The Current State of Cannabis Law

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A Man's Home Is
(Not Always)
His Castle

RPAPL 881 License to Enter Neighbor's Property

By Richard A. Klass, Esq.

"Discourage litigation. Persuade your neighbors to

compromise whenever you can. Point out to them how the nominal winner is often a real loser — in fees, expenses, and waste of time. As a peacemaker the lawyer has a superior opportunity of being a good man. There will still be business enough."

— Abraham Lincoln
Notes for a Law Lecture
July 1850

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BIO

Richard A. Klass is the quintessential "Court Street lawyer," as defined by *The New York Times*, a "street-smart sharpie with verve, hustle and a striver's charisma." Practicing law much like a critical care doctor functions, Klass is the lawyer clients appreciate when the issue is so vital. Practicing primarily in the areas of commercial litigation, debt collection and enforcement of judgments, legal malpractice, and real estate litigation, his firm also represents clients in bankruptcy, civil appeals, and federal court litigation. Mr. Klass lectures and writes extensively for lawyers and industry professionals.

Mr. Klass serves as an Officer of the Brooklyn Bar Association, Member of the Grievance Committee for the Appellate Division, Second Department, Former Chair of the General Practice Section of the New York State Bar Association, Co-Editor of the New York State Bar Association's General Practice Section *One on One* Publication, and an Arbitrator, Small Claims Part of the Civil Court of the City of New York, County of Kings. He also served as a representative to the Statewide Special Counsel for the Supreme Court's Commercial Division. Mr. Klass also serves as a Fee Arbitrator in the Part 137 Attorney-Client Fee Dispute Program. He has been selected for the New York Super Lawyers List.

In 1989, Mr. Klass received his Bachelor of Arts at Hofstra University and his Juris Doctorate at New York Law School in 1992. He was the Recipient of the American Jurisprudence Award in Conflict of Laws. Mr. Klass is admitted to the following jurisdictions: State of New York (1992); State of New Jersey (1993); U.S. District Court for the Eastern District of New York (1992); U.S. District Court for the Southern District of New York (1992); U.S. District Court for the District of New Jersey (1993); U.S. Court of Appeals for the Second Circuit (1999); and the U.S. Supreme Court (1997).

Richard Klass has been a formative voice within New York law circles both for the high standards of his work as well as his extensive writings, lectures, and appearances in the media. He reaches an audience of lawyers and non-lawyers equally through publications which include his quarterly newsletter, *Law Currents* and his blogs *Law Currents* and *The Legal Malpractice Blog, New York.* His books include *I Got Bloomed: Keeping Client Confidences and Loyalties* (2018), *Killing the "Zombies": Recent Changes to New York State's Foreclosure Laws* (published 2017), *Attorney's Liens and Legal Fee Enforcement* (2015), *Retention and Withdrawal of Counsel: a guide for attorneys* (2015), and *Successfully Defending Your Credit Card Lawsuit* (2013). The newsletter and blog, *Law Currents*, with tens of thousands of readers combined, is particularly popular. Written in a style that appeals to nearly anyone who likes a good story, this two-page illustrated quarterly features entertaining and informative case studies written in plain English.

Richard A. Klass, Esq.

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A Man's Home Is (Not Always) His Castle

In the current economic and political climate in New York City, which encourages building more and more housing units for the multitudes, it is not surprising that property owners are experiencing "growing pains." Among those "growing pains" are the inconvenience and annoyance to neighboring property owners when a developer buys land next door, then seeks to build on that land, and must gain access through the adjacent owners' property in order to do the work. Access may be needed to move equipment, build up to the property line, or deliver material to the building site.

RPAPL 881 grants a license to enter property:

New York law seeks to find middle ground between the property developer and the neighboring owner so that the developer may build its structure while the neighbor can be left relatively undisturbed. Real Property Actions and Proceedings Law (RPAPL) Section 881 provides as follows:

When an owner or lessee seeks to make improvements or repairs to real property so situated that such improvements or repairs cannot be made by the owner or lessee without entering the premises of an adjoining owner or his lessee, and permission so to enter has been refused, the owner or lessee seeking to make such improvements or repairs may commence a special proceeding for a license so to enter pursuant to article four of the civil practice law and rules. The petition and affidavits, if any, shall state the facts making such entry necessary and the date or dates on which entry is sought. Such license shall be granted by the court in an appropriate case upon such terms as justice requires. The licensee shall be liable to the adjoining owner or his lessee for actual damages occurring as a result of the entry.

RPAPL 881 affords adjacent property owners rights

There is a judicial recognition that the statute was enacted as part of the State's police powers in order to ensure that adjacent property owners can gain access to the other's land when needed.

Sakele Bros., LLC v Safdie, 302 AD2d 20, 28 [1st Dept 2002] ("RPAPL 881 provides for a special proceeding to obtain a license to enter another's real property to gain access to the petitioner's own real property for the purpose of making repairs or improvements, after such permission has been requested and denied.")

Sunrise Jewish Ctr. of Val. Stream, Inc. v Lipko, 61 Misc 2d 673, 675 [Sup Ct 1969] ("The statute was enacted in recognition of the fact that property owners often build right up to the building line and in furtherance of the public interest in preventing the urban blight which results when such a building, for want of a license, cannot be repaired, 1966 Report Law Rev.Comm. (Leg.Doc. (1966) No. 65) 102. Thus, the fact that petitioner created the problem by building within one inch of the line has no bearing.")

Chase Manhattan Bank (Nat. Ass'n) v Broadway, Whitney Co., 57 Misc 2d 1091, 1095-96 [Sup Ct 1968], *affd sub nom. Chase Manhattan Bank v Broadway, Whitney Co.*, 24 NY2d 927 [1969] ("The same equitable doctrines may be relied upon in establishing adequate guidelines for the court in the application of the statute here in dispute. The statute does not direct the court to grant a license to every applicant. On the contrary, it may be granted only 'in an appropriate case'. In accordance with the foregoing principles of law, it should be granted only when necessary, under reasonable conditions, and where the inconvenience to the adjacent property owner is relatively slight compared to the hardship of his neighbor if the license is refused. Moreover, the statute affords the adjoining property owner adequate 'legal rights and remedies' (Forstmann v. Joray Holding Co., Inc., supra), in that it subjects the licensee to full liability for 'actual damages occurring as a result of the entry'. In effect, it is no more than a codification of the well settled principles of jurisprudence expounded by the courts of this state and in other jurisdictions dealing with conflicting interests of adjacent property owners.")

Stuck v Hickmott, 158 AD3d 1331, 1333 [4th Dept 2018] ("Respondent contends that the work for which the license was sought is beyond the scope of RPAPL 881 because painting a wooden fence does not constitute an improvement or a repair to real property within the meaning of the statute. We reject that contention. While the statute must be construed narrowly inasmuch as it stands in derogation of common-law property rights (*see MK Realty Holding, LLC v Scneider*, 39 Misc 3d 1209[A], 2013 NY Slip Op 50551[U], [Sup Ct, Queens County 2013]; *see generally Matter of Bayswater Health Related Facility v Karagheuzoff*, 37 NY2d 408, 414 [1975]; *Hay v Cohoes Co.*, 2 NY 159, 161-163 [1849]), we conclude that, in the absence of a statutory definition, the usual and commonly understood meaning of the words "improvement" and/or "repair" encompasses the painting of the wooden fence in this case (see Black's Law Dictionary 875-876, 1490 [10th ed 2014]; *Sunrise Jewish Ctr. of Val. Stream v Lipko*, 61 Misc 2d 673, 675 [Sup Ct, Nassau County 1969]; cf. *Chase Manhattan Bank [Natl. Assn.] v Broadway, Whitney Co.*, 59 Misc 2d 1085, 1086-1087 [Sup Ct, Queens County 1969]; *see generally Yaniveth R. v LTD Realty Co.*, 27 NY3d 186, 192 [2016]). That interpretation is supported by the legislative history, which establishes that the legislature—in recognition that the nature of abutting properties often requires property owners to access the neighboring property in order to make improvements or repairs to their own—intended to encourage such improvements or repairs by removing unreasonable obstacles to efforts to prevent blight and deterioration (Introducer's Mem in Support, Bill Jacket, L 1968, ch 220; *see Sunrise Jewish Ctr. of Val. Stream*, 61 Misc 2d at 675).")

Deutsche Bank Tr. v 120 Greenwich Dev. Assoc., 7 Misc 3d 1006(A) [Sup Ct 2005] ("The statute was enacted in recognition of the fact that property owners often build right up to the building line. Consequently, unless the court has the authority to grant licenses in appropriate cases, buildings could

lose their value or utility, for want of an ability to make improvements or repairs. The possible result could be urban blight. *See: Sunrise Jewish Center of Valley Stream, Inc. v. Lipko, supra*. Constructing a new building at the site is certainly an improvement which will enhance the value of the lot. *Rosma Development LLC v. South*, 5 Misc.3d 1014(a) (Kings Co. Sup.Ct.2004). The statute does not limit improvements to existing structures. More importantly, in many circumstances, demolition, whether it be partial or complete, is a necessary element of making improvements to property.")

Petition must be brought by owner

340 W. LLC v Spring St. Garage Condominium, 31 Misc 3d 1230(A) [Sup Ct 2011] ("Necessarily implied in the February Judgment then is the determination that the Board owns the Parcel. See also R.P.A.P.L. x 881 ("When an owner ... seeks to make improvements or repairs to real property so situated that such improvements or repairs cannot be made by the owner ... without entering the premises of an adjoining owner ... the owner ... seeking to make such improvements or repairs may commence a special proceeding for a license[.]") (emphasis added).")

Must establish need to gain entry

Mehdi Dilmaghani & Co., Inc. v Spa Health Clubs, Inc., 45 AD2d 1021 [2d Dept 1974] (Where defendant's power transformer for its building was positioned so that access thereto could only be from plaintiff's property, defendant would be entitled to make an application for appropriate relief under RPAPL §881.)

Lincoln Spencer Apartments, Inc. v Zeckendorf-68th St. Assoc., 88 AD3d 606 [1st Dept 2011] ("RPAPL 881 is the means by which a landowner seeking "to make improvements or repairs" to its property may seek a license to enter an adjoining landowner's property when those "improvements or repairs cannot be made" without such entry. Here, the court erred by granting petitioner a license to access Copley's roof because petitioner failed to "state the facts making such entry necessary," as the statute requires.")

In re Tory Burch LLC v Moskowitz, 146 AD3d 528, 529 [1st Dept 2017] ("The petitioner failed to make a showing as to the reasonableness and necessity of the trespass referenced in the order where, at the time of its petition, none of the items sought had been memorialized in specific plans filed and approved by the Department of Buildings, and the project was under a stop work order.")

Refusal of access must be shown

Sunrise Jewish Ctr. of Val. Stream, Inc. v Lipko, 61 Misc 2d 673, 675 [Sup Ct 1969] ("Likewise without significance are the facts that no request in writing was made (under the statute it is enough that 'permission so to enter has been refused') and that a second abutting owner has not been joined in this proceeding (his affidavit shows his willingness to consent on specified conditions, but in any event nothing in the statute or the CPLR proscribes separate proceedings or mandates joinder of all abutting owners whose property must be entered upon to complete the proposed improvement or repair).")

444 E. 86th Owners Corp. v 435 E. 85th St. Tenants Corp., 32 Misc 3d 1232(A) [Sup Ct 2011], affd, 93 AD3d 588 [1st Dept 2012] ("[I]t does not dispute 85th St. Tenants' allegations that it has refused to participate in negotiations regarding a license agreement, pursuant to RPAPL 881, permitting 86th Owners access to 85th St. Tenants' premises to investigate and repair.")

Conversion of injunction action into an RPAPL 881 proceeding

Mindel v Phoenix Owners Corp., 210 AD2d 167, 167-68 [1st Dept 1994] ("The court's conversion of this action, commenced by plaintiffs for injunctive relief, into a proceeding by defendant for leave to enter plaintiffs' properties for repairs under RPAPL 881, was unusual but proper (CPLR 103 [c]), in view of (1) defendant's affirmation in opposition to the original application for a preliminary injunction giving early notice that

defendant was seeking relief under RPAPL 881; (2) the presentation, in what were already protracted proceedings, of all the evidence that would be adduced in an RPAPL 881 proceeding; and (3) the substantive claims made in support of defendant's asserted need to enter plaintiffs' properties.")

Ponito Residence LLC v 12th St. Apt. Corp., 38 Misc 3d 604, 612 [Sup Ct 2012] ("A court may convert an action for a preliminary injunction into a proceeding under RPAPL 881 where such conversion is appropriate.")

Amalgamated Dwellings, Inc. v Hillman Hous. Corp., 299 AD2d 199, 200 [1st Dept 2002] ("The causes of action for an injunction and easement by necessity for repairs to plaintiff's western facade, which abuts the park, were properly dismissed on the ground that plaintiff has a statutory right to seek such access through a special proceeding (RPAPL 881), and, accordingly, is asserting a mere right of convenience, not necessity.")

Sakele Bros., LLC v Safdie, 302 AD2d 20, 28 [1st Dept 2002] ("[W[e address the branches of the motion and cross motion seeking summary judgment on defendant's first counterclaim to the extent it requests a declaration that defendant is entitled, purportedly pursuant to RPAPL 881, to enter upon plaintiff's property to demolish, repair or rebuild the party wall, based on the wall's allegedly poor condition. Although defendant's reliance on RPAPL 881 is misplaced, we deem this prong of the first counterclaim to be based on the principle that a seriously deteriorated party wall may be torn down and rebuilt by either party, upon reasonable notice to the other (10 Warren's Weed, New York Real Property, Party Walls § 9, at 15 [4th ed]).")

