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AN ACT RELATING TO AMENDMENTS TO THE CHEROKEE NATION CHILD SUPPORT GUIDELINES

BE IT ENACTED BY THE CHEROKEE NATION:

Section 1. Title and Codification

This Act shall be known and may be cited as the "Child Support Amendments Act of 2017"

Section 2. Purpose

The purpose of this Act is to make amendments to the Cherokee Nation Child Support Guidelines, codified at 43 CNCA § 507 et seq.

Section 3. Legislative History

- LA 12-05, effective March 21, 2005
LA 32-06, effective December 20, 2006
LA 21-07, effective April 23, 2007
LA 12-12, effective May 18, 2012

Section 4. Amendatory.

Section 508A of Title 43 of the Cherokee Nation Code Annotated is amended to read as follows:

§ 508A. Definitions

A. **"Adjusted Gross Income"** (AGI) means the net determination of the income of a parent, calculated by modifying the gross income of the parent as follows:

1. adding to the gross income of the parent any Social Security benefit paid to the child on the account of the parent,
2. deducting from gross income the amount of any support alimony arising in a prior case to the extent that payment is actually made, and
3. deducting from gross income any deductions as set forth for other prior-born or after-born children for whom the parent is legally responsible and is actually supporting, pursuant to Section 508C of this title.

B. **"Base child support obligation"** means the amount of support displayed on the Schedule of Basic Child Support Obligations which corresponds to the combined AGI of both parents and the number of children for whom support is being determined. This amount is rebuttably presumed to be the appropriate amount of basic child support to be provided by both parents in the case immediately under consideration, prior to consideration of any adjustments for medical and child care costs, and any other additional expenses.

C. **"Child"** means:

1. a person under eighteen (18) years of age: and
2. a person eighteen (18) or more years of age with respect to whom a child support order has been issued pursuant to the laws of a state or a federally recognized tribe or nation.

B D. **"Child support"** means a payment of money, continuing support or arrearages or the provision of a benefit (including payment of health insurance, child care, and educational expenses) for the support of a child.

G E. **"Child support order"**:

1. means a judgment, decree, or order of a court requiring the payment of child support in periodic amounts or in a lump sum: and
2. includes:
 - a. a permanent or temporary order, and
 - b. an initial order or a modification of an order.

D E. **"Court"** means a court or administrative agency of a state or tribe that is authorized by state or tribal law to establish the amount of child support payable by a contestant or make a modification of a child support order.

G. **"Current monthly child support obligation"** means the base child support obligation and the proportional share of any medical insurance and annualized child care costs.

È H. **"Custodial parent party"** means a parent or third-party caretaker who has physical custody of a child more than one hundred eighty-two (182) days per year.

~~F. **"Custodial party"** means a court-appointed caretaker who has physical custody of a child.~~

Ë I. **"Non-custodial parent"** means a parent who ~~does not have~~ has physical custody of a child one hundred eighty-two (182) days per year or less.

È J. **"Obligee"** means

1. the person or entity to whom a support obligation is owed,
2. the Office of Child Support Services or a public agency of another state or tribe that has the right to receive current or accrued support payments or that is providing support enforcement services, or
3. a person designated in a support order or as otherwise specified by the court.

È K. **"Obligor"** means the person who is required to make payments under an order for support.

È L. **"Overnight"** means the child is in the physical custody and control of a parent for an overnight period of at least twelve (12) hours, and that parent has made a reasonable expenditure of resources for the care of the child. The twelve- (12) hour period could be during the day if the child is under school age.

È M. **"Parenting time adjustment"** means an adjustment to the base child support amount based upon parenting time.

È N. **"Payor"** means any person or entity paying monies, income, or earnings to an obligor. In the case of a self-employed person, the "payor" and "obligor" may be the same person.

È O. **"Social Security Title II benefits"** means any benefits received pursuant to the provisions of Title II of the federal Social Security Act, 42 USC § 401 *et seq.* as amended.

Section 5. Amendatory.

Section 508B of Title 43 of the Cherokee Nation Code Annotated is amended to read as follows:

§ 508B. Computation of gross income-Imputed income-Self employment income-Fringe benefits-Social Security Title II benefits

A. As used in this act:

1. **"Earned income"** is defined as income received from labor or the sale of goods or services and includes, but is not limited to, income from:

- a. salaries;
- b. wages;
- c. tips;
- d. commissions;
- e. bonuses; and
- f. military pay.

2. **"Gross income"** includes earned and passive income from any source, except as excluded in this section.

3. **"Passive income"** is defined as all other income and includes, but is not limited to, income from:

- a. dividends;
- b. pensions;
- c. rent;
- d. interest income;
- e. trust income;
- f. support alimony being received from someone other than the other parent in this case;
- g. annuities;
- h. social security benefits;
- i. workers' compensation benefits;
- j. unemployment insurance benefits;
- k. disability insurance benefits;
- l. gifts;
- m. prizes;
- n. gambling winnings;
- o. lottery winnings; and
- p. royalties.

