



ADMINISTRATIVE RULES OF MONTANA



37.62.105 DETERMINATION OF INCOME FOR CHILD SUPPORT

- (1) Income for child support includes actual income, imputed income as set forth in ARM 37.62.106, or any combination thereof which fairly reflects a parent's resources available for child support. Income can never be less than zero.
 - (a) Parents are presumed to be capable of earning income from full-time employment; full-time employment is presumed to be 40 hours per week but may be more or less depending upon the parent's profession and/or the employer's policies.
 - (b) The net value of a parent's assets may be considered for child support where, in a specific case, it would be inappropriate not to do so.
- (2) Actual income includes:
 - (a) economic benefit from whatever source derived, except as excluded in (3) of this rule, and includes but is not limited to income from salaries, wages, tips, commissions, bonuses, earnings, profits, dividends, severance pay, pensions, periodic distributions from retirement plans, draws or advances against wages or salaries, interest, trust income, annuities, royalties, alimony or spousal maintenance, social security benefits, veteran's benefits, workers' compensation benefits, unemployment benefits, disability payments, earned income credit and all other government payments and benefits. Income also includes capital gains net of capital losses. To the extent the net gains result from recurring transactions, they may be averaged over a period of at least three years. If the net gains are attributable to a single event or year, they may be used to represent income over one or more years;
 - (b) gross receipts minus reasonable and necessary expenses required for the production of income for those parents who receive income or benefits as the result of an ownership interest in a business or who are self-employed. Specifically:
 - (i) straight line depreciation for vehicles, machinery, and other tangible assets may be deducted from income if the asset is required for the production of income. The party requesting such depreciation shall provide sufficient information to calculate the value and expected life of the asset. Internal Revenue Service rules apply to determine expected life of assets;
 - (ii) if expenses are not required for the production of income, the expenses are not allowable deductions; if business expenses include a personal component, such as personal use of business vehicles, only the business component is deductible;
 - (iii) a net loss in the operation of a business or farm may not offset other income. If a parent has more than one business and the businesses are related, however, the total losses of the businesses may be offset against (deducted from) the total profits. An

artist, for example, whose principal income source is the sale of paintings in her gallery may also own a company that publishes calendars and other commercial uses of her paintings as a marketing tool. A loss in the operation of the publishing company may be offset against the profit in the gallery business because the two enterprises are related; and

- (iv) investment losses outside the normal course of business may not reduce other income.
 - (c) the value of noncash benefits, including but not limited to in-kind compensation, personal use of vehicle, housing, payment of personal expenses, food, utilities, etc.;
 - (d) grants, scholarships, third-party contributions, and earned income received by parents engaged in a plan of economic self-improvement, including students. Financial subsidies or other payment intended to subsidize the parent's living expenses and not required to be repaid at some later date must be included in income for child support; and
 - (e) allowances for expenses, flat rate payments or per diem received, except as offset by actual expenses. Actual expenses may be considered only to the extent a party can produce receipts or other acceptable documentation. Reimbursement of actual employment expenses may not be considered income for purposes of these rules.
- (3) Income for child support does not include:
- (a) income attributable to subsequent spouses, domestic associates, and other persons who are part of the parent's household;
 - (b) means-tested veteran's benefits;
 - (c) means-tested public assistance benefits including but not limited to cash assistance programs funded under the federal temporary assistance to needy families (TANF) block grant;
 - (d) supplemental security income (SSI);
 - (e) supplemental nutrition assistance program (SNAP) benefits, formerly known as food stamps;
 - (f) child support payments received from other sources; and
 - (g) adoption subsidies paid by state or federal agencies, unless expenses of the subsidized child are included in the calculation.
- (4) Income for child support does not include lump sum social security payments or social security benefits received by a child or on behalf of a child as the result of a parent's disability or the child's disability, whether or not the child is a child of the calculation. See ARM 37.62.144 for more information on Social Security benefits.
- (5) If overtime is mandatory and the worker has no control over whether or not overtime is worked, the overtime earnings are included in income for child support. In the case of voluntary overtime earnings or earnings from a job that is in addition to a full-time job, and the earnings are expected to continue for the foreseeable future, the earnings are presumed to be available for child support and are included in the calculation subject to rebuttal of the presumption.

Authorizing statute(s): 40-5-203, MCA

Implementing statute(s): 40-5-209, MCA

History: NEW, 2012 MAR p. 747, Eff. 7/1/12.