

# ILLINOIS FAMILY LAW: DETERMINATION OF INCOME FOR CHILD SUPPORT AND SPOUSAL MAINTENANCE PURPOSES

How the Internal Revenue Service and Illinois family law defines income are different. Your gross income noted on the tax return is not necessarily the figure the Illinois courts will use. Let's first look at the language of the relevant statute at 750 ILCS 5/505(a)(3):

*(A) As used in this Section, “gross income” means the total of all income from all sources, except “gross income” does not include (i) benefits received by the parent from means-tested public assistance programs, including, but not limited to, Temporary Assistance for Needy Families, Supplemental Security Income, and the Supplemental Nutrition Assistance Program or (ii) benefits and income received by the parent for other children in the household, including, but not limited to, child support, survivor benefits, and foster care payments. Social security disability and retirement benefits paid for the benefit of the subject child must be included in the disabled or retired parent’s gross income for purposes of calculating the parent’s child support obligation, but the parent is entitled to a child support credit for the amount of benefits paid to the other party for the child. “Gross income” includes maintenance treated as taxable income for federal income tax purposes to the payee and received pursuant to a court order in the pending proceedings or any other proceedings and shall be included in the payee’s gross income for purposes of calculating the parent’s child support obligation.*

Furthermore, caselaw includes the following in determining gross income:

| Topic   | Court Case  |
|---|---|
| Tax refund attributable to a maintenance payment to a former spouse                 | <u>In re Marriage of Pylawka</u> , 277 Ill. App. 3d 728,661 N.E.2d 505 (2nd Dist. 1996)     |
| Deferred compensation contributions   | <u>Posey v. Tate</u> , 275 Ill. App. 3d 822, 656 N.E.2d 222 (1st Dist. 1995)                |
| Military allowance  | <u>In re Marriage of McGown</u> , 265 Ill. App. 3d 976,638 N.E.2d 695 (1st Dist. 1994)      |
| Capital account to which a spouse’s business made contribution based on performance | <u>In re Marriage of Winne</u> , 239 Ill. App. 3d 273,606 N.E.2d 777 (2nd Dist. 1992)       |
| Severance pay received in year before support was due                               | <u>In re Marriage of Benkendorf</u> , 352 Ill. App. 3d 429,624 N.E.2d 1241 (1st Dist. 1993) |
| Income from investments and bonuses received from a closely held corporation        | <u>In re Marriage of Olson</u> , 223 Ill. App. 3d 636, 585 N.E.2d 1082 (2nd Dist. 1992)     |
| Bond and security income  | <u>In re Marriage of Harmon</u> , 210 Ill. App. 3d 92,568 N.E.2d 737 (4th Dist. 1990)       |

|  |  |
|--|--|
| Non-recurring income   | <u>In re Marriage of Hart</u> , 194 Ill. App. 3d 839,551 N.E.2d 737 (4th Dist. 1990)   |
| Local government firefighter disability income   | <u>People ex rel Meyers v. Kidd</u> , 308 Ill. App. 3d 593, 720 N.E.2d 11255 (5th Dist. 1999)  |
| Social security disability benefits (non-SSI)  | <u>Dept. of Public Aid ex rel Lozada v. Rivera</u> , 324 Ill. App. 3d 476, 755 N.E.2d 548 (2nd Dist. 2001)   |
| Military person's quarters allowance   | <u>In re Marriage of Baylor</u> , 324 Ill. App. 3d 213, 753 N.E.2d 1264 (4th Dist. 2001)   |
| Personal injury settlements representing reimbursement for lost wages or earnings      | <u>Villanueva v. O'Gara</u> , 231 Ill. App. 3d 481, 595 N.E.2d 1349 (3rd Dist. 1992)   |
| Non-recurring sources of income from the sale of a business and parcels of real estate | <u>In re Marriage of Miller</u> , 231 Ill. App. 3d 213, 675 N.E.2d 985 (3rd Dist. 1997)  |
| Payments under a Federal Employers Liability Act claim                                 | <u>Illinois Dept. of Public Aid ex rel Jennings v White</u> , 286 Ill. App. 3d 213, 675 N.E.2d 985 (3rd Dist. 1997)  |
| Proceeds from spouse's stock options from employer, when exercised                     | <u>Colangelo v. Sebela</u> , 355 Ill. App. 3d 383, 822 N.E.2d 571 (2nd Dist. 2005)   |
| Veteran's Administration disability benefits   | <u>In re Marriage of Pope-Clifton</u> , 355 Ill. App. 3d 478, 823 N.E.2d 607 (4th Dist. 2005)  |
| Non-recurring disbursements from spouse's individual retirement account                | <u>In re Marriage of Lindman</u> , 356 Ill. App. 3d 462, 824 N.E.2d 1219 (2nd Dist. 2005), <u>but see In re Marriage of O'Daniel</u> , 282 Ill. App. 3d 845,850 (4th Dist. 2008) |
| Spouse's annual bonus and automobile allowance   | <u>Einstein v. Nijim</u> , 358 Ill. App. 3d 263,831 N.E.2d 50 (4th Dist. 2005)   |
| Gifts that are not loans   | <u>In re Marriage of Rogers</u> , 213 Ill. 2d 129, 820 N.E.2d 386 (2004).  |