

# JULY 2015 NEWSLETTER

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## **HOW CHILD SUPPORT IS CALCULATED IN PENNSYLVANIA**

### **FIRM ANNOUNCEMENTS:**

#### **A. UPCOMING SEMINARS**

Jeffrey S. Pozzuolo, Esquire and Kelly A. Barse, Esquire will be conducting a CPE/CLE webinar seminar titled: "Estate Planning For The Millennial Couple" on Friday, July 17, 2015 at Lawline. Please visit Lawline.com to view the webinar.

**Attorneys and CPAs can obtain mandatory CLE or CPE credits via the internet by viewing this seminar live or online at Lawline.com.**

#### **B. EDUCATIONAL SEMINARS ON YOU TUBE:**

Pozzuolo Rodden, P.C. is pleased to announce you can view the following seminars taught by Joseph R. Pozzuolo and/or Jeffrey S. Pozzuolo at "Pozzuolo Rodden, P.C.- You Tube"

**\*The Negotiation and Documentation of Commercial Real Estate Loan Documents**

**\*The Fundamentals of Starting a Business**

**\*How Middle Income Families Should Plan for Retirement**

**C. BLOGS**

1. The following are a few of the business, tax and estate planning blogs posted on our main website [www.pozzuolo.com](http://www.pozzuolo.com) during the past month:

- a. Agreement To Arbitrate An Employment Contract Was Upheld And Enforced;
- b. Why You Need A Business Transition Plan;
- c. Business Succession Planning; and,
- d. Wife Is Entitled To Collect APL/Spousal Support Arrearages From Husband's Estate

Please visit our website [www.pozzuolo.com](http://www.pozzuolo.com) for more information on these and other relevant business, estates and employment topics.

2. The following are a few of the family law blogs posted on our family law website [www.pozzuolofamilylaw.com](http://www.pozzuolofamilylaw.com) during the past month:

- a. Wife Is Entitled To Collect APL/Spousal Support Arrearages From Husband's Estate;
- b. Parent Does Not Maintain Custodial Rights Over His Child Attending High School After The Child Reaches 18 Years;
- c. Motion for Additional Discovery Denied As Not Relevant To Motion To Modify Child Support; and,
- d. Post Nuptial Agreement Is Unforceable For Lack Of Consideration And Failure To Comply With Uniform Written Obligations Act.

Please visit our website [www.pozzuolofamilylaw.com](http://www.pozzuolofamilylaw.com) for more information on these and other relevant family law topics.

**Please visit our Facebook page to read all of our past and future blogs: Pozzuolo Rodden, PC**

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**QUESTION OF THE MONTH:**

**What Is The Difference Between The Annual Exclusion From Gift Tax And The Lifetime Exemption?**

Answer-See Page 6 of this Newsletter

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## **HOW CHILD SUPPORT IS CALCULATED IN PENNSYLVANIA**

The core concept of child support is simple and well-known. Even people without children know the basics. Child support is a monthly payment that one parent makes to the other to help cover the various costs of raising a child. Typically, that payment is made to the custodial parent- the parent who spends the most time caring for the child. Accordingly, it is typically the non-custodial parent who makes the payment. This is because the law assumes that the custodial parent is already spending money directly on the child. When the parents have equal amounts of custodial time, the payments will be made by the parent with the higher income to the parent with the lower income.

Although the core concept of child support is simple, it can become more complex when the time comes to actually calculate the amount of child support that is due. This article will examine and explain the methodology used to calculate child support in Pennsylvania.

In Pennsylvania, a party's basic child support obligation is determined pursuant to the Pennsylvania Support Guidelines. The two key considerations that the support guidelines take into account are:

- 1) the parties' combined monthly net income; and,
- 2) the number of children who will be covered by the child support order.

### **Step One: Determining Combined Monthly Net Income**

To determine each parent's monthly net income, you start by determining each individual parent's gross income. Gross income includes wages, bonuses, pensions, royalties, commissions, income made through interest, Social Security benefits, and any other sources of income. From the parent's total gross income, you then make deductions for taxes, union dues, and alimony paid from one party to the other. The remaining amount is each parent's monthly net income. Simply add the two amounts together to arrive at the parents' combined monthly net income.

### **Step Two: Applying the Pennsylvania Support Guidelines**

Once you have calculated the combined monthly net income, you can determine the monthly basic child support obligation by turning to the Pennsylvania Support Guidelines. The support guidelines determine the monthly basic child support obligation by comparing the parents' combined monthly net income to the number of children who will be covered by the support order. The more children who will be covered, the higher the obligation. For example, parents with a combined monthly income of \$2,000 and one child would have a basic support obligation of \$486. However, if they had five children, the basic support obligation would be \$1,009.

