

2001

Kevin Dwyer v. Emily Assenberg : Brief of Appellant

Utah Court of Appeals

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Utah Court of Appeals

Kevin Dwyer, :

Brief of Appellant

Appellant,

v.

Emily Assenberg,
Appellee.

Appellate Case No. 20010634 *blue*

From the 7th District Court, Utah, Case # 004700079

FILED
Utah Court of Appeals

DEC 29 2001

Pauletta Stagg
Clerk of the Court

List of Parties

- a. Emily Assenberg-Respondent(appelle)
- b. Kevin Dwyer-Petitioner (appellant)
- c. Quince Tillien (Dwyer)-Assenberg (minor child)

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1. Table of Authorities

1. In *Allred v. Allred*, 797 P.2d 1108; 141 Utah Adv. Rep. 14; 1990 Utah App.

the court, in determining the amount of prospective [**7] support, shall consider all relevant factors including but not limited to:

- (a) the standard of living and situation of the parties;
- (b) the relative wealth and income of the parties;
- (c) the ability of the obligor to earn;
- (d) the ability of the obligee to earn;
- (e) the need of the obligee;
- (f) the age of the parties;
- (g) the responsibility of the obligor for the support of others.

Utah Code Ann. § 78-45-7(2) (1987). n1 This court has recognized that "[s]ection 78-45-7 requires the trial court to consider at least the seven factors listed .

. . [and to] enter findings on all of the factors." *Jefferies*, 752 P.2d at 911

2. In *Allred v. Allred*, 797 P.2d 1108; 141 Utah Adv. Rep. 14; 1990 Utah App.

Ordinarily, we accord the trial court considerable discretion in adjusting the financial interests of divorced parties and, thus, the court's "actions are entitled to a presumption of validity." *Hansen v. Hansen*, 736 P.2d 1055, 1056 (Utah Ct. App. 1987). However, where the court has abused its discretion in

apportioning those financial responsibilities, we cannot affirm that determination. *Id.* See also *Ostler v. Ostler*, 789 P.2d 713, 715 (Utah Ct. App. 1990).

3. In *Hinkley v. Hinkley*, 815 P.2d 1352; 167 Utah Adv. Rep. 16; 1991 Utah App. Findings of fact will be regarded as clearly erroneous only if they are "so lacking in support as to be against the clear weight of the evidence[.]" *Id.* (quoting *In re Estate of Bartell*, 776 P.2d 885, 886 (Utah 1989)).

4. In *Motes v. Motes*, 786 P.2d 232; 121 Utah Adv. Rep. 50; 1989 Utah App. "State divorce courts must always recognize the financial benefit accompanying dependency exemptions when awarding alimony and child support. However, income tax exemptions are only valuable to persons with income, and up to a certain point, the higher the income the more valuable [**22] the financial benefit, given the progressivity of the federal income tax. *Cross*, 363 S.E.2d 449 at 460 (W.Va. 1987). Prohibiting state courts from allocating the available exemptions to the parent receiving the greatest economic benefit often results in the unnecessary depletion of limited family resources.

~~Incentive for...~~

Thus, use of the power to order a custodial parent to execute a section 152 declaration should not be used to evenly or otherwise divide the available exemptions without regard to the particular economic realities. On the contrary, it should be limited to those situations where the noncustodial parent has the higher income and provides the majority of support for the child or children whose exemption is claimed--support at a level **which can be increased** as a result of a reduction in his or her tax burdens. Indeed, it **would be** an abuse of discretion for a divorce court to order a custodial parent to sign the declaration in the absence of appropriately supported findings to that effect or demonstrating other exceptional circumstances making it in the best interest of the parties and their children that the declarations be signed. The declarations are **not to be used** as a kind of "consolation [****23**] prize" for parents **who are** losing daily association with their children. Moreover, by ordering the custodial parent to execute the declaration, the court actually gives the custodial parent a tool to compel timely support payments. The court's order should provide that the duty to execute the declaration at the end of each year is contingent on the noncustodial parent being current in support payments. See also note 4, *supra*. The custodial parent may then rightfully refuse to execute the declaration if support payments are owing, thereby creating an economic

incentive for the noncustodial parent to comply with his or her support obligations.

As observed in Sarver, "this is not a question . . . of 'overrid[ing] federal tax law' or 'unconstitutional meddling with Congressional authority.' It is simply a matter of determining and preserving the most resources in situations of obvious limited [*240] resources." 439 N.W.2d at 554 (Sabers, J., specially concurring).

In summary, we conclude the 1984 amendment to section 152 does not divest state courts of their traditional power to allocate federal tax dependency exemptions, and state courts have the power to order [**24] a custodial parent to execute a declaration in favor of the noncustodial parent. The contrary position followed by only a minority of jurisdictions was not intended by Congress, especially given the lack of an express termination of the traditional approach of state courts to dependency-exemption allocation. Finally, the practical effect of a contrary ruling would essentially prevent state courts from taking permissible advantage of progressive tax brackets and maximizing the resources available to support divorcing parents and their families.