McMullan v HRH Const., LLC, 38 AD3d 206, 207 [1st Dept 2007] ("defendants' utter failure to show facts making the entry necessary would require denial of any such RPAPL application").

Std. Realty Assoc., Inc. v Chelsea Gardens Corp., 105 AD3d 510 [1st Dept 2013] ("The motion court properly dismissed the portion of plaintiff's claim based on the temporary use of airspace to hang scaffolding while installing signs in the past as de minimis. Defendants could have sought a license for the use of airspace during the installation of each sign (see RPAPL 881). At that time, if appropriate, plaintiff could have requested injunctive relief.")

Chiu Cheuk Chan v 28-42 LLC, 22 Misc 3d 1110(A) [Sup Ct 2009] ("In the instant case, defendants do not dispute the allegations of trespassing upon plaintiffs' property as well as the damage to the abutting concrete walkway albeit for the stated purpose of carrying out a construction project on their own property. Defendants acknowledge that RPAPL 881 provides a mechanism for adjoining landowners to seek court intervention to make improvements to their premises which by necessity require entry on to a neighboring property, when permission to do so has been refused. Upon the institution of a special proceeding, a court in an appropriate case, may grant a license upon such terms as are just. (*See, McMullan v. HRH Constr., LLC*, 38 AD3d 206 [2007]; *Matter of Broadway Enters. v. Lum*, 16 AD3d 413 [2005].) Here, as in McMullan, defendants have declined to pursue available legal remedies. Defendants have instead unilaterally entered plaintiffs' property, destroyed a concrete walkway, removed a fence, caused a temporary shutdown of electricity and left construction materials and debris. Plaintiffs have, therefore, established a clear right to relief (*McMullan v. HRH Constr., LLC* at 206) which is not ameliorated by defendants' declaration that they are responsible for all damages incurred and have adequate insurance.")

22 Irving Place Corp. v 30 Irving LLC, 57 Misc 3d 253, 257 [Sup Ct 2017] ("Based upon the circumstances in this matter, the Court declines to "convert" this matter. Further, if the Court were to convert this matter, the Court would find that just terms require that no license fee be imposed. First, the Court finds that defendant has acted in good faith and has erected the sidewalk shed not because it simply wished to perform repairs, but because it was required to do so. The regulation that requires the sidewalk bridge, specifically requires that certain cutouts and provision for access be made. The regulation clearly made provision for the avoidance of interference and required the sidewalk shed to be extend 20 feet

towards and within one inch of an adjacent building, without requiring any form of compensation. Further, in seeking the conversion, plaintiff has not specified any damages that it will suffer. The fact that the shed is built on the portion of the public sidewalk that is within plaintiff's property line is without consequence as that portion is traveled on by the public, utilized by the public and plaintiff has not claimed that it has lost any use of that area. Thus, plaintiff has no loss of enjoyment to its property.")

Reasonable measures must be taken to protect the adjacent property

Mindel v Phoenix Owners Corp., 210 AD2d 167 [1st Dept 1994] ("We adopt a standard of reasonableness in concluding that defendant is prepared to do all that is feasible to avoid injuries resulting from its entry upon plaintiffs' properties.")

Bd. of Managers of Artisan Lofts Condominium v Moskowitz, 114 AD3d 491, 492 [1st Dept 2014] ("In determining whether or not to grant a license pursuant to Real Property Actions and Proceedings Law § 881, courts generally apply a standard of reasonableness.")

Queens Coll. Special Projects Fund, Inc. v Newman, 154 AD3d 943, 944 [2d Dept 2017], lv to appeal denied, 31 NY3d 901 [2018] ("The factors which the court may consider in determining the petition include the nature and extent of the requested access, the duration of the access, the protections to the adjoining property that are needed, the lack of an alternative means to perform the work, the public interest in the completion of the project, and the measures in place to ensure the financial compensation of the adjoining owner for any damage or inconvenience resulting from the intrusion.")

MK Realty Holding, LLC v Scneider, 39 Misc 3d 1209(A) [Sup Ct 2013] ("The court must balance the competing interests of the parties and should issue a license when necessary, under reasonable conditions, and where the inconvenience to the adjacent property owners is outweighed by the hardship of their neighbors if the license is refused.")

2225 46th St., LLC. v Giannoula Hahralampopoulos, 55 Misc 3d 621, 624 [NY Sup 2017] ("In this regard, it must be remembered that section 881 compels a property owner to grant access for the benefit of another. The respondent to an RPAPL 881 petition has not sought out the intrusion and does not derive any benefit from it. The court must be mindful of the fact that it is called upon to grant access after the parties have failed to reach an agreement, and must not allow either party to overreach and use the court to avoid negotiating in good faith.")

23-31 Astoria Blvd v Villegas, 60 Misc 3d 1217(A) [Sup Ct 2018] ("Nonetheless, the court is not limited to requiring bonds and insurance to ensure that the petitioner will able to compensate Respondent for any damage. Justice also requires that the terms of the license provide for safeguards to prevent damage from occurring (*537 West 27th St. Owners LLC v. Mariners Gate LLC*, 2009 NY Slip Op. 32360(U), 2009 WL 3400277 [Sup. Ct NY County]).")

N. 7-8 Inv'rs, LLC v Newgarden, 43 Misc 3d 623, 628 [Sup Ct 2014] ("The risks and costs involved in the use that a Petitioner makes of its neighbor's property should be wholly borne by the Petitioner. Equity requires that the owner compelled to grant access should not have to bear any costs resulting from the access, including steps necessary to safeguard their property.")

Rosma Development, LLC, LLC v South, 5 Misc 3d 1014(A) [Sup Ct 2004] ("Therefore, the court concludes that petitioners should be entitled to exercise their statutory right to gain the necessary access in order to proceed with the construction project without unreasonable interference (*see Matter of Massa v. City of Kingston*, 235 A.D.2d 947, 949 [1997]). Respondents may not be permitted to frustrate petitioners' plans to develop their land when, in the balancing of the interests involved, the inconvenience and any resultant damages to respondents can be remedied (*see Sunrise Jewish Ctr. of Valley Stream*, 61 Misc.2d at 676).")

License fees

DDG Warren LLC v Assouline Ritz 1, LLC, 138 AD3d 539, 539-40 [1st Dept 2016] ("Although the determination of whether to award a license fee is discretionary, in that RPAPL 881 provides that a "license shall be granted by the court in an appropriate case upon such terms as justice requires" (emphasis added), the grant of licenses pursuant to RPAPL 881 often warrants the award of contemporaneous license fees (*see e.g. Columbia Grammar & Preparatory Sch. v 10 W. 93rd St. Hous. Dev. Fund Corp.*, 2015 NY Slip Op 31519 [U] [Sup Ct, NY County Aug. 13, 2015]; *Snyder v 122 E. 78th St. NY LLC*, 2014 NY Slip Op 32940[U] [Sup Ct, NY County 2014]; *Matter of North 7-8 Invs., LLC v Newgarden*, 43 Misc 3d 623 [Sup Ct, Kings County 2014]; *Ponito Residence LLC v 12th St. Apt. Corp*., 38 Misc 3d 604 [Sup Ct, NY County 2012]; *Matter of Rosma Dev., LLC v South*, 5 Misc 3d 1014[A], 2004 NY Slip Op 51369[U] [Sup Ct, Kings County 2004]). After all, "[t]he respondent to an 881 petition has not sought out the intrusion and does not derive any benefit from it . . . Equity requires that the owner compelled to grant access should not have to bear any costs resulting from the access" (*North 7-8 Invs*., 43 Misc 3d at 628; see also *Matter of 25 Tenants Corp. v 7 Sutton Sq., LLC*, 2015 NY Slip Op 30526[U], *3 [Sup Ct, NY County 2015]).")

10 E. End Ave. Owners, Inc. v Two E. End Ave. Apt. Corp., 35 Misc 3d 1215(A) [Sup Ct 2012] ("While RPAPL provides that the court may issue a license "upon such terms as justice requires", this court does not construe such provision to warrant the imposition of a monetary license fee or award to the licensor, in exchange for access, given that, the statute speaks to monetary damages separately later in the statute, and limits such damages to "actual damage occurring as a result of the entry".")

N. 7-8 Inv'rs, LLC v Newgarden, 43 Misc 3d 623, 633-34 [Sup Ct 2014] ("One unreported decision has held that RPAPL 881 does not authorize the imposition of a fee as a condition of a license. *10 East End Owners Inc. v. Two East End Ave Apartment Corp*., 35 Misc.3d 1215(A) 951 N.Y.S.2d 2 84 (Sup.N.Y.2012). The court in 10 East End Owners, held that the language in the statute that a license shall be granted "upon such terms as justice requires" does not warrant imposition of a license fee. Id at *3. The Court reasoned that the statute provided for damages but limited them to actual damages occurring as a result of the entry. Id at *3.

However, this analysis ignores the fact the recovery for actual damages and a license fee compensate two entirely different things. Unlike damages, a license fee compensates the owner for the use the Petitioner makes of their property and their temporary loss of enjoyment of a portion of their property.

Further, the Court in *10 East End Owners*, distinguished the decision in the *Matter of Rosma*, on the grounds that in *Rosma* involved a "voluntary project by a developer erecting a new structure", while in the case before it the petitioner was seeking access because it was required, by NYC Local Law 11 of 1998, to undertake the repairs which necessitated access. Id. The present case involves a voluntary project by a developer to build a new building, and thus is distinguishable from the facts in *10 East End Owners*.")

Rosma Dev., LLC v South, 5 Misc 3d 1014(A) [Sup Ct 2004] ("[T]he court is mindful of the resultant inconvenience to respondents, it finds that respondents should receive compensation for petitioners' utilization of their property during the time period of the license in a fair and equitable sum as set forth below. Additionally (as herein below stated), respondents shall have the remedy of damages, and other terms and conditions, including the maintenance of substantial insurance coverage, must be imposed."

Bond and Insurance

DDG Warren LLC v Assouline Ritz 1, LLC, 138 AD3d 539, 540 [1st Dept 2016] ("The court had the authority to order a bond (*see e.g. North 7-8 Invs*., 43 Misc 3d at 633), even though respondents were covered by petitioner's insurance (*see 125 W. 21st LLC v ARC Assoc. GP LLC*, 2007 NY Slip Op 31658 [U], [Sup Ct, NY County 2007]).")

Attorney's and Engineer's fees

Firemen's Ass'n of State of New York v 99 Washington, LLC, 73 AD3d 1320, 1322-23 [3d Dept 2010] ("As we will avoid construing an agreement in a manner that would produce "unreasonable or unfair results" (*Barrow v Lawrence United Corp.*, 146 AD2d 15, 20 [1989]), and we find that an alternate construction would create *1323 such an injustice in this case, we agree with Supreme Court that the requirement that plaintiff prevail in the litigation may be reasonably inferred (*see generally Corrigan v Breen*, 241 AD2d 861, 863 [1997]; *A. J. Cerasaro, Inc. v State of New York*, 97 AD2d 598, 598-599 [1983]).") ("it appears undisputed that defendants made every effort to complete the project in a timely manner, including expending hundreds of thousands of dollars in overtime. Indeed, the relatively minor delay in completing the air space phase of the project apparently stemmed from weather conditions and safety concerns; plaintiff has not alleged that it was the result of any negligence of defendants. By the time the first court order was issued in this action, defendants had completed the air space work and were back on schedule within the time frame of the license agreement to vacate the parking area, rendering plaintiff's requested relief moot. As we view plaintiff's decision to commence this action to have been unnecessary under the circumstances and, therefore, unreasonable, we will not interfere with Supreme Court's decision to deny counsel fees.")

Van Dorn Holdings, LLC v 152 W. 58th Owners Corp., 149 AD3d 518, 519 [1st Dept 2017] ("Supreme Court also did not abuse its discretion in granting respondents attorneys' and engineers' fees. "A property owner compelled to grant a license should not be put in a position of either having to incur the costs of a design professional to ensure petitioner's work will not endanger his property, or having to grant access without being able to conduct a meaningful review of petitioner's plans" (*Matter of North 7-8 Invs.*, 43 Misc 3d at 630).")

North 7-8 Investors, LLC v Newgarden, 43 Misc 3d 623, 630 [Sup Ct 2014] ("A property owner compelled to grant a license should not be put in a position of either having to incur the costs of an design professional to ensure Petitioner's work will not endanger his property, or having to grant access without being able to conduct a meaningful review of Petitioner's plans. Justice in this case requires that Petitioner pay the Respondent's architects reasonable fees incurred in reviewing Petitioner's plans and making counter proposals, as well as ongoing monitoring of the work during the term of the license.")

N. 7-8 Inv'rs, LLC v Newgarden, 43 Misc 3d 623, 631 [Sup Ct 2014] ("RPAPL 881 authorizes that Court to grant the license on such terms as justice requires. This language is broad and allows for the flexibility and full scope upon which equity depends. It is sufficient statutory authority to award reasonable attorney fees as a condition of a license, where the circumstances warrant it.

Respondent's request for attorneys' fees, both for negotiating a proposed license agreement, and for opposing the this petition, is not based on being the prevailing party in this action. The attorneys' fees are sought as a condition of license rather than as an incident of litigation.

