

**LIST OF CITATIONS/STATUTES FOR PRESENTATION:
Income Determination–Advanced**

HYPO 1

- COVID stimulus check funds aka Economic Impact Payments are not considered income by the IRS.
- CFC section 4060 – If net monthly disposable income does not reflect the actual or prospective earnings, the court may adjust the amount appropriate.
- Court has broad discretion to deviate up or down if in the best interests of the children. IRMO deGuigne (2002) 97 CA4th 1353, at 1361, 119 CR2nd 430, at 436.

HYPO 2

- CFC section 4058(a)(1) includes disability payments as income.
- IRMO Daugherty (2014) 232 Cal App 4th 463 - Derivative benefits received for children is not income to either parent. Child's income, not parent. If payee is recipient of benefits from payor's disability, credit against support order and possibly arrears. May be basis for deviation.

HYPO 3

- CFC section 3910(a) - The father and mother have an equal responsibility to maintain, to the extent of their ability, a child of whatever age who is incapacitated from earning a living and without sufficient means.

HYPO 4

- Tax filing status – Actual status as of yearend.
- CFC section 4059.
- Child tax credit – The person who claimed the child on their latest (2020) tax return will receive the advanced payments in 2021.
- Childcare tax credit – 26 U.S.C. §§ 21 (e)(5), 152(e)(4); IRS Publication 503, *Child of divorced or separated parents or parents living apart*.

HYPO 5

- Adoptive Assistance is assistance from the government in providing for your child. This is not income per the IRS code. 26 U.S.C. § 137.

HYPO 6

- BAH and BAS are non-taxable income for child support. - IRMO Stanton (2011) 190 CA4th 547.

HYPO 7

- Imputation of earnings – Earning Capacity: FC4058(b) Discretion to consider in lieu of income if consistent with best interests. Burden on party seeking to impute to show ability (age, experience, health), and opportunity to work (job availability). IRMO Regnery (1989) 214 CA3rd 1367, 263 CR 243.

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- PPP loan – forgiven PPP loans are not considered income even if just a portion is forgiven.
- Unemployment benefits - “..income from whatever source derived” IRC language-- Mandatory: FC 4058(a)(1). Under the Cares Act, the first \$10,200 of benefits are non-taxable income if income is less than \$150,000
- Depreciation – paper write-off. Add it back as non-taxable income. Asfaw v. Woldberhan (2007) 147 CA4th 1407 Depreciation of rental property is not deductible in calculating child support under 4058 and 4059. IRMO Hein (2020) 52 Cal.App.5th 519 - extends Asfaw add-back of depreciation to equipment and vehicles.
- Auto expenses, Cell phone, company meals- Gross income to business less operating expenses is income added back as non-taxable income. FC 4058(a)(2). You must ask if the expenditure was necessary for the operation of the business.

Hypo 8

- Calculating timeshare – Does not have to be exact. CFC section 4055.
- County of San Diego v. P.B. (2020) 55 Cal.App.5th 1058 - Courts may not impute timeshare for the purposes of guideline child support.
- Deviating Down from GL – CFC sections 4056 and 4057.