~~53~~ **Shinkoskey v. Shinkoskey**, 2001 UT App 44; 19 P.3d 1005; 415 Utah Adv. Rep. 16; 2001 Utah App.

the trial court must base the award on evidence of the receiving spouse's financial need, the payor spouse's ability to pay, and the reasonableness of the requested fees. **Kelley v. Kelley**, 2000 UT App 236, P30, 9 P.3d 171 (quoting **Childs v. Childs**, 967 P.2d 942, 947 (Utah Ct. App. 1998)). Moreover, "such an award must be based on sufficient findings" regarding these factors. **Rehn v. Rehn**, 1999 UT App 41, P22, 974 P.2d 306. Our supreme court has stressed, "The trial court . . . must make the findings of fact explicit in support of its legal conclusions

Without adequate findings of fact, there can be no meaningful [***17] appellate review. **Willey v. Willey**, 951 P.2d 226, 230 (Utah 1997); see also **Wilde v. Wilde**, 969 P.2d 438, 444 (Utah Ct. App. 1998) (remanding for trial court to reconsider request for fees [**1011] "and to make the required findings in support of its determination"). We also have held that "unless the record 'clearly and uncontrovertedly supports' the trial court's decision, the absence of adequate findings of fact ordinarily requires remand for more detailed findings by the trial court." **Woodward v. Fazzio**, 823 P.2d 474, 478 (Utah Ct. App. 1991)

ulation of in

6. In **Stuber v. Stuber**, 121 Utah 632; 244 P.2d 650; 1952 Utah

The rights of the [***9] wife to attorney's fees when she is forced to go to court to enforce a divorce decree should not be different from those of one who seeks temporary alimony.

2. Statement of Jurisdiction

Pursuant to Utah Code§ the Utah Court of Appeals has Jurisdiction in all appeals originating from trial court cases in Utah District Courts including the 7th District.

3. Statement of issues for appellate review:

A. Imputation of income and calculations of child support award

See citations to table of authorities 1,2,3

B. Assignment of attorney's fees

See citations to tables of authorities 5&6

C. Assignment of child as deduction (exemption) for income tax purposes

See citations to table of authorities 4&5

Standard of review for each issue:

A. Imputation of income and calculations of child support award:

Cited in trial court record pages 106 lines 1-13 and pages 57-63

Generally the courts have found that the trial court is granted “considerable discretion” in determining support award.

The trial court is directed to consider the following seven factors in determining support obligations:

- (a) the standard of living and situation of the parties;
- (b) the relative wealth and income of the parties;
- (c) the ability of the obligor to earn;
- (d) the ability of the obligee to earn;
- (e) the need of the obligee;
- (f) the age of the parties;
- (g) the responsibility of the obligor for the support of others.

Also, “Findings of fact will be regarded as clearly erroneous only if they are “so lacking in support as to be against the clear weight of the evidence.”

B. Assignment of attorney’s fees:

Cited in the trial court record page 143 lines 16-19, page 6 line 21, page 7 lines 13-16,

Generally, “the trial court must base the award on evidence of the receiving spouse's financial need, the payor spouse's ability to pay, and the reasonableness of the requested fees.”

Further, "The trial court . . . must make the findings of fact explicit in support of its legal conclusions Without adequate findings of fact, there can be no meaningful [***17] appellate review."

C. Assignment of child as deduction (exemption) for income tax purposes:

Cited in the record of the trial court page 7 lines 13-16, pages 156-163

It has been held that, “State divorce courts must always recognize the financial benefit accompanying dependency exemptions when awarding alimony and child support. However, income tax exemptions are only valuable to persons with income, and up to a certain point, the higher the income the more valuable [**22] the financial benefit, given the progressivity of the federal income tax.”

Further, that “Prohibiting state courts from allocating the available exemptions to the parent receiving the greatest economic benefit often results in the unnecessary depletion of limited family resources.”

Also, “It is simply a matter of determining and preserving the most resources in situations of obvious limited resources.”

Additionally, in “those situations where the noncustodial parent has the higher income and provides the majority of support for the child state courts have the power to order [**24] a custodial parent to execute a declaration in favor of the noncustodial parent.”

Again, in “maximizing the resources available to support divorcing parents and their families.”

4. Statutes, Rules, Regulations

The Utah code statutes:

30-3-3(1) Award of Costs, Attorney and Witness Fees

78-45-7 Determination of Amount of Support-Rebuttable Guidelines

78-45-7.14 Base Combined Child Support Obligation Table

78-45-7.2 Application of Guideline-Rebuttal

78-45-7.21 Award of Tax Exemption for Dependent Children

78-45-7.3 Procedure-Documentation Stipulation

78-45-7.5 Determination of Gross Income-Imputed Income

IRS Publications

#501-Exemption for Dependent Children (Pages 11-14)

Form 8332

Statement of the case

This case appeared before the Honorable Lyle R. Anderson on May 26, 2001 in the 7th District Court-Utah. Filed, pro se, by the Petitioner (Appellant-Kevin Dwyer), the issues at hand were paternity, support, visitation and custody. The initial filing reflected that the Respondent, Appellee-Emily Assenberg, resided in Moab, UT and sought a court order reflecting visitation/custody with that respect. Subsequent to the filing and previous to the trial, Ms. Assenberg and minor child, Quince Tillien (Dwyer)-Assenberg, relocated to Salt Lake City, UT. In January of 2001, at the request of Mr. Dwyer and over the objection of Ms. Assenberg, the trial court ordered mediation. Ms. Assenberg abandoned mediation and the case was moved to trial.

At trial Mr. Dwyer requested that his income be imputed at \$1400/mo., consistent with his unemployment benefit^a. Further, Mr. Dwyer presented witnesses who attested to his obligation to his child, Chahakilo Tori, by a previous

relation, residing in his home^b. Mr. Dwyer requested that the Court order joint legal custody as being in the best interest of the child, Quince. Mr. Dwyer also asked that the Court find that the best interests of the “family unit” would be served by awarding the tax exemption benefit to the party with the greatest tax liability^c. Specifically, a buyout of the minor child’s tax exemption was requested. Mr. Dwyer requested liberal visitation pursuant to UCA §30-3-35.5 and §30-3-35. Mr. Dwyer requested that Ms. Assenberg’s income be imputed according to her present earnings^d. Finally, Mr. Dwyer asked that the Court order Ms. Assenberg to amend the minor child’s birth certificate to reflect Mr. Dwyer as the father.

