

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

L.E.,	:	
Plaintiff	:	
	:	
v.	:	No. 03-21,681
	:	PACES NO. 399105953
G.R.,	:	
Defendant	:	

**OPINION and ORDER**

This opinion addresses the Exceptions filed by Father to the Master's order of September 16, 2005, awarding Mother child support. Father objects to the Master's inclusion of \$920.84 per month in his income. That figure was derived from the monthly amount Father's Sub-S corporation pays to the U.S. Treasury and the Pennsylvania Department of Revenue for back taxes and associated penalties. The back taxes and associated penalties are due because in a previous tax year, the corporation inadvertently underwithheld taxes. Although it is unclear to the court exactly what type of taxes were underwithheld, it appears they related at least in part to Father and a previous employee.

The Master cited Spahr v. Spahr, 869 A.2d 548 (Pa. Super. 2005) for the proposition that tax liability must be attributable to the year the income is earned and the tax liability has accrued. She then went on to cite the testimony of the corporation's accountant that Father's salary is determined by calculating how much the corporation can afford to pay him each month. The Master thus concluded if the corporation did not have to pay the back taxes and penalties, that money would be available to Father for his salary. She therefore added \$920.84 to his monthly income.

This case is certainly similar to Spahr in some respects; however, in other respects it is very different. In Spahr, the issue was Father's 2003 income. Father's Sub-S corporation made a distribution of \$126,189 to him in 2003, to cover taxes that

had accrued in 2002 and were due April 15, 2003. The taxes were due because Father had underestimated the amount of taxes he would owe in 2002, and therefore the estimated taxes he paid in 2002 did not fully satisfy his tax liability for 2002. In addition, Father failed to make the fourth quarter estimated payment of \$59,000 for 2002, which contributed to the amount of taxes due on April 15, 2003. Father argued that the \$126,189 he received in 2003 should not be included in his income because it was used to pay his 2002 taxes, which were due on April 15, 2003.

Secondarily, Father's estimated payments made in 2003 generated a \$23,000 refund, due to the corporation's reduced profits in 2003. He received the refund in 2004, and argued that the refund should be income for 2004, rather than 2003.

Father's position was essentially a "cash flow" argument. The Superior Court rejected this position, agreeing with the trial court that "[f]or support purposes, tax liability must be attributable to the year the income is earned and the tax liability accrued, no matter when the tax payment is made." Id. at 553. The Superior Court also stated that corporate distributions made to relieve or reimburse an individual for tax liability are nonetheless income for support purposes.

In the case before this court, by contrast, Father received no money from the corporation for payment of his back taxes. Had he done so, the court would agree with the Master that such money should be included in his income. Rather, the Master assessed Father with what is essentially an *absence* of money to him, reasoning that he would have received this money if the corporation did not have to pay the tax debt. This connection is tenuous at best. In fact, Father's counsel argued that there were plenty of other corporate debts left unpaid, and that the corporation merely had to prioritize the tax debt. Judging from the corporation's precarious financial status at this point, the court seriously doubts that absent the tax debt, the money would be going into Father's pocket.

Moreover, the tax debt at issue in this case is not Father's personal tax debt, as in Spahr, but rather a corporate debt. Again, it is highly tenuous to conclude that Father personally benefited from this underwithholding in previous years, and the court will not speculate on what the actual benefit was to him. And finally, even if Father had benefited financially due to the mistake, that occurred before the child at issue was born, and it would be unfair to penalize Father at this point in time.

In conclusion, the court in Spahr was faced with an accounting question: whether to calculate taxes on a cash-flow basis of when they were paid and when a refund was received, or whether to calculate actual tax liability for each calendar year. The court chose the latter method, primarily because the former would permit individuals to manipulate their yearly income for support purposes. Clearly, there is no manipulation in the case before this court. The error was made before the child's birth, and at this point is a corporate debt. The money the corporation pays on the debt each month is simply not available to Father, and the court will not attribute the tax debt payments to Father as income.

With Father's income at \$2040 per month and Mother's income at \$3508.36 per month, child support is \$368.80 per month. Father has another support obligation of \$874.72 per month from another county, which entitles him to a multi-family deviation of 82% as a deviation factor, bringing his obligation to this child down to \$302.42 per month.

**ORDER**

AND NOW, this \_\_\_\_\_ day of December, 2005, for the reasons stated in the foregoing opinion, Father's Exceptions are granted and it is ordered that:

1. Effective March 16, 2005, Father's child support obligation shall be \$302.42 per month.
2. Effective March 16, 2005, Father's health insurance obligation shall be \$94.01 per month.
3. Effective March 16, 2005, unreimbursed medical expenses shall be set at 36.77% to Father, 63.23% to Mother.
4. In all other respects, the Master's order of September 16, 2005 is affirmed.

BY THE COURT,

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Richard A. Gray, J.

cc: Dana Jacques, Esq., Law Clerk  
Hon. Richard A. Gray  
Christopher Williams, Esq.  
Joy McCoy, Esq.  
Domestic Relations (MR)  
Family Court  
Gary Weber, Esq.