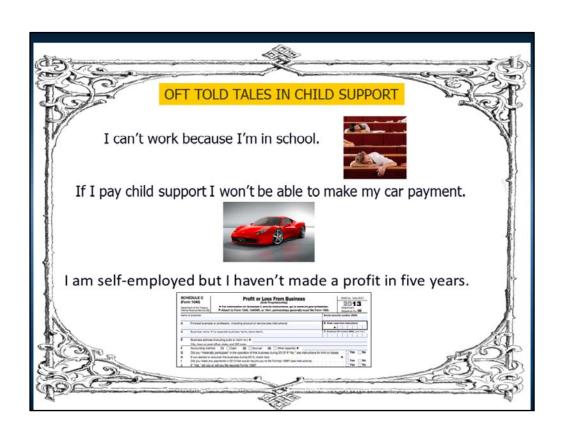
# HOW TO DETERMINE INCOME – Practical Guide to Understanding Relevant Documents

21st Annual AB 1058 Child Support Training Conference September 12-15, 2017

#### Presenters:

Commissioner Diana C. Baker (Monterey and San Benito Counties) Family Law Facilitator Peggy Hill (Monterey County)



## **Types of Income**

- 1. Presumed FC §17400(d)(2)
  - Only DCSS can use this and only on the proposed Judgment
- 2. <u>Imputed</u> FC §4058(b)
  - Prove Up (ability and opportunity to work)
  - Voluntary Quit
  - Expenses (kinda imputing)

"Imputing" Based on	PL-190  Interpretation for the process of the possible of the
Expenses	I. Neath-care code not paid by Prigrandor.  I. Obrid care  C. Child care  I. Survivals and health of the second o
	15. Advantery Ness (This is required a delate party is required politic particles (This is required a delate party is required politic particles (This is required a delate party is required to the second or this party was (percent):  1. The source of this incompress to the party

Note: Can only consider this as evidence of expenses if the "Actual expenses" box is checked.

## 3. Actual – FC §4058(a) Annual Gross Income

 FC §4058 (a)(1) – commissions, salary, wages, bonuses, worker's comp., unemployment insurance benefits (UIB), disability insurance benefits, social security benefits, rents, etc.

We want to make the best guess we can about the payor's CURRENT and near FUTURE income.

Most times what a person made in the recent past is what they will probably make in the near future. This will not work if the person has a new job or new job classification, got a raise, one time bonus, etc.

If the person has a flat salary, you can use that.

If there are seasonal highs and lows during the year – average the income for a 12-month time period. W-2s (earnings) and 1099s (Unemployment Insurance Benefits) are helpful. If income varies with some overtime, etc., use Year to Date (YTD). The Period Ending (PE) date will tell you how long it took the person to earn the YTD amount. Divide the YTD income by the number of months it took the person to earn it. Note: Income earned in December will be included in the next year's YTD number if the first payday in that next year includes work days in the prior December. You need to adjust for that.

Reminder: Make sure you put the income on the right lines in the calculator.

## Income Does NOT include (FC § 4058(c))

- Income from need based public assistance program
  - Supplemental Security Income (SSI)
  - SSI State Supplementary Payments (SSP)
  - CalWORKS (California Work Opportunity and Responsibility to Kids)
    - California's version of federal Temporary Assistance to Needy Families (TANF) program
  - General Assistance (GA)
- Child support received for other kids

#### How to Calculate Partial Months

4.33 weeks in month 26 alternate weeks in year 52 weeks in year

365 days in year 8,760 hours in year

#### To Get Monthly Amount:

Annual - /by 12 mos.

Weekly - X 52 wks. /by 12 mos.

Semi-mo. - X 2

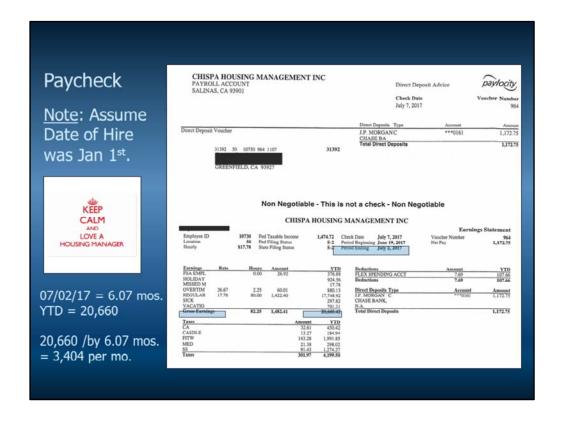
Bi-weekly - X 26 /by 12 mos.

OR /by 2 X 4.33 wks. in mo.

01 = .03	16 = .53
02 = .07	17 = .57
03 = .10	18 = .60
04 = .13	19 = .63
05 = .17	20 = .67
06 = .20	21 = .70
07 = .23	22 = .73
08 = .27	23 = .77
09 = .30	24 = .80
10 = .33	25 = .83
11 = .37	26 = .87
12 = .40	27 = .90
13 = .43	28 = .93
14 = .47	29 = .97
15 = .50	30 = 1.00

#### Class handout.

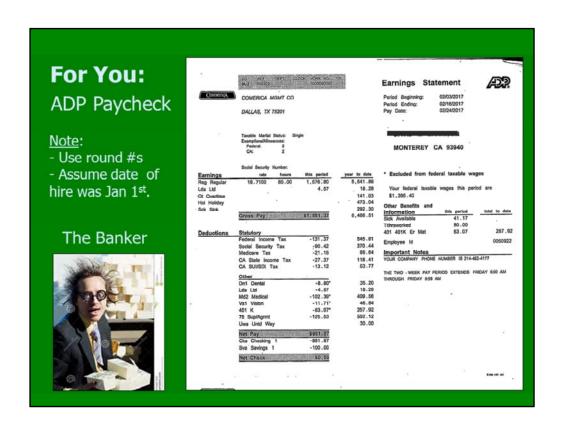
This chart helps you figure out how much time the party took to earn the Year To Date (YTD) income. For example, if a party started work on January  $1^{st}$  and the Period Ending (PE) date is June  $21^{st}$ , the party worked 5 months (01/01/17 thru 05/31/17) + .70 months in June or a total of 5.70 months.



