

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

RDN, : NO. 84-20,241  
Petitioner :  
: vs. : DOMESTIC RELATIONS SECTION  
: Exceptions  
MJH, :  
Respondent :

OPINION AND ORDER

Before the Court are Respondent’s exceptions to the Family Court Order dated February 24, 2003, in which Respondent was directed to pay support for the parties’ three minor children. Argument on the exceptions was heard April 2, 2003.

In his exceptions, Respondent contends the hearing officer erred in failing to deduct certain expenses he claims are necessary for his self-employment, in calculating his taxable income, and in the amounts included in each party’s income based on each party’s joint income tax refund. These will be addressed seriatim.

With respect to the employment expenses not allowed by the hearing officer, specifically the cost of a physical examination, attorneys fees incurred for the reviewing of Respondent’s contract with Federal Express, and a down payment on a truck used for his work with Federal Express, the Court finds that none of these are on-going expenses and therefore believes the hearing officer did not err in not deducting such from his income.

With respect to the calculation of taxable income, Respondent appears to be comparing income for federal income tax purposes with income for child support purposes and, as noted above, without the three deductions for purposes of child support, the figures will not be the same.

With respect to the tax refunds, the hearing officer attributed to Petitioner a proportionate

share of the refund received by she and her husband, based upon her percentage of the gross income. He also attributed to Respondent a percentage of the tax refund received by he and his wife, based upon his proportionate share of the gross income. Respondent argues that because the refund was increased by an education credit and a child tax credit, as well as two additional exemptions, based upon his wife's children, that increase in the refund should be attributable to his wife's income and not to his. He also argues that Petitioner's portion of the tax refund between she and her husband should be greater than that found by the hearing officer, as the three children claimed as exemptions and for purposes of a child tax credit are her children, not her husband's. The Court agrees that for purposes of child support, the actual tax obligation of the party to the support Order should be calculated.

From his 2001 federal income tax return, it is possible to conclude that Respondent had a gross income of \$30,172.87. Added to that is one-half the interest income, one-half the dividend income, one-half the business loss and one-half the capital loss, resulting in an adjusted gross income of \$30,228.37. The parties' total adjusted gross income was \$44,177.00 and thus Respondent's share was 68.42558%. To calculate the federal income tax incurred by Respondent if his wife's children were not claimed on the tax return, three exemptions are considered, rather than five. This results in a taxable income of \$27,877.00 and a tax of \$4,181.00. Subtracting the rate reduction credit, which is attributable to both Respondent and his wife, results in a total tax incurred by Respondent and his wife of \$3,757.00. Respondent's share of that tax is \$2,571.00. Since he had \$4,499.00 withheld from his income, his refund would be \$1,928.00, or \$160.67 per month.

From Petitioner's tax return it is possible to conclude that her husband had an income of \$20,775.00 from employment, and adding his business income of \$2,619.00 and one-half the interest income, or \$8.50, gives her husband a gross income of \$23,402.50. Subtracting one-half his self-employment tax, \$185.00, provides him with an adjusted gross income of \$23,217.50. Since the total adjusted gross income shown on the tax return is \$52,840.00, Petitioner's husband's share of that adjusted gross income is 43.93925%. To calculate the tax liability of Petitioner and her husband without the three children, two exemptions are considered as well as the itemized deduction taken by Petitioner and her husband, resulting in a taxable income of \$38,697.00, and a tax of \$5,801.00. Since the tax obligation actually incurred by Petitioner and her husband was \$4,496.00, the difference,

\$1,305.00, may be attributable to the effect of claiming the children as exemptions. Based on her proportion of the adjusted gross income, it is possible to determine that Petitioner would have a tax of \$3,252.00 out of the \$5,801.00, were the children not considered. Since she is to be attributed the entire tax savings based on the exemptions, of \$1,305.00, her tax is lowered to \$1,947.00. She's also to be attributed with the \$1,800.00 child tax credit, resulting in her tax being \$147.00. Petitioner's withholding was \$4,586.50 and thus her share of the refund would be \$4,439.50.<sup>1</sup> Petitioner thus has a monthly tax refund of \$369.96.

Adding each party's tax refund to the employment income results in Petitioner having a monthly net income of \$2,687.95 and Respondent having a monthly net income of \$1,522.43. Considering these incomes, the guidelines suggest a payment for the support of three minor children of \$497.06.

At argument it came to light that Respondent does not have a child with his wife for whom he has a support obligation and the multiple family formula, which was applied by the hearing officer, was done so in error. The obligation calculated herein will therefore not be adjusted.

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<sup>1</sup> While at first this appears incorrect, as the refund itself was only \$3,079.00, it is also shown by the documentation that Petitioner's husband under-withheld. His share of the tax of \$5,801.00 would be \$2,549.00 and his self-employment tax of \$370.00 results in him having a total tax obligation of \$2,919.00. He had withheld only \$1,558.50, and he thus owes the government \$1,360.50. This was paid by Petitioner's over-withholding, resulting in a reduction of the refund to \$3,079.00.

ORDER

AND NOW, this 17<sup>th</sup> day of April, 2003, for the foregoing reasons, Respondent's exceptions are granted in part and denied in part. Effective September 5, 2002, the Order of February 24, 2003 is hereby modified to provide for a payment of \$497.06 per month. The percentage responsibility for excess unreimbursed medical expenses is also modified such that Petitioner shall be responsible for 63.85% of such and Respondent shall be responsible for 36.15% of such.

As modified herein, the Order of February 24, 2003 is hereby affirmed.

By the Court,

Dudley N. Anderson, Judge

cc: Family Court  
Domestic Relations Section  
RN  
MH  
Gary Weber, Esq.  
Dana Jacques, Esq.  
Hon. Dudley N. Anderson