At trial, Ms. Assenberg requested that she be awarded sole physical and legal custody of the minor child. Ms. Assenberg further requested that Mr. Dwyer’s income be imputed, by the Court at \$3000/mo^e. Ms. Assenberg requested that Mr. Dwyer’s visitation be limited to UCA §30-3-35.5 and §30-3-35 and that overnight visitation not be granted until the minor child is twenty-four months of age. Ms. Assenberg asserted that Mr. Dwyer’s obligation to his child in his present home was not court sanctioned and therefore not valid in the calculation of monthly support obligation to the minor child. Ms. Assenberg requested that the Court restrict Mr. Dwyer from removing the child from the state of Utah.

In its Order and Findings, the Court held that Ms. Assenberg is entitled to sole legal and physical custody. With respect to visitation, the Court held that the UCA §30-3-35.5 and §30-3-35 guidelines were applicable with the provision that overnight visitation be abated until the minor child reaches 24 months. The Court imputed Mr. Dwyer's income at \$2800/mo and Ms. Assenberg's at \$960/mo. The Court ordered each party to provide one-half of education or work related child care and one-half of medical expense. The Court ordered that Mr. Dwyer pay \$2000 for Ms. Assenberg's attorney's fees. The Court awarded the tax exemption for the minor child to Ms. Assenberg. For the year 2000, only, the tax exemption award was contingent on Ms. Assenberg being able to show, within 60 days, what the dollar benefit of the exemption was. Further, this dollar amount was subject to a "buy out" by Mr. Dwyer.

Facts relevant to this case:

1. A child named Quince Tillien (Dwyer) Assenberg* was born to Emily Assenberg and Kevin Dwyer on January 23, 2000.
2. Since the birth of said child, Kevin Dwyer has maintained support for the child consistent with UCA § 78-45-7 and 78-45-7.14.

3. Emily Assenberg filed a birth certificate, for said child, omitting the name of the father, on June 26th, 2000.
4. Kevin Dwyer and Olga Ehrlich, Grand County, Utah, have a child named Chahakilo Tori, born to them February 18th, 1990 (see citations to trial court record item “b”).
5. Previous to, and during the trial in Dwyer v. Assenberg, Chahakilo Tori did reside with his father, Kevin Dwyer^f.
6. Kevin Dwyer has maintained support for Chahakilo Tori since the child’s birth^g.
7. In Dwyer v. Assenberg (Civil No. 004700079) Kevin Dwyer was represented Pro Se.

Note: Per the trial court, an amended birth certificate changing the child’s name from Quince Tillien Assenberg to Quince Tillien *Dwyer* Assenberg is to be filed by Ms. Assenberg. As of the date of filing this brief, and despite repeated requests by Mr. Dwyer, that change has not taken place.

Summary of Arguments

Argument 1 asserts that the calculation of the child support obligation for Mr. Dwyer and Ms. Assenberg is incorrect. The imputation of income for Mr. Dwyer and Ms. Assenberg is incorrect as it fails to reflect the actual earnings or earning potential for each parent. The calculation of child support fails to consider the child in the present home of Mr. Dwyer.

Argument 2 asserts that Mr. Dwyer should not be required to pay opposing counsel's fees to Ms. Assenberg as there has been no demonstrated need and such a determination acts as a disincentive for parents seeking to assume parental responsibility.

Argument 3 asserts that the tax exemption benefit should be awarded to the parent who contributes the greater amount of support to the child and that the other parent should, by agreement, be compensated for the amount of additional tax liability incurred by not claiming the child.

Arguments of Appellant

Argument 1

Mr. Dwyer asserted in his filings and at trial that his child, Chahakilo Tori, from a previous relation was living in his home (see citations “b,f,g”). This fact was apparent to Ms. Assenberg as she resided with Mr. Dwyer and Chahakilo Tori for some time before giving birth to Quince. Testimony from a variety of witnesses, including the child’s mother, Olga Ehrlich, confirms that Mr. Dwyer maintained support and a home space for Chahakilo Tori (see citation “g”). Mr. Dwyer is entitled to a deduction from his income as imputed for the purposes of calculating support for Quince as a result of this prior and ongoing relation. Because the trial court judge erred, when he incorrectly identified line “2(b)” on the child support obligation worksheet as the appropriate standard for the calculation, Mr. Dwyer was not allowed this deduction to his imputed income^h. Line “2(c)” of the support obligation worksheet is the correct entry for “children in the present home.” The Utah State issued child support obligation worksheet, cited by the judge makes no mention of previous court determinations with regard to children in the present home. There was no dispute at trial as to this preexisting obligation. The only contention by Ms. Assenberg’s counsel is that there was not a previous court

decision with respect to support for Chahakilo Tori. The standard for review of such issues confirms the necessity of considering other persons dependent on a father.

Mr. Dwyer's income has varied considerably over the past. Testimony confirms that he has held a variety of jobsⁱ. He was unemployed at the time of Quince's birth and at trial. As such, his income should not be imputed at its highest historical level. Mr. Dwyer filed unemployment compensation check stubs with the trial court to support his claim of an income of \$1420/mo. As a beneficiary of state unemployment compensation, his unemployment was determined by the state to be involuntary.

Ms. Assenberg testified that she earn \$18/hour and works 30 hours per week^j. This results in an income calculation of \$2160/mo. Ms. Assenberg's income was imputed at \$960/mo, a calculation based on minimum wage earnings and 40 hour work weeks. There was no evidence or testimony introduced to support a figure other than \$2160/mo.

Mr. Dwyer's income should be imputed to \$2100/mo, which reflects more accurately his historical income. Ms. Assenberg's income should be imputed to \$2100/mo which reflects her income minus certain business related expenses. Based on the income figures supplied to the trial court by the mother of Chahakilo Tori and Mr. Dwyer, Mr. Dwyer is entitled to a deduction of \$250 from his monthly income for the purposes of calculating the support award for his pre-existing obligation to his child, Chahakilo Tori.