### **Step Three: Determining Each Parent's Share of the Obligation**

The basic support obligation does not fall entirely on one parent, however. It is the combined obligation of the two parents. The individual support obligation of the non-custodial parent is calculated by determining what his or her share is of the combined monthly income. For example, if the parents'

combined monthly income is \$2,000, and the non-custodial parent's income is \$1,500, then he or she makes 75% of the combined income. Accordingly, he or she would be obligated to pay 75% of the basic support obligation. If you reverse the roles and the parent with a net income of \$500 is the non-custodial parent, he would only be obligated to pay 25% of the basic support obligation. Pennsylvania uses this model to ensure that a child receives the same amount of financial support from his parents that he would have if his parents had stayed together.

#### **Step Four: Adjustments for Additional Expenses**

Finally, adjustments may be made due to certain additional expenses of childcare. The types of expenses which may adjust a child support payment are not routine or minor, such as expenses for school supplies and clothing. These types of routine expenses are already presumed a part of the support obligation. However, larger expenses such as childcare can be considered. If a custodial parent has to pay for childcare while he or she goes to work, and the non-custodial parent does not, the non-custodial parent's obligation can be increased. An example of how that increase would be calculated is provided below.

Other types of major childcare expenses for which adjustments can be made to the basic support obligation include paying tuition for private school, sending the child to summer camp, paying health insurance premiums, and paying for unreimbursed medical expenses.

#### **Going Through the Steps**

Following is a hypothetical example of two divorcing Pennsylvania parents going through the process of calculating their respective child support obligations. We will call them Tom and Jane. Tom and Jane have one child, and Jane is the custodial parent. In this example we will use round numbers for the sake of simplicity, and apply the current Pennsylvania Support Guidelines. The guidelines are adjusted periodically, so it is always necessary to refer directly to an updated copy.

#### **Step One: Determining Combined Net Monthly Income**

Tom's monthly income includes \$5,000 in wages and an additional \$2,500 in commissions. Therefore, his gross income is  $(5,000 + 2,500 =)$  \$7,500. However, Tom also pays \$1,500 in taxes. Therefore his net income is  $(7,500 - 1,500 =)$  \$6,000

Jane's monthly income includes \$3,000 in wages, with no other sources of income. Therefore, her gross income is \$3,000. However, Jane pays \$1,000 in taxes. Therefore her net income is  $(3,000 - 1,000 =)$  \$2,000.

Tom and Jane's combined net monthly income is calculated by adding Tom's net income (\$6,000) to Jane's net income (\$2,000), resulting in  $(6,000 + 2,000 =)$  \$8,000

#### **Step Two: Applying the Pennsylvania Support Guidelines**

Tom and Jane now look to the Pennsylvania Support Guidelines. They find their combined net income of \$8,000, and then compare that to the number of children the support order will cover. Tom and Jane only have one child. The basic support obligation set forth on the Pennsylvania Support Guideline chart for parents with a combined net income of \$8,000 and one child is

\$1,244.

### **Step Three: Determining Each Parent's Share of the Obligation**

Tom and Jane now need to determine what share of the basic support obligation they are individually responsible for. This is calculated by determining what share of the combined net monthly income each provides. The combined net monthly income of Tom and Jane is \$8,000. Tom's individual net monthly income is \$6,000. Accordingly, he provides a  $(6,000 / 8,000 =) .75$ , or 75% share of the combined net monthly income, and Jane provides a 25% share.

Accordingly, 75% is the share of the basic support obligation that Tom, as non-custodial parent, must pay to Jane, as custodial parent. Tom will owe  $(1,244 \times 75\% =)$  \$933 a month in child support.

### **Step Four: Adjustments for Additional Expenses**

Jane pays \$600 a month for childcare while she is at work. Accordingly, Tom's child support obligation can be increased by his share of their combined net income and basic support obligation. Tom's share is 75%, and accordingly Tom's obligation can be increased by  $(600 \times 75\% =)$  \$450 a month, leaving him with a total monthly obligation of  $(933 + 450 =)$  \$1,383 a month.