Respondent's opposition to the Petition was that he has not refused Petitioner access, but that Petitioner had refused to agree to reasonable terms for the license, to protect Respondent's property and to reimburse him for costs he would in incur because of the license. The attorneys' fees incurred in opposing the petition in this case are not an incident of litigation but a continuation of the process of negotiating a license agreement.")

Resultant damages must be proven

E. 77 Owners Co, L.L.C. v King Sha Group, Inc., 40 Misc 3d 1205(A) [Sup Ct 2013] ("Where a building is damaged by the negligent removal of lateral support by its neighbor, as here, the proper measure of damages is "reasonable cost of restoration," including the cost of repairs and "reasonable value of the services of engineers employed to ascertain the extent and cause of the injury." 1 N.Y.Jur.2d Adjoining Landowners § 33 (2013). Owners are also entitled to loss in rental

value during the time repairs are being made. 36 N.Y.Jur.2d Damages § 77.")

Wohl v Fequiere, 104 AD3d 861, 862 [2d Dept 2013] ("appellant failed to establish any damages resulting from the petitioner's entry upon the appellant's real property pursuant to an order granting the petitioner a license to enter and make improvements to that real property.")

Van Dorn Holdings, LLC v 152 W. 58th Owners Corp., 149 AD3d 518, 519 [1st Dept 2017] ("However, we modify so much of the order as imposed a $500 daily penalty on petitioner for each day beyond the license term that work is not completed, to instead allow respondents, if the work is not completed within the license period, to move for a determination of the proper amount of any penalty, or increase or continuation of the licensing fee, or any other relief available to them.")

PB 151 Grand LLC v 9 Crosby, LLC, 58 Misc 3d 1219(A) [Sup Ct 2018] ("Given the speculative nature of the claims, and since the work will not proceed pursuant to the schedule respondent had contemplated, the issue of whether respondent sustains damages as a direct result of the issuance of the license (and is thus entitled to reimbursement pursuant to section 881), as well as the amount of actual damages sustained, must await the conclusion of the license period, at which time a Special Referee shall make such determination based on the rules of evidence.")

License cannot create an encroachment or direct affirmative *injunction against neighbor*

AREP Fifty-Seventh, LLC, v PMGP Assoc., L.P., 101 AD3d 440, 441 [1st Dept 2012] ("In this proceeding, petitioner sought a license directing that respondent remove a five-foot section of a sidewalk construction bridge, properly placed in front of petitioner's property, to allow petitioner to erect a crane for its construction project. The court erred in granting the petition. RPAPL 881, the means by which a landowner seeking to make improvements or repairs to its property may seek a license to enter an adjoining landowner's premises when those improvements or repairs cannot be made without such entry, has no application here. Petitioner did not seek a license for "entry" onto respondent PMGP's "premises"."")

Broadway Enterprises, Inc. v Lum, 16 AD3d 413, 414 [2d Dept 2005] (underpinning of a foundation on the respondents' premises could constitute a permanent encroachment, and the court denied the application in order to explore alternative methods of construction that the petitioner could utilize in constructing its property).

Foceri v Fazio, 61 Misc 2d 606, 608 [Sup Ct 1969] ("This petitioner seeks a license to create an encroachment now not in existence. The relief sought transcends the statute and, even though the encroachment be deemed slight, it is contrary to elementary principles of equity. (*Moran v. Gray*, 257 App.Div. 999, 13 N.Y.S.2d 581; *St. Vincent's Orphan Asylum v. Madison Warren Corp*., 225 App.Div. 379, 380, 233 N.Y.S. 364, 365.) A court cannot sanction the performance of such an unlawful act.")

McLennon v Serv. 31 Corp., 9 Misc 3d 1109(A) [Sup Ct 2005] ("RPAPL 881 only provides for temporary license to enter another's property to perform work on one's own property. It does not allow for an owner to encroach on the adjoining property")

Standard Realty Associates, Inc. v Chelsea Gardens Corp., 105 AD3d 510 [1st Dept 2013] ("Defendants' submissions show that the western wall of defendant Chelsea's building was leased to a nonparty for the purpose of posting an advertising sign, which protruded into plaintiff's airspace without plaintiff's consent or permission. While the encroachment of the four-inch bolts and the advertising sign is small, it remains a trespass where defendants are liable for the use of plaintiff's property rights (cf. *Sakele Bros. v Safdie*, 302 AD2d 20, 27 [1st Dept 2002]; *Salesian Socy. v Village of Ellenville*, 121 AD2d 823, 824 [3d Dept 1986]). We reject defendants' contention that dismissal of the trespass claim was warranted because the encroachment of four inches was minimal. An invasion of another's property or airspace need not be more than de minimis in

order to constitute a trespass (cf. *Hoffmann Invs. Corp. v Yuval*, 33 AD3d 511, 512 [1st Dept 2006]; *Wing Ming Props. [U.S.A.] v Mott Operating Corp.*, 172 AD2d 301 [1st Dept 1991], affd 79 NY2d 1021 [1992]).")

Sample Order granting License

Taken from *Rosma Dev., LLC v South*, 5 Misc 3d 1014(A) [Sup Ct 2004]:

Accordingly, petitioners are hereby granted a license, pursuant to RPAPL 881, to enter upon a portion of respondents' land for the limited purpose of erecting sidewalk bridging, which will abut approximately ten feet onto the sidewalk in front of respondents' real property, and certain protection on the roofs of respondents' property, pursuant to the copies of the proposed bridge plans and roof plans as set forth in the petition. The granting of such license is subject to the following terms and conditions:

(1) petitioners shall be entitled to such license for a period of 12 months, commencing upon the entry of this order and judgment,

(2) petitioners are directed to pay the sum of $2,500 per month to respondent, and the same sum to respondents, jointly, until the work under the license is completed,

(3) petitioners shall not unreasonably interfere with respondents' necessary access to their fire escape or their access to their chimney, and shall take the necessary steps, measures, and precautions to prevent and avoid any further damage to the backyard of respondents; petitioners shall remove and cure any issued and outstanding violations,

(4) petitioners shall notify respondents in writing when they have completed the work under the license,

(5) upon the completion of the term of the license, respondents' land within such license area shall be returned to its original condition, and all materials used in construction and any resultant debris shall be removed from the license area,

(6) petitioners shall save respondents harmless for any damages occurring within the license area, during the period of this license, and a policy of liability insurance in an amount of not less than $2 million which names respondents as additional insureds shall be maintained by petitioners during the period of this license,

(7) petitioners shall be held liable to respondents for any damages which they may suffer as a result of the granting of this license and all damaged property shall be repaired at the sole expense of petitioners. A hearing shall be held before this court at the expiration of the term of the license granted herein to determine the actual damages incurred by respondents as the result of petitioners' entry upon respondents' land pursuant to said license. Alternatively, respondents may submit any present or future claim for damages directly to petitioners' insurer, without prejudice to their rights to later seek damages before the court, and

(8) any such other terms and conditions that petitioners and respondents may agree to in writing.

~ ~ ~

Please feel free to contact me with any questions.

— Richard A. Klass

GENERAL PRACTICE SECTION &

COMMITTEE ON PROFESSIONAL DISCIPLINE

ANNUAL MEETING

JANUARY 15, 2019

HOT TIPS FROM EXPERTS

4 STEPS TO PICKING A GOOD TRADEMARK

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A good trademark is a trademark that is enforceable in court. A trademark that is enforceable in court is also good for business. So, picking a good trademark is imperative. The process of picking a good trademark comprises at least 4 steps[1]:

1. Understanding what a Trademark is.

A trademark is a source identifier. It identifies the source of the goods or services in connection with which it is being used. It communicates to the consumer in a shorthand manner the source - the company that produces the goods and services, on which the trademark is displayed.

Anything can act as a trademark. Think Nike® "Swoosh." Think Adidas® "Stripes." Think UPS® "brown" (yup, the color). Think Christian Louboutin® "red sole." Think Target® "bullseye." Think a particular perfume or aroma. Think Coca Cola® jingles. Anything can act as a trademark, so long as it is used on goods or services in commerce. And - "anything"- really means anything.

A trademark can last forever as long as it is being used in commerce. Unlike a patent or a copyright, which expire after a certain period of time, a trademark never dies. A patent dies at 20 years after its filing date. A copyright is good for the life of its author plus 70. But not a trademark-- so long as a trademark is being used in commerce in connection with goods or services, it can last indefinitely. For that reason alone, I love trademarks.

2. Picking a Trademark that is inherently distinctive or suggestive.

The Courts in the United States have recognized that there are four types of trademarks: inherently distinctive, suggestive, descriptive, and generic. Inherently distinctive and suggestive trademarks are what courts protect all the time. The courts have clearly stated that inherently distinctive and suggestive trademarks merit protection because they are the most likely to act as the best source identifiers.

Descriptive trademarks merit protection only if they have acquired secondary meaning, and generic trademarks never merit any protection because they can never become source identifiers.

A descriptive trademark is one that immediately communicates to the consumer a particular quality or property of the goods or services in connection with which it is being used. For example, BACITRACIN + for use in connection with ointments containing bacitracin antibiotic. Or VITAMIN WATER for use in connection with water infused with vitamins. (see June 9, 2004 Office Action issued by the U.S. Patent and Trademark Office in U.S. Trademark Application Serial No. 75/734,223). Descriptive trademarks can be protected only after their owners have invested hundreds of thousands of dollars and effort in marketing and sales, such that the marks have acquired secondary meaning, the way VITAMIN WATER has.

[1] In the interest of brevity, citations have been omitted.

Suggestive marks or inherently distinctive marks, i.e. fanciful (completely made up) or arbitrary marks don't tell the consumer anything about the goods or services in connection with which they are being used. A consumer cannot use a suggestive or inherently descriptive mark used on goods or services to decide what is in the goods or services or how either will perform. The only way that a consumer will associate a suggestive or inherently descriptive mark with goods is due to advertising, marketing, and distribution. As a result, suggestive and inherently distinctive marks are the best source identifiers.

Individuals and entities should resist any urge to pick a name that describes their goods or the properties or qualities of their goods or services, just because they don't have a lot of money to spend on advertising. If they don't resist, not only will it be very difficult for an attorney to protect them and their trademarks, but they will miss an opportunity to develop and create a brand-a truly distinctive identity in the market they are targeting.

On the other hand, they could pick a mark that starts with the letters A-M. Guy Kawasaki, the chief evangelist of Canva, an online graphic design tool and a former advisor to the Motorola business unit of Google and chief evangelist of Apple, the author of *APE*, *What the Plus!*, *Enchantment*, and nine other books suggests that it is a good idea to pick a mark, starting with any letter from A-M because their booth at a trade show will be at the first part of the exhibition hall and not at the end. This way, visitors to the booth are fresh and have not become tired by the time they reach the booth. Wise words!

Guy Kawasaki also says, "Pick a mark with verb potential." Think *Google It!* Or *Xerox It!* Make the mark memorable (by the way, you really need to get to know him and read his stuff. He has a lot of good things to say).

Start-ups should pick a mark that somehow captures their unique value proposition. Not easy to do but worth all the effort. Remember, this is going to become their brand.

3. Understanding what Trademark Laws are all about.

Trademark laws are all about the consumer. YES, THE CONSUMER! Trademark laws are not about the owners of the trademarks. The fact that Trademark Laws can be used by trademark owners to stop infringers, while nice is not the primary focus of Trademark Laws.

Trademark Laws were implemented to prevent consumer confusion. They are designed so that when a company's targeted consumers see the company's trademark on its goods or in connection with its services, they do not make a decision to purchase the goods or services just because they believe that the goods and services are affiliated with another company that has a similar trademark. When seeing goods with one company's trademark, consumers cannot be confused into buying those goods because they think that the goods originate from a different company, or affiliated with another company, or sponsored by another company.

Confusing? Maybe this example might clear things up. A company decides to sell sneakers. It then uses a checkmark as its logo for these sneakers. The consumers see the sneakers with the checkmark, they get confused that the checkmark is the Nike® "Swoosh", and they decide to buy the sneakers because they think that they are buying Nike® sneakers, instead of the company's sneakers. Well, that is not good. It is not good for the company because it has missed an opportunity to build a brand. It is also not good for Nike, because it has lost a sale. Rest assured, Nike will go after that company one way or another.

4. Investing the funds to conduct a proper trademark search.

The only way to pick a trademark that will, more likely than not, prevent consumer confusion and preempt the possibility of receipt of a cease and desist letter from Nike®, or Adidas® or anyone else, is to get a trademark search done AND have a trademark attorney evaluate the trademark search results. Just getting a trademark search done is not enough. Just like only searching the United States Trademark Office is not enough. Just like searching registered trademark databases in the United States is not enough.

Only a judge or jury can decide the question of whether a consumer will become confused by the trademark. And only trademark attorneys with years of experience can offer an opinion as to whether a trademark is confusingly similar to another trademark by applying both their knowledge and their experience to the evaluation of the trademark search results. Experienced attorneys need to look at each and every result the trademark search generates to determine which result is relevant and possibly material, and which is not, by applying at least 8 to 13 factors to the relevant results to decide whether a likelihood of confusion exists.

A proper trademark search and an opinion letter a worthwhile investment. "An ounce of prevention is worth a pound of cure." A good trademark attorney's opinion as to whether a trademark is good or bad is that "ounce of prevention."

A trademark search is a risk assessment tool. The trademark attorney will use the trademark search to assess the risk and determine the likelihood that someone might try to stop a client looking to adopt a new trademark from using that trademark. If the objective during the trademark adoption process is peace of mind and knowledge of the odds of whether a trademark might be problematic, then a proper trademark search must be done. If the objective is confidence that the trademark will be a successful brand then a proper trademark search is a must.

