

Tennessee Department of Human Services

Child Support Division



A Guide to Tennessee Income Shares

DHS Rule Chapter 1240-2-4

2008 Edition

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I. Background

The Child Support Amendments of 1984 (PL 98-378), 42 U.S.C. §§ 653-669, in particular §667 and 45 C.F.R. § 302.56, are part of the federal law implementing Title IV-D of the Social Security Act which establishes the processes and procedures for the operation of a child support enforcement program in every state. These provisions require that states establish guidelines for setting child support award amounts. The Guidelines, which are rebuttable presumptions, must be applied by all persons in the state whose duty it is to set child support award amounts in all child support cases. In Tennessee, these requirements are implemented pursuant to T.C.A. §§36-5-101(e); 71-1-105(12), (16), and 71-1-132. Current Guidelines appear in Chapter 1240-2-4 of the Rules of the Tennessee Department of Human Services, and may be found at: <http://www.state.tn.us/sos/rules/1240/1240-02/1240-02-04.pdf> .

The Department of Human Services replaced the Flat Percentage of income version of guidelines for child support with an Income Shares version, effective January 18, 2005. The Income Shares Guidelines were amended effective June 20, 2006. The new amendments, effective July 22, 2008, further advance the process of determining support, update the figures for self-employed persons, low income parents, and imputed income.

II. Calculation Tools

A. Worksheets: Reference: 1240-2-4-.08

The Income Shares rules use two (2) Worksheets to calculate the parent's financial obligation for child support. Both parents and a non-parent caretaker in a case use the same Child Support Worksheet and Credit Worksheet. The use of the Worksheets promulgated by the Department is mandatory in order to ensure uniformity in the calculation of child support awards pursuant to the Rules. A completed Worksheet must be maintained as part of the official record of the tribunal either by filing them as exhibits to be kept in the tribunal's record or as attachments to the child support order.

1. Child Support Worksheet: Reference: 1240-2-4-.08(4)

The Child Support Worksheet is used for calculating the child support obligation of both parents. The Child Support Worksheet requires information about the children for whom support is being set or modified, both parents' income, and support being paid by either parent for other children not subject to the current order . The Worksheet is used to establish the percentage of income (PI) of each parent that determines the allocation of basic support and mandatory and certain other expenses. The Worksheet also requires information about the amount of parenting time each parent has with the child in order to determine whether adjustments to support amounts should be made for greater or lesser amounts of time spent with the children, and information about deviations to be added to the presumptive child support order.

State of Tennessee – Child Support Worksheet

Part I. Identification

Indicate the status of each parent or Caretaker by placing an "X" in the appropriate column

Name of Mother: _____
 Name of Father: _____
 Name of non-parent Caretaker: _____
 TCSES case #: _____
 Docket #: _____
 Court name: _____

PRP ARP SPLIT

Name(s) of Child(ren)	Date of Birth	Days with Mother	Days with Father	Days with Caretaker

Part II. Adjusted Gross Income

Use Credit Worksheet to calculate line items 1d and 1e

- 1** Monthly Gross Income
- 1a** Federal benefit for child
- 1b** Self-employment tax paid
- 1c** Subtotal
- 1d** Credit for in-home children
- 1e** Credit for not-in-home children
- 2** Adjusted Gross Income (AGI)
- 2a** Combined Adjusted Gross Income
- 3** Percentage Share of Income (PI)

	Mother / Column A	Father / Column B	Non-parent Caretaker / Column C
1	\$	\$	
1a	+	+	
1b	-	-	
1c	\$	\$	
1d	-	-	
1e	-	-	
2	\$	\$	
2a	\$		
3	%	%	

Part III. Parents' Share of BCSO

- 4** BCSO allotted to primary parent's household
- 4a** Share of BCSO owed to primary parent
- 5** Each parent's average parenting time
- 6** Parenting time adjustment
- 7** Adjusted BCSO

4	\$	\$	\$
4a	\$	\$	
5			
6	\$	\$	
7	\$	\$	

Part VI. Additional Expenses		Mother / Column A	Father / Column B	Non-parent Caretaker / Column C
8a	Children's portion of health insurance premium	\$	\$	\$
8b	Recurring Uninsured Medical Expenses	\$	\$	\$
8c	Work-related childcare (payroll-deducted)	\$	\$	\$
9	Total additional expenses	\$	\$	\$
10	Share of additional expenses owed	\$	\$	
11	Adjusted Support Obligation (ASO)	\$	\$	

Part V. Presumptive Child Support Order / Modification of Current Support		Obligation Column		
12	Presumptive Child Support Order (PCSO)	\$	\$	\$

* Enter the difference between the greater and smaller numbers from Line 11, except in non-parent caretaker situations.

