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Child Support - A Taxing Matter

Category: Child Support

Despite the best intentions of both the Federal and I was surprised at the comment. It's been nearly three years since the introduction of the Federal Child Support Guidelines, yet the intelligent and sophisticated person I was speaking to told me that she was unaware that the rules had changed for those receiving or paying child support. In her case there were approximately two years during which it was likely she would lose the tax advantage of the changes, but more about that later in the column. To assist anyone else who may not be clear on the changes, I think it's helpful to briefly revisit the effect of the Guidelines.

The first principle is that child support payments, with some exceptions, are based entirely on the income of the paying spouse. Generally in order to establish a pattern of income used to calculate what is called "guideline income" the paying spouse provides the last three years of income tax returns and the three most recent pay stubs. Once the "guideline income" is established a simple chart is used to calculate the child support based on the number of children eligible to receive support. As an example, according to the chart, if the paying spouse earns \$40,000 a year, he or she would pay approximately 343 for 1 child, 566 for 2 children and so on. There is also an ongoing obligation on the part of the paying spouse to provide to the receiving spouse upon request, not more than once a year, the financial information necessary to calculate any adjustments in child support based upon an increase in guideline income.

There is however a narrow, and generally difficult to establish, exception to the rules in the event of "undue hardship" on the part of the paying spouse in certain circumstances. Such circumstances include situations where the paying spouse has a legal obligation to support another spouse or child. But before anyone can take advantage of this exception, the court is required to look at the "household income" of the paying spouse. If it is determined that there is a "higher standard of living" in the household of the spouse claiming undue hardship than the

household of the receiving spouse, the application will fail.

Another exception to the Guidelines can occur if the parties agree to an amount different from the Guidelines, but a court still has the discretion to determine whether the agreed support arrangements are appropriate in the circumstances.

On the subject of the tax deductibility of child support payments, any court Orders made after the introduction of the Guidelines in May of 1997 are not tax deductible for the paying spouse nor income in the hands of the receiving spouse. However, what is often overlooked is the fact that Orders or Agreements prior to the Guidelines will remain in effect under the old rules ie: tax deductible to the payer, income to the receiver, unless and until there is a new Order or agreement between the parties. Revenue Canada has a tax election form which the parties can sign indicating the date from which the payments will be treated, as if under the Guidelines.

With tax filing time upon us, it's not a bad idea to clarify with your spouse just how your child support payments are going to be handled. 