Argument 2

Mr. Dwyer sought relief in court as his paternity, obligations for support and rights of visitation were brought into question as the result of Ms. Assenberg's failure to cite him as the father on the birth certificate of Quince. Mr. Dwyer sought a court order to mediate the issues of the case. The trial was in large part necessitated by Ms. Assenberg's refusal to consider Mr. Dwyer's obligation to his child residing with him. In an effort to conserve limited financial resources, Mr. Dwyer represented himself. Mr. Dwyer made no frivolous or excessive filings. Mr. Dwyer was helpful to the trial court and opposing council in preparing filings.

Ms. Assenberg made no assertion, as to need for relief, with respect to attorney's fees and specifically, the court made no finding as to Ms. Assenberg's wealth.

It is a punitive measure to assign opposing counsel's attorney's fees to the party attempting to assert relation and obligations relative to a child.

Argument 3

Mr. Dwyer has, to date, and, likely will in the future, contribute a greater portion of the child's support. Under a variety of income scenarios, and as the income is imputed, the tax benefit of the child is of considerably greater value to Mr. Dwyer. The best interest of the child dictates that the limited financial resources of the "family unit" be conserved. The IRS allows for the non-custodial parent to claim a child provided a waiver (IRS form 8332) is issued by the custodial parent. The best interests of Quince are served by a buyout/waiver arrangement, with respect to tax benefit, as proposed by Mr. Dwyer (and endorsed by the trial court, for tax year 2000 only), and a stipulation as to being current in support obligation for the waiver to be served. This form of buyout/waiver arrangement would improve the income position of both the parents. The standard of review clearly supports such a buyout/waiver arrangement.

Relief being sought

Mr. Dwyer requests that the Court Appeals issue an order containing the following relief:

1. Imputation of income
 - a. Mr. Dwyer's income is imputed at \$2100/mo.
 - b. Ms. Assenberg's income is imputed to \$2100/mo.
2. The deduction for child in the present home
 - a. In the calculation of support obligation, Mr. Dwyer is entitled to claim his obligation to Chahakilo Tori.
3. Attorney's fees and court costs
 - a. As associated with the action for paternity, support, custody and visitation the parties in this suit are required to pay their own fees.
 - b. Court costs, for trial and appeal, shall be divided evenly between the parties.
4. Tax exemption benefit
 - a. The tax exemption associated with Quince Tillien (Dwyer) Assenberg is awarded to whichever party it is most advantageous with the party taking the exemption compensating the party not

taking the exemption with an amount equal to the increased tax liability as a result of not taking the exemption. The party not taking the exemption will sign an IRS 8332 form. Such an arrangement is stipulated on the parties being current with their support obligations (for the custodial parent, current status is assumed).

Addendum Contents

1. IRS Form 8332
2. IRS Publication #501
3. Copy of Worksheet to Determine Obligation to Children in Present Home

Citations to trial court record

- ^a Trial Court Record Page 137 line 25
- ^b Trial Court Record Page 19 lines 23-25, page 20 lines 1-3
Page 31 lines 4-10
Page 44 lines 13-14, 20-25
Pages 45, 46, and 47 lines 1-8
- ^c Trial Court Record Page 136 lines 6-10
- ^d Trial Court Record Page 106 lines 1-10
- ^e Trial Court Record Page 139 lines 23-25
- ^f Trial Court Record Page 45 lines 14-22
- ^g Trial Court Record Page 44 lines 20-25, page 45 line 1
- ^h Trial Court Record Page 149 lines 3-17
- ⁱ Trial Court Record Page 19 lines 15-22
page 15 lines 19-24
- ^j Trial Court Record Page 106 lines 4-10

**Release of Claim to Exemption
for Child of Divorced or Separated Parents**

▶ **Attach** to noncustodial parent's return **each year** exemption is claimed.
Caution: Do not use this form if you were never married.

OMB No. 1545-0915

Attachment
Sequence No. **115**

Name of noncustodial parent claiming exemption

Noncustodial parent's
social security number (SSN) ▶

Part I Release of Claim to Exemption for Current Year

I agree not to claim an exemption for _____

Name(s) of child (or children)

for the tax year 20____.

Signature of custodial parent releasing claim to exemption

Custodial parent's SSN

Date

Note: If you choose not to claim an exemption for this child (or children) for future tax years, also complete Part II.

Part II Release of Claim to Exemption for Future Years (If completed, see Noncustodial parent below.)

I agree not to claim an exemption for _____

Name(s) of child (or children)

for the tax year(s) _____.

(Specify. See instructions.)

Signature of custodial parent releasing claim to exemption

Custodial parent's SSN

Date

General Instructions

Purpose of form. If you are a **custodial parent** and you were ever married to the child's **noncustodial parent**, you may use this form to release your claim to your child's exemption. To do so, complete this form (or a similar statement containing the same information required by this form) and give it to the noncustodial parent who will claim the child's exemption. The noncustodial parent must attach this form or similar statement to his or her tax return **each year** the exemption is claimed.

You are the **custodial parent** if you had custody of the child for most of the year. You are the **noncustodial parent** if you had custody for a shorter period of time or did not have custody at all. For the definition of custody, see **Pub. 501**, Exemptions, Standard Deduction, and Filing Information.

Support test for children of divorced or separated parents. Generally, the custodial parent is treated as having provided over half of the child's support if:

- The child received over half of his or her total support for the year from one or both of the parents **and**
- The child was in the custody of one or both of the parents for more than half of the year.

Note: Public assistance payments, such as Temporary Assistance for Needy Families (TANF), are not support provided by the parents.

