

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

In the Matter of:)	
)	OAH No. 12-0133-CSS
U B)	CSSD No. 001058082
_____)	

DECISION AND ORDER

I. Introduction

The obligor, U B, appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on April 26, 2012. The obligee child is L, 16 years of age. The other parent is J U-S.

The formal hearing was held on June 6, 2012, and August 9, 2012. Both parties participated. Mr. B was represented by Terry C. Aglietti. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing sessions were recorded.

Based on the record as a whole and after careful consideration, Mr. B's child support is modified to \$747 per month, effective March 1, 2012, and ongoing.

II. Facts

A. Procedural History

Mr. B's child support obligation for L was set at \$221 per month in 1997.¹ On February 17, 2012, Ms. U-S requested a modification review.² On February 28, 2012, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.³ Mr. B provided income information.⁴ On April 26, 2012, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. B's modified ongoing child support at \$759 per month, effective March 1, 2012.⁵ He appealed on May 8, 2012, asserting that CSSD had inadvertently used his wife's income in the child support calculation.⁶

¹ Exh. 1.
² Exh. 2.
³ Exh. 3.
⁴ Exh. 4.
⁵ Exh. 5.
⁶ Exh. 6.

B. Material Facts

Mr. B and Ms. U-S are the parents of L, 16. L lives full-time with Ms. U-S, so child support in this case is calculated under Civil Rule 90.3(a), which directs how support is to be determined in primary custody cases.

Mr. B lives in Virginia. He is the sole owner of, and operates, B No Name, LLC, a company that installs No Name residential telephone lines. In 2011, Mr. B's company had gross receipts of \$105,134, and, after deductions, "ordinary business income" of \$21,374.⁷ One of the line items in the deductions section of B No Name's corporate tax return is a \$6,000 figure listed as "compensation of officers."⁸ This is attributed to Mr. B as income because he is the only officer for the corporation. Other noteworthy items listed in the company's tax return are "distributions" of \$12,000,⁹ a deduction for meals and entertainment of \$1,193,¹⁰ and a Section 179 expense deduction of \$7,300.¹¹

III. Discussion

A. Controlling Law

Child support orders may be modified upon a showing of "good cause and material change in circumstances."¹² If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes "material change in circumstances" has been established and the order may be modified. Mr. B's child support has been \$221 per month since October 1997. Thus, a child support calculation of \$254.15 or more would be sufficient to warrant modification in this case.¹³

A modification is effective beginning the first of the next month after CSSD issues a notice to the parties that a modification has been requested.¹⁴ In this case, the notice was issued on February 28, 2012, so a modification would be effective as of March 1, 2012.¹⁵ In a child support matter, the person who files the appeal, in this case, Mr. B, has the burden of proving by

⁷ Obligor's Notice of Supplemental Filing at pg. 1; received June 14, 2012 (hereinafter referred to as B No Name Tax Return).

⁸ *Id.*

⁹ *Id.* at pg. 3.

¹⁰ *Id.*

¹¹ *Id.* at pg. 6.

¹² AS 25.27.190(e).

¹³ \$221 x 1.15 = \$254.15.

¹⁴ 15 AAC 125.321(d).

¹⁵ Exh. 3.

a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order was incorrect.¹⁶

B. Mr. B's Self Employment Income

Mr. B disagrees with CSSD's determination that his child support obligation should be \$759 per month for one child. For the modification review, CSSD calculated this monthly amount from figures that were reported on his and his wife's joint federal income tax return. The parties agreed during the hearing that CSSD had incorrectly used his wife's income and the agency was directed to recalculate the support amount as it deemed appropriate from Mr. B's personal tax return and that of B No Name, LLC, which was filed during the hearing process.

Civil Rule 90.3(a)(1) provides that an obligor's child support obligation is to be calculated from his or her "total income from all sources," minus mandatory deductions. The Rule does not have a specific formula for determining the income of a self-employed obligor, but the commentary to the Rule provides this guidance:

Self Employment Income. Income from self-employment, rent, royalties, or joint ownership of a partnership or closely held corporation includes the gross receipts minus the ordinary and necessary expenses required to produce the income. Ordinary and necessary expenses do not include amounts allowable by the IRS for the accelerated component of depreciation expenses, investment tax credits, or other business expenses determined by the court to be inappropriate. Expense reimbursements and in-kind payments such as use of a company car, free housing or reimbursed meals should be included as income if the amount is significant and reduces living expenses.^[17]

Mr. B reported income from B No Name of \$14,074 on his and his wife's personal income tax return.¹⁸ This figure was derived from subtracting \$7,300, the Section 179 expense line item, from the corporation's \$21,374 ordinary business income.¹⁹

After the initial hearing, CSSD revised its estimate of Mr. B's child support to \$712 per month, calculated from a combination of figures taken from his corporate and personal tax

¹⁶ 15 AAC 05.030(h); 2 AAC 64.290(e).