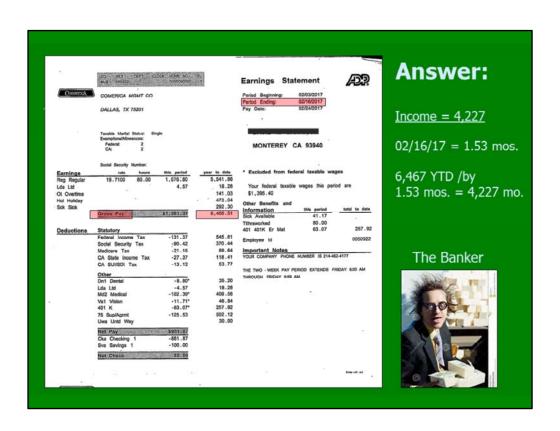
Note: Gross "Year to Date" will be the biggest number.

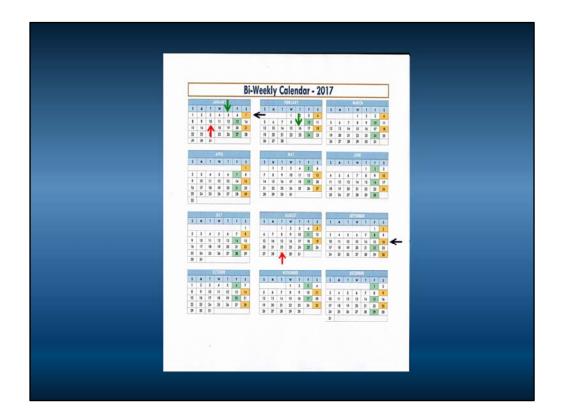
Do not confuse the "Period Ending" (PE) date with the date of the check.

How to calculate earnings with partial month: Divide amount of money earned by the time it took to earn it. Use "How to Calculate Partial Months" chart to calculate number of days it took to earn it.



Exercise: Find YTD and calculate his earnings from January 1st thru February 16th.





Most checks you see will be for every two weeks of work. This chart is simply an easy way to figure out how many days, if any, the party worked in December that may be included in the next year's YTD.

Example 1 (black arrows): If the person has a Period Ending (PE) date of September 16<sup>th</sup>, you could look at a calendar and count back every two weeks. This chart does it for you. The first PE date in 2017 was January 7<sup>th</sup>. That means that one week of December earnings is included in the 2017 YTD amount. You need to adjust for that time period.

Example 2 (red arrows): If the person has a PE date of August  $22^{nd}$ , again, you can count back every two weeks. Or you can use the yellow and green colored dates for guidance. August  $22^{nd}$  is three days before the green colored date. Look for the first green colored date in 2017 and go back three days. His first PE date in 2017 was January  $10^{th}$ . That means there were four days of December's earnings included in the 2017 YTD amount.

Example 3 (green arrows): Note the Banker's paycheck actually has a PE date of February 16<sup>th</sup>. If you locate this on the bi-weekly calendar, you will see that his first PE date in 2017 was January 5, 2017. That means he worked 9 days in 2016 which is included in his 2017 YTD earnings.

When we assumed he started work on January 1, 2017, we divided his YTD earnings by 1.53 months (01/01/17 - 02/16/17). We found he earned \$4,227 per month.

If we add .30 months for the 9 days he worked in December, we should divide his YTD by 1.83. In other words, 1.53 (01/01/17 thru 02/16/17) plus .30 months for the nine days in December. His YTD of 6,467 divided by 1.83 = 3,553.

By not adjusting for the 2016 earnings included in his 2017 YTD, we would be re using \$674 more income for him than he actually earned.

### Bonuses – Optional Approaches

- FC §4060 If the monthly income does not accurately reflect the actual or prospective earnings, the court may adjust the amount accordingly.
  - Add it all
  - Amortize
  - Temporary order with review
  - Bonus Calculator [Smith-Ostler] (IRMO Ostler & Smith (1990) 223 Cal.App.3<sup>rd</sup> 33)

- 1. Add it all If this is a bonus that the party gets every year, it is basically just part of the normal earnings. Add the total bonus to the yearly earnings and divide by 12.
- 2. Amortize it Figure a normal one-time bonus will be gone in a year. For example, if payor got a \$1,200 bonus on January 1<sup>st</sup> it will be spent at the rate of \$100 per month. If the effective date of the child support order is February 1<sup>st</sup>, then the payor has spent \$100 in January. Add the extra \$100 from February thru December 31<sup>st</sup>. At that point, the bonus is totally spent and you just use the base earnings.
- 3. Temporary order with review Base the child support on base earnings or an agreed amount and set for a review when all the information is available (end of December or after W-2s and 1099s are received).

Try for an agreed amount if payor is likely to get another bonus this year. Otherwise, if the child support is too low, payor will owe a lot of back child support and if it is too high, payee may have to pay payor back.

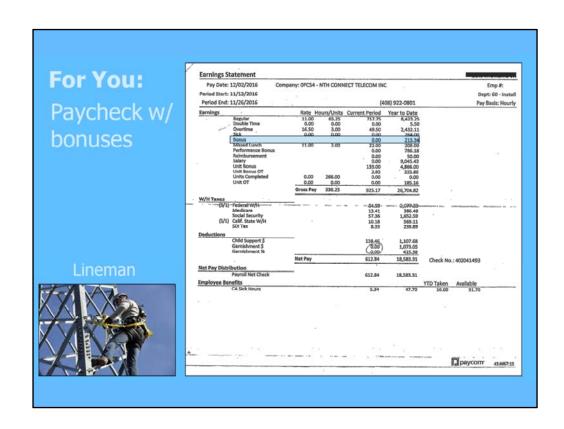
4. Bonus calculator – Set child support on the party's base salary and the calculator will tell you how much of each bonus goes to support. Some DCSS offices will not do this because it is too time-consuming. If there are two attorneys, DCSS can collect child support on base income and have attorneys work out the bonus amount and notify DCSS re how much to collect.