Pennsylvania provides a useful online tool in estimating child support obligations called the Child Support Estimator, located at:

[https://www.humanservices.state.pa.us/cs/ws/cs\\_ws\\_controller.aspx?qG01B7nXtMRiNTdGKgvKGMWco06Et06ffr\\_i8pczrh2O7sBIMMMf0Dd@SzhM31Z1uFKoSoYfDxbXttwwQOXgiFw--FoiCS7tDwn7jVf5W8LmSiX0mD5zNLCls9chOJBTYucsVx2IOCmSS](https://www.humanservices.state.pa.us/cs/ws/cs_ws_controller.aspx?qG01B7nXtMRiNTdGKgvKGMWco06Et06ffr_i8pczrh2O7sBIMMMf0Dd@SzhM31Z1uFKoSoYfDxbXttwwQOXgiFw--FoiCS7tDwn7jVf5W8LmSiX0mD5zNLCls9chOJBTYucsVx2IOCmSS).

Although not guaranteed, the Estimator can give you a basic idea of your obligation.

### **Calculating Child Support Beyond the Guidelines**

The Pennsylvania Support Guidelines have limitations. For example, they do not calculate support obligations when the parties' combined net income exceeds \$30,000 per month. In that case, child support is calculated pursuant to Pennsylvania Rule of Civil Procedure 1910.16-3.1, which determines the parents' basic support obligation by starting with a base number (ex. \$2,801 for one child, \$3,836 for two children) and adding a percentage of the amount of the net income above \$30,000 (ex. 8.5% for one child, 11.6% for two children).

The Guidelines also only provide calculations for up to six children. When there are more than six children who are the subject of a single order, child support is calculated as follows: First, the amount of support which would be owed for six children is calculated (ex. \$3,000). Second, the amount of support which would be owed for five children is calculated (ex. \$2,500). Third, the amount for five children is subtracted from the amount for six children (ex.  $3,000 - 2,500 =$  \$500). Fourth, that number is multiplied by the number of children in excess of six (ex. Eight children,  $500 \times 2 =$  \$1,000). Finally, that number is added to the amount of support which would be due for only six children (ex.  $3,000 + 1,000 =$

\$4,000).

### **Conclusion**

It is important to be as prepared as possible when entering into any new situation in life. This is especially true when considering your financial future and the care and support of your children. Although the Pennsylvania Support Guidelines are a useful tool for determining what your obligation will be, complicated and unique situations can require further advice and guidance.

An experienced family law attorney should be consulted for all questions or concerns about your current or future child support obligations. Please feel free to contact this office and meet with one of our experienced attorneys about any such questions or concerns.

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## **QUESTION OF THE MONTH:**

### **What Is The Difference Between The Annual Exclusion From Gift Tax And The Lifetime Exemption?**

One of the topics that cause the most confusion when discussing gift taxation is the difference between the annual exclusion from gift tax and the lifetime exemption. Part of this confusion likely stems from the fact that people think they should be able to give their property away during their lifetime with no tax consequences and partially from the difference between federal and state estate/gift tax laws.

The annual exclusion from gift tax allows an individual to give up to a certain amount tax free per person per year. In 2015, the maximum amount that can be gifted under the annual exclusion is \$14,000 and this number is set by Congress. For example, this year you could give \$14,000 to each of your family members or even everyone you know and incur no gift tax liability. You can repeat this pattern of giving calendar year after calendar year and incur zero gift tax liability as long as you give no more than the annual exclusion from gift tax. Any gifts exceeding the amount permitted to be made tax free under the annual exclusion would have to be reported on a federal gift tax return for the year in which the gift was made. Whether there would be any tax due on the gift depends on whether you have any available lifetime exemption.

In contrast to the annual exclusion, the federal lifetime exemption from gift tax limits the amount you can gift over the course of your lifetime and at your death. In 2015, the maximum amount you can make a gift of tax free over your lifetime or at death is \$5,430,000. This number is also set by Congress and is scheduled to increase at set intervals over the next few years. Congress has linked the Federal Estate Tax and the Federal Gift Tax together to prevent people from avoiding Federal Estate Tax at their death by giving away all of their property shortly before they pass away. For instance, if you were to make \$2,000,000 in gifts during your lifetime that did not qualify for the annual exclusion, this would reduce the amount you can bequeath tax free at your death to \$3,430,000. If your taxable estate at your death exceeded \$3,430,000, your estate would have to pay Federal Estate Tax on the excess amount at the rate of forty percent (40%).

The following example demonstrates how the annual exclusion and the lifetime exemption would apply to a gift made to a child in the amount of \$100,000. First, \$14,000 of that gift would qualify for the annual exclusion and could be transferred tax free. The remaining \$86,000 would be applied against your remaining lifetime exemption. If you had not used any lifetime exemption previously, the amount you could pass tax free at death would be reduced to \$5,344,000.

