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Family Law Issues in Agriculture: Child Support

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Child support in most states is largely formulaic (i.e., a math equation)—basic support is typically calculated by looking at the income and qualified deductions of each parent. However, for most involved in farming and ranching or other kind of agri-business, finding the numbers for the math equation is anything but straightforward. This figure is also used to help calculate child add-on expenses

such as:

Calculating Support

The exact equation for calculating child support does vary from state to state. In some states like New York, an income cap is used. Nearly every state has “deviation factors” that allow the court to adjust basic child support either upwards or downwards based on the statutory factors (e.g., standard of living the child would have enjoyed had the household stayed intact; special needs/medical needs of the child; financial resources of the child).

Business owners, including farmers, ranchers, and food entrepreneurs, do not have straight-forward income. Accelerated depreciation, prepaids, and other deductions that support living expenses can be added back to the Obligor’s income for purposes of this equation. Courts typically have discretion on any such adjustments. If the farm or agri-business pays for living expenses, such as housing, mobile phone, vehicle expenses, food/entertainment, then the court can also input this as income for child support purposes.

Example: Farmer John used accelerated depreciation for a \$100K combine over 1 year. The family farm also pays for Farmer John’s cellular phone bill, truck/ vehicle expenses and

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housing expenses. Farmer Susie can argue that said monies be added back to John's IRS income of \$25K when calculating child support – this is discretionary upon the court and varies from state to state.

Emancipation

The age of emancipation for child support purposes varies from state to state. Some states, like New York, choose an age of emancipation of 21 years, while most states choose the age of 18 or graduation from high school, whichever is later (but no more than age 19). Additionally, the child will also be considered emancipated upon marriage or entry into the military. This is a negotiated point with farm divorces as the parents may voluntarily agree to extend child support obligation through the age of 22 or through an undergraduate degree (or even graduate school, if applicable). Oftentimes, courts will allow parties to seek post-majority support if the child is attending college. Parents can also seek court intervention to extend the date of emancipation if the child is of special needs and is dependent on the parents.

Post-Secondary Expenses or Post-Majority Support

College expenses are a hot topic in divorces. Sometimes divorcing couples choose to wait until the children are at the age of 16 or 17 and college feels more imminent while others want to address the issue at the time of the divorce. Courts will often cap required contributions to college to a cap based on tuition for the state university; however, parents can agree on a lower or higher cap depending on the circumstances and income of the parties.

Life Insurance

Life insurance can be used as payment security for child support payments (including college expenses) in the event of death. This is usually a negotiated point; it can be ordered by the court, but it is typically voluntary. Term life insurance is used in these instances and the required amount can decrease each year and as the total child support obligation decreases. This may also be done for spousal support, if applicable.

Modification

Importantly, child support can be revisited. Most states allow for child support to be modified when there has been a substantial change in circumstances (e.g., significant change in income). Some states specify that either party may revisit support after a certain number of years. Divorcing parents may choose to exchange tax returns every year to help ascertain if child support should be adjusted; some refer to this annual check-up as a "true up" and require the same in their divorce settlement agreement.

Conclusion

As one can imagine, this can become a problematic math equation because it requires a thorough review of tax returns and other business financials. Farmers, ranchers, and agri-business owners are advised to

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consult an experienced family law attorney with a food and agriculture background to help negotiate a fair agreement for child support.

For more information:

Cari B. Rincker et al., ONWARD AND UPWARD: GUIDE FOR GETTING THROUGH NEW YORK DIVORCE AND FAMILY LAW ISSUES (2015) available at <https://www.amazon.com/Onward-Upward-Getting-Through-Divorce/dp/0692556540>

Cari B. Rincker, “I’m Talking About the Big D and I Don’t Mean Dallas” (May 2019), available at <https://www.slideshare.net/rinckerlaw/im-talking-about-the-big-d-family-law-issues-in-agriculture>

American Academy of Matrimonial Lawyers, Online Book store, available at <https://aaml.org/store/ListProducts.aspx?catid=704530>

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