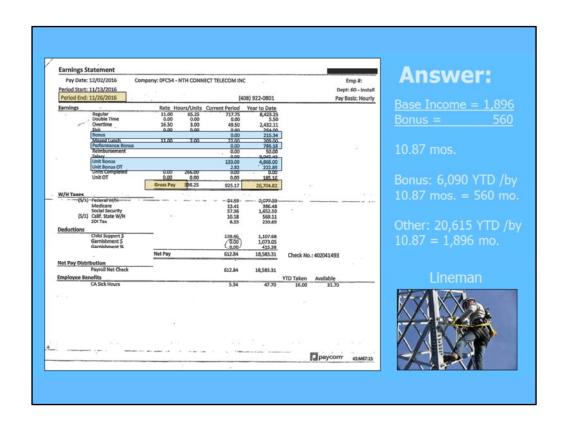
DissoMaster Data Screen Monthly Figures					ВС	NUS	CALC	ULA	TION	
Input Data Father Mother Party Info Father Mother Number of children 0 1				Annual Bonus Table For Mother (annual numbers)  "R" next to a figure denotes that Wother is a recipient for the corresponding bonus "C5%" is the percentage of wage bonus paid as additional child support "SS%" is the percentage of the total wage bonus paid as additional spousal support						
% time with NDP 20.00 0.00 Filing Status Single HHMLA # federal exemptions 1* 2* Wages + salary 4000 1500										
Guideline (2017)	Cash Flow Analysis	Gdin.	Prop.	Bonus	Basic CS %	Basic CS \$	SS %	SSS	Total Basic CS	Total SS
Nets (adjusted)	Comb. net spendable	4829	4870	Wages	0.00	0	0.00	0	7,697 R	4,113 R
	Percent change	0%	0.8%	100	5.00	5	26.00	26	7.692 R	4.087 R
Mother 1649	Father, payor of SS, CS, Pro	p. SS, Prop	CS	200	5.00	10	25.50	51	7.688 R	4.061 R
Total 4829	Payment cost	910	883	300	5.00	15	25.67	77	7,683 R	4,036 R
Support	Net spendable income	2196	2223	400	4.75	19	26.25	105	7,678 R	4,007 R
Presumed CS 641	Change from guideline	0	27	500	4.60	23	27.00	135	7,674 R	3,977 R
Basic CS 641	% of combined spendable	45.5%	45.6%	600	4.50	27	27.50	165	7,671 R	3,947 R
Add-ons 0	% of saving over	0%	66.9%	700	4.43	31	27.86	195	7,667 R	3,917 R
Per Kid	guideline	10000		800	4.38	35	28.13	225	7,663 R	3,887 R
Child 1 641	Total Taxes	820	633	900	4.33	39	28.44	256	7,659 R	3,857 R
S. Clara SS 343	Dep. exemptions value	0	27	1,000	4.30	43	28.60	286	7,655 R 7,651 R	3,827 R 3,797 R
Total 984	# withholding allowances	O(es)	0(es)	1,100	4.18	46 50	28.83	316 346	7,051 R 7,647 R	3,797 R 3.767 R
Proposed, Tactic 9	Net wage paycheck	3348	3348	1,200 1,300	4.17	54	28.83	376	7,647 R	3,767 R
Presumed CS 688	Mother			1,400	4.15	58	29.00	406	7,639 R	3.707 R
S. Clara SS 457	Payment benefit	900	913	1,500	4.13	62	29.07	436	7.635 R	3.677 R
Total 1144	Net spendable income	2633	2647	1,600	4.13	66	29.13	466	7.631 R	3 646 R
Comb	Change from guideline	0	13	1,700	4.12	70	29.18	496	7.627 R	3,616 R
Savings 41	% of combined spendable	54.5%	54.4%	1.800	4.11	74	29.22	526	7,623 R	3,586 R
Total releases	% of saving over	0%	33.1%	1,900	4.11	78	29.26	556	7,619 R	3,556 R
to Father	guideline	1700		2,000	4.10	82	29.30	586	7.616 R	3,526 R
Default Case Settings	Total Taxes	-149	-3							
Default Case Settings Default Tax Settings	Dep. exemptions value	0	13							
Delaum rak Settings	# withholding allowances	3	O(es)							
	Net wage paycheck	1342	1292							

Usually it is the payor who gets the bonuses so with each bonus the child support goes up. In this example, it is the payee Mom who gets the bonuses. So as she gets a bonus, the payor's

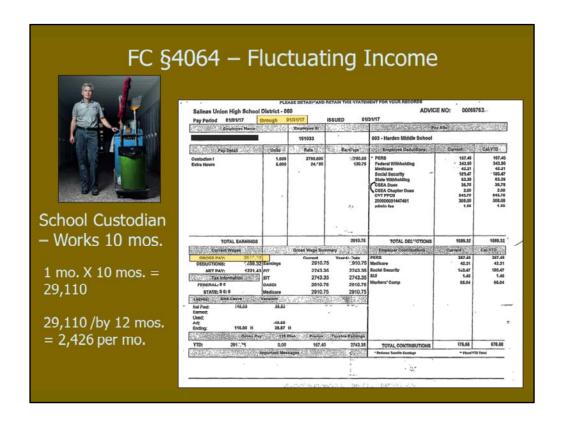
child and spousal support amount goes down.

Using a Bonus Calculator saves the parties from coming back to court every time there is a bonus. Set the support on the party's base salary then, when a bonus comes, look at the chart to see how much of that bonus should go to the payee. Most self-represented litigants will not be comfortable using a Bonus Calculator. This will come up when there are two attorneys.