CONCLUSION

The foregoing list is not exhaustive. However, it is a good beginning. Following these steps will help a client stay out of trouble, and put their brand on the right path to success. Adhering to them will save the client a lot of money and even more importantly a tremendous amount of heartache and disappointment. Implementing them will allow the client to leverage the value of their trademarks, to reach their objectives, and achieve a better quality of life both professionally and personally.

GENERAL PRACTICE SECTION &
COMMITTEE ON PROFESSIONAL DISCIPLINE
ANNUAL MEETING
JANUARY 15, 2019
HOT TIPS FROM EXPERTS

A CASE STUDY
A TRADEMARK SEARCH FOR A CORPORATE NAME: YES OR NO?

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When incorporating, the clients' proposed corporate name must be cleared both as a corporate name and as a trademark. The corporate name must be cleared both with the State Secretary of the state in which the clients have chosen to incorporate in, but also as a trademark with a comprehensive trademark search. Failure to do so may lead to a whole host of problems that may severely affect the clients' income and quality of life.

A trademark can be anything that can act as a source identifier, i.e. a tool, which companies use in connection with their goods and services for the purpose of helping consumers distinguish their goods and services from those of their competitors. Famous trademarks include McDonald's ®, Coke®, Pepsi®, Nike®, Adidas®, Tommy Hilfiger®, Ferrari®, BMW®, Jaguar®, Prudential®, Century 21®, and so on.

It is not unusual for clients to use their corporate name as a trademark, as soon as the corporation is formed, and/or the domain name for the corporation is registered. Further, clients incur tremendous costs in connection with such use. Such costs can include the cost of (i) designing, developing and commissioning packaging for the clients' goods or services; (ii) creating selling opportunities through various advertising media, including but not limited to, signs, brochures, catalogs, flyers, television, radio, internet, trade shows, seminars, and public demonstrations; (iii) building up inventory to meet consumer demand; and (iv) attracting investors. As a result, the clients' business begins growing nationwide, maybe even worldwide, attracting lots of attention along the way.

Then it happens. The clients receive a cease and desist letter from another company, maybe a competitor maybe not ("the sender"), informing them that their use of their company name as a trademark is confusingly similar to the sender's trademark, and constitutes grounds for a lawsuit against the clients for trademark infringement and unfair competition. The clients' failure to cease and desist from the use of their company name as a trademark will result in the sender's initiation of a lawsuit against them in a court of law.

The threat of a lawsuit, the obvious need to stop using the corporate name as a trademark, and the clear necessity to adopt a new name and incur new costs in connection with the adoption and promotion of a new name, on top of the costs already incurred, has a significant negative impact on both the clients' income and quality of life. The clients are first shocked, and then angry. Why should the clients have to change their company name? Did not the incorporating professionals clear it as a corporate name? Did they not search the state database? And did not the web registrar clear it as a domain name? Was this not enough? The answer is no, it was not enough. Such searches do not clear the corporate name for use as a trademark. Only a full-blown trademark search in databases that comprise both registered and unregistered trademarks can clear the name as a trademark.

No one will compensate the clients for the past costs incurred in connection with the name that is supposedly infringing and who will reimburse them for the new costs they will have to incur in connection with new packaging, new advertising and disposing of the old inventory. It is not too difficult to see how the clients might blame the incorporating professionals, even

bring suit against them, for their failure to clear the name or advise them to clear the name as a trademark.

A trademark search brings peace of mind that the clients have taken all reasonable business steps necessary to prevent capitalizing on, and misappropriating of, the goodwill of any trademark that might precede them in the industry. It minimizes the chances of ever receiving a cease and desist letter of the type discussed above. In the event of a trademark infringement lawsuit brought against them for trademark infringement, it may preclude damages, punitive, or otherwise. It prevents their insurance company from denying them coverage for a trademark infringement suit, on the basis of bad faith. It provides them with commercial leverage that gives them an edge in business, whether in trying to secure financing or during a possible merger or acquisition.

If the foregoing makes sense, then clients should be advised that if they are going to use their corporate name as a trademark, they really, really need to commission a trademark search to make sure that their use of their company name is not confusingly similar to a trademark already being used in commerce by someone else.

Presumption of Death in Surrogate's Court Proceedings

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Materials for this segment are being distributed as a handout.

The Impact of the 2017 Tax Cut and Jobs Act
on New York Maintenance (Alimony) Awards

presented by Neil Cahn

In 1980, New York passed the Child Support Standards Act (Domestic Relations Law §240 and other statutes), by which child support was to be determined, presumptively, in accordance with a mathematical formula (a copy of D.R.L. §240[1-b][a, b], detailing how C.S.S.A. adjusted income of the parents is to be computed, is included).

35 years later, in 2015, New York passed certain amendments to Domestic Relations Law §236(B), the Equitable Distribution and maintenance (alimony) statute, by which post-divorce maintenance was also to be determined, presumptively, in accordance with a formula (a copy of D.R.L. §236[B][5-a, 6], detailing the presumptive formulas for temporary (pre-judgment, *pendente lite*) and post-judgment maintenance, is included).

Now, **Notice of Guideline Maintenance**, detailing that post-divorce maintenance formula, is required to be included along with the divorce summons (a copy of the Notice is included).

On December 22, 2017, the Tax Cut and Jobs Act (TCJA) was signed into law. Among other changes, the Act cut tax brackets for individuals, whether filing individually or jointly. The standard deduction was increased from $6,350 to $12,000 for single filers, from $9,350 to $18,000 for unmarried individuals with at least one qualifying child (head of household), and from $12,700 to $24,000 for joint married filers. Personal exemptions were eliminated.

Previously, maintenance (alimony) payments were deductible by the payor (ex)spouse and includable in the income of the recipient (a copy of I.R.C. § 71 is included). Under the TCJA, alimony will no longer be deductible by the payor, nor includable in the income of the payee. However, that aspect of the Act will only be effective only for divorce

decrees, separation agreements and certain modifications entered into beginning January 1, 2019 (a copy of Section 11051 of Public Law 115-97, repealing the deduction for alimony payments, is included).

As a result, there was a mad scramble to resolve pending divorces on or before December 31, 2018, either through the entry into a divorce stipulation of settlement, if not the entry of a Judgment of Divorce.

Through 2018, making use of the alimony tax deduction was one of the tools in the matrimonial lawyer's toolbox, used to increase the benefits to the non-monied spouse by having Uncle Sam share in the payment.

Take, for example, a husband who in 2018 earns $399,000 in W-2 income paid by his professional corporation, another $26 in interest income, and $108,468 in pass-through income from his Subchapter S P.C. Using the presumptive maintenance and child support formulas, the husband's adjusted income for maintenance calculation purposes is $492,107.70. The wife's adjusted income, who only has $25 in interest income, is $25.00. According to the maintenance formula (when child support is also to be awarded), the husband's presumptive maintenance obligation would be fixed at $36,793.75, at least to the initial "cap," now $184,000 (calculation table included).

To determine the father's child support obligation, the maintenance award would be subtracted from the husband's income, and included in the wife's income. In this case, the father's child support obligation would be $2,852.65 per month, for the income "capped" at $148,000 (and $9,485.71 if child support was based on all of his income) (*see*, table).

Under 2018 law, the $36,794 (rounded) alimony deduction for the husband, would result in a reduction in his federal and state income taxes of $15,397 (summary included). Uncle Sam would be paying 41.85% of the alimony.

On the other hand, the wife, filing as head of household for her two children, would pay no federal taxes and $406 in New York State income taxes if the $36,794 in maintenance is included in her income (1.10%).

Without the deduction, the alimony payments add some $14,000 in combined taxes.

Also of great importance, and although New York's Legislature had a year's notice, no change has been made to the maintenance formula. Thus, despite the fact that the formula was created with full knowledge of the tax impacts, there has been no change to either the "cap," nor the rate, to reflect the effect of the elimination of the alimony tax deduction. Thus, in this example, the cost of the husband's maintenance obligation will go from the after-tax cost of $21,396.75 (for an obligation created in 2018) to being equal to the full actual $36,793.75 award (if the obligation is first declared in 2019).

Expressed differently, for the husband earning $184,000 (adjusted), and the wife having no income, the formulas would award the wife $36,800 (20%) for maintenance and another $34,235 in child support, a total of $71,035 in after-tax dollars (as compared to an after-tax cost of $55,638 for a 2018 award).

This year will see the courts and, hopefully, the Legislature deal with this unanticipated "modification" of the presumptive maintenance formula.

26 USCS § 71

Current through PL 115-281, approved 12/1/18

United States Code Service - Titles 1 through 54 > TITLE 26. INTERNAL REVENUE CODE > SUBTITLE A. INCOME TAXES > CHAPTER 1. NORMAL TAXES AND SURTAXES > SUBCHAPTER B. COMPUTATION OF TAXABLE INCOME > PART II. ITEMS SPECIFICALLY INCLUDED IN GROSS INCOME

§ 71. Alimony and separate maintenance payments [Caution: See prospective amendment note below.].

(a) General rule. Gross income includes amounts received as alimony or separate maintenance payments.

(b) Alimony or separate maintenance payments defined. For purposes of this section--

(1) In general. The term "alimony or separate maintenance payment" means any payment in cash if--

(A) such payment is received by (or on behalf of) a spouse under a divorce or separation instrument,

(B) the divorce or separation instrument does not designate such payment as a payment which is not includible in gross income under this section and not allowable as a deduction under section 215 [26 USCS § 215],

(C) in the case of an individual legally separated from his spouse under a decree of divorce or of separate maintenance, the payee spouse and the payor spouse are not members of the same household at the time such payment is made, and

(D) there is no liability to make any such payment for any period after the death of the payee spouse and there is no liability to make any payment (in cash or property) as a substitute for such payments after the death of the payee spouse.

(2) Divorce or separation instrument. The term "divorce or separation instrument" means--

(A) a decree of divorce or separate maintenance or a written instrument incident to such a decree,

(B) a written separation agreement, or

(C) a decree (not described in subparagraph (A)) requiring a spouse to make payments for the support or maintenance of the other spouse.

(c) Payments to support children.

(1) In general. Subsection (a) shall not apply to that part of any payment which the terms of the divorce or separation instrument fix (in terms of an amount of money or a part of the payment) as a sum which is payable for the support of children of the payor spouse.

(2) Treatment of certain reductions related to contingencies involving child. For purposes of paragraph (1), if any amount specified in the instrument will be reduced--

(A)on the happening of a contingency specified in the instrument relating to a child (such as attaining a specified age, marrying, dying, leaving school, or a similar contingency), or

(B)at a time which can clearly be associated with a contingency of a kind specified in subparagraph (A),an amount equal to the amount of such reduction will be treated as an amount fixed as payable for the support of children of the payor spouse.

(3) Special rule where payment is less than amount specified in instrument. For purposes of this subsection, if any payment is less than the amount specified in the instrument, then so much of such payment as does not exceed the sum payable for support shall be considered a payment for such support.

(d) Spouse. For purposes of this section, the term "spouse" includes a former spouse.

(e) Exception for joint returns. This section and section 215 [26 USCS § 215] shall not apply if the spouses make a joint return with each other.

(f) Recomputation where excess front-loading of alimony payments.

(1) In general. If there are excess alimony payments--

(A)the payor spouse shall include the amount of such excess payments in gross income for the payor spouse's taxable year beginning in the 3rd post-separation year, and

(B)the payee spouse shall be allowed a deduction in computing adjusted gross income for the amount of such excess payments for the payee's taxable year beginning in the 3rd post-separation year.

(2) Excess alimony payment s. For purposes of this subsection, the term "excess alimony payments" mean the sum of--

(A)the excess payments for the 1st post-separation year, and

(B)the excess payments for the 2nd post-separation year.

(3) Excess payments for 1st post-separation year. For purposes of this subsection, the amount of the excess payments for the 1st post-separation year is the excess (if any) of--

(A)the amount of the alimony or separate maintenance payments paid by the payor spouse during the 1st post-separation year, over

(B)the sum of--

(i)the average of--

(I)the alimony or separate maintenance payments paid by the payor spouse during the 2nd post-separation year, reduced by the excess payments for the 2nd post-separation year, and

(II)the alimony or separate maintenance payments paid by the payor spouse during the 3rd post-separation year, plus

(ii)$ 15,000.

(4) Excess payments for 2nd post-separation year. For purposes of this subsection, the amount of the excess payments for the 2nd post-separation year is the excess (if any) of--

(A)the amount of the alimony or separate maintenance payments paid by the payor spouse during the 2nd post-separation year, over

(B)the sum of--

(i)the amount of the alimony or separate maintenance payments paid by the payor spouse during the 3rd post-separation year, plus

(ii)$ 15,000.

(5) Exceptions.

(A) Where payment ceases by reason of death or remarriage. Paragraph (1) shall not apply if--

(i)either spouse dies before the close of the 3rd post-separation year, or the payee spouse remarries before the close of the 3rd post-separation year, and

(ii)the alimony or separate maintenance payments cease by reason of such death or remarriage.

(B) Support payments. For purposes of this subsection, the term "alimony or separate maintenance payment" shall not include any payment received under a decree described in subsection (b)(2)(C).

(C) Fluctuating payments not within control of payor spouse. For purposes of this subsection, the term "alimony or separate maintenance payment" shall not include any payment to the extent it is made pursuant to a continuing liability (over a period of not less than 3 years) to pay a fixed portion or portions of the income from a business or property or from compensation for employment or self-employment.