Low Income? _____ (N = 15% Y = 7.5%)

Current Order Flat % _____ (N / Y)

Modification of Current Child Support Order	13a	Current child support order amount for the obligor parent	\$	\$	
	13b	Amount required for significant variance to exist	\$	\$	
	13c	Actual variance between current order and PCSO / BCSO	\$	\$	

Part VI. Deviations and FCSSO					
Deviations must be Substantiated by written findings in the Child Support Order	14	Deviations (Specify):	\$	\$	

15	Final Child Support Order (FCSSO)	\$	\$		
16	FCSSO adjusted for federal benefit, Line 1a,	\$	\$		

Comments, Calculations, or Rebuttals to Schedule

Preparer's Use Only

Name: _____ Date: _____

Title: _____

2. Credit Worksheet: Reference: 1240-2-4-.08(5)

The Credit Worksheet is used for determining the amount of credit a tribunal shall consider to reduce either parent's gross income to allow for the support provided to a parent's qualified other children.

State of Tennessee – Credit Worksheet

Part I. Identification

		PRP	ARP	SPLIT
Indicate the status of each parent or Caretaker by placing an "X" in the Appropriate column	Name of Mother:			
	Name of Father:			
	Name of non-parent Caretaker:			
	TCSSES case #:			
	Docket #:			
	Court name:			

Part II. Other Children

		Column A	Column B
Parent Income Information	1 Applicable gross income from credit worksheet	\$	\$
In-Home Children	2 Below, list qualified children living in the parent's home (if none, skip to line 7):		
	Name(s) of Child(ren) for PRP Date of Birth Name(s) of Child(ren) for ARP Date of Birth		

	3 Number of qualified children living in the parent's home	#	#
	4 Theoretical child support order (this parent's income on CS Schedule for number of children from line 4)	\$	\$
	5 75% of theoretical child support order from line 5	\$	\$
Not-In-Home Children	6 Below, list qualified children not living in the parent's home (if none, skip to Part III):		
	Name(s) of Child(ren) for PRP Date of Birth Name(s) of Child(ren) for ARP Date of Birth		

	7 Number of qualified children not living in the parent's home	#	#
	8 Average documented monetary support over last 12 months	\$	\$
	9 Theoretical child support order (this parent's income on CS Schedule for number of children from line 8)	\$	\$
	10a 75% of theoretical child support order from line 10	\$	\$
	10b Allowable credit for not-in-home children	\$	\$

B. Child Support Schedule: Reference: 1240-2-4-.09

The Child Support Schedule (“CS Schedule” or “Schedule”) is a chart which displays the Basic Child Support Obligation (BCSO) in dollar amounts which correspond to various levels of combined Adjusted Gross Income (AGI) of the children’s parents and the number of children for whom a child support order is being established or modified.

A column on the left margin of the page contains various levels of the parents’ monthly combined adjusted gross income in \$50.00 increments from \$150.00 to \$28,250 per month. At the top of the page moving left to right are columns headed by numbers of children to be supported in the case being determined. The cell at the intersection of the parents’ income with the number of children to be supported contains the basic child support obligation (BCSO) that is entered on the Child Support Worksheet. The BCSO is the amount of support allocated for the care of the child based upon the combined adjusted gross income of both parents, not just the income of the alternate residential parent or obligor parent. Each parent’s share of that obligation will, in the majority of cases, be a percentage of the full BCSO amount, although it could be the whole amount if the other parent is determined to have no countable income.

The obligation amounts from the CS Schedule make certain basic assumptions about the family income. **Rule 1240-2-4-.03(6)(b)**. Each BCSO amount takes into consideration federal withholding and FICA contributions of both parents. Therefore, unlike the Flat Percentage model, no calculation for net income is necessary. (There may be a deduction from gross income for self-employment taxes in applicable cases.)

