

(e) **SUPPORT OBLIGATIONS WHEN CUSTODIAL PARENT OWES SPOUSAL SUPPORT.** (Added 3/2/00)

Where children are residing with the spouse obligated to pay spousal support or alimony pendente lite (custodial parent) and the other spouse (non-custodial parent) has a legal obligation to support these children, the guideline amount of spousal support or alimony pendente lite shall be determined by offsetting the non-custodial parent's obligation for support of the children and the custodial parent's obligation of spousal support or alimony pendente lite, and awarding the net difference either to the non-custodial parent as spousal support/alimony pendente lite or to the custodial parent as child support as the circumstances warrant.

The following example uses the formula to show the steps followed to determine the amount of the non-custodial parent's support obligation to the children and the effect of that obligation upon the custodial parent's spousal support obligation. The example assumes that the parties have two children and the non-custodial parent's net monthly is \$1,000 and the custodial parent's net monthly income is \$2,600. First, determine the spousal support obligation of the custodial parent to the non-custodial parent based upon their net incomes from the formula for spousal support without dependent children, i.e., \$640. Second, recompute the net income of the parties assuming the payment of the spousal support so that \$640 is deducted from the custodial parent's net income, now \$1,960, and added to the non-custodial parent's net income, now \$1,640. Third, determine the child support obligation of the non-custodial parent based upon the recomputed net incomes in Step 2 from the schedule and formula for two children, i.e., \$468. Fourth, determine the recomputed support obligation of the custodial parent to the non-custodial parent by subtracting the non-custodial parent's child support obligation from Step 3 (\$468) from the original support obligation determined in Step 1 (\$640). The recomputed spousal support is \$172. (Added 3/2/00)

(f) **ALLOCATION. CONSEQUENCES.** (Added 3/2/00)

- (1) An order awarding both spousal and child support may be unallocated or state the amount of support allocable to the spouse and the amount allocable to each child. However, the formula provided by these rules assume that an order will be unallocated. Therefore, if the order is to be allocated, the formula set forth in this Rule shall be utilized to determine the amount of support allocable to the spouse. If allocation of an order utilizing the formula would be inequitable, the court shall make an appropriate allocation. Also, if an order is to be allocated, an adjustment shall be made to the award giving consideration to the federal income tax consequences of an allocated order as may be appropriate under the circumstances. (Added 3/2/00)

- (2) When the parties are in higher income brackets, the income tax considerations are likely to be a more significant factor in determining an award of support. A support award for a spouse and children is taxable to the obligee while an award for the children only is not. Consequently, in certain situations an award only for the children will be more favorable to the obligee than an award to the spouse and children. In this situation, the trier of fact should utilize the guidelines which result in the greatest benefit to the obligee. (Added 3/2/00)

When the obligee's net income is equal to or greater than the obligor's net income, the guideline amount for spouse and children is identical to the guideline amount for children only. Therefore, in cases involving support for spouse and children, whenever the obligee's net income is equal to or greater than the obligor's net income, the guideline amount indicated shall be attributed to child support only. (Added 4/1/99)

- (3) Unallocated charging orders for child and spousal support, or child support and alimony pendente lite, shall terminate upon the death of the payee spouse or payee ex-spouse. (Added 6/5/01)
- (4) In the event that obligor defaults on an unallocated order, the court shall allocate the order for collection of child support pursuant to the Internal Revenue Service income tax refund intercept program or for registration and enforcement of the order in another jurisdiction under the Uniform Interstate Family Support Act, 23 Pa.C.S. §7101 et seq. The court shall provide notice of allocation to the parties. (Revised 6/5/01)

**NOTE:** *This provision is necessary to comply with various state and federal laws relating to the enforcement of child support. It is not intended to affect the tax consequences of an unallocated order.* (Added 4/1/99)

*Adopted September 6, 1989, effective September 30, 1989; amended and effective January 27, 1993; amended December 8, 1998, effective April 1, 1999; amended March 2, 2000, effective immediately; <sup>(1)</sup>amended October 27, 2000, effective immediately; <sup>(2)</sup>amended June 5, 2001; effective immediately; amended October 30, 2001, effective immediately; amended September 24, 2002, effective immediately; amended November 9, 2004, effective immediately; amended May 17, 2005, effective immediately*