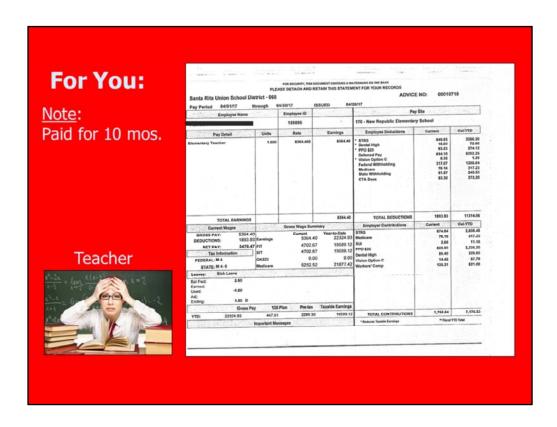


Note: These "bonuses" may be a normal part of his paycheck. Ask. If so, it is just regular income.

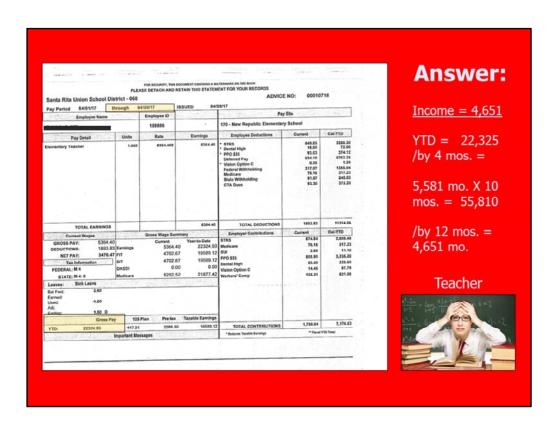


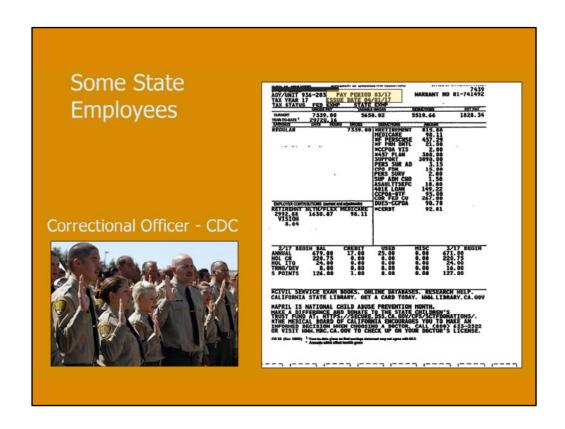
Some folks, like school personnel, work 10 months of the year. If they get paid for 10 months, you need to multiply the monthly income by 10 months and then divide by 12 months to get a monthly amount.

However, some school personnel will opt to get paid less during the 10 months they work in order to be paid during the two months they do not work. In that case, you do not multiply and divide.

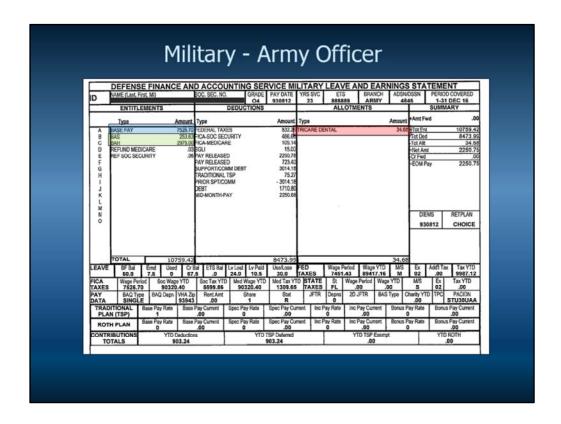


Calculate "fluctuating income."





Some state employees have to work a whole month BEFORE they get paid. In this example, the person got paid for all of March on April 1<sup>st</sup>. That means that income earned in December will not be paid until January. The YTD number will include an entire extra month of income. You need to divide this YTD by four months – not three months – to account for the extra income included in this YTD number.

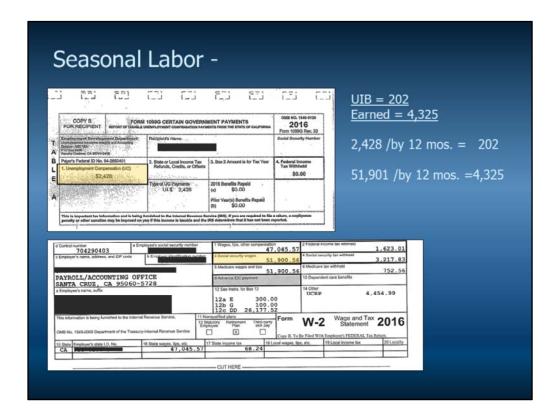


There are a lot of different categories that make up a military paycheck. See the Taxes Slide and the handout provided in class.

Base pay is always taxable. BAS (Basic Assistance for Sustenance) and BAH (Basic Assistance for Housing) are generally not taxable. Your Commissioner may interpret this differently.

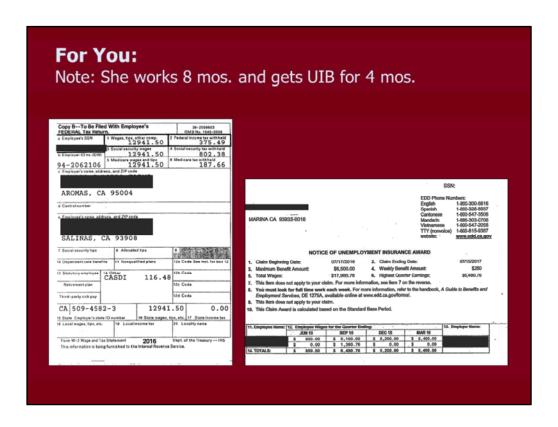
Great Resource: How to read an Army Leave and Earnings Statement (LES) <a href="https://www.dfas.mil/civilianemployees/understandingyourcivilianpay/LES.html">https://www.dfas.mil/civilianemployees/understandingyourcivilianpay/LES.html</a>