The Schedule assumes that all families with children incur certain basic child-rearing expenses and includes an average amount to cover these basic expenses for various levels of the parents’ combined income and number of children. Housing, food, and transportation comprise the bulk of these basic child-rearing expenses. Clothing, entertainment, and costs associated with a public school education are also included in the BCSO, but comprise a relatively small share of total expenditures. The amount spent on certain other expenses (such as the cost of the child’s health care) varies among households and, in some households are not incurred at all (such as childcare), therefore, these expenses are not included in the BCSO. The Schedule, and, therefore, the BCSO, does not include amounts for extraordinary educational expenses for private or special schooling or for other significant special expenses associated with the social, athletic or cultural development of the child. These may be included in the obligation by deviation.

III. Child Support Worksheet – Part I – Identification

A. General Information

1. Use only 1 worksheet for all child support calculations – including non-parent caretaker situations with both parents available.
2. When both parents are available in non-parent caretaker situations, all caretakers will be identified on the same Worksheet – the non-parent caretaker will be the PRP and both parents will be an ARP.

3. When both parents are available in non-parent caretaker situations, put both TCSES numbers and / or docket numbers on the same line, entering the Mother's information first, then the Father's information.

B. Caretaker Designations

1. **Primary Residential Parent (PRP) –**

This is the Guidelines designation for the parent with whom the child resides fifty percent (50%) or more of the time – previously known as the “custodial parent.” Whenever present in a particular case, a non-parent caretaker will always be a child's PRP.

2. **Alternate Residential Parent (ARP) –**

This is the Guidelines designation for the parent with whom the child resides less than fifty percent (50%) of the time – previously known as the “non-custodial parent.”

3. These new terms are consistent with those used in T.C.A. § 36-6-402 relative to Parenting Plans.

C. Definition of “Days” –

1. For the purpose of determining Parenting Time Adjustments, a “Day” is defined as more than 12 hours within a 24-hour period, rather than a calendar day, and will presume the necessary expenditure of resources. Begin counting the “Day” at the time the ARP begins spending time with the child. Judicial discretion will be permitted in appropriate situations. Rules will continue to allow either parent to argue that the PTA is not appropriate in their particular situation.
2. In extraordinary circumstances, as determined by the tribunal, partial days of parenting time may be considered for credit. An example of an extraordinary circumstance is a situation in which the ARP picks up the child after school three (3) or more days a week and keeps the child until eight (8) o'clock p.m. This three (3) day period of routinely incurred parenting time of shorter duration may be cumulated as a single day.

D. Parenting Type Situations.

1. **Standard Parenting**

- a. All of the children associated with the child support order in a particular case reside more than fifty percent (50%) of the time with the same parent (the PRP). Thus, the same parent is the PRP for all the children being supported by the order, and the other parent is the ARP for all children.

- b. So long as all children are spending less than fifty percent (50%) of the time with the ARP, the children don't need to all have the same amount of parenting time with the ARP. **Reference: 1240-2-4-.02(23)**

Standard Parenting Example: Suppose there are three minor children in the case being determined. Child 1 spends 350 days a year with the primary residential parent, Child 2 spends 250 days a year with the primary residential parent, and Child 3 spends 200 days a year with the primary residential parent. All 3 children spend more than 50% of the time with the same parent; this is standard parenting.

2. Split Parenting

- a. There must be at least two children, and at least one child must reside with each parent more than fifty percent (50%) of the time. **Reference: 1240-2-4-.02(22).**
- b. Each parent's support obligation is calculated for the number of children who spend more than fifty percent (50%) of the time **with the other parent**. **Rule 1240-2-4-.02(22) & -.08(6)c2.**

Split Parenting Example:

Mother and Father have three minor children in the case being determined. Child 1 spends 350 days a year with the Mother, Child 2 spends 150 days a year with the Mother, and Child 3 spends 200 days a year with the Mother. In this example, Mother is the PRP for Child 1 and Child 3. Father is the PRP for Child 2.

3. Equal or 50 / 50 Parenting

- a. The child spends exactly fifty percent (50%) of the time (or 182.5 days) with each parent.
- b. When combined with a standard parenting situation, the PRP for all other children will be deemed the PRP for the 50 / 50 child.
- c. When combined with a split parenting situation, the Mother will be deemed the PRP for the 50 / 50 child.

