exh. 2 at pg. 4.

¹¹² In the alternative, CSSD may grant an obligor additional time to file income information.

¹¹³ Civil Rule 90.3(a)(1)(C).

¹¹⁴ *Id.*

¹¹⁵ See Hearing Brief/Objections of R. J. at pg. 4.

Retroactive Application of Amendments. When establishing support for a period of time before a complaint or petition was served, the court should apply the most current version of the rule, except for portions of the rule that state dollar amounts. This is because Civil Rule 90.3, unlike most other court rules, is interpretive. The most current version of the rule is presumably the most refined interpretation to date of the statute calling for fair and equitable child support awards. For example, the credit for prior children living with the obligor was not found in early versions of the rule, but nonetheless should be applied when support is being established. However, the dollar amounts in the rule, such as the minimum support amount (increased from \$40 to \$50) and the income cap (increased from \$60,000 to \$105,000), have been revised over time to reflect inflation or for other reasons. With regard to these amounts, the court should apply the version of the rule that was in effect in the month for which support is being calculated.^[117]

Thus, Mr. J.' calculations for each year at issue should include the deduction for supporting prior children in the home. The deduction for both C. and K. is effective from the beginning of this obligation, November 1988, because they came to Alaska in June 1988, through August 2000, the month that the older child, C., turned 18 years of age. The deduction is for one child in the home, effective from September 2000 through February 2002, the month that K., the younger child, turned 18 years of age. The child support calculations from March 2002 do not contain a deduction for supporting prior children in the home.

Mr. J. made two primary arguments regarding the treatment of his business income. First, he claimed that the penalties and interest he paid following IRS audits in 1988 through 1991 should be included in the tax figures deducted from his income in the child support calculations. He cited as his authority *Bergstrom v. Lindback*,¹¹⁸ a case decided by the Alaska Supreme Court. In *Bergstrom*, one of the issues concerned whether the deduction for federal income taxes the lower court used in Mr. Bergstrom's child support calculation should be based on his payroll tax withholdings or his actual federal income tax liability. The Supreme Court noted that payroll tax withholdings do not necessarily reflect a person's actual tax liability and determined that the "actual tax liability under existing Internal Revenue Service regulations, rather than the amount withheld, is the proper basis for determining the amount to be deducted from [an obligor parent's] income."¹¹⁹

¹¹⁶ Alaska Supreme Court Order No. 1192, effective July 15, 1995.

¹¹⁷ Civil Rule 90.3, Commentary VI.E.2.

¹¹⁸ 779 P.2d 1235 (Alaska 1989).

¹¹⁹ 779 P.2d at 1236.

The question as to how *Bergstrom* applies in Mr. J.’ case concerns what specifically constitutes an obligor’s “actual tax liability.” Mr. J. argues that his “actual tax liability” includes the penalties and interest he had to pay as a result of being audited by the IRS. CSSD does not agree: the division asserts that the penalties and interest do not constitute a portion of Mr. J.’ “actual tax liability.”

CSSD is correct on this issue. The tax examination documents Mr. J. filed show specific line items for the “total adjustments” the IRS made, as well as Mr. J.’ “corrected taxable income,” and the resulting “total corrected tax liability.”¹²⁰ From these figures, the IRS considered any payments he had made and then calculated Mr. J.’ balance due.¹²¹ Finally, the IRS used Mr. J.’ balance due to calculate his penalties and interest. Clearly, the obligor’s “actual tax liability” does not include the penalties and interest assessed against him by the IRS and the charge for penalties and interest may not be added to the tax liability amounts in his child support calculations.

Mr. J. also asserted that he should be entitled to deduct from his business income a \$15,000 boat payment he made each year from 1990 through 1993, a total of four payments. The obligor is incorrect – he cannot deduct the boat payments from his business income. The boat is a capital investment that should be depreciated over time. The fact that Mr. J. did not file tax returns during those years does not change the analysis.

IV. Conclusion

Contrary to Ms. W.’s claim, Mr. J. is entitled to a default review of his case because his child support was calculated from a default income figure, specifically, the AFDC needs standards in effect at the time his support obligation was established.

The Administrative Child Support and Medical Support Order CSSD issued on December 18, 2009, was incorrect. Mr. J. is entitled to a deduction for supporting his prior children, C. and K., in his home beginning in 1988 and throughout their minority. Mr. J. is not entitled to an additional deduction from income for the \$15,000 boat payments he made from 1990 through 1993, nor is he entitled to a deduction for the penalties and interest the IRS charged him for the years 1988 through 1991. Mr. J.’ child support obligation is now correctly calculated

¹²⁰ See Exh. 6 at pg. 6, lines 2, 4 and 11.

¹²¹ *Id.* at line 16.

for the period from 1988 through 2007 and the support amounts set forth herein should be adopted.

V. Child Support Order

- Mr. J. is obligated to pay support for S. and T. as follows:

YEAR	MONTH	CS AMT	YEAR	MONTH	CS AMT
1988	Nov - Dec	\$186	1999	Jan - Dec	\$549
1989	Jan - Feb	\$384	2000	Jan - Aug	\$986
"	Mar - Dec	\$518	"	Sept - Dec	\$1081
1990	Jan - Dec	\$330	2001	Jan - Dec	\$393
1991	Jan - Dec	\$707	2002	Jan - Feb	\$250
1992	Jan - Dec	\$308	"	Mar - Dec	\$313
1993	Jan - Dec	\$294	2003	Jan - Dec	\$281
1994	Jan - Dec	\$178	2004	Jan - Dec	\$416
1995	Jan - Dec	\$495	2005	Jan - July	\$292
1996	Jan - Dec	\$293	"	Aug - Dec	\$216
1997	Jan - Dec	\$208	2006	Jan - Dec	\$77
1998	Jan - Dec	\$353	2007	Jan - Feb	\$95

DATED this 29th day of June, 2010.

By: Signed
 Kay L. Howard
 Administrative Law Judge

Adoption

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060, adopts this Decision and Order as the final administrative determination in this matter.

Under AS 25.27.062 and AS 25.27.250, the obligor's income and property are subject to withholding. Without further notice, a withholding order may be served on any person, political subdivision, department of the State, or other entity.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 25.27.210 and Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 19th day of July, 2010.

By: Signed
Signature
Kay L. Howard
Name
Administrative Law Judge
Title

[This document has been modified to conform to technical standards for publication.]