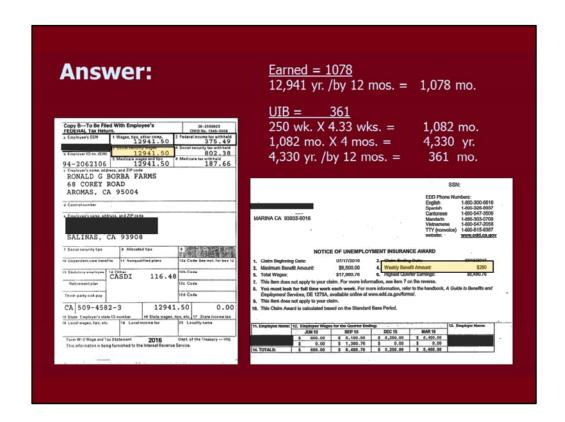
Note: There is a separate one for Army/Air Force, Navy, and Reserve/National Guard

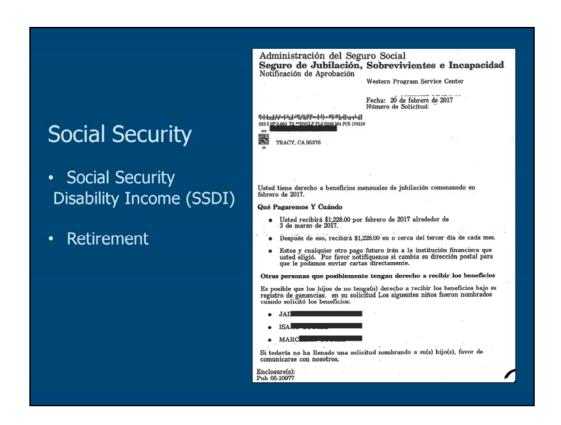


To calculate seasonal labor, add all the earnings and divide by 12 months to get a monthly earnings amount. Add all the Unemployment Insurance Benefits (UIB) and divide by 12 to get a monthly UIB amount.

Note: You will also get a 1099 form for an independent contractor (self-employment).







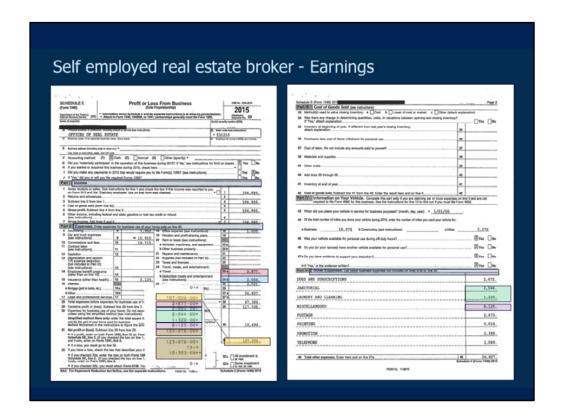
#### **Social Security Notifications**

Taxes: SSDI ...... Tax free
Retirement ...... Taxable

See class handout "Taxes – Who Pays What?" Included here as second to last slide.

## Self Employment

 FC §4058 (a)(2) – Income from the proprietorship of a business, such as gross receipts reduced by expenditures required for the operation of the business

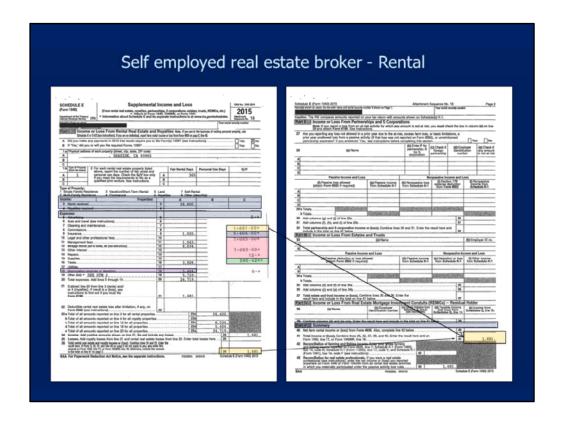


Tax returns are presumptively correct. However, there are deductions that are fine for the federal and state government but are not deductions from income for calculating child support. What a Commissioner includes and excludes is pretty much discretionary.

The following are generally added back to the net self-employment income for child support calculation:

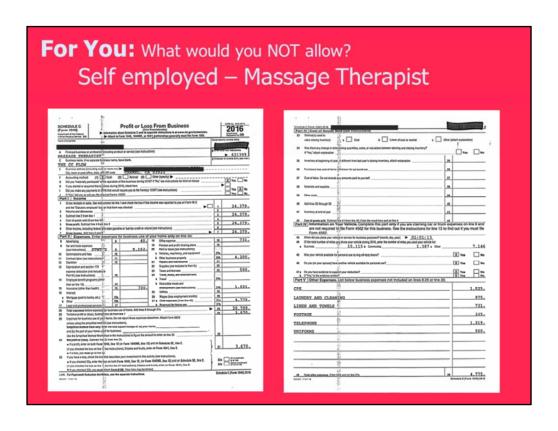
- 1. Depreciation. Example, you buy office equipment that costs \$5,000 and will need to be replaced in five years. You might deduct the whole \$5,000 in the year you bought it. However, the government knows that this equipment is losing value every year. So instead, you may be allowed to deduct \$1,000 a year for five years from your income for tax purposes. This is just a paper deduction. The money was spent when you bought it. So the \$1,000 you are writing off this year is still sitting in your bank account. Since it is not an actual cash expense, it can be considered as income for child support.
- 2. Meals and entertainment. You do not get to deduct your meals at home so why would you get to deduct them when you are traveling? However, some may argue that it costs more to eat out than at home, etc.
- 3. Expenses not related to the business. In this example, the real estate agent only has \$1,000 a year in office expense. She does not seem to be renting an office. In addition, the adding machine tape is covering the spot where she is deducting \$10,494 for business use of her home. Why would we allow her to deduct janitorial expenses for her home?