IV. Child Support Worksheet – Part II – Adjusted Gross Income

A. Columns

1. Column A is always used for Mother's information.
2. Column B is always used for Father's information.
3. Column C is always used for non-parent caretaker's information. This Column will be utilized only in Parts III and IV of the Worksheet.

B. Line 1 – Gross Income: Reference: 1240-2-4-.02(9) and 1240-2-4-.04(3)

1. When calculating child support obligations for children using the income shares model, the gross income of both parents will be used in the calculation. The definition of income generally includes all income from all sources.

Reminder – The gross income of non-parent caretakers and step-parents is not considered.

2. Excluded from gross income are: (1) child support payments received by either parent for the benefit of a child of another relationship; (2) benefits received from means-tested public assistance programs set out in the Rules; (3) the child's income from any source, and (4) adoption assistance payments.

Example of calculating gross income:

PRP works making \$15 per hour and works 30 hr/wk

$$\text{\$ } 15 \times 30 = \text{\$ } 450/\text{wk}$$

$$\text{\$ } 450 / \text{wk} \times 52 \text{ wk} / \text{yr} = \text{\$ } 23,400 / \text{yr}$$

$$\text{\$ } 23,400 \div 12 \text{ months} = \text{\$ } 1950 \text{ monthly gross income}$$

ARP works making \$ 23.00 per hour and works 40 hr/wk

$$\text{\$ } 23 \times 40 = \text{\$ } 920 / \text{wk}$$

$$\text{\$ } 920 / \text{wk} \times 52 \text{ wk} / \text{yr} = \text{\$ } 47,840 / \text{yr}$$

$$\text{\$ } 47,840 \div 12 \text{ months} = \text{\$ } 3986.67 \text{ monthly gross income}$$

3. Imputed Income – Reference: 1240-2-4-.04(3)(d)

a. Reasons to Impute Income –

- (1) There is a finding of willful and voluntary unemployment or underemployment;

- (2) There is an absence of other reliable evidence of income –
- (3) The parent owns non-income producing assets to which a reasonable rate of return can be imputed.

b. Willful and Voluntary Unemployment or Underemployment

When parents are living together, their choices are made jointly. Together they may decide one parent will take a lower paying job to take occupational training, or spend more time at home, or fulfill some other need, and the family reduces expenses, or the other parent increases income to meet the needs of the family. When parents are living separately, those choices are seldom made jointly. One parent's choice can have a devastating impact on the financial support available for the children. Many times the state will have to support the children through food stamps, Families First (TANF) benefits, or TennCare when one parent voluntarily reduces income.

Every parent is responsible for his/her deliberate choices, for example, to leave employment for a lower paying job or a part-time job, or to attend classes, or to engage in behavior that will cause the parent to lose employment. If the deliberate choice is not reasonable in light of the parent's obligation to support his/her children and does not benefit the children, the tribunal can assess the parent's ability to earn and set child support based on that assessment, rather than on the actual lower income that exists as a result of the parent's choices. The determination of the reasonableness of the occupational choice is not limited to those motivated by an intent to avoid or reduce the payment of child support, but can be based on any intentional choice or act that affects an obligor parent's income. This intentional choice includes criminal activity, which will not serve as good cause for reducing child support. A parent who is incarcerated is deemed to have intentionally chosen behavior which results in the inability to adequately support that parent's children. On the other hand, the decision of a parent to attend additional classes which, within a reasonable period of time, will result in a significant increase in the ability to support and will benefit the children and would likely not be viewed as having become underemployed under that set of facts.

If the parent's voluntary choices result in reduced income and inability to support the parent's child, then the tribunal should calculate the parent's income based on evaluation of the parent's skills, education, and training, and set support on the income the parent should be earning.

Tennessee also has a public policy to support the armed forces of the United States. Therefore, when an individual enlists, is drafted, or is activated from a Reserve or National Guard unit, for full-time service in

the Armed Forces of the United States, that choice or requirement alone shall not render the individual subject to imputed income for voluntary unemployment or underemployment if, as a result, the parent's income is reduced due to the choice of enlistment or because of the involuntary activation or conscription.