For this support test to apply, the parents must be one of the following:

- Divorced or legally separated under a decree of divorce or separate maintenance,
- Separated under a written separation agreement, **or**
- Living apart at all times during the last 6 months of the year.

Caution: This support test does not apply to parents who never married each other.

If the support test applies, and the other four dependency tests in your tax return

instruction booklet are also met, the custodial parent can claim the child's exemption.

Exception. The custodial parent will not be treated as having provided over half of the child's support if **any** of the following apply.

- The custodial parent agrees not to claim the child's exemption by signing this form or similar statement.
- The child is treated as having received over half of his or her total support from a person under a multiple support agreement (**Form 2120**, Multiple Support Declaration).
- A pre-1985 divorce decree or written separation agreement states that the noncustodial parent can claim the child as a dependent. But the noncustodial parent must provide at least \$600 for the child's support during the year. This rule does not apply if the decree or agreement was changed after 1984 to say that the noncustodial parent cannot claim the child as a dependent.

Additional information. For more details, see **Pub. 504**, Divorced or Separated Individuals.

Specific Instructions

Custodial parent. You may agree to release your claim to the child's exemption for the current tax year or for future years, or both.

- Complete **Part I** if you agree to release your claim to the child's exemption for the current tax year.
- Complete **Part II** if you agree to release your claim to the child's exemption for any or all future years. If you do, write the specific future year(s) or "all future years" in the space provided in Part II.



To help ensure future support, you may not want to release your claim to the child's exemption for future years.

Noncustodial parent. Attach this form or similar statement to your tax return for **each year** you claim the child's exemption. You may claim the exemption **only** if the other four dependency tests in your tax return instruction booklet are met.

Note: If the custodial parent released his or her claim to the child's exemption for any future year, you **must** attach a copy of this form or similar statement to your tax return for each future year that you claim the exemption. **Keep a copy for your records.**

Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by Internal Revenue Code section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

Recordkeeping	7 min.
Learning about the law or the form	5 min.
Preparing the form	7 min.
Copying, assembling, and sending the form to the IRS	14 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Tax Forms Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001. **Do not** send the form to this address. Instead, see the Instructions for Form 1040 or Form 1040A.

IN THE _____ DISTRICT COURT

_____, COUNTY, STATE OF UTAH

<p style="text-align: center;">_____ vs. _____</p>	<p style="text-align: center;">WORKSHEET TO DETERMINE FATHER'S OBLIGATION TO CHILDREN IN HIS PRESENT HOME</p> <p style="text-align: right;">Civil No. _____</p>
--	--

OTHER PARENT NAME _____	FATHER	OTHER PARENT	COMBINED
1. Enter the # of natural and adopted children of the father and the other parent.			
2a. Enter the father's and other parent's gross monthly income. Refer to Instructions for definition.	\$	\$	
2b. Enter previously ordered alimony that is actually paid. (Do not enter alimony ordered for this case).	-	-	
2c. Enter pre-existing ordered child support. (Do not enter obligations ordered for the children in this case).	-	-	
3. Subtract Lines 2b and 2c, from 2a. This is the Adjusted Monthly Gross Income for child support purposes.	\$	\$	\$
4. Take the COMBINED figure in Line 3 and the number of children in Line 1 to the Support Table. Find the Combined Support Obligation. Enter it here.			\$
5. Divide each parent's adjusted monthly gross in Line 3 by the COMBINED adjusted monthly gross in Line 3.	%	%	
6. Multiply Line 4 by Line 5 for each parent to obtain each parent's share of the Base Support Obligation.	\$	\$	
7. Multiply the amount of the children's portion of the insurance premium actually paid.			\$
8. Enter the monthly work or training related child care expense for the children in Line 1.			

9. FATHER'S SHARE OF BASE CHILD SUPPORT AWARD FOR THE CHILDREN IN LINE 1. Enter the amount for the father from line 6.	\$
10. FATHER'S SHARE OF CHILDREN'S INSURANCE FOR THE CHILDREN IN LINE 1. Multiply Line 7 by .50, and enter the result here.	\$
11. FATHER'S SHARE OF WORK OR TRAINING RELATED CHILD CARE EXPENSES FOR THE CHILDREN IN LINE 1. Multiply Line 8 by .50, and enter the result here.	\$
12. FATHER'S SHARE OF TOTAL CHILD SUPPORT OBLIGATION TO THE CHILDREN IN LINE 1. Add lines 9,10, and 11. This amount may be used to adjust the father's gross income on the sole, split, or joint custody worksheets.	\$



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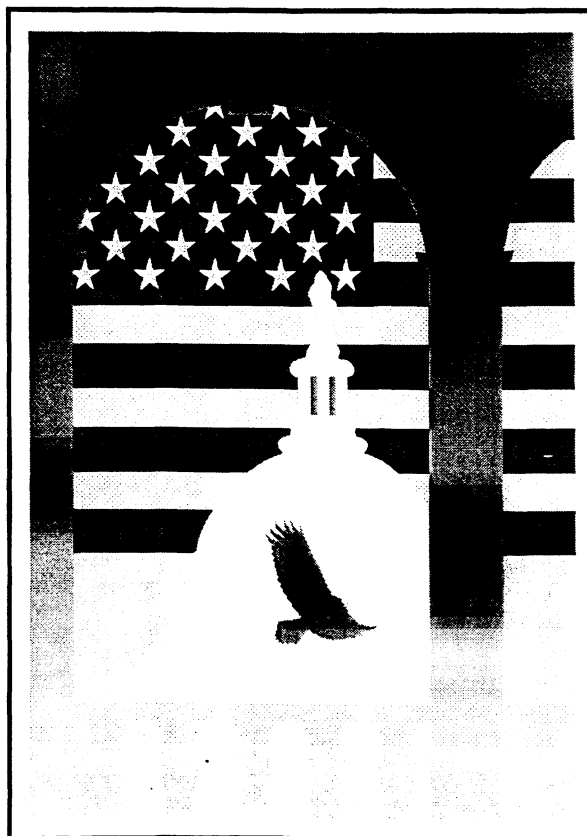
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Exemptions, Standard Deduction, and Filing Information

For use in preparing

2000 Returns



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Important Changes

Who must file. Generally, the amount of income you can receive before you must file a return has increased. *Table 1* shows the filing requirements for most taxpayers.