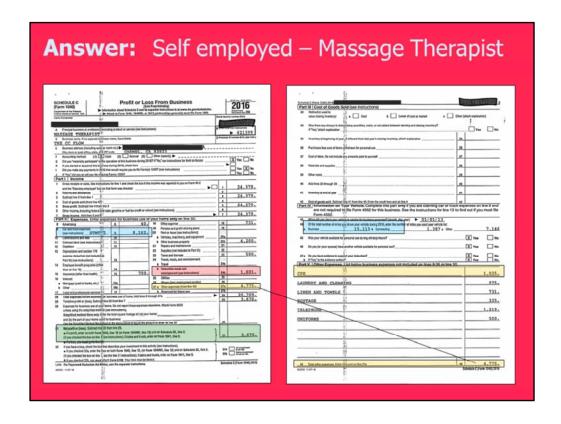
Everyone needs clean clothes. Should she be allowed a deduction for laundry and cleaning? Would your answer be different if she was required to wear a uniform?



We start with her idea of net income from the business (\$1,681). We add back in depreciation (\$5,404) for a total of \$7,085. We divide by 12 months to get her monthly rental income of \$590.42.

(Note: For this example, we are assuming it is OK for her to deduct the \$5,710 listed at line 19.)

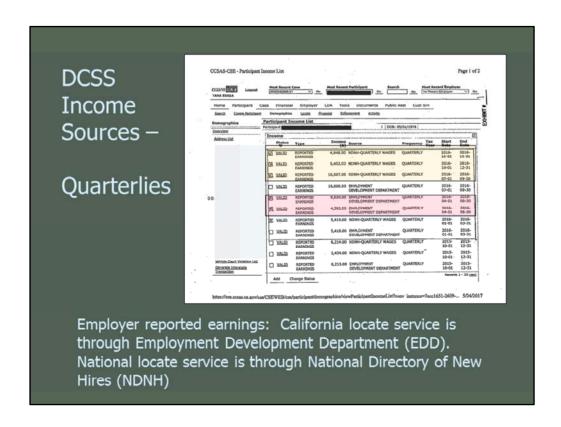




Review his Schedule C to determine what you would allow him as business expenses.

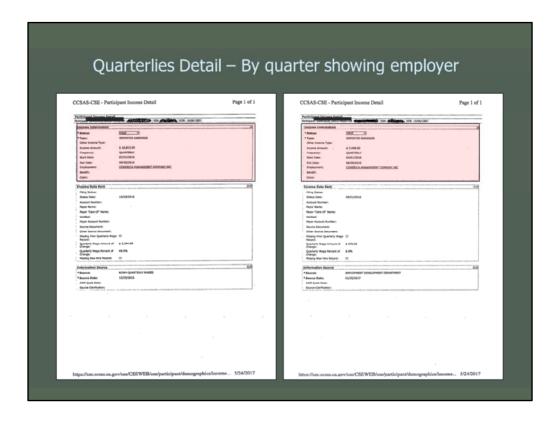
If he is a mobile massage therapist it may make sense to allow for mileage (Note: He took the standard mileage deduction - 15,115 work miles x .54 cents per mile = 8,162.) Would you allow for meals and entertainment?

His "Other Expenses" on page two look reasonable but what is "CPE?" Ask him.

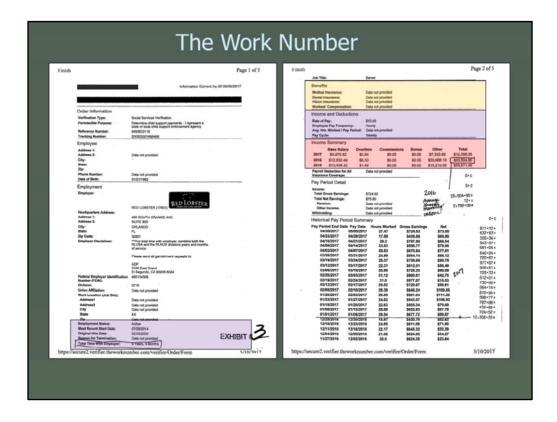


DCSS advised me that the Quarterlies always seem to be off by \$1.00

Both payor and the payee used to load automatically to the California Child Support Automated System, Child Support Enforcement (CCSAS-CSE) commonly referred to as CSE. Now it is just payor. DCSS has to manually request info thru EDD on the payee.



These are helpful because they have the name of the employer.



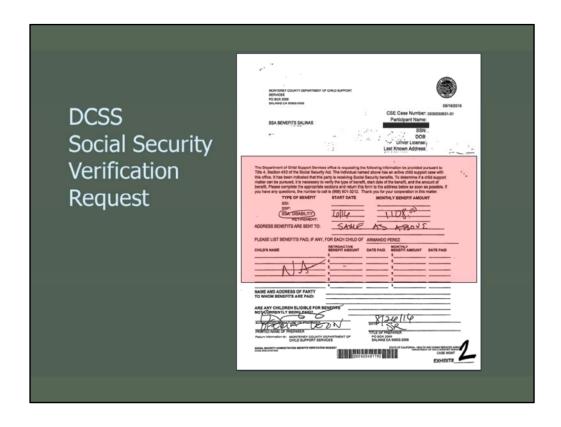
This is an optional form for California. The information is listed by Social Security number.

If the employer signs up for this and provides all the information, the employer does not have to complete an Employer Wage and Insurance Verification form. (Next slide.)

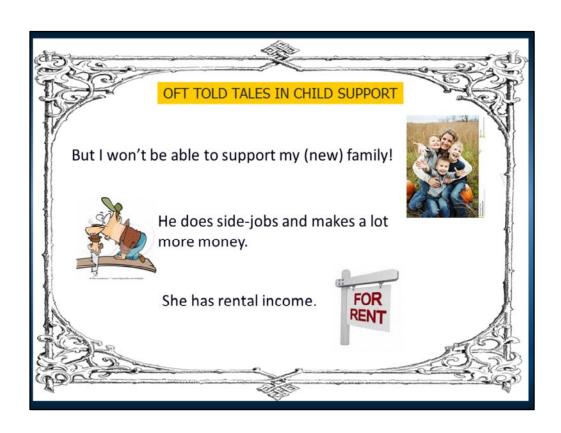
Some employers complete the form but they do not report to EDD so DCSS checks both.