(6) Post-separation years. For purposes of this subsection, the term "1st post-separation years" means the 1st calendar year in which the payor spouse paid to the payee spouse alimony or separate maintenance payments to which this section applies. The 2nd and 3rd post-separation years shall be the 1st and 2nd succeeding calendar years, respectively.

(g) Cross References.

(1) For deduction of alimony or separate maintenance payments, see section 215 [26 USCS § 215].

(2) For taxable status of income of an estate or trust in the case of divorce, etc., see section 682 [26 USCS § 682].

History

(Aug. 16, 1954, ch 736, 68A Stat. 19; July 18, 1984,P.L. 98-369, Div A, Title IV, § 422(a), 98 Stat. 795; Oct. 22, 1986, P.L. 99-514, Title XVIII, § 1843(a)-(c)(1), (d), 100 Stat. 2853, 2855.)

End of Document

115 P.L. 97

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UNITED STATES PUBLIC LAWS > 115th Congress -- 1st Session > PUBLIC LAW 115-97 > [H.R. 1]

Synopsis

AN ACT

To provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018.

Text

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

(Next) **SEC. 11000.**

Short title, etc.

(a) Amendment of 1986 code. Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

Subtitle A--Individual tax reform

Sec. 11051.

Repeal of deduction for alimony payments

(a) In general. Part VII of subchapter B is amended by striking section 215 (and by striking the item relating to such section in the table of sections for such subpart).

(b) Conforming amendments.

(1) Corresponding repeal of provisions providing for inclusion of alimony in gross income.

(A) Subsection (a) of section 61 is amended by striking paragraph (8) and by redesignating paragraphs (9) through (15) as paragraphs (8) through (14), respectively.

(B) Part II of subchapter B of chapter 1 is amended by striking section 71 (and by striking the item relating to such section in the table of sections for such part).

(C) Subpart F of part I of subchapter J of chapter 1 is amended by striking section 682 (and by striking the item relating to such section in the table of sections for such subpart).

(2) Related to repeal of section 215.

(A) Section 62(a) is amended by striking paragraph (10).

(B) Section 3402(m)(1) is amended by striking "(other than paragraph (10) thereof)".

(C) Section 6724(d)(3) is amended by striking subparagraph (C) and by redesignating subparagraph (D) as subparagraph (C).

(3) Related to repeal of section 71.

(A) Section 121(d)(3) is amended--

(i) by striking "(as defined in section 71(b)(2))" in subparagraph (B), and

(ii) by adding at the end the following new subparagraph:

"(C) Divorce or separation instrument. For purposes of this paragraph, the term "divorce or separation instrument" means--

"(i) a decree of divorce or separate maintenance or a written instrument incident to such a decree,

"(ii) a written separation agreement, or

"(iii) a decree (not described in clause (i)) requiring a spouse to make payments for the support or maintenance of the other spouse.".

(B) Section 152(d)(5) is amended to read as follows:

"(5) Special rules for support.

"(A) In general. For purposes of this subsection--

"(i) payments to a spouse of alimony or separate maintenance payments shall not be treated as a payment by the payor spouse for the support of any dependent, and

"(ii) in the case of the remarriage of a parent, support of a child received from the parent's spouse shall be treated as received from the parent.

"(B) Alimony or separate maintenance payment. For purposes of subparagraph (A), the term "alimony or separate maintenance payment" means any payment in cash if--

"(i) such payment is received by (or on behalf of) a spouse under a divorce or separation instrument (as defined in section 121(d)(3)(C)),

"(ii) in the case of an individual legally separated from the individual's spouse under a decree of divorce or of separate maintenance, the payee spouse and the payor spouse are not members of the same household at the time such payment is made, and

"(iii) there is no liability to make any such payment for any period after the death of the payee spouse and there is no liability to make any payment (in cash or property) as a substitute for such payments after the death of the payee spouse.".

(C) Section 219(f)(1) is amended by striking the third sentence.

(D) Section 220(f)(7) is amended by striking "subparagraph (A) of section 71(b)(2)" and inserting "clause (i) of section 121(d)(3)(C)".

(E) Section 223(f)(7) is amended by striking "subparagraph (A) of section 71(b)(2)" and inserting "clause (i) of section 121(d)(3)(C)".

(F) Section 382(l)(3)(B)(iii) is amended by striking "section 71(b)(2)" and inserting "section 121(d)(3)(C)".

(G) Section 408(d)(6) is amended by striking "subparagraph (A) of section 71(b)(2)" and inserting "clause (i) of section 121(d)(3)(C)".

(4) Additional conforming amendments. Section 7701(a)(17) is amended--

(A) by striking "sections 682 and 2516" and inserting "section 2516", and

(B) by striking "such sections" each place it appears and inserting "such section".

(c) Effective date. The amendments made by this section shall apply to--

(1) any divorce or separation instrument (as defined in section 71(b)(2) of the Internal Revenue Code of 1986 as in effect before the date of the enactment of this Act) executed after December 31, 2018, and

(2) any divorce or separation instrument (as so defined) executed on or before such date and modified after such date if the modification expressly provides that the amendments made by this section apply to such modification.

Notice of Guideline Maintenance

If your divorce was commenced on or after January 25, 2016, this Notice is required to be given to you by the Supreme Court of the county where your divorce was filed to comply with the Maintenance Guidelines Law ([S. 5678/A. 7645], Chapter 269, Laws of 2015) because you may not have counsel in this action to advise you**. It does not mean that your spouse (the person you are married to) is seeking or offering an award of "Maintenance" in this action. "Maintenance" means the amount to be paid to the other spouse for support after the divorce is final.**

You are hereby given notice that under the Maintenance Guidelines Law (Chapter 269, Laws of 2015), there is an obligation to award the guideline amount of maintenance on income up to $184,000 to be paid by the party with the higher income (the maintenance payor) to the party with the lower income (the maintenance payee) according to a formula, unless the parties agree otherwise or waive this right. Depending on the incomes of the parties, the obligation might fall on either the Plaintiff or Defendant in the action.

There are two formulas to determine the amount of the obligation. If you and your spouse have no children, the higher formula will apply. If there are children of the marriage, the lower formula will apply, but only if the maintenance payor is paying child support to the other spouse who has the children as the custodial parent. Otherwise the higher formula will apply.

Lower Formula

1-Multiply Maintenance Payor's Income by 20% .
2- Multiply Maintenance Payee's Income by 25% .
Subtract Line 2 from Line 1: = **Result 1**
Subtract Maintenance Payee's Income from 40 % of Combined Income* = **Result 2**.
Enter the lower of **Result 2** or **Result 1,** but if less than or equal to zero, enter zero.
THIS IS THE CALCULATED GUIDELINE AMOUNT OF MAINTENANCE WITH THE LOWER FORMULA

Higher Formula

1-Multiply Maintenance Payor's Income by 30%
2- Multiply Maintenance Payee's Income by 20%
Subtract Line 2 from Line 1= **Result 1**
Subtract Maintenance Payee's Income from 40 % of Combined Income*= **Result 2**
Enter the lower of **Result 2** or **Result 1,** but if less than or equal to zero, enter zero
THIS IS THE CALCULATED GUIDELINE AMOUNT OF MAINTENANCE WITH THE HIGHER FORMULA

***Combined Income equals Maintenance Payor's Income up to $184,000 plus Maintenance Payee's Income**

Note: The Court will determine how long maintenance will be paid in accordance with the statute.

(Rev. 1/31/18)

NY CLS Dom Rel § 236, Part 1 of 3

Copy Citation

Current through 2018 released Chapters 1-372, 377-403

New York Consolidated Laws Service Domestic Relations Law (Arts. 1 — 15) Article 13 Provisions Applicable to More Than One Type of Matrimonial Action (§§ 230 — 255)

§ 236. Special controlling provisions; prior actions or proceedings; new actions or proceedings

Except as otherwise expressly provided in this section, the provisions of part A shall be controlling with respect to any action or proceeding commenced prior to the date on which the provisions of this section as amended become effective and the provisions of part B shall be controlling with respect to any action or proceeding commenced on or after such effective date. Any reference to this section or the provisions hereof in any action, proceeding, judgment, order, rule or agreement shall be deemed and construed to refer to either the provisions of part A or part B respectively and exclusively, determined as provided in this paragraph any inconsistent provision of law notwithstanding.

5-a. Temporary maintenance awards.

a. Except where the parties have entered into an agreement providing for maintenance pursuant to subdivision three of this part, in any matrimonial action the court, upon application by a party, shall make its award for temporary maintenance pursuant to the provisions of this subdivision.

b. For purposes of this subdivision, the following definitions shall be used:

(1) "Payor" shall mean the spouse with the higher income.

(2) "Payee" shall mean the spouse with the lower income.

(3) "Length of marriage" shall mean the period from the date of marriage until the date of commencement of action.

(4) "Income" shall mean income as defined in the child support standards act and codified in section two hundred forty of this article and section four hundred thirteen of the family court act without subtracting alimony or maintenance actually paid or to be paid to a spouse that is a party to the instant action pursuant to subclause (C) of clause (vii) of subparagraph five of paragraph (b) of subdivision one-b of section two hundred forty of this article and subclause (C) of clause (vii) of subparagraph five of paragraph (b) of subdivision one of section four hundred thirteen of the family court act and without subtracting spousal support paid pursuant to section four hundred twelve of such act.

(5) "Income cap" shall mean up to and including one hundred seventy-five thousand dollars of the payor's annual income; provided, however, beginning January thirty-first, two thousand sixteen and every two years thereafter, the income cap amount shall increase by the sum of the average annual percentage changes in the consumer price index for all urban consumers (CPI-U) as published by the United States department of labor bureau of labor statistics for the prior two years multiplied by the then income cap and then rounded to the nearest one thousand dollars. The office of court administration shall determine and publish the income cap.

(6) "Guideline amount of temporary maintenance" shall mean the dollar amount derived by the application of paragraph c or d of this subdivision.

(7) "Self-support reserve" shall mean the self-support reserve as defined in the child support standards act and codified in section two hundred forty of this article and section four hundred thirteen of the family court act.

(8) "Agreement" shall have the same meaning as provided in subdivision three of this part.

c. Where the payor's income is lower than or equal to the income cap, the court shall determine the guideline amount of temporary maintenance as follows:

(1) Where child support will be paid for children of the marriage and where the payor as defined in this subdivision is also the non-custodial parent pursuant to the child support standards act:

(a) the court shall subtract twenty-five percent of the payee's income from twenty percent of the payor's income.

(b) the court shall then multiply the sum of the payor's income and the payee's income by forty percent.

(c) the court shall subtract the payee's income from the amount derived from clause (b) of this subparagraph.

(d) the court shall determine the lower of the two amounts derived by clauses (a) and (c) of this subparagraph.

(e) the guideline amount of temporary maintenance shall be the amount determined by clause (d) of this subparagraph except that, if the amount determined by clause (d) of this subparagraph is less than or equal to zero, the guideline amount of temporary maintenance shall be zero dollars.

(f) temporary maintenance shall be calculated prior to child support because the amount of temporary maintenance shall be subtracted from the payor's income and added to the payee's income as part of the calculation of the child support obligation.

(2) Where child support will not be paid for children of the marriage, or where child support will be paid for children of the marriage but the payor as defined in this subdivision is the custodial parent pursuant to the child support standards act:

(a) the court shall subtract twenty percent of the payee's income from thirty percent of the payor's income.

(b) the court shall then multiply the sum of the payor's income and the payee's income by forty percent.

(c) the court shall subtract the payee's income from the amount derived from clause (b) of this subparagraph.

(d) the court shall determine the lower of the two amounts derived by clauses (a) and (c) of this subparagraph.

(e) the guideline amount of temporary maintenance shall be the amount determined by clause (d) of this subparagraph except that, if the amount determined by clause (d) of this subparagraph is less than or equal to zero, the guideline amount of temporary maintenance shall be zero dollars.

(f) if child support will be paid for children of the marriage but the payor as defined in this subdivision is the custodial parent pursuant to the child support standards act, temporary maintenance shall be calculated prior to child support because the amount of temporary maintenance shall be subtracted from the payor's income pursuant to this subdivision and added to the payee's income pursuant to this subdivision as part of the calculation of the child support obligation.

d. Where the payor's income exceeds the income cap, the court shall determine the guideline amount of temporary maintenance as follows:

(1) the court shall perform the calculations set forth in paragraph c of this subdivision for the income of the payor up to and including the income cap; and

(2) for income exceeding the cap, the amount of additional maintenance awarded, if any, shall be within the discretion of the court which shall take into consideration any one or more of the factors set forth in subparagraph one of paragraph h of this subdivision; and

(3) the court shall set forth the factors it considered and the reasons for its decision in writing or on the record. Such decision, whether in writing or on the record, may not be waived by either party or counsel.

e. Notwithstanding the provisions of this subdivision, where the guideline amount of temporary maintenance would reduce the payor's income below the self-support reserve for a single person, the guideline amount of temporary maintenance shall be the difference between the payor's income and the self-support reserve. If the payor's income is below the self-support reserve, there shall be a rebuttable presumption that no temporary maintenance is awarded.

f. The court shall determine the duration of temporary maintenance by considering the length of the marriage.

g. Temporary maintenance shall terminate no later than the issuance of the judgment of divorce or the death of either party, whichever occurs first.

h.