Exemption amount. The amount you can deduct for each exemption has increased from \$2,750 in 1999 to \$2,800 in 2000.

Exemption phaseout. You will lose all or part of the benefit of your exemptions if your adjusted gross income is above a certain amount. The amount at which this phaseout begins depends on your filing status. For 2000, the phaseout begins at \$96,700 for married persons filing separately; \$128,950 for single individuals; \$161,150 for heads of household; and at \$193,400 for married persons filing jointly. See *Phaseout of Exemptions*, later.

Standard deduction. The standard deduction for taxpayers who do not itemize deductions on Schedule A of Form 1040 is higher in 2000 than it was in 1999. The amount depends on your filing status. The *2000 Standard Deduction Tables* are shown later as *Tables 7, 8, and 9*.

Itemized deductions. The amount you can deduct for itemized deductions is limited if your adjusted gross income is more than \$128,950 (\$64,475 if you are married filing separately). See *Who Should Itemize*, later.

Paid preparer authorization. Beginning with your return for 2000, you can check a box and authorize the IRS to discuss your tax return with the paid preparer who signed it. If you check the "Yes" box in the signature area of your return, the IRS can call your paid preparer to answer any questions that may arise during the processing of your return. Also, you are authorizing your paid preparer to perform certain actions. See your income tax package for details.

Photographs of missing children. The Internal Revenue Service is a proud partner with the National Center for Missing and Exploited Children. Photographs of missing children selected by the Center may appear in this publication on pages that would otherwise be blank. You can help bring these

test does not apply. If the other dependency tests were met, Marie's father can claim an exemption for her.

Student under age 24. The gross income test does not apply if your child is a student who is under age 24 at the end of the calendar year. The other dependency tests must still be met.

Student defined. To qualify as a student, your child must be, during some part of each of 5 calendar months during the calendar year (not necessarily consecutive)

- 1) A full-time student at a school that has a regular teaching staff, course of study, and regularly enrolled body of students in attendance, or
- 2) A student taking a full-time, on-farm training course given by a school described in (1) above or a state, county, or local government.

Full-time student defined. A full-time student is a person who is enrolled for the number of hours or courses the school considers to be full-time attendance.

School defined. The term "school" includes elementary schools, junior and senior high schools, colleges, universities, and technical, trade, and mechanical schools. It does **not** include on-the-job training courses, correspondence schools, and night schools.

Example. James, 22, attends college as a full-time student. During the summer, James earned \$3,000. If the other dependency tests are met, his parents can take the exemption for James.

Vocational high school students. People who work on "co-op" jobs in private industry as a part of the school's prescribed course of classroom and practical training are considered full-time students.

Night school. Your child is not a full-time student while attending school only at night. However, full-time attendance at a school can include some attendance at night as part of a full-time course of study.

5. Support Test

You must provide more than half of a person's total support during the calendar year to meet the support test. You figure whether you have provided more than half by comparing the amount you contributed to the person's support with the entire amount of support the person received from all sources. This includes support the person provided from his or her own funds.

You may find *Table 5* helpful in figuring whether you provided more than half of a person's support.

Person's own funds not used for support. A person's own funds are not support unless they are actually spent for support.

Example. Your mother received \$2,400 in social security benefits and \$300 in interest. She paid \$2,000 for lodging and \$400 for recreation.

Even though your mother received a total of \$2,700, she spent only \$2,400 for her own support. If you spent more than \$2,400 for her support and no other support was received, you have provided more than half of her support.

Child's wages used for own support. You cannot include in your contribution to your child's support any support that is paid for by the child with the child's own wages, even if you paid the wages.

Year support is provided. The year you provide the support is the year you pay for it, even if you do so with borrowed money that you repay in a later year.

If you use a fiscal year to report your income, you must provide more than half of the dependent's support for the calendar year in which your fiscal year begins.

Armed Forces dependency allotments. The part of the allotment contributed by the government and the part taken out of your military pay are both considered provided by you in figuring whether you provide more than half of the support. If your allotment is used to support persons other than those you name, you can take the exemptions for them if they otherwise qualify.

Example. You are in the Armed Forces. You authorize an allotment for your widowed mother that she uses to support herself and your sister. If the allotment provides more than half of their support, you can take an exemption for each of them, if they otherwise qualify, even though you authorize the allotment only for your mother.

Tax-exempt military quarters allowances. These allowances are treated the same way as dependency allotments in figuring support. The allotment of pay and the tax-exempt basic allowance for quarters are both considered as provided by you for support.

Tax-exempt income. In figuring a person's total support, include tax-exempt income, savings, and borrowed amounts used to support that person. Tax-exempt income includes certain social security benefits, welfare benefits, nontaxable life insurance proceeds, Armed Forces family allotments, nontaxable pensions, and tax-exempt interest.

Example 1. You provide \$4,000 toward your mother's support during the year. She has earned income of \$600, nontaxable social security benefit payments of \$4,800, and tax-exempt interest of \$200. She uses all these for her support. You cannot claim an exemption for your mother because the \$4,000 you provide is not more than half of her total support of \$9,600.

Example 2. Your daughter takes out a student loan of \$2,500 and uses it to pay her college tuition. She is personally responsible for the loan. You provide \$2,000 toward her total support. You cannot claim an exemption for your daughter because you provide less than half of her support.