Because the income of the custodial parent is relevant an analysis to determine willful and voluntary unemployment or underemployment now *also* applies to the custodial parent, including custodial parents receiving Families First Benefits. Some of these parents may actually be willfully and voluntarily unemployed or underemployed and, in such cases, should be subject to the establishment of income if the analysis warrants that. **However, it is the position of the Department that custodial parents should not be deemed willfully and voluntarily unemployed or underemployed based solely on the receipt of Families First Benefits.** As with every parent, the tribunal should make a case-by-case determination. In so doing, the Rules provide for consideration of the parent's education and training as well as efforts to obtain additional education or training that may, ultimately, enhance the standard of living of the child. Parents on Families First should, generally, not be considered willfully and voluntarily unemployed or underemployed whose record in the program and work experience do not demonstrate recurring receipt of Families First benefits without good reason, and the parent is complying with a Personal Responsibility Plan.

A stay-at-home parent should not automatically be deemed to be willfully and voluntarily unemployed or underemployed. In all cases, a parent's education, prior work experience, and circumstances prior to separation or divorce should be considered.

c. Other Reliable Evidence of Income

In an initial determination to set support, **income may be imputed** to individual parents who fail or refuse to produce reliable evidence of income where the tribunal has no other reliable evidence of income or income potential. *Both parents are equally subject to having income imputed.* For this reason, and because the median annual gross income for males in Tennessee is \$8,289 more than for females in Tennessee, the Department determined that gender-specific information was more appropriate than an average median income figure. The median gross income figures have been obtained from the 2006 Census data.

- (1) Annual median gross income for the Tennessee female population is \$ \$29,300

- (2) Annual median gross income for the Tennessee male population is of \$ 37,589

C. Adjustments to Gross Income

1. **Line 1a** – Federal benefits, including Social Security paid to a child on a parent’s account is included in the income of the applicable parent (ultimately, to be subtracted from that parent’s support obligation). This provision is applicable to both parents. Reference: 1240-2-4-.04(3)(a)5
2. **Line 1b** – If self-employed, the parent can deduct from gross income any amount of self-employment tax actually paid. Reference: 1240-2-4-.04(4)
3. **Qualified Other Child Credits**

- a. A child is an “other child” if not subject to the child support order under consideration.
- b. A child is “qualified” if a parent is legally responsible for, and is actually supporting the child.

The parent seeking credit must submit proof of the legal relationship between the parent and the child, **and** proof of support.

- (1) Proof of the legal relationship could include, but is not limited to, a tribunal order, a valid Voluntary Acknowledgment of Paternity, or a birth certificate showing the parent’s name.
 - (2) Proof of support does not include payment on arrears.
- c. Each minor child of a parent is counted for either support or credit **in only one category**. In other words, a child can only be one of the following:
 - (1) The subject of the order before the court, or
 - (2) An other qualified children living 50% or more of the time in the parent’s home, or
 - (3) An other qualified child living in the parent’s home less than 50% of the time.
 - d. Both parents are entitled to a credit against gross income for any support provided to a parent’s “qualified other children.”

The amount of the credit is calculated on the Credit Worksheet (**Rule 1240-2-4-.08(4)(c)(7)**). The only deduction used in calculating the theoretical order is for any self-employment taxes paid by the parent. *No*

other deductions or adjustments are made to the gross income of the party claiming the credit for purposes of calculating the theoretical order.

- e. Income of, and support provided by, the child's other parent is not considered when calculating a credit for a qualified other child. [Rule 1240-2-4-.04(3)(a)]

f. Line 1d – Credit for “In-Home” Children

- (1) If the child for whom the parent is claiming credit resides **fifty percent (50%) or more** of the time with that parent, proof of residence with the parent creates a presumption of support for the child, such as in the situation where a parent has re-married and has additional children by that marriage that are living with the parent. No separate proof of amounts paid for the support of “other” children living with the parent is required. **Credit is calculated on Lines 2 – 5 of the Credit Worksheet.**

- (2) The amount of the credit is 75% of a theoretical support order.

Credit for “In-Home” Children –

If the parent proves legal responsibility and that child resides with parent 50% or more of the time, actual support is assumed.

Theoretical order = \$ 500 / month

\$ 500 x 75% = \$ 375 / month

Credit is \$ 375

g. Line 1e – Credit for “Not-In-Home” Children

- (1) Support paid for all children residing less than fifty percent (50%) of the time with the parent claiming the credit is included in this calculation, including support paid pursuant to pre-existing and subsequent support orders. The parent must provide proof of legal relationship and proof of financial support – for example, cancelled checks payable to the PRP or copies of cancelled checks, clerk's record of child support payments, DHS record of child support payments. **Credit will be calculated on Lines 6 – 10b of the Credit Worksheet.**

- (2) The credit is the total amount of support provided to all children living less than 50% of the time with the parent claiming the credit, up to 75% of the theoretical support order.

