



Child Support Bulletin – August 2015

Allocation of Child's Tax Exemption

Child support orders in North Dakota must include a provision for health insurance coverage for the child. N.D.C.C. § 14-09-08.10. Under the Affordable Care Act, a person claiming a child as a dependent for federal income tax purposes is potentially eligible for premium tax credits, but also potentially liable for a tax penalty if the child is not insured. This can lead to situations where the failure of one parent to insure the child as ordered by the court can result in a penalty to the other parent.

To help alleviate these situations, often by aligning the duty to provide insurance with the right to claim the child as a dependent, a new law effective on August 1, 2015, provides:

Each order entered under this code for the support of a minor child or the support of a child after majority under section 14-09-08.2 must identify the person who is authorized to claim the child as a dependent for purposes of filing an income tax return.

N.D.C.C. § 14-09-09.37. For divorce cases, allocating the tax exemption for the child is already quite common, but it is rare in cases where the order is secured by Child Support. To comply with the new law, Child Support will begin submitting recommendations to the court regarding the tax exemption for the child.

Unlike divorce cases, allocation of the tax exemption in child support cases can be complicated if the child is in Foster Care or if the case was referred to Child Support because public assistance has been expended for a child who is in the care of a relative other than a parent or legal guardian.

As a general rule, and at the risk of over-simplification, Child Support's recommendations to the court will follow the following hierarchy (in descending order):

- If the exemption is already allocated for the child in the current or a different civil file, recommend that the court take judicial notice of the allocation if necessary but otherwise propose no change.

- If a parent is already carrying private health insurance coverage for the child, recommend that the exemption be allocated to the parent carrying the insurance.
- If there is a parent with primary residential responsibility, recommend that the exemption be allocated to that parent.
- If the child is in Foster Care or is in the care of a caretaker relative, recommend that the exemption be allocated to the parent who previously had primary residential responsibility, because it is that parent to whom the child will most often return.
- If the parents share equal residential responsibility, or if it is a Foster Care case against parents who do not live together, recommend that the exemption be allocated to the parent with the greater income. If the income is the same, recommend that the allocation of the exemption alternate every other year.

Procedurally, following service of the summons and complaint in a child support case, Child Support will notify the parties of the recommended allocation of the tax exemption and the impact of that recommendation regarding the potential tax penalty if the child is not insured. The notice will recommend that a party consider obtaining advice from a tax professional, and explain that any disagreement with the proposed allocation can be brought to the attention of Child Support, for potential stipulation if all of the parties agree, or to the court. The assigned Child Support attorney as the moving party will be available to explain to the court the basis for our recommendation, but we will defer to the informed wishes of the parents or the discretion of the court regarding allocation of the exemption.

A person who faces a potential tax penalty due to another's failure to honor a court order to insure the child can request a hardship exemption. However, there are conditions that must be met for the exemption to apply and, as a result, the exemption has limited effectiveness.

For further information from the federal Office of Child Support Enforcement in this area, please click [here](#).

At the present time, there will be no change to Child Support's standard request for health insurance coverage if available to the obligee at no or nominal cost or else available to the obligor at reasonable cost. However, this continues to be an area where we are waiting for post-ACA guidance from the federal government regarding the establishment and enforcement of medical support.

Please feel free to contact the Child Support program if you have any questions regarding our implementation of the new law.