Social security benefit payments. If a husband and wife each receive payments that are paid by one check made out to both of them, half of the total paid is considered to be for the support of each spouse, unless they can show otherwise.

If a child receives social security benefits and uses them toward his or her own support, the payments are considered as provided by the child.

Support provided by the state (welfare, food stamps, housing, etc.). Benefits provided by the state to a needy person generally

are considered to be used for support. However, payments based on the needs of the recipient will not be considered as used entirely for that person's support if it is shown that part of the payments were not used for that purpose.

Foster care payments and expenses. Payments you receive for the support of a foster child from a child placement agency are considered support provided by the agency. Similarly, payments you receive for the support of a foster child from a state or county are considered support provided by the state or county.

If you are not in the trade or business of providing foster care and your unreimbursed out-of-pocket expenses in caring for a foster child were mainly to benefit an organization qualified to receive deductible charitable contributions, the expenses are deductible as charitable contributions, but are not considered support you provided. For more information about the deduction for charitable contributions, see Publication 526. If your unreimbursed expenses are not deductible as charitable contributions, they are considered support you provided.

If you are in the trade or business of providing foster care, your unreimbursed expenses are not considered support provided by you.

Example. Lauren, a foster child, lived with Mr. and Mrs. Verbenia. The Verbenias cared for Lauren because they wanted to adopt her, not as a trade or business or to benefit the agency that placed her in their home. The Verbenias' unreimbursed expenses are not deductible as charitable contributions, but are considered support they provided for Lauren.

Home for the aged. If you make a lump-sum advance payment to a home for the aged to take care of your relative for life and the payment is based on that person's life expectancy, the amount of support you provide each year is the lump-sum payment divided by the relative's life expectancy. The amount of support you provide also includes any other amounts that you provided during the year.

Total Support

To figure if you provided more than half of the support of a person, you must first determine the total support provided for that person. Total support includes amounts spent to provide food, lodging, clothing, education, medical and dental care, recreation, transportation, and similar necessities.

Generally, the amount of an item of support is the amount of the expense incurred in providing that item. For lodging, the amount of support is the fair rental value of the lodging.

Expenses that are not directly related to any one member of a household, such as the cost of food for the household, must be divided among the members of the household.

Example 1. Grace Brown, mother of Mary Miller, lives with Frank and Mary Miller and their two children. Grace gets a fully taxable pension of \$1,500, which she spends for clothing and recreation. Grace has no other income. Frank and Mary's total food expense for the household is \$5,000. They pay Grace's medical and drug expenses of \$300. The fair rental value of the lodging provided for Grace is \$960 a year, based on the cost of similar

Table 5. **Worksheet for Determining Support**

Funds Belonging to the Person You Supported	
1) Total funds belonging to the person you supported, including income received (taxable and nontaxable) and amounts borrowed during the year, plus the amount in savings and other accounts at the beginning of the year	\$
2) Amount used for support	\$
3) Amount used for other purposes	\$
4) Amount in savings and other accounts at end of the year	\$
(The total of lines 2, 3, and 4 should equal line 1)	
Expenses for Entire Household (where the person you supported lived)	
5) Lodging (Complete item a or b)	
a) Rent paid	\$
b) If not rented, show fair rental value of home. If the person you supported owned the home, include this amount in line 19.	\$
6) Food	\$
7) Utilities (heat, light, water, etc. not included in line 5a or 5b)	\$
8) Repairs (not included in line 5a or 5b)	\$
9) Other. Do not include expenses of maintaining home, such as mortgage interest, real estate taxes, and insurance.	\$
10) Total household expenses (Add lines 5 through 9)	\$
11) Total number of persons who lived in household	
Expenses for the Person You Supported	
12) Each person's part of household expenses (line 10 divided by line 11)	\$
13) Clothing	\$
14) Education	\$
15) Medical, dental	\$
16) Travel, recreation	\$
17) Other (specify)	\$
18) Total cost of support for the year (Add lines 12 through 17)	\$
Did You Provide More Than Half?	
19) Amount the person provided for own support (line 2, plus line 5b if the person you supported owned the home)	\$
20) Amount others provided for the person's support. Include amounts provided by state, local, and other welfare societies or agencies. Do not include any amounts included on line 1.	\$
21) Amount you provided for the person's support (line 18 minus lines 19 and 20)	\$
22) 50% of line 18	\$
<p>Is line 21 more than line 22?</p> <p>Yes. You meet the support test for the person. If the other exemption tests are met, you may claim an exemption for the person.</p> <p>No. You do not meet the support test for the person. You cannot claim an exemption for the person unless you can do so under a multiple support agreement. See <i>Multiple Support Agreement</i> later in this publication.</p>	

rooming facilities. Figure Grace's total support as follows:

Fair rental value of lodging	\$ 960
Clothing and recreation	1,500
Medical expenses	300
Share of food (1/5 of \$5,000)	1,000
Total support	\$3,760

Because the support Frank and Mary provide (\$960 lodging + \$300 medical expenses + \$1,000 food = \$2,260) is more than half of Grace's \$3,760 total support, and Grace meets the other dependency tests, they can claim an exemption for her.

Example 2. Your parents live with you, your spouse, and your two children in a house you own. The fair rental value of your parents' share of the lodging is \$2,000 a year, which includes furnishings and utilities. Your father receives a nontaxable pension of \$4,200, which he spends equally between your mother and himself for items of support such as clothing, transportation, and recreation. Your total food expense for the household is \$6,000. Your heat and utility bills amount to \$1,200. Your mother has hospital and medical expenses of \$600, which you pay during the year. Figure your parents' total support as follows:

<u>Support provided</u>	<u>Father</u>	<u>Mother</u>
Fair rental value of lodging	\$1,000	\$1,000
Pension spent for their support	2,100	2,100
Share of food (1/6 of \$6,000)	1,000	1,000
Medical expenses for mother		600
Parents' total support	\$4,100	\$4,700

You must apply the support test separately to each parent. You provide \$2,000 (\$1,000 lodging, \$1,000 food) of your father's total support of \$4,100 — less than half. You provide \$2,600 to your mother (\$1,000 lodging, \$1,000 food, \$600 medical) — more than half of her total support of \$4,700. You meet the support test for your mother, but not your father. Heat and utility costs are included in the fair rental value of the lodging, so these are not considered separately.