Wage and Insura	nce Verification
WAGE AND INSURANCE VERIFICATION  THE COMMITTEE	WAGE AND INSURANCE VERIFICATION THAT INSURANCE INSURANCE INSURANCE VERIFICATION THAT INSURANCE INSURANCE INSURANCE INSURANCE VERIFICATION THAT INSURANCE INSURANCE INSURANCE INSURANCE VERIFICATION THAT INSURANCE INSUR
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The Wage and Insurance Verification has a wealth of information. This will give you income and deductions like union dues and mandatory retirement. It will also tell you how much insurance costs for the employee and dependents. There may be children you have never heard of listed as being covered by the person's insurance. Check to make sure you have the correct filing status for the person. If the children are not in the home, the person may get credit for other support paid.



This is Social Security Disability (SSDI) income. Children of a parent who gets SSDI or retirement benefits may be entitled to what are called "derivative benefits." Brief explanation: Their child gets an income (derivative benefit) because the parent is disabled or retired. The amount the child gets may be off-set against current and/or past due child support. There are a bunch of rules about how this works. See Family Code §4504.



# **Types of Deductions**

### FC §4059

- (a) Income taxes
- (b) Federal Insurance Contribution Act (F.I.C.A)
- (c) Mandatory union dues and retirement
- (d) Health insurance for parent and any child State disability insurance (S.D.I.)
- (e) Child and spousal support paid in another case.
- (f) Job related expenses
- (g) Hardship (Not our job description)

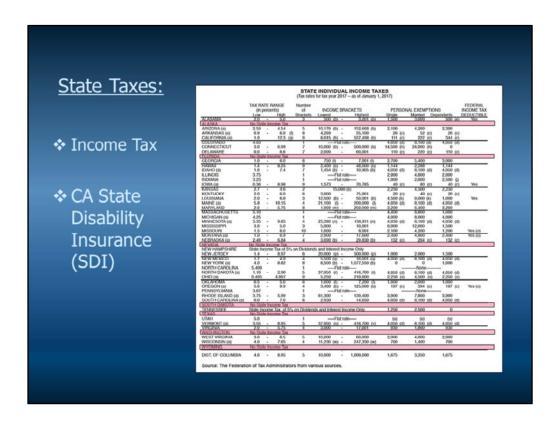
# FC §4059(a), (b), (c), (d) Deductions

### Federal Taxes:

❖ Income Tax



- ❖ Medicare
  - (1.45% up to \$200,000; 2.35%% over \$200,000)
- ❖ F.I.C.A. = Social Security
  - (6.2% of gross earnings up to \$127,200 in 2017)



Commissioner Baker may use another state's tax rate if there is no tax or a flat tax rate. If the other state has a graduated tax rate, she will default to California. There are too many variables to try to figure out a person's taxes unless the other state has no tax or has a flat tax rate.

### TAXES – Who pays what?

### Earned income:

- Federal & state income tax, FICA, Medicare, SDI
- Except –

In Home Supportive Services (IHSS) - NO FICA State correctional officers — NO FICA or SDI

<u>Unearned income</u> (Pensions, trust income, interest received, dividends, net rents, royalties, annuities):

- · Federal & state income tax but NO FICA or SDI
- Except –

Unemployment Insurance Benefits (UIB) – Federal but NO state tax

See class handout – second to last slide.

# <u>TAXES – Who pays what?</u> - continued

### Tax Free:

- Workers' compensation
- Disability benefits

Social Security Disability (SSDI) State Disability Insurance (SDI)

### Military:

Base pay	Taxable
BAS (Basic allowance for sustenance)	Tax free
BAH (Basic allowance for housing)	Tax free
CONÚS COLA	Taxable
(Continental US Cost of Living Adjustmen	t)

- COLA (outside CONUS) ...... Tax free
- Flight pay, hazardous duty pay, etc. ..... Taxable
- VHA (Variable housing allowance) ....... Not included

Note: Ask service member in which state he/she files taxes.



The mandatory retirement deduction will generally apply to someone who works for the government. There is no deduction for a *voluntary* retirement plan like a 401(k) plan.

## FC §4059 (c), (d), (e), (f), (g) Deductions

- Mandatory union dues
- Health insurance for self and/or child
- Court ordered child and spousal support actually paid in other case. If voluntary payment, child support up to GL amount.
- Job related expenses

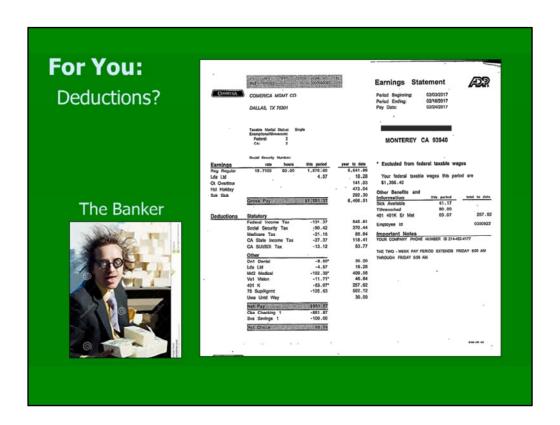
- 1. Union dues. The deduction is generally the monthly amount not for joining (although that is arguable).
- 2. Health insurance. Paid for the party or a child

Check to see if the health insurance is pre-tax or post-tax. If it is a deduction on the paycheck it is probably pre-tax. If it is paid directly to the insurance company, it is post-tax.

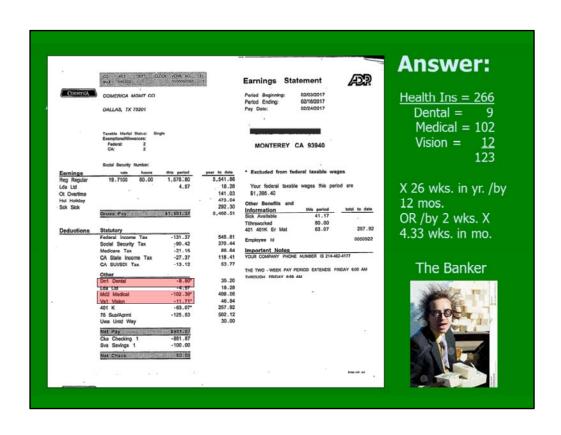
Deductions that go to a savings account to cover *out-of-pocket expenses* are not deductible. These will have various names like "Health Savings Account," Family Savings Account," etc.