(1) The court shall order the guideline amount of temporary maintenance up to the income cap in accordance with paragraph c of this subdivision, unless the court finds that the guideline amount of temporary maintenance is

unjust or inappropriate, which finding shall be based upon consideration of any one or more of the following factors, and adjusts the guideline amount of temporary maintenance accordingly based upon such consideration:

(a) the age and health of the parties;

(b) the present or future earning capacity of the parties, including a history of limited participation in the workforce;

(c) the need of one party to incur education or training expenses;

(d) the termination of a child support award during the pendency of the temporary maintenance award when the calculation of temporary maintenance was based upon child support being awarded and which resulted in a maintenance award lower than it would have been had child support not been awarded;

(e) the wasteful dissipation of marital property, including transfers or encumbrances made in contemplation of a matrimonial action without fair consideration;

(f) the existence and duration of a pre-marital joint household or a pre-divorce separate household;

(g) acts by one party against another that have inhibited or continue to inhibit a party's earning capacity or ability to obtain meaningful employment. Such acts include but are not limited to acts of domestic violence as provided in section four hundred fifty-nine-a of the social services law;

(h) the availability and cost of medical insurance for the parties;

(i) the care of children or stepchildren, disabled adult children or stepchildren, elderly parents or in-laws provided during the marriage that inhibits a party's earning capacity;

(j) the tax consequences to each party;

(k) the standard of living of the parties established during the marriage;

(l) the reduced or lost earning capacity of the payee as a result of having forgone or delayed education, training, employment or career opportunities during the marriage; and

(m) any other factor which the court shall expressly find to be just and proper.

(2) Where the court finds that the guideline amount of temporary maintenance is unjust or inappropriate and the court adjusts the guideline amount of temporary maintenance pursuant to this paragraph, the court shall set forth, in a written decision or on the record, the guideline amount of temporary maintenance, the factors it considered, and the reasons that the court adjusted the guideline amount of temporary maintenance. Such decision, whether in writing or on the record, shall not be waived by either party or counsel.

(3) Where either or both parties are unrepresented, the court shall not enter a temporary maintenance order unless the court informs the unrepresented party or parties of the guideline amount of temporary maintenance.

i. Nothing contained in this subdivision shall be construed to alter the rights of the parties to voluntarily enter into agreements or stipulations as defined in subdivision three of this part which deviate from the presumptive award of temporary maintenance.

j. When a payor has defaulted and/or the court is otherwise presented with insufficient evidence to determine income, the court shall order the temporary maintenance award based upon the needs of the payee or the standard of living of the parties prior to commencement of the divorce action, whichever is greater. Such order may be retroactively modified upward without a showing of change in circumstances upon a showing of newly discovered evidence.

k. In any action or proceeding for modification of an order of maintenance or alimony existing prior to the effective date of this subdivision, brought pursuant to this article, the temporary maintenance guidelines set forth in this subdivision shall not constitute a change of circumstances warranting modification of such support order.

l. In any action or proceeding for modification where the parties have entered into an agreement providing for maintenance pursuant to subdivision three of this part entered into prior to the effective date of this subdivision, brought pursuant to this article, the temporary maintenance guidelines set forth in this subdivision shall not constitute a change of circumstances warranting modification of such support order.

m. In determining temporary maintenance, the court shall consider and allocate, where appropriate, the responsibilities of the respective spouses for the family's expenses during the pendency of the proceeding.

n. The temporary maintenance order shall not prejudice the rights of either party regarding a post-divorce maintenance award.

6. Post-divorce maintenance awards.

a. Except where the parties have entered into an agreement pursuant to subdivision three of this part providing for maintenance, in any matrimonial action, the court, upon application by a party, shall make its award for post-divorce maintenance pursuant to the provisions of this subdivision..

b. For purposes of this subdivision, the following definitions shall be used:

(1) "Payor" shall mean the spouse with the higher income.

(2) "Payee" shall mean the spouse with the lower income.

(3) "Income" shall mean:

(a) income as defined in the child support standards act and codified in section two hundred forty of this article and section four hundred thirteen of the family court act, without subtracting alimony or maintenance actually paid or to be paid to a spouse that is a party to the instant action pursuant to subclause (C) of clause (vii) of subparagraph five of paragraph (b) of subdivision one-b of section two hundred forty of this article and subclause (C) of clause (vii) of subparagraph five of paragraph (b) of subdivision one of section four hundred thirteen of the family court act and without subtracting spousal support paid pursuant to section four hundred twelve of such act; and

(b) income from income-producing property distributed or to be distributed pursuant to subdivision five of this part.

(4) "Income cap" shall mean up to and including one hundred seventy-five thousand dollars of the payor's annual income; provided, however, beginning January thirty-first, two thousand sixteen and every two years thereafter, the income cap amount shall increase by the sum of the average annual percentage changes in the consumer price index for all urban consumers (CPI-U) as published by the United States department of labor bureau of labor statistics for the prior two years multiplied by the then income cap and then rounded to the nearest one thousand dollars. The office of court administration shall determine and publish the income cap.

(5) "Guideline amount of post-divorce maintenance" shall mean the dollar amount derived by the application of paragraph c or d of this subdivision.

(6) "Guideline duration of post-divorce maintenance" shall mean the durational period determined by the application of paragraph f of this subdivision.

(7) "Post-divorce maintenance guideline obligation" shall mean the guideline amount of post-divorce maintenance and the guideline duration of post-divorce maintenance.

(8) "Length of marriage" shall mean the period from the date of marriage until the date of commencement of the action.

(9) "Self-support reserve" shall mean the self-support reserve as defined in the child support standards act and codified in section two hundred forty of this article and section four hundred thirteen of the family court act.

(10) "Agreement" shall have the same meaning as provided in subdivision three of this part.

c. Where the payor's income is lower than or equal to the income cap, the court shall determine the guideline amount of post-divorce maintenance as follows:

(1) Where child support will be paid for children of the marriage and where the payor as defined in this subdivision is also the non-custodial parent pursuant to the child support standards act:

(a) the court shall subtract twenty-five percent of the payee's income from twenty percent of the payor's income.

(b) the court shall then multiply the sum of the payor's income and the payee's income by forty percent.

(c) the court shall subtract the payee's income from the amount derived from clause (b) of this subparagraph.

(d) the court shall determine the lower of the two amounts derived by clauses (a) and (c) of this subparagraph.

(e) the guideline amount of post-divorce maintenance shall be the amount determined by clause (d) of this subparagraph except that, if the amount determined by clause (d) of this subparagraph is less than or equal to zero, the guideline amount of post-divorce maintenance shall be zero dollars.

(f) notwithstanding the provisions of this subdivision, where the guideline amount of post-divorce maintenance would reduce the payor's income below the self-support reserve for a single person, the guideline amount of post-divorce maintenance shall be the difference between the payor's income and the self-support reserve. If the payor's income is below the self-support reserve, there shall be a rebuttable presumption that no post-divorce maintenance is awarded.

(g) maintenance shall be calculated prior to child support because the amount of maintenance shall be subtracted from the payor's income and added to the payee's income as part of the calculation of the child support obligation.

(2) Where child support will not be paid for children of the marriage, or where child support will be paid for children of the marriage but the payor as defined in this subdivision is the custodial parent pursuant to the child support standards act:

(a) the court shall subtract twenty percent of the payee's income from thirty percent of the payor's income.

(b) the court shall then multiply the sum of the payor's income and the payee's income by forty percent.

(c) the court shall subtract the payee's income from the amount derived from clause (b) of this subparagraph.

(d) the court shall determine the lower of the two amounts derived by clauses (a) and (c) of this subparagraph.

(e) the guideline amount of post-divorce maintenance shall be the amount determined by clause (d) of this subparagraph except that, if the amount determined by clause (d) of this subparagraph is less than or equal to zero, the guideline amount of post-divorce maintenance shall be zero dollars.

(f) if child support will be paid for children of the marriage but the payor as defined in this subdivision is the custodial parent pursuant to the child support standards act, post-divorce maintenance shall be calculated prior to child support because the amount of post-divorce maintenance shall be subtracted from the payor's income

pursuant to this subdivision and added to the payee's income pursuant to this subdivision as part of the calculation of the child support obligation.

(g) notwithstanding the provisions of this subdivision, where the guideline amount of post-divorce maintenance would reduce the payor's income below the self-support reserve for a single person, the guideline amount of post-divorce maintenance shall be the difference between the payor's income and the self-support reserve. If the payor's income is below the self-support reserve, there shall be a rebuttable presumption that no post-divorce maintenance is awarded.

d. Where the payor's income exceeds the income cap, the court shall determine the guideline amount of post-divorce maintenance as follows:

(1) the court shall perform the calculations set forth in paragraph c of this subdivision for the income of payor up to and including the income cap; and

(2) for income exceeding the cap, the amount of additional maintenance awarded, if any, shall be within the discretion of the court which shall take into consideration any one or more of the factors set forth in subparagraph one of paragraph e of this subdivision; and

(3) the court shall set forth the factors it considered and the reasons for its decision in writing or on the record. Such decision, whether in writing or on the record, may not be waived by either party or counsel.

e.

(1) The court shall order the post-divorce maintenance guideline obligation up to the income cap in accordance with paragraph c of this subdivision, unless the court finds that the post-divorce maintenance guideline obligation is unjust or inappropriate, which finding shall be based upon consideration of any one or more of the following factors, and adjusts the post-divorce maintenance guideline obligation accordingly based upon such consideration:

(a) the age and health of the parties;

(b) the present or future earning capacity of the parties, including a history of limited participation in the workforce;

(c) the need of one party to incur education or training expenses;

(d) the termination of a child support award before the termination of the maintenance award when the calculation of maintenance was based upon child support being awarded which resulted in a maintenance award lower than it would have been had child support not been awarded;

(e) the wasteful dissipation of marital property, including transfers or encumbrances made in contemplation of a matrimonial action without fair consideration;

(f) the existence and duration of a pre-marital joint household or a pre-divorce separate household;

(g) acts by one party against another that have inhibited or continue to inhibit a party's earning capacity or ability to obtain meaningful employment. Such acts include but are not limited to acts of domestic violence as provided in section four hundred fifty-nine-a of the social services law;

(h) the availability and cost of medical insurance for the parties;

(i) the care of children or stepchildren, disabled adult children or stepchildren, elderly parents or in-laws provided during the marriage that inhibits a party's earning capacity;

(j) the tax consequences to each party;

(k) the standard of living of the parties established during the marriage;

(l) the reduced or lost earning capacity of the payee as a result of having forgone or delayed education, training, employment or career opportunities during the marriage;

(m) the equitable distribution of marital property and the income or imputed income on the assets so distributed;

(n) the contributions and services of the payee as a spouse, parent, wage earner and homemaker and to the career or career potential of the other party; and

(o) any other factor which the court shall expressly find to be just and proper.

(2) Where the court finds that the post-divorce maintenance guideline obligation is unjust or inappropriate and the court adjusts the post-divorce maintenance guideline obligation pursuant to this paragraph, the court shall set forth, in a written decision or on the record, the unadjusted post-divorce maintenance guideline obligation, the factors it considered, and the reasons that the court adjusted the post-divorce maintenance obligation. Such decision shall not be waived by either party or counsel.

f. The duration of post-divorce maintenance may be determined as follows:

(1) The court may determine the duration of post-divorce maintenance in accordance with the following advisory schedule:

Length of the marriage	Percent of the length of the marriage for which maintenance will be payable
0 up to and including 15 years	15% - 30%
More than 15 up to and including 20 years	30% - 40%
More than 20 years	35% - 50%

(2) In determining the duration of post-divorce maintenance, whether or not the court utilizes the advisory schedule, it shall consider the factors listed in subparagraph one of paragraph e of this subdivision and shall set forth, in a written decision or on the record, the factors it considered. Such decision shall not be waived by either party or counsel. Nothing herein shall prevent the court from awarding non-durational maintenance in an appropriate case.

(3) Notwithstanding the provisions of subparagraph one of this paragraph, post-divorce maintenance shall terminate upon the death of either party or upon the payee's valid or invalid marriage, or upon modification pursuant to paragraph b of subdivision nine of this part or section two hundred forty-eight of this article.

(4) Notwithstanding the provisions of subparagraph one of this paragraph, when determining duration of post-divorce maintenance, the court shall take into consideration anticipated retirement assets, benefits, and retirement eligibility age of both parties if ascertainable at the time of decision. If not ascertainable at the time of decision, the actual full or partial retirement of the payor with substantial diminution of income shall be a basis for a modification of the award.

g. Where either or both parties are unrepresented, the court shall not enter a maintenance order or judgment unless the court informs the unrepresented party or parties of the post-divorce maintenance guideline obligation.

h. Nothing contained in this subdivision shall be construed to alter the rights of the parties to voluntarily enter into validly executed agreements or stipulations which deviate from the post-divorce maintenance guideline obligation.

i. When a payor has defaulted and/or the court makes a finding at the time of trial that it was presented with insufficient evidence to determine income, the court shall order the post-divorce maintenance based upon the needs of the payee or the standard of living of the parties prior to commencement of the divorce action, whichever is greater. Such order may be retroactively modified upward without a showing of change in circumstances upon a showing of substantial newly discovered evidence.

j. Post-divorce maintenance may be modified pursuant to paragraph b of subdivision nine of this part.

k. In any action or proceeding for modification of an order of maintenance or alimony existing prior to the effective date of the chapter of the laws of two thousand fifteen which amended this subdivision, brought pursuant to this article, the guidelines for post-divorce maintenance set forth in this subdivision shall not constitute a change of circumstances warranting modification of such support order.

l. In any action or proceeding for modification where the parties have entered into an agreement providing for maintenance pursuant to subdivision three of this part entered into prior to the effective date of the chapter of the laws of two thousand fifteen which amended this subdivision, brought pursuant to this article, the guidelines for post-divorce maintenance set forth in this subdivision shall not constitute a change of circumstances warranting modification of such agreement.

m. In any action or proceeding for modification of an order of maintenance or alimony existing prior to the effective date of the chapter of the laws of two thousand fifteen which amended this subdivision, brought pursuant to this article, the guidelines for post-divorce maintenance set forth in paragraphs c, d and e of this subdivision shall not apply.

n. In any action or proceeding for modification where the parties have entered into an agreement providing for maintenance pursuant to subdivision three of this part entered into prior to the effective date of the chapter of the laws of two thousand fifteen which amended this subdivision, brought pursuant to this article, the guidelines for post-divorce maintenance set forth in paragraphs c, d and e of this subdivision shall not apply.

o. In any decision made pursuant to this subdivision the court shall, where appropriate, consider the effect of a barrier to remarriage, as defined in subdivision six of section two hundred fifty-three of this article, on the factors enumerated in paragraph c of this subdivision.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF FIELD(COUNTYALLCAPS)

FIELD(PLAINTIFF),

Plaintiff,

- against -

FIELD(DEFENDANT),

Defendant.