It is also important to note that the annual exclusion and the lifetime exemption do not apply to certain gifts, which can be made tax free. You may make payments directly to an educational institution or a medical provider on behalf of someone for certain qualified expenses without incurring any gift tax liability. Gifts between spouses are completely tax free, whether made during life or at death.

In addition to being able to make gifts between spouses with no Federal Gift or Estate Tax consequences, there are two other benefits available to married couples. First, married couples can engage in what is known as “gift splitting” wherein they can make joint gifts to a single person for up to twice the amount of the annual exclusion tax free. If you do decide to use gift splitting, a gift tax return should be filed to show that the gift was one half from you and one half from your spouse, even if the funds originated from a jointly held bank account with your spouse.

The second benefit available to married couple is known as “portability,” which allows married couples to essentially pool their federal lifetime and death time exemptions to pass the maximum amount tax free. For instance, if your spouse dies first and has a taxable estate of only \$3,000,000, the unused \$2,430,000 can be used by you at your death, permitting you to pass up to \$7,860,000 tax free. This benefit is only available as long as you make the election to use portability at the death of the first spouse on the Federal Estate Tax return and the surviving spouse does not remarry.

If you have questions about how planned giving using the annual exclusion could be incorporated into your estate plan, an experienced estate planning attorney should be contacted to assist with your planning.

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- If there are any legal questions you would like this office to answer in the future, please email the question to us at [info@pozzuolo.com](mailto:info@pozzuolo.com). Each month, the question with the most relevance to our privately held business clients, advisors, and friends will be answered in our monthly newsletter. The questions can relate to any of the areas practiced by this office including business planning and transactions, corporate law, commercial litigation, employment law and litigation, commercial real estate and development, construction law and litigation, estate planning, estate administration, tax and pension law, family law litigation.
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## **PUBLICATIONS**

All of the following professional publications and past newsletters written by attorneys of this office are available by clicking here: [http://pozzuolo.com/Pubs\\_Articles.shtml](http://pozzuolo.com/Pubs_Articles.shtml)

### **Corporate/Tax Articles**

- Bankruptcy - How To Prevent It And How To Cope With It Should It Happen To Your Business
- Deferred Compensation Rewards And Retains Key Employees
- Design Buy-Sell Agreements For Maximum Utility
- How An S Corporation Avoids The Double Taxation Incurred When Excessive Compensation Is Treated As A Dividend

- How Mortgage Lenders Should Draft Broker Agreements To Avoid RESPA Violations
- How To Look, Act And Sound Like A Professional Corporation
- How to Structure a Suitable Buy-Sell Agreement
- How To Use Non-Qualified Deferred Compensation Arrangements As A Business, Retirement And Tax Planning Tool
- Money Purchase Pension Plan Falls Out Of Favor
- Protecting A Client's Business From Unfair Competition Using Restrictive Covenants
- Structuring Loans From Qualified Plans - How To Handle The Strict Tax Rules
- What Type of Qualified Corporate Retirement Plan Best Serves Your Business, Tax And Retirement Needs
- Why An Employment Contract Is Mandatory

### **Estate Planning Articles**

- Adapt Estate Planning Strategies to Fit the Needs of Same-Sex Couples
- College Funding Tool Offers Estate Planning Advantage
- Diversify Strategies For An Effective Estate Plan
- Divorce and Estate Planning
- Divorce Raises The Need For Performing An Estate Planning Review
- Drafting The Durable Power Of Attorney For Wealth Protection Purposes
- Estate Planning For Pet Owners
- Remarriage Situations Can Raise Special Estate Planning Considerations
- Six Proven Estate Planning Techniques
- Special Needs Trust - An Estate Planning Tool For The Disabled
- The Limited Liability Company -A Sophisticated Tool For Estate Planning
- Using Trusts To Maximize Family Protection And Minimize Estate Tax
- Why Living Wills- Advance Directives Are An Essential Part Of Estate Planning

***Actual resolution of legal issues depends upon many factors, including variations of facts and state laws. This newsletter is not intended to provide legal advice on specific subjects. It is to provide insight into legal developments and issues. You should always consult with legal counsel before taking any action on matters covered in our updates.***

This newsletter is courtesy of Pozzuolo Rodden, P.C.

To subscribe, unsubscribe, or for any questions, please contact us at [INFO@POZZUOLO.COM](mailto:INFO@POZZUOLO.COM).