Lodging defined. Lodging is the fair rental value of the room, apartment, or house in which the person lives. It includes a reasonable allowance for the use of furniture and appliances, and for heat and other utilities.

Fair rental value defined. This is the amount you could reasonably expect to receive from a stranger for the same kind of lodging. It is used in place of rent or taxes, interest, depreciation, paint, insurance, utilities, cost of furniture and appliances, etc. In some cases, fair rental value may be equal to the rent paid.

If you provide the total lodging, the amount of support you provide is the fair rental value of the room the person uses, or a share of the fair rental value of the entire dwelling if the person has use of your entire home. If you do not provide the total lodging, the total fair rental value must be divided depending on how much of the total lodging you provide. If you provide only a part and the person supplies the rest, the fair rental value must be divided between both of you according to the amount each provides.

Example. Your parents live rent free in a house you own. It has a fair rental value of \$5,400 a year furnished, which includes a fair

rental value of \$3,600 for the house and \$1,800 for the furniture. This does not include heat and utilities. The house is completely furnished with furniture belonging to your parents. You pay \$600 for their utility bills. Utilities are not usually included in rent for houses in the area where your parents live. Therefore, you consider the total fair rental value of the lodging to be \$6,000 (\$3,600 fair rental value of the unfurnished house, \$1,800 allowance for the furnishings provided by your parents, and \$600 cost of utilities) of which you are considered to provide \$4,200 (\$3,600 + \$600).

Person living in his or her own home. The total fair rental value of a person's home that he or she owns is considered support contributed by that person.

Living with someone rent free. If you live with a person rent free in his or her home, you must reduce the amount you provide for support by the fair rental value of lodging he or she provides you.

Property. Property provided as support is measured by its fair market value. Fair market value is the price that property would sell for on the open market. It is the price that would be agreed upon between a willing buyer and a willing seller, with neither being required to act, and both having reasonable knowledge of the relevant facts.

Capital expenses. Capital items, such as furniture, appliances, and cars, that are bought for a person during the year can be included in total support under certain circumstances.

The following examples show when a capital item is or is not support.

Example 1. You buy a \$200 power lawn mower for your 13-year-old child. The child is given the duty of keeping the lawn trimmed. Because a lawn mower is ordinarily an item you buy for personal and family reasons that benefits all members of the household, you cannot include the cost of the lawn mower in the support of your child.

Example 2. You buy a \$150 television set as a birthday present for your 12-year-old child. The television set is placed in your child's bedroom. You can include the cost of the television set in the support of your child.

Example 3. You pay \$5,000 for a car and register it in your name. You and your 17-year-old daughter use the car equally. Because you own the car and do not give it to your daughter but merely let her use it, you cannot include the cost of the car in your daughter's total support. However, you can include in your daughter's support your out-of-pocket expenses of operating the car for her benefit.

Example 4. Your 17-year-old son, using personal funds, buys a car for \$4,500. You provide all the rest of your son's support — \$4,000. Since the car is bought and owned by your son, the car's fair market value (\$4,500) must be included in his support. The \$4,000 support you provide is less than half of his total support of \$8,500. You cannot claim an exemption for your son.

Medical insurance premiums. Medical insurance premiums you pay, including premiums for supplementary Medicare coverage, are included in the support you provide.

Medical insurance benefits. Medical insurance benefits, including basic and supplementary Medicare benefits, are not part of support.

Tuition payments and allowances under the GI Bill. Amounts veterans receive under the GI Bill for tuition payments and allowances while they attend school are included in total support.

Example. During the year, your son receives \$2,200 from the government under the GI Bill. He uses this amount for his education. You provide the rest of his support — \$2,000. Because GI benefits are included in total support, your son is not your dependent.

Other support items. Other items may be considered as support depending on the facts in each case. For example, if you pay someone to provide child care or disabled dependent care, you can include these payments as support, even if you claim a credit for them. For information on the credit, see Publication 503, *Child and Dependent Care Expenses*.

Do Not Include in Total Support

The following items are not included in total support.

- 1) Federal, state, and local income taxes paid by persons from their own income.
- 2) Social security and Medicare taxes paid by persons from their own income.
- 3) Life insurance premiums.
- 4) Funeral expenses.
- 5) Scholarships received by your child if your child is a full-time student.
- 6) Survivors' and Dependents' Educational Assistance payments used for the support of the child who receives them.

Multiple Support Agreement

Sometimes no one provides more than half of the support of a person. Instead, two or more persons, each of whom would be able to take the exemption but for the support test together provide more than half of the person's support.

When this happens, you can agree that any one of you who individually provides more than 10% of the person's support, but **only one**, can claim an exemption for that person. Each of the others must sign a written statement agreeing not to claim the exemption for that year. The statements must be filed with the income tax return of the person who claims the exemption. **Form 2120, Multiple Support Declaration**, can be used for this purpose.

Example 1. You, your sister, and you two brothers provide the entire support of your mother for the year. You provide 45% your sister 35%, and your two brothers each provide 10%. Either you or your sister can claim an exemption for your mother. The other must sign a Form 2120 or a similar statement agreeing not to take an exemption for her. Because neither brother provides more than 10% of the support, neither can take the exemption. Your brothers do not have to sign a Form 2120 or the written statement.