

Child Support Recalculation Program

Dealing with Self-Employment Income

The Child Support Recalculation Program's (RP's) goal is to increase access to justice and assist as many clients as possible by administratively recalculating their court-ordered child support. Special challenges can arise in dealing with clients who have self-employment income. Some self-employment cases cannot be handled by RP and need court involvement instead.

Self-employed people can be eligible for certain benefits and income tax deductions that salaried employees are not. Depending on the type and extent of self-employment income, courts may add some of those benefits or deductions back into the calculation when deciding on the self-employed person's income for child support purposes. To make this decision, judges can do a comprehensive review of the self-employed party's finances, examining business and personal financial documents and questioning the party on those documents. Since these reviews involve investigation and discretion, they are not suitable for an administrative recalculation program like RP.

Unlike a court, RP cannot use discretion to take into account each person's particular situation. RP has a simple, administrative process that recalculates child support based on Line 150 of the parent's filed income tax return as assessed by Canada Revenue Agency. There is a risk that in self-employment situations, tax documents may show less income than is actually available for child support purposes. For this reason, Alberta Justice did public consultation to ask how self-employment situations should be handled. The results of these consultations guided the policies explained below.

Minimal income or minimal expenses in a sole proprietorship

A sole proprietorship is a business that is not incorporated and that is owned by one person. This is different from a corporation (where the business is registered (incorporated) under a *Business Corporations Act* and has shareholders and directors) or a partnership (where two or more people own an unincorporated business).

Many persons have sole proprietorship "side businesses" that contribute only a small amount to their overall earnings. Some examples are salaried employees who sell crafts on weekends or use their acreage for a small farming operation. Other persons may have significant self-employment earnings, but claim very few income tax deductions against their self-employment income. This includes many contractors who operate from their homes to sell advice or research or writing services.

In these cases of *minimal sole proprietorship income* or *minimal sole proprietorship expenses*, Line 150 of the tax return is generally a reasonable indication of what the person's actual income is. The risk is low that Line 150 shows less income than is available for child support. RP can therefore complete a recalculation if the income tax information shows:

- **gross self-employment income** from a sole proprietorship that is **20% or less** of the person's **total income from other sources**, or

- **business expenses** from a sole proprietorship that are **20% or less** of the **gross business income**.

When consent from the other party is required

As explained above, RP automatically completes recalculations in some sole-proprietorship situations. RP also recalculates automatically if the self-employment income shown benefits the non-self employed party, such as:

- when the payor's self-employment income will result in an *increase* in child support; and
- if the recipient's self-employment income will result in a *decrease* to the payor's child support.

When income disclosure to RP shows self-employment income **that will not benefit the non-self employed party in the recalculation**, RP first asks for their consent before recalculating:

- if a sole-proprietor's business earnings or expenses are not considered *minimal*,
- if the parent's tax return shows earnings from a partnership, or
- if the parent is involved in a private corporation.

Consent is sought in cases involving partners and shareholders/directors of corporations because these persons have opportunities to control how much income they earn. Some choose to reduce their income taxes by taking less income from their corporations or partnerships and/or by "income splitting" with other shareholders who are family members. Some may also do this purposely to avoid higher child support payments. This is an area where courts often carefully examine the party's and business' financial records and circumstances and then apply their discretion.

In asking for consent, RP sends a letter to the non-self employed party asking for a written response. The non-self employed person can review the income tax information from the self-employed parent and may consult with a lawyer and/or accountant before making their decision. If RP does not receive their consent, RP will not recalculate for that particular year.

Self-employment losses

RP's regulations require the program to add back all self-employment **losses** into the Line 150 total. This prevents a person with employment earnings from using self-employment losses to decrease their guideline income.

Court involvement

Parties may involve the courts if RP's policies are not appropriate for their particular situation, or if RP cannot help them when a recalculation of child support is needed. Where RP's involvement is not appropriate, the courts can order that the child support amount not be recalculated by RP.

How to contact Alberta's Child Support Recalculation Program

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RP is unable to see clients in person. Please contact us by mail, phone, fax or e-mail.