Index No.: FIELD(indexnumber)

COMPUTATION OF MAINTENANCE AND CHILD SUPPORT

Date of Commencement: FIELD(Commencedate)
Date of Marriage: FIELD(Dom)
Length of Marriage: KEYBOARD(Length of Marriage)

	Presumptive Maintenance Calculation			
		Payor	Payee	Total
1.	Gross Income Subject to FICA/Medicare	$399,000.00	$0.00	$399,000.00
2.	FICA (6.2%) (2019 cap $132,900 =$8,239.80)	$8,239.80	$0.00	$8,239.80
3.	Medicare (1.45%)	$5,785.50	$0.00	$5,785.50
4.	Medicare surcharge[1]	$1,341.00	$0.00	$1,341.00
5.	Total Medicare	$7,126.50	$0.00	$7,126.50
6.	NYC Taxes	$0.00	$0.00	$0.00
7.	Additional Deductions	$0.00	$0.00	$0.00
8.	Total Deductions	$15,366.30	$0.00	$15,366.30
9.	Sub-Total	$383,633.70	$0.00	$383,633.70
10.	Additional Income ***not*** subject to FICA/Medicare	$108,474.00	$25.00	$108,499.00
11.	Gross Income (line 1 + line 9)	$507,474.00	$25.00	$507,499.00
12.	C.S.S.A. Adjusted Income (line 9 + line 10)	$492,107.70	$25.00	$492,132.70

[1] *Wages above $200,000 (individuals), $250,000 (joint filers), and $125,000 (spouses filing separately) will be subject to higher payroll taxes (0.9% on earned income above threshold). A 3.8% Medicare surtax is levied on the lesser of net investment income or the excess of modified adjusted gross income (MAGI) above threshold.*

13.	Annual Gross (Total) Income (C.S.S.A. adjusted) of the Payor, but not more than $184,000			$184,000.00
14.	Annual Gross (Total) Income (C.S.S.A. adjusted) of the Payee, but not more than $184,000			$25.00
15.	Income of the Husband over $184,000, if any			$308,107.70
16.	Income of the Wife over $184,000, if any			$0.00
	1st Computation			
17.	20% of payor's income (line 13)			$36,800.00
18.	25% of payee's income (line 14)			$6.25
19.	Line 17 less line 18			$36,793.75
	2nd Computation			
20.	Sum of income of payor (line 13) and payee (line 14)			$184,025.00
21.	Line 8 x 40%			$73,610.00
22.	Payee's income (line 14)			$25.00
23.	Line 21 less line 22			$73,585.00

	Presumptive Maintenance		
24.	Lower of lines 19 or 23 (but not less than zero)	**Annually:**	$36,793.75
25.		**Monthly:**	**$3,066.15**
26.		**Bi-weekly:**	**$1,415.14**
27.		**Weekly:**	**$707.57**

Child support shall be calculated using C.S.S.A. income of the payor less maintenance and income of payee as income including maintenance

Duration of marriage	**Duration of maintenance**
0 to 15 years	15% to 30% of length of marriage
>15 to 20 years	30% to 40% of length of marriage
>20 years	35% to 50% of length of marriage

Presumptive Duration for KEYBOARD(Length of Marriage)-year marriage: KEYBOARD(short period) to KEYBOARD(long period) years.

Presumptive Child Support Calculation

28.	Pre-maintenance C.S.S.A. Adjusted Income	$492,107.70	$25.00	$492,132.70
29.	Maintenance	$-36,793.75	$36,793.75	
30.	C.S.S.A. Adjusted Income	$455,313.95	$36,818.75	
31.	Total Parental Income			$492,132.70

32.	Percent of Total Income	92.52%	7.48%	100.00%
33.	Child Support Percentage			25%
34.	C.S.S.A. cap			$148,000.00
35.	Pro rata share of first $148,000 of base income	$136,927.43	$11,072.57	$148,000.00
36.	Presumptive annual support on cap	$34,231.86	$2,768.14	$37,000.00
37.	Presumptive monthly support on cap	$2,852.65	$230.68	$3,083.33
38.	Presumptive weekly support on cap	$658.30	$53.23	$711.54
39.	Parental income over $148,000 cap	$318,386.52	$25,746.18	$344,132.70
40.	Annual formula support on excess	$79,596.63	$6,436.54	$86,033.18
41.	Monthly formula support on excess	$6,633.05	$536.38	$7,169.43
42.	Weekly formula support on excess	$1,530.70	$123.78	$1,654.48
43.	Presumptive Annual Child Support on Total Income	$113,828.49	$9,204.69	$123,033.18
44.	Monthly Child Support on Total	$9,485.71	$767.06	$10,252.76
45.	Weekly Child Support on Total	$2,189.01	$177.01	$2,366.02

US Main Summary

	2018		
	Case 1	Case 2	Difference
Filing Status	Single	Single	
Total Income	$ 507,494	$ 507,494	$ 0
Adjustments		36,794	36,794
Adjusted Gross Income	507,494	470,700	(36,794)
Deductions	12,000	12,000	0
Taxable Income	495,494	458,700	(36,794)
Regular Tax	149,112	136,235	(12,877)
Tentative Minimum Tax	119,117	108,290	(10,827)
Tax After Credits	149,112	136,235	(12,877)
Other Taxes	1	1	0
Total Tax	149,113	136,236	(12,877)
Tax Due or (Overpaid Tax)	149,113	136,236	(12,877)
Federal Balance Due or (Refund)	$ 149,113	$ 136,236	$ (12,877)
State Balance Due or (Refund)	$ 34,215	$ 31,695	$ (2,520)
Net Balance Due or (Refund)	$ 183,328	$ 167,931	$ (15,397)
Tax Rates			
Marginal Tax Rate	35	35	0
Effective Tax Rate	30.1	29.7	(0.4000000000)

One Page Summary

	2018		
	Case 1	Case 2	Difference
INCOME			
Wages, Salaries, Tips, Etc.	$ 399,000	$ 399,000	$ 0
Interest	26	26	0
Passthrough Income (Loss)	108,468	108,468	0
Total Income	$ 507,494	$ 507,494	$ 0
ADJUSTMENTS			
Alimony Paid		36,794	36,794
Total Adjustments	$ 0	$ 36,794	$ 36,794
Adjusted Gross Income	$ 507,494	$ 470,700	$ (36,794)
DEDUCTIONS AND EXEMPTIONS			
Filing Status	Single	Single	
Number of Exemptions	1	1	
Adjusted Gross Income	$ 507,494	$ 470,700	$ (36,794)
Deduction	12,000	12,000	0
Taxable Income	$ 495,494	$ 458,700	$ (36,794)
TAX			
Taxable Income	$ 495,494	$ 458,700	$ (36,794)
Tables/Rate Schedules	149,112	136,235	(12,877)
Tax	$ 149,112	$ 136,235	$ (12,877)
CREDITS AGAINST INCOME TAX			
OTHER TAXES			
Miscellaneous Taxes	1	1	0
Total Other Taxes	$ 1	$ 1	$ 0
Total Tax	$ 149,113	$ 136,236	$ (12,877)
PAYMENTS			
Balance Due or (Overpayment)	$ 149,113	$ 136,236	$ (12,877)
State Balance Due or (Overpayment)	$ 34,215	$ 31,695	$ (2,520)
Net Balance Due or (Overpayment)	$ 183,328	$ 167,931	$ (15,397)
Tax Rates			
Marginal Tax Rate	35	35	0
Effective Tax Rate	30.1	29.7	(0.4000000000)

NY Main Summary

	2018		
	Case 1	Case 2	Difference
Federal Adjusted Gross Income	$ 507,494	$ 470,700	$ (36,794)
New York Adjusted Gross Income	507,494	470,700	(36,794)
Deductions	8,000	8,000	0
New York Taxable Income	499,494	462,700	(36,794)
Regular Tax	34,215	31,695	(2,520)
Total New York State Taxes	34,215	31,695	(2,520)
Total State and City Taxes	34,215	31,695	(2,520)
Tax Due or (Overpaid Tax)	34,215	31,695	(2,520)
Balance Due or (Refund)	$ 34,215	$ 31,695	$ (2,520)
Net Balance Due or (Refund)	$ 34,215	$ 31,695	$ (2,520)
Tax Rates			
Marginal Tax Rate	6.85	6.85	0
Effective Tax Rate	6.9	6.9	0

2018 **FEDERAL INCOME TAX SUMMARY** PAGE 1

JOHN SMITH 012-34-5678

INCOME	
WAGES, SALARIES, TIPS, ETC	399,000
INTEREST INCOME	26
RENT, ROYALTY, PARTNERSHIP, SCORP, TRUST	108,468
TOTAL INCOME	507,494
ADJUSTMENTS TO INCOME	
TOTAL ADJUSTMENTS	0
ADJUSTED GROSS INCOME	507,494
ITEMIZED DEDUCTIONS	
TAXES	2,735
TOTAL ITEMIZED DEDUCTIONS	2,735
TAX COMPUTATION	
STANDARD DEDUCTION	12,000
LARGER OF ITEMIZED OR STANDARD DEDUCTION	12,000
INCOME PRIOR TO EXEMPTION DEDUCTION	495,494
TAXABLE INCOME	495,494
TAX BEFORE CREDITS	149,112
CREDITS	
TOTAL CREDITS	0
TAX AFTER CREDITS	149,112
OTHER TAXES	
OTHER TAXES	1,792
TOTAL TAX	150,904
PAYMENTS	
FEDERAL INCOME TAX WITHHELD	1,791
TOTAL PAYMENTS	1,791
REFUND OR AMOUNT DUE	
AMOUNT YOU OWE	149,113
TAX RATES	
MARGINAL TAX RATE	35.0%
EFFECTIVE TAX RATE	30.5%

JOHN SMITH 012-34-5678

NEW YORK TAX SUMMARY	
FEDERAL ADJUSTED GROSS INCOME	507,494
ADJUSTED GROSS INCOME	
NEW YORK ADJUSTED GROSS INCOME	507,494
TAXABLE INCOME	
ITEMIZED/STANDARD DEDUCTION	8,000
NEW YORK TAXABLE INCOME	499,494
TAX AND CREDITS	
NEW YORK STATE TAX	34,215
TOTAL NEW YORK STATE TAX	34,215
TOTAL STATE & CITY TAXES & CONTRIBUTIONS	34,215
PAYMENTS	
TOTAL PAYMENTS	0
REFUND OR AMOUNT DUE	
AMOUNT REFUNDED TO YOU	0
AMOUNT YOU OWE	34,215
TAX RATES	
MARGINAL TAX RATE	6.85%
EFFECTIVE TAX RATE	6.9%
NEW YORK CITY MARGINAL TAX RATE	0.00%
YONKERS MARGINAL TAX RATE	0.00%

2018 **FEDERAL INCOME TAX SUMMARY** PAGE 1

JOHN SMITH 012-34-5678

INCOME	
WAGES, SALARIES, TIPS, ETC	399,000
INTEREST INCOME	26
RENT, ROYALTY, PARTNERSHIP, SCORP, TRUST	108,468
TOTAL INCOME	507,494
ADJUSTMENTS TO INCOME	
ALIMONY PAID	36,794
TOTAL ADJUSTMENTS	36,794
ADJUSTED GROSS INCOME	470,700
ITEMIZED DEDUCTIONS	
TAXES	2,735
TOTAL ITEMIZED DEDUCTIONS	2,735
TAX COMPUTATION	
STANDARD DEDUCTION	12,000
LARGER OF ITEMIZED OR STANDARD DEDUCTION	12,000
INCOME PRIOR TO EXEMPTION DEDUCTION	458,700
TAXABLE INCOME	458,700
TAX BEFORE CREDITS	136,235
CREDITS	
TOTAL CREDITS	0
TAX AFTER CREDITS	136,235
OTHER TAXES	
OTHER TAXES	1,792
TOTAL TAX	138,027
PAYMENTS	
FEDERAL INCOME TAX WITHHELD	1,791
TOTAL PAYMENTS	1,791
REFUND OR AMOUNT DUE	
AMOUNT YOU OWE	136,236
TAX RATES	
MARGINAL TAX RATE	35.0%
EFFECTIVE TAX RATE	30.1%

