



McIntosh Lawyers, PC

Joe McIntosh, Esquire
Attorneys & Counselors at Law

23 West Second Street
Media, PA 19063
Tel. 610-566-1700
Fax 610-565-7944

E-mail Joe@McIntoshLawyers.com
www.McIntoshLawyers.com

LL.M. in Taxation
Master of Laws

LL.M. in Trial Advocacy
Master of Laws

M.B.A.

Laura Vickers
Legal Assistant

Admitted to:
Pennsylvania
U.S. Tax Court
U.S. Court of Federal Claims
U.S. Court of International Trade
U.S. Court of Appeals Federal Circuit
U.S. District Court
U.S. Court of Appeals
U.S. Supreme Court

SUPPORT

1. **Spousal Support.** The purpose of spousal support is to assure a reasonable living allowance to the party requiring support. The duty to provide spousal support arises from the marital relationship itself and terminates when the relationship ends.
2. **Alimony Pendente Lite (APL)** is an order for temporary support granted to a spouse during the pendency of a divorce proceeding. Alimony Pendente Lite is awarded to equalize the parties' ability to maintain or defend in a divorce action.

In the past, alimony payments were tax-deductible by the paying spouse and reportable income to the recipient. Beginning on January 1, 2019, alimony payments are no longer tax-deductible to the paying spouse or reportable income to the recipient. Pennsylvania updated its spousal support formula to reflect the changes to the tax law.

a. **No Child Support.** The new formula requires taking 33% of the obligor's monthly net income (the obligor is the spouse with the higher net income) and subtracting 40% the obligee's monthly net income (the spouse with the lower net income).

Monthly net income includes income from any source, including wages, salaries, commissions, bonuses, interest, rental income, etc. The only items that are deductible from the parties' monthly gross incomes are taxes, and mandatory deductions, such as union dues. Voluntary deductions, such as 401(k) contributions are added back.

Depreciation is added back as income unless, it represent an actual outlay of cash.

Perquisites such as auto, entertainment, meals, cell phone and insurance can be included as income.

- b. **Child Support and Spousal Support or Alimony Pendente Lite (APL).** This calculation requires taking 25% of the obligor's monthly net income (the spouse with the higher net income) and subtracting 30% the obligee's monthly net income (the spouse with the lower net income)

The other aspect is the spousal support/APL award amount is now considered part of the recipient spouse's income. This is for purposes of assigning percentage splits for children's out-of-pocket, unreimbursed healthcare expenses and premiums, extracurricular activities, tuition, etc. This means that the recipient spouse will now pay a higher percentage towards these costs than they did prior to January 1, 2019. This also offsets the loss of the payor's tax savings from the lost deduction.

3. **Child Support.** The obligation to pay or provide the support for minor children is the duty of both parents. A minor child's right to support cannot be waived or bargained away. Therefore, signed agreements waiving child support is unenforceable and void. The parental duty of support is owed until the child has graduated from high school and has reached the age of 18; unless the child has special needs (mentally handicapped). The support obligation is based upon the reasonable needs of the child and the parents' available income or earning capacity. Both parents have an obligation to support their children based upon their respective incomes, earning capacities, assets and abilities.

Private school tuition, extracurricular activities, sports, tutoring, music lessons, etc.; are paid in addition to the child support and split pursuant to the parent respective income.

4. **Earning Capacity.** If the Court determines that a party to a support action has willfully failed to obtain or maintain appropriate employment, the Court may impute to that party an income equal to the party's earning capacity. Age, education, training, health, work experience, earnings history and child care responsibilities are factors which shall be considered in determining earning capacity. In order for an earning capacity to be assessed, the Court must state the reasons for the assessment in writing or on the record. Generally, the Court should not impute an earning capacity that is greater than the amount the party would earn from one full-time position. Determination of what constitutes a reasonable work regimen depends upon all relevant circumstances including the choice of jobs available within a particular occupation, working hours, working conditions and whether a party has exerted substantial good faith efforts to find employment.