

THREE AFFILIATED TRIBES - PUBLIC NOTICE OF TRIBAL CODE CHANGES

DATE: APRIL 9, 2021

TO THE MEMBERS OF THE THREE AFFILIATED TRIBES:

Please take Notice that the Tribal Business Council of the Three Affiliated Tribes has approved (by vote of 7-0), the following Draft Code Changes to be considered for enactment by the Tribal Business Council. The Three Affiliated Tribes - Child Support Guidelines Committee has presented these proposed code changes to Chapter 5 of the Fort Berthold Tribal Code. The Tribal Council has approved the draft provisions, and is now seeking comments from the public.

Pursuant to the provisions of Tribal Law— Resolution 08-56-MP, the proposed Code Changes are to be published in the official Tribal Newspaper.

FURTHER, you are notified that you have thirty (30) days from the date of this publication to submit comments on the proposed code changes. Written comments should be submitted to the office of the Tribal Secretary by either hard copy (in a sealed envelope, and identified on the outside as comments on the proposed code changes); or by electronic transmission via the Tribal e-mail system. Comments must be in writing and signed by the individual submitting the comments. Copies should also be submitted to the Legal Department and the Division of Child Support Enforcement.

The Tribal Council will set a hearing to be held at the Tribal Chambers at the regular council meeting in the month of June, 2021. The final draft shall not be acted upon until the comment period has closed.

The Three Affiliated Tribes does hereby intend to modify and re-enact the following sections of Chapter 5-26 of Title V - Domestic Relations Code, as follows:

- 5-26-2 Definition - 6. "Extended Visitation" - re-define as visitation between the obligor and a child allowing credit for all overnight visitation on an annual basis.
- 5-26-2 Definitions - 10. "Net Income"— net income shall be defined as Gross annual income, less:
- a. Hypothetical Federal income tax obligation.
 - b. Hypothetical Federal Insurance Contributions Act (FICA).
 - c. Medicare taxes.
 - d. Portion of Health Insurance to afford coverage for child(ren) for whom support is sought.
 - e. Actual medical expenses of child.
 - f. Employee retirement contributions.
 - g. Net Income is only used in calculation purposes to persons that are self-employed.
- 5-26-2 Definition - 17. "Self-Employment" - redefine "Self-employment" to mean employment that results in an obligor earning income from any business organization or entity which the obligor is, to a significant extent, able to directly or indirectly control. For purposes of this Chapter, it also includes any activity that generates income from rental property, royalties, business gains, partnerships, trusts, corporations, and any other organization or entity regardless of form and regardless of whether such activity would be considered self-employment activity under the Internal Revenue Code. Self-employed individuals will have their child support obligations set based upon their net income.

- 5-26-3 (3.) Gross Income received by an obligor from all sources must be considered in the determination of the child support obligation.
- 5-26-3 (5.) In applying the child support guidelines, an obligor's monthly gross income amount ending in fifty dollars or more must be rounded up to the nearest one hundred dollars, and must otherwise be rounded down to the nearest one hundred dollars.
- 5-26-3 (6.) The annual total of all income considered in determining a child support obligation must be determined and then divided by twelve in order to determine the obligor's monthly gross income.
- 5-26-3 (10.) Each child support order must include a statement of the gross of the obligor used to determine the child support obligation.
- 5-26-3. (12.) No amount may be deducted to determine net income unless that amount is included in gross income, when determining the support obligation of a self-employed individual.
- 5-26-7 Net Income from self-employment means total income, or 50% of total income from a married individual, for internal revenue and child support determination purposes, of the obligor.
- 5-26-7 (4.) Self-employment activities may experience significant changes in production and income over time. To the extent that information is reasonably available, the average of the most recent three years of each self-employment activity, if undertaken on a substantially similar scale, must be used to determine self-employment income. When self-employment activity has not been operated on a substantially similar scale for three years, a shorter period may be used.
- 5-26-7 (6.) When less than three years were averaged under subsection 4 above, a loss resulting from the averaging may not be used; and an amount equal to sixty percent (60%) of the gross earnings will be used for averaging purposes, or a sum equal to annual federal minimum wage, whichever is greater.
- 5-26-7 (7.) When three or more years were averaged under subsection 4 of this section, a loss resulting from the averaging may not be used and an amount equal to eighty percent (80%) of the gross earnings will be used for averaging purposes, or a sum equal to annual federal minimum wage, whichever is greater.
- 5-26-8 Determining the cost of supporting a child living with the obligor.
The cost of supporting child(ren) living with the obligor, who are not also child(ren) of the obligee, may be deducted from gross income under subsection 4 of section 5-26-9 and shall be calculated by the use of the Appendix F.
- 5-26-9 Determination of support amount in multiple-family cases.
This section must be used to determine the child support amount presumed to be the correct amount of child support in all cases, and will be calculated, as set forth in Appendix F.
- 5-26-12 Adjustment for regular visitation.
For purposes of this section, "regular visitation" means overnight visitation between an obligor and a child living with an obligee, and a deduction for regular visitation may be granted, as calculated in Appendix F.

- 5-26-14 Medical support included in child support obligation.
1. A child support obligation set upon application of this Chapter shall address the child's health care coverage and reimbursement for medical support provided to the child by the obligee, Three Affiliated Tribes, another tribe, or a state.
 2. The child support order may require the obligor to provide satisfactory health care coverage whenever that coverage is available at reasonable cost or becomes available at reasonable cost. The term "Reasonable Cost of Health Insurance" shall be defined as a cost that is equal to or less than five percent (5%) of annual "Gross Income".
 3. After verification of a child's unreimbursed or uninsured medical expenses, the Court may order these expenses to be paid by the obligor as part of child support obligation in addition to the regular child support required or ordered.
 4. Each obligor that provides health insurance coverage to a child, will be able to receive a deduction from their child support obligation, by an amount calculated pursuant to Appendix F.

5-26-17 Modify language from "Net Income" to "Gross Income".

~~5-26-20~~ Guidelines Schedule - Determining the child support amount.
The amount of child support payable by the obligor is determined by the application of the following schedule to the obligor's monthly gross income and the number of children for whom support is being sought in the matter before the Court. Monthly sums ending in a 1 or 2 will be rounded down to 0; sums 3 or 4 shall be rounded up to 5; sums ending in 6 or 7 shall be rounded down to 5; and sums ending in 8 or 9 shall be rounded up to 10.

APPENDIX E. - MONTHLY GROSS INCOME CHART - is available for viewing and copying at the Office of the Division of Child Support Enforcement, 22 Minne Tobe Drive, New Town, ND 58763

APPENDIX F. -

1. HOW TO FACTOR IN CHILD SUPPORT DEDUCTION FOR SUPPORTING OTHER CHILDREN
2. HOW TO FACTOR IN REGULAR VISITATION WITH CHILDREN - BASED UPON COURT ORDERS
3. HOW TO FACTOR IN HEALTH INSURANCE COVERAGE.

Appendix F. - is available for viewing and copying at the Office of the Division of Child Support Enforcement, 22 Minne Tobe Drive, New Town, ND 58763

This Notice shall be published for two consecutive publications.

Dated this 9th day of April, 2021

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