JOHN SMITH 012-34-5678

NEW YORK TAX SUMMARY	
FEDERAL ADJUSTED GROSS INCOME	470,700
ADJUSTED GROSS INCOME	
NEW YORK ADJUSTED GROSS INCOME	470,700
TAXABLE INCOME	
ITEMIZED/STANDARD DEDUCTION	8,000
NEW YORK TAXABLE INCOME	462,700
TAX AND CREDITS	
NEW YORK STATE TAX	31,695
TOTAL NEW YORK STATE TAX	31,695
TOTAL STATE & CITY TAXES & CONTRIBUTIONS	31,695
PAYMENTS	
TOTAL PAYMENTS	0
REFUND OR AMOUNT DUE	
AMOUNT REFUNDED TO YOU	0
AMOUNT YOU OWE	31,695
TAX RATES	
MARGINAL TAX RATE	6.85%
EFFECTIVE TAX RATE	6.9%
NEW YORK CITY MARGINAL TAX RATE	0.00%
YONKERS MARGINAL TAX RATE	0.00%

US Main Summary

	Case 1 2018	Case 2 2018
Filing Status	HH	HH
Number of Dependents	2	2
Total Income	$ 25	$ 36,819
Adjusted Gross Income	25	36,819
Deductions	18,000	18,000
Taxable Income	0	18,819
Regular Tax	0	1,987
Credits		1,987
State Balance Due or (Refund)	$ 0	$ 406
Net Balance Due or (Refund)	$ 0	$ 406
Tax Rates		
Marginal Tax Rate	0	12

One Page Summary

	Case 1 2018	Case 2 2018
INCOME		
Interest	25	25
Alimony Received		36,794
Total Income	$ 25	$ 36,819
ADJUSTMENTS		
Adjusted Gross Income	$ 25	$ 36,819
DEDUCTIONS AND EXEMPTIONS		
Filing Status	HH	HH
Number of Exemptions	3	3
Adjusted Gross Income	$ 25	$ 36,819
Deduction	18,000	18,000
Taxable Income	$ 0	$ 18,819
TAX		
Taxable Income	$ 0	$ 18,819
Tables/Rate Schedules	0	1,987
Tax	$ 0	$ 1,987
CREDITS AGAINST INCOME TAX		
Child Tax Credit & Other Dependent Credit		1,987
Total Credits	$ 0	$ 1,987
OTHER TAXES		
PAYMENTS		
State Balance Due or (Overpayment)	$ 0	$ 406
Net Balance Due or (Overpayment)	$ 0	$ 406
Tax Rates		
Marginal Tax Rate	0	12

NY Main Summary

	Case 1 2018	Case 2 2018
Federal Adjusted Gross Income	$ 25	$ 36,819
New York Adjusted Gross Income	25	36,819
Deductions	11,200	11,200
Exemptions	2,000	2,000
New York Taxable Income	0	23,619
Regular Tax	0	1,062
New York State Household Credit	120	0
Total New York State Taxes	0	1,062
Total State and City Taxes	0	1,062
Payments	0	656
Tax Due or (Overpaid Tax)	0	406
Balance Due or (Refund)	$ 0	$ 406
Net Balance Due or (Refund)	$ 0	$ 406
Tax Rates		
Marginal Tax Rate	0	5.9
Effective Tax Rate	0	4.5

JANE SMITH 012-34-5678

INCOME	
INTEREST INCOME	25
TOTAL INCOME	25
ADJUSTMENTS TO INCOME	
TOTAL ADJUSTMENTS	0
ADJUSTED GROSS INCOME	25
ITEMIZED DEDUCTIONS	
TAXES	398
TOTAL ITEMIZED DEDUCTIONS	398
TAX COMPUTATION	
STANDARD DEDUCTION	18,000
LARGER OF ITEMIZED OR STANDARD DEDUCTION	18,000
INCOME PRIOR TO EXEMPTION DEDUCTION	-17,975
TAXABLE INCOME	-17,975
TAX BEFORE CREDITS	0
CREDITS	
TOTAL CREDITS	0
TAX AFTER CREDITS	0
OTHER TAXES	
TOTAL TAX	0
PAYMENTS	
TOTAL PAYMENTS	0
REFUND OR AMOUNT DUE	
AMOUNT YOU OWE	0
TAX RATES	
MARGINAL TAX RATE	0.0%

JANE SMITH 012-34-5678

NEW YORK TAX SUMMARY	
FEDERAL ADJUSTED GROSS INCOME	25
ADJUSTED GROSS INCOME	
NEW YORK ADJUSTED GROSS INCOME	25
TAXABLE INCOME	
ITEMIZED/STANDARD DEDUCTION	11,200
DEPENDENT EXEMPTIONS	2,000
NEW YORK TAXABLE INCOME	0
TAX AND CREDITS	
NEW YORK STATE TAX	0
NEW YORK STATE HOUSEHOLD CREDIT	120
TOTAL STATE & CITY TAXES & CONTRIBUTIONS	0
PAYMENTS	
TOTAL PAYMENTS	0
REFUND OR AMOUNT DUE	
AMOUNT REFUNDED TO YOU	0
AMOUNT YOU OWE	0
TAX RATES	
MARGINAL TAX RATE	0.00%
NEW YORK CITY MARGINAL TAX RATE	0.00%
YONKERS MARGINAL TAX RATE	0.00%

JANE SMITH 012-34-5678

INCOME	
INTEREST INCOME	25
ALIMONY RECEIVED	36,794
TOTAL INCOME	36,819
ADJUSTMENTS TO INCOME	
TOTAL ADJUSTMENTS	0
ADJUSTED GROSS INCOME	36,819
ITEMIZED DEDUCTIONS	
TAXES	748
TOTAL ITEMIZED DEDUCTIONS	748
TAX COMPUTATION	
STANDARD DEDUCTION	18,000
LARGER OF ITEMIZED OR STANDARD DEDUCTION	18,000
INCOME PRIOR TO EXEMPTION DEDUCTION	18,819
TAXABLE INCOME	18,819
TAX BEFORE CREDITS	1,987
CREDITS	
CHILD TAX CREDIT & OTHER DEPENDENT CR	1,987
TOTAL CREDITS	1,987
TAX AFTER CREDITS	0
OTHER TAXES	
TOTAL TAX	0
PAYMENTS	
TOTAL PAYMENTS	0
REFUND OR AMOUNT DUE	
AMOUNT YOU OWE	0
TAX RATES	
MARGINAL TAX RATE	12.0%

JANE SMITH 012-34-5678

NEW YORK TAX SUMMARY	
FEDERAL ADJUSTED GROSS INCOME	36,819
ADJUSTED GROSS INCOME	
NEW YORK ADJUSTED GROSS INCOME	36,819
TAXABLE INCOME	
ITEMIZED/STANDARD DEDUCTION	11,200
DEPENDENT EXEMPTIONS	2,000
NEW YORK TAXABLE INCOME	23,619
TAX AND CREDITS	
NEW YORK STATE TAX	1,062
TOTAL NEW YORK STATE TAX	1,062
TOTAL STATE & CITY TAXES & CONTRIBUTIONS	1,062
PAYMENTS	
EMPIRE STATE CHILD CREDIT	656
TOTAL PAYMENTS	656
REFUND OR AMOUNT DUE	
AMOUNT REFUNDED TO YOU	0
AMOUNT YOU OWE	406
TAX RATES	
MARGINAL TAX RATE	5.90%
EFFECTIVE TAX RATE	4.5%
NEW YORK CITY MARGINAL TAX RATE	0.00%
YONKERS MARGINAL TAX RATE	0.00%

NY CLS Dom Rel § 240, Part 1 of 2

Copy Citation

Current through 2018 released Chapters 1-372, 377-403

New York Consolidated Laws Service Domestic Relations Law (Arts. 1 — 15) Article 13 Provisions Applicable to More Than One Type of Matrimonial Action (§§ 230 — 255)

§ 240. Custody and child support; orders of protection

1-b.

(a) The court shall make its award for child support pursuant to the provisions of this subdivision. The court may vary from the amount of the basic child support obligation determined pursuant to paragraph (c) of this subdivision only in accordance with paragraph (f) of this subdivision.

(b) For purposes of this subdivision, the following definitions shall be used:

(1) "Basic child support obligation" shall mean the sum derived by adding the amounts determined by the application of subparagraphs two and three of paragraph (c) of this subdivision except as increased pursuant to subparagraphs four, five, six and seven of such paragraph.

(2) "Child support" shall mean a sum to be paid pursuant to court order or decree by either or both parents or pursuant to a valid agreement between the parties for care, maintenance and education of any unemancipated child under the age of twenty-one years.

(3) "Child support percentage" shall mean:

(i) seventeen percent of the combined parental income for one child;

(ii) twenty-five percent of the combined parental income for two children;

(iii) twenty-nine percent of the combined parental income for three children;

(iv) thirty-one percent of the combined parental income for four children; and

(v) no less than thirty-five percent of the combined parental income for five or more children.

(4) "Combined parental income" shall mean the sum of the income of both parents.

(5) "Income" shall mean, but shall not be limited to, the sum of the amounts determined by the application of clauses (i), (ii), (iii), (iv), (v) and (vi) of this subparagraph reduced by the amount determined by the application of clause (vii) of this subparagraph:

(i) gross (total) income as should have been or should be reported in the most recent federal income tax return. If an individual files his/her federal income tax return as a married person filing jointly, such person shall be required to prepare a form, sworn to under penalty of law, disclosing his/her gross income individually;

(ii) to the extent not already included in gross income in clause (i) of this subparagraph, investment income reduced by sums expended in connection with such investment;

(iii) to the extent not already included in gross income in clauses (i) and (ii) of this subparagraph, the amount of income or compensation voluntarily deferred and income received, if any, from the following sources:

(A) workers' compensation,

(B) disability benefits,

(C) unemployment insurance benefits,

(D) social security benefits,

(E) veterans benefits,

(F) pensions and retirement benefits,

(G) fellowships and stipends,

(H) annuity payments, and

(I) alimony or maintenance actually paid or to be paid to a spouse who is a party to the instant action pursuant to an existing court order or contained in the order to be entered by the court, or pursuant to a validly executed written agreement, in which event the order or agreement shall provide for a specific adjustment, in accordance with this subdivision, in the amount of child support payable upon the termination of alimony or maintenance to such spouse; provided, however, that the specific adjustment in the amount of child support is without prejudice to either party's right to seek a modification in accordance with subparagraph two of paragraph b of subdivision nine of part B of section two hundred thirty-six of this article. In an action or proceeding to modify an order of child support, including an order incorporating without merging an agreement, issued prior to the effective date of this subclause, the provisions of this subclause shall not, by themselves, constitute a substantial change of circumstances pursuant to paragraph b of subdivision nine of part B of section two hundred thirty-six of this article.

(iv) at the discretion of the court, the court may attribute or impute income from, such other resources as may be available to the parent, including, but not limited to:

(A) non-income producing assets,

(B) meals, lodging, memberships, automobiles or other perquisites that are provided as part of compensation for employment to the extent that such perquisites constitute expenditures for personal use, or which expenditures directly or indirecly [indirectly] confer personal economic benefits,

(C) fringe benefits provided as part of compensation for employment, and

(D) money, goods, or services provided by relatives and friends;

(v) an amount imputed as income based upon the parent's former resources or income, if the court determines that a parent has reduced resources or income in order to reduce or avoid the parent's obligation for child support;

(vi) to the extent not already included in gross income in clauses (i) and (ii) of this subparagraph, the following self-employment deductions attributable to self-employment carried on by the taxpayer:

(A) any depreciation deduction greater than depreciation calculated on a straight-line basis for the purpose of determining business income or investment credits, and

(B) entertainment and travel allowances deducted from business income to the extent said allowances reduce personal expenditures;

(vii) the following shall be deducted from income prior to applying the provisions of paragraph (c) of this subdivision:

(A) unreimbursed employee business expenses except to the extent said expenses reduce personal expenditures,

(B) alimony or maintenance actually paid to a spouse not a party to the instant action pursuant to court order or validly executed written agreement,

(C) alimony or maintenance actually paid or to be paid to a spouse who is a party to the instant action pursuant to an existing court order or contained in the order to be entered by the court, or pursuant to a validly executed written agreement, in which event the order or agreement shall provide for a specific adjustment, in accordance with this subdivision, in the amount of child support payable upon the termination of alimony or maintenance to such spouse; provided, however, that the specific adjustment in the amount of child support is without prejudice to either party's right to seek a modification in accordance with subparagraph two of paragraph b of subdivision nine of part B of section two hundred thirty-six of this article. In an action or proceeding to modify an order of child support, including an order incorporating without merging an agreement, issued prior to the effective date of this subclause, the provisions of this subclause shall not, by themselves, constitute a substantial change of circumstances pursuant to paragraph b of subdivision nine of part B of section two hundred thirty-six of this article.

(D) child support actually paid pursuant to court order or written agreement on behalf of any child for whom the parent has a legal duty of support and who is not subject to the instant action,

(E) public assistance,

(F) supplemental security income,

(G) New York city or Yonkers income or earnings taxes actually paid, and

(H) federal insurance contributions act (FICA) taxes actually paid.

(6) "Self-support reserve" shall mean one hundred thirty-five percent of the poverty income guidelines amount for a single person as reported by the federal department of health and human services. For the calendar year nineteen hundred eighty-nine, the self-support reserve shall be eight thousand sixty-five dollars. On March first of each year, the self-support reserve shall be revised to reflect the annual updating of the poverty income guidelines as reported by the federal department of health and human services for a single person household.