¹⁷ Civil Rule 90.3, Commentary III.B.

¹⁸ Obligor's Notice of Supplemental Filing at pg. 1, received August 10, 2012 (hereinafter referred to as Obligor's Personal Tax Return). This distinction between the two returns is necessitated by the fact that Mr. B filed them on different days, but the two filing documents had the same title and the returns were not marked with exhibit numbers.

¹⁹ See Obligor's Personal Tax Return at pg. 4.

returns.²⁰ CSSD included three income items from B No Name's return: the \$6,000 figure identified as compensation to officers; the \$21,374 ordinary business income; and \$12,000, which was a line item figure identified only as "distributions."²¹ CSSD correctly included the first two items in Mr. B's income because they were specifically named as "compensation" and "income," respectively, on the corporation's tax return. The "distributions" line item is also correctly included in Mr. B's income because he is the sole owner and officer of the corporation. There is no one else to whom corporate distributions *could* be paid, so the distributions figure should also be attributed to him as income.

CSSD disallowed Mr. B's meals and entertainment deduction of \$1,193 and added it back into his income.²² However, the obligor should be allowed this deduction. Mr. B testified that he takes his laborer out to lunch every day – nothing fancy, just a drive-through meal that is approximately \$5.00 or so for each of them. Buying his worker lunch on a daily basis could be considered a reasonable business expense, especially if it gives the worker an additional benefit of employment, or serves as an incentive for the person to stay with the company. The corporate return indicates the deduction is 50% of Mr. B's total meals and entertainment expenditure, so the amount reflects only his expense for taking the worker out for lunch, not for Mr. B himself. Thus, the \$1,193 figure should not be included in the income CSSD used to calculate his support obligation.

CSSD also added \$1,056 to Mr. B's income for the revised calculation. According to the agency, this amount reflects 50% of his and his wife's "additional child tax credit."²³ This item also should not be included in Mr. B's income for child support purposes. Pursuant to 26 U.S.C. § 24, the child tax credit is available to taxpayers who have a "qualifying child" within a family making less than \$130,000 per year.²⁴ For some families, the child tax credit will exceed their tax liability. In such cases, the unused portion of the child tax credit may be refundable as the "additional child tax credit."²⁵ Every tax credit an obligor receives does not automatically translate into income for child support purposes. As stated above, income for a self-employed obligor is defined as the company's "gross receipts minus the ordinary and necessary expenses

²⁰ See Exh. 9.

²¹ Exh. 9 at pg. 2. *see also* B No Name Tax Return at pg. 3.

²² Exh. 9 at pg. 2.

²³ Exh. 9 at pg. 2; *see also* Obligor's Personal Tax Return at pg. 6.

²⁴ http://en.wikipedia.org/wiki/Child_tax_credit, accessed November 27, 2012.

²⁵ *Id.*

required to produce the income.”²⁶ The only tax credits the commentary mentions for inclusion in a self-employed obligor’s income are “investment tax credits,”²⁷ which are not present in Mr. B’s case. The “additional child tax credit” is not income to the obligor under Civil Rule 90.3, so the \$1,056 amount should be subtracted from the income figure CSSD used to calculate Mr. B’s support obligation.

Finally, CSSD included in Mr. B’s estimated income the amount of \$1,460, which the agency derived by straight lining his Section 179 expense of \$7,300.²⁸ According to the corporate return, this deduction was for the purchase of a “box trailer” that cost \$6,800, and a “ditch witch trailer” that cost \$500; the total purchase price for the two was \$7,300.²⁹ Strangely, the corporate return identified these items as “personal property.”³⁰ However, because of the nature of B No Name’s work, they are more accurately viewed as a type of business equipment.