B. Income specifically excluded is:

- 1. Actual child support received for children not before the Court;
- 2. Adoption assistance subsidy ~~paid by the Department of Human Services~~;
- 3. Benefits received from means-tested public assistance programs including, but not limited to:
 - a. Temporary Assistance for Needy Families (TANF),
 - b. Supplemental Security Income (SSI),
 - c. food stamps, and
 - d. General Assistance and State Supplemental Payments for Aged, Blind and the Disabled;
- 4. The income of the child from any source, including, but not limited to, trust income and social security benefits drawn on the disability of the child;

5. Payments received by the parent for the care of foster children; and

6. Educational scholarships and grants used for tuition and related expenses.

C.

1. For purposes of computing gross income of the parents, gross income shall include for each parent whichever is the most equitable of:

a. all actual monthly income described in this section, plus such overtime and supplemental income as the Court deems equitable, or

b. the average of the gross monthly income for the time actually employed during the previous three (3) years, or

c. the minimum wage paid for a forty- (40) hour week, or

d. gross monthly income imputed as set forth in subsection (D) of this section.

2. If a parent is permanently physically or mentally incapacitated, the child support obligation shall be computed on the basis of actual monthly gross income.

D. Imputed income.

1. Instead of using the actual or average income of a parent, the Court may impute gross income to a parent under the provisions of this section if equitable.

2. The following factors may be considered by the court when making a determination of willful and voluntary underemployment or unemployment:

a. whether a parent has been determined by the Court to be willfully or voluntarily underemployed or unemployed for the purpose of affecting the child support computation, including whether unemployment or underemployment for the purpose of pursuing additional training or education is reasonable in light of the obligation of the parent to support his or her children and, to this end, whether the training or education will ultimately benefit the child in the case immediately under consideration by increasing the parent's level of support for that child in the future,

b. when there is no reliable evidence of income,

c. the past and present employment of the parent,

d. the education, training, and ability to work of the parent,

e. the lifestyle of the parent, including ownership of valuable assets and resources, whether in the name of the parent or the current spouse of the parent, that appears inappropriate or unreasonable for the income claimed by the parent,

f. the role of the parent as caretaker of a handicapped or seriously ill child of that

parent, or any other handicapped or seriously ill relative for whom that parent has assumed the role of caretaker which eliminates or substantially reduces the ability of the parent to work outside the home, and the need of that parent to continue in that role in the future, or

g. any other factors deemed relevant to the particular circumstances of the case.

E. Self-employment income.

1. Income from self-employment includes income from, but not limited to, business operations, work as an independent contractor or consultant, sales of goods or services, and rental properties, less ordinary and reasonable expenses necessary to produce such income.

2. A determination of business income for tax purposes shall not control for purposes of determining a child support obligation. Amounts allowed by the Internal Revenue Service for accelerated depreciation or investment tax credits shall not be considered reasonable expenses.

3. The District or Administrative Court shall deduct from self-employment gross income an amount equal to the employer contribution for F.I.C.A. tax which an employer would withhold from an employee's earnings on an equivalent gross income amount.

F. Fringe benefits.

1. Fringe benefits for inclusion as income or in-kind remuneration received by a parent in the course of employment, or operation of a trade or business, may be counted as income if they significantly reduce personal living expenses.

2. Such fringe benefits might include, but are not limited to: company car, housing, or room and board.

3. Basic Allowance for Housing, Basic Allowance for Subsistence, and Variable Housing Allowances for service members are considered income for the purposes of determining child support.

4. Fringe benefits do not include employee benefits that are typically added to the salary, wage, or other compensation that a parent may receive as a standard added benefit such as employer contributions to portions of health insurance premiums or employer contributions to a retirement or pension plan.

G. Social Security Title II benefits.

1. Social Security Title II benefits received by a child shall be included as income to the parent on whose account the benefit of the child is drawn and applied against the support obligation ordered to be paid by that parent. If the benefit of the child is drawn from the disability of the child, the benefit of the child is not added to the income of either parent and not deducted from the obligation of either parent.

2. Child support greater than social security benefit. If the child support award due after calculating the child support guidelines is greater than the social security benefit received on behalf of the child, the obligor shall be required to pay the amount exceeding the social security benefit as part of the child support award in the case.

3. Child support equal to or less than social security benefits.

a. If the child support award due after calculating the child support guidelines is less than or equal to the social security benefit received on behalf of the child, the child support obligation of that parent is met and no additional child support amount must be paid by that parent.

b. Any social security benefit amounts which are greater than the support ordered by the Court shall be retained by the caretaker for the benefit of the child and shall not be used as a reason for decreasing the child support order or reducing arrearages.

c. The child support computation form shall include a notation regarding the use of social security benefits as offset.

4.

a. Calculation of child support as provided in subsection (F) of this section shall be effective no earlier than the date on which the motion to modify was filed.

b. The Court may determine if under the circumstances of the case, it is appropriate to credit social security benefits paid to the custodial person prior to a modification of child support against the past-due child support obligation of the noncustodial parent.

c. Any credit granted by the Court pursuant to subparagraph b of this paragraph shall be limited to the time period during which the social security benefit was paid, or the time period covered by a lump sum for past social security benefits.

