

State Income Tax Obligation – Obligor Not Residing in North Dakota (IC-CO-00-06)

Child Support Guidelines, N.D. Admin. Code §75-02-04.1-01(7)(b)

Question: When North Dakota's child support guidelines are applied to an obligor who does not live in North Dakota, what is the appropriate amount to deduct from the obligor's gross income for the state income tax obligation in order to arrive at net income?

Answer: Pursuant to N.D. Admin. Code § 75-02-04.1-01(7)(b), "net income" means total annual gross income less "a hypothetical state income tax obligation equal to fourteen percent of the amount determined under subdivision a without reduction for child tax credits." (Subdivision a addresses the calculation of the hypothetical federal income tax obligation; the hypothetical state income tax obligation is actually a function of the hypothetical federal income tax obligation.) This percentage is applied regardless of the obligor's state of residence or the state income tax rate, if any, in effect in the obligor's state of residence.

The percentage was selected based on the fact that North Dakota's income tax rate is 14% of the federal income tax. However, the state income tax obligation is treated as a hypothetical because it is not intended to precisely mirror the tax obligation actually imposed on the obligor. Since most child support obligations calculated pursuant to the guidelines are for obligors who are North Dakota residents, the approach is generally fair and realistic. For those obligors who are not North Dakota residents, the approach is simpler than attempting to use tax rates imposed under the laws of other states or political subdivisions. In addition to simplifying the calculations, it also has the effect of treating obligors alike.

Reference: Summary of Comments Received in Regard to Proposed Amendments to N.D. Admin. Code ch. 75-02-04.1, Child Support Guidelines, dated June 14, 1999.

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