- (3) The total amount of support provided **may** include in-kind remuneration reduced to a dollar figure approved by the court in the case of the qualified other child or affirmed by the receiving parent in that case. [Rule1240-2-4-.04(5)(e)2(ii)(III)]

Children not in the home:

Parent claiming credit proves legal responsibility and actual financial support.

Example 1:

Theoretical order = \$ 500 monthly

\$ 500 x 75% = \$ 375 monthly

Actual financial support = \$ 200 monthly

Credit is \$ 200 monthly because the actual support is less than the theoretical order.

Example 2:

Theoretical order = \$ 300 monthly

\$300 x 75% = \$ 225 monthly

Actual financial support = \$ 250 monthly

Credit is \$ 225 monthly because the theoretical order is less than the actual support.

D. Line 2 – Adjusted Gross Income (AGI)

1. Once a parent’s gross income has been determined and all credits applied, the subtotal is called the Adjusted Gross Income (AGI).
2. An amount is entered for each parent.

Example of adjustment to income (PRP):

<u>Primary Residential Parent (PRP)</u> gross monthly income	\$ 19500
Subtract self-employment tax	- 0
Subtract credit for “In-Home” children (1 child = \$ 412 x 75% = \$ 309)	- 309
Subtract credit for “Not-In-Home” children	- 0
Subtotal (Adjusted Gross Income for PRP)	<u>\$ 1641</u>

Example of adjustment to income (ARP):

<u>Alternate Residential Parent (ARP) gross monthly income</u>	\$ 3986.67
Subtract self-employment tax	- 0.00
Subtract credit for “In-Home” children (2 children = \$ 1027 x 75%)	- 770.25
Subtract credit for “Not-In-Home” children	- 0.00
Subtotal (Adjusted Gross Income for ARP)	\$ 2616.42

E. Line 2a – Combined Adjusted Gross Income

1. This total is the sum of each parent’s individual adjusted gross income.
2. The amount of the combined adjusted gross income appears in a space to the left of the “Mother” column.

F. Line 3 – Percentage of Income (PI)

1. One of the basic concepts of Income Shares is that each parent’s pro-rata share of the combined adjusted gross income is used to allocate responsibility for payment of both the basic expenses as well as the additional expenses, *i.e.*, health care expenses, child care, recurring uninsured medical expenses, and, in the court’s discretion, also for allocation of extraordinary educational or special expenses.
Reference: 1240-2-4-.03 (f)1.(iii)
2. Financial responsibility is allocated according to each parent’s percentage of income (PI).

Each parent’s PI is calculated by dividing the parent’s individual AGI by the combined AGI of both parents.

Example of each parent’s PI

PRP’s Adjusted Gross Income (see previous example)	\$ 1641
ARP’s Adjusted Gross Income (see previous example)	+ \$ 2616
Combined Adjusted Gross Income (AGI)	\$ 4257

PRP’s pro-rata share of total financial obligation	\$ 1,641 ÷ \$ 4,257 = 39% (PI)
ARP’s pro-rata share of total financial obligation	\$ 2,616 ÷ \$ 4,257 = 61% (PI)

V. Child Support Worksheet – Part III – Parents’ Share of BCSO

A. Line 4 – BCSO allotted to primary parent’s household

1. The full BCSO obtained from the Child Support Schedule is allocated to the household of the primary parent, whether that is the Mother, Father, or non-parent caretaker.
2. To determine the Basic Child Support Obligation (BCSO) for each parent, use the parents’ *combined adjusted* gross income together with the number of children to be supported in the case being considered. Look on the **CS Schedule** in **Rule 1240-2-4-.09**. In the left column, find the *combined adjusted* gross income, move across the line to the column for the number of children to be supported. The number in the box where the income and the number of children intersect is the amount of the **total basic child support obligation** for both parents. Enter the BCSO on **Line 4 of the CS Worksheet** in the column of the primary parent.
3. If there is combined adjusted gross income on Line 2a greater than zero, then the minimum BCSO amount entered on Line 4 will be \