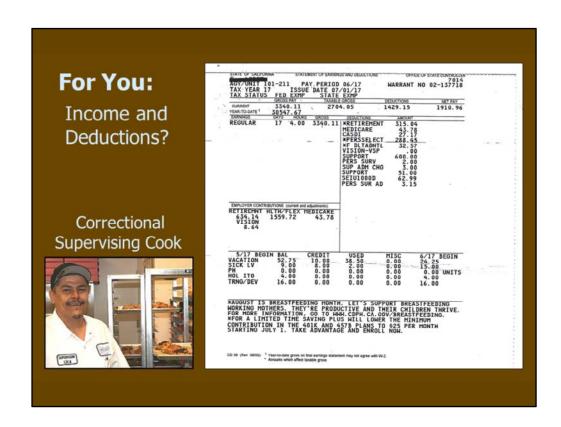
Military health insurance is called "Tri-Care."

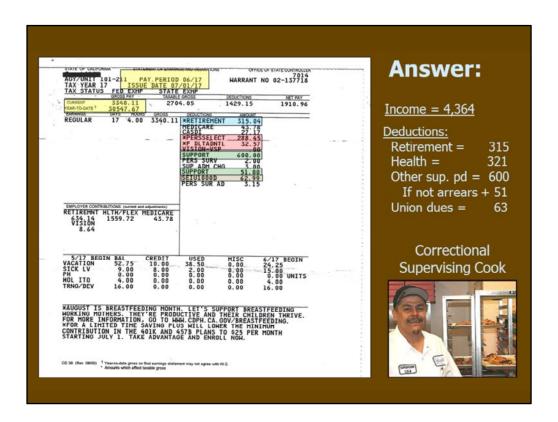
- 3. Other support paid. This is for *current* child support actually paid. There is no deduction for payments on arrears.
- 4. Job related expenses. This is a deduction for things people have to buy to do their job like uniforms, steel-toed boots, etc. We give credit for replacing tools that break down and have to be replaced but not the cost of buying all new tools to go into a particular occupation.



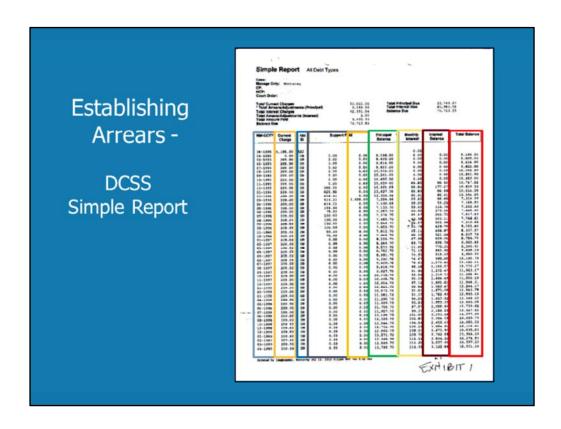
When it comes to monthly deductions like union dues and health insurance, do not use YTD. First, these types of deductions are not pro-rated so the YTD number is not an accurate reflection of what is paid each month. Second, deductions like health insurance go up. Use the current amount the person pays, not an average of what was paid in the past.







In this example, there are two deductions labeled "Support." If they are both for current support, he should get a deduction for both. He should not get a deduction for the \$51 if it is for payment on arrears.



When establishing past due support, ask DCSS to use this form. It is easier to read than some of the others. Commissioner Baker uses this PowerPoint presentation before establishing a parent's past due support.

Note: The number in the second yellow column with no separate heading is probably a tax refund intercept. We are NOT supposed to say that because tax information is so highly confidential. But how else you explain to someone what it is?

#### Resources:

- 1. Guideline Calculator User Guide <a href="http://www.childsup.ca.gov/portals/0/resources/docs/gdlncalculator.pdf">http://www.childsup.ca.gov/portals/0/resources/docs/gdlncalculator.pdf</a>
- 2. State Tax Chart www.taxadmin.org/assets/docs/Research/Rates/ind\_inc.pdf
- 3. How to read an Army Leave and Earnings Statement (LES) <a href="https://www.dfas.mil/civilianemployees/understandingyourcivilianpay/LES.html">https://www.dfas.mil/civilianemployees/understandingyourcivilianpay/LES.html</a>

Note: There is a separate one for Army/Air Force, Navy, and Reserve/National Guard

4. Detailed List of Income Used, Tax, etc. for Commissioners:
California Judges Benchguide 203, AB 1058 Child Support
Proceedings: Establishing Support, Appendix B

TAXES – Who pays what?
Earned income:  • Federal & state income tax, FICA, Medicare, SDI
Except —
In Home Supportive Services (IHSS) - NO FICA State correctional officers - NO FICA or SDI
Unearned income (Pensions, trust income, interest received, dividends, net
rents, royalties, annuities):  • Federal & state income tax but NO FICA or SDI
• Except -
Unemployment Insurance Benefits (UIB) — Federal but NO state tax
Tax Free:
Workers' compensation     Disability benefits
Social Security Disability (SSDI)
State Disability Insurance (SDI)
Military:
Base pay Taxable     BAS (Basic allowance for sustenance)     Tax free
BAH (Basic allowance for housing) Tax free
CONUS COLA Taxable     (Continental US Cost of Living Adjustment)
COLA (outside CONUS) Tax free
<ul> <li>Flight pay, hazardous duty pay, etc Taxable</li> <li>VHA (Variable housing allowance) Not included</li> </ul>
Note: Ask service member in which state he/she files taxes.
(Commissioners can find a detailed list of income used, tax, etc., in California Judges
Benchguide 203, AB 1058 Child Support Proceedings: Establishing Support, Appendix B)

**Class Handout** 