Section 6. Amendatory.

Section 508C of Title 43 of the Cherokee Nation Code Annotated is amended to read as follows:

§ 508C. Deductions from gross income for qualified other children

A. Deductions for other children of either parent who are qualified under this section may be considered by the Court for the purpose of reducing the gross income of the parent. Adjustments are available for a child:

1. Who is the biological, legal, or adopted child of the parent;
2. Who was born prior to or after the child in the case under consideration;
3. Whom the parent is actually supporting; and

4. Who is not before the Court to set, modify, or enforce support in the case immediately under consideration.

B. Children for whom support is being determined in the case under consideration, stepchildren, and other minors in the home that the parent has no legal obligation to support shall not be considered in the calculation of this deduction.

C. If the Court finds a parent has a parent-child relationship with a child not before the Court, the Court may grant a deduction for that child as set forth in subsection (D) of this section.

D. Calculation of deduction for qualified other children.

1. Out-of-home children.

a. To receive a deduction against gross income for child support provided pursuant to a court order for qualified other children whose primary residence is not in the home of the parent seeking deduction, the parent shall establish the existence of a support order and provide documented proof of support paid for the other child consistently over a reasonable and extended period of time prior to the initiation of the proceeding that is immediately under consideration by the tribunal, but in any event, such time period shall not be less than twelve (12) months.

b. Documented proof of support includes:

i. physical evidence of monetary payments to the caretaker of the child, such as canceled checks or money orders, and

ii evidence of payment of child support under another child support order, such as a payment history from a tribunal clerk or child support office.

c. The available deduction against gross income for either parent's qualified children not in the home of the parent is the actual documented court-ordered current monthly child support obligation of the qualified other children, averaged to a monthly amount of support paid over the most recent twelve-month period.

2. In-home children.

a. To receive a deduction against gross income for qualified ~~prior-born~~ other children whose primary residence is with the parent seeking deduction, but who are not part of the case being determined, the parent must establish a legal duty of support and that the child resides with the parent more than fifty percent (50%) of the time. Documents that may be used to establish that the parent and child share the same residence include the school or medical records showing the address of the child and the utility bills of the parents mailed to the same address, court orders reflecting the parent is the primary residential parent or that the parent shares the parenting time of the child fifty percent (50%) of the

time.

b. The deduction for other qualified children shall be computed as a hypothetical child support order calculated using the deduction worksheet the gross income of the parents, the total number of qualified other children living in the home of the parent, and the Oklahoma Child Support Guideline Schedule, 43 O.S. § 119, as amended.

c. The available deduction against gross income for the qualified in-home children of either parent is seventy-five percent (75%) of a hypothetical support order calculated according to these Guidelines, using the Deduction Worksheet, the gross income of the parent less any self-employment taxes paid, the total number of qualified other children living in the home of the parents, and the Oklahoma Child Support Guideline Schedule in 43 O.S. § 119, as amended.

Section 7. Amendatory.

Section 514 of Title 43 of the Cherokee Nation Code Annotated is amended to read as follows:

§ 514. Interest on delinquent child support and judgments

If the order is established under Cherokee Nation law, delinquent court-ordered child support payments and child support judgments (whether accrual or arrearage) may draw interest at the rate of five percent (5%) two percent (2%) per year, and the interest shall be collected in the same manner as the payments upon which the interest accrues. If the order is established under another jurisdiction's laws, interest shall accrue based on the law of the jurisdiction from which the order originated. Private interest may be waived by the custodial parent/party and/or by the Court if the non-custodial parent makes regular, consistent payments and no arrearage exists.

Section 8. Amendatory.

Section 515 of Title 43 of the Cherokee Nation Code Annotated is amended to read as follows:

§ 515. Child support computation form

A. A child support computation form shall be signed by the Judge and incorporated as a part of all orders which establish or modify a child support obligation.

B. When services are not being provided by the Office of Child Support Services, a support order summary form shall be prepared by the attorney of record or the pro se litigant and presented to the Judge with all orders which establish paternity or establish, modify or enforce a child support obligation. No paternity or child support order shall be signed by the Judge without presentation of the valid support order summary form. No support order summary form shall be valid unless signed by an attorney representing the Office of Child Support Services. After the order is signed by the Judge, the summary of support order form may be submitted to the ~~to the~~ Office of Child Support Services for collection and enforcement.

Section 9. Repealer.

Section 516 of Title 43 of the Cherokee Nation Code Annotated is repealed in its entirety and reserved for future use.

Section 10. Provisions as cumulative

The provisions of this act shall be cumulative to existing law.

Section 11. Severability

The provisions of this act are severable and if any part of provision hereof shall be held void the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this act.

Section 12. Effective Date

The provisions of this act shall become effective thirty (30) days from and after the date of its passage and approval.

Section 13. Self-Help Contributions

To the extent that this Act involves programs or services to citizens of the Nation or others, self-help contributions shall be required, unless specifically prohibited by the funding agency, or a waiver is granted due to physical or mental incapacity of the participant to contribute.