Civil Rule 90.3 clearly states that ordinary and necessary expenses do not include accelerated depreciation.³¹ Contrary to Mr. B’s assertion that the Section 179 line item is merely an item that has been expensed in its entirety, or costed out, Section 179 expenses *are* a type of accelerated depreciation. Subject to certain limits, Section 179 of the Internal Revenue Code allows federal taxpayers to treat the purchase of some capital assets acquired for their businesses as expensed items in the tax year in which the items are put into service.³² This means that instead of amortizing the cost of the item over a period of years, and deducting from gross income only the depreciation calculated for the tax year in question, the taxpayer may be able to deduct up to the full cost of the item in a single tax year. This, in effect, allows the taxpayer to accelerate the depreciation by taking all of it at one time.³³

Thus, CSSD was correct to straight line Mr. B’s Section 179 expense. Without more information from Mr. B, the division determined the equipment had a useful life of five years.³⁴ From that, CSSD divided the \$7,300 expensed item by five years, which yielded an amount to be

²⁶ Civil Rule 90.3, Commentary III.B.

²⁷ *Id.*

²⁸ Exh. 9 at pg. 2; *see also* B No Name Tax Return at pg. 6.

²⁹ B No Name Tax Return at pg. 6.

³⁰ B No Name Tax Return at pg. 8.

³¹ Civil Rule 90.3, Commentary III.B.

³² *See* 26 U.S.C. § 179.

³³ *Grams v. Grams*, 624 N.W.2d 42, 56 (Neb. App. 2001) (stating that “a Section 179 deduction is, in effect, accelerated depreciation taken in the year property is placed in service” and rejecting parent’s argument that machinery costs expensed under Section 179 should not be added back into income for child support purposes).

³⁴ CSSD’s explanation of its calculation presented during supplemental hearing.

deducted of \$1,460.³⁵ The division then added that amount to Mr. B's income for child support purposes. However, the agency did the actual arithmetic backwards. If the amount to be deducted for one year is \$1,460, the *remainder* of the \$7,300 total, or, \$5,840, is *not* being deducted and thus is the amount that should be added back into Mr. B's income for the child support calculation.³⁶

The following figures should thus be included in Mr. B's income in order to calculate his modified child support obligation:

\$6,000	Compensation of officers
\$21,374	Ordinary business income
\$12,000	Distributions
<u>\$ 5,840</u>	<u>Non-deductible portion of Section 179 expense</u>
\$45,214	Total

When the above figure is inserted into CSSD's online child support calculator, the result is a child support amount of \$747 per month for one child.³⁷ This result is \$35 higher than CSSD's most recent calculation, most notably because, even though the agency's line items for meals and entertainment and the additional child tax credit were deleted, the non-deductible portion of the Section 179 expense was significantly higher, thus accounting for the higher result.³⁸ Although CSSD mistakenly used a combination of Mr. B's and his wife's income figures in its initial calculation for the modification review, ironically, CSSD's result was only \$12 different than the amount arrived at in this decision. However, because this result is taken from Mr. B's actual income, the result reasonably represents his ability to pay child support.

IV. Conclusion

Mr. B met his burden of proving by a preponderance of the evidence that CSSD's November 2, 2009, Modified Administrative Child Support and Medical Support Order was incorrect, because the modified child support amount was calculated from a combination of Mr. B's and his wife's income figures from their joint tax return. Mr. B's income for child support

³⁵ See Exh. 9 at pg. 2.

³⁶ \$7,300 - \$1,460 = \$5,840.

³⁷ Attachment A. CSSD used an annual tax amount of \$368.50 in the calculation, which yielded a monthly tax deduction of only \$30.71. See Exh. 9 at pgs. 1-2. The annual figure represents 50% of Mr. B's and his wife's total joint tax liability. See Obligor's Personal Tax Return at pg. 2, line 61 ($\$737 \div 2 = \368.50).

³⁸ CSSD inserted an annual tax figure of

purposes has been corrected and the result is a modified child support amount of \$747 per month for one child. This amount should be adopted, effective March 1, 2012. This case does not include a variance under Civil Rule 90.3(c).

V. Child Support Order

- Mr. B is liable for modified child support for L in the amount of \$747 per month, effective March 1, 2012, and ongoing;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated April 26, 2012 remain in full force and effect.

DATED this 27th day of November, 2012.

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 4th day of January, 2013.

By: Signed

Signature
Angela M. Rodell

Name
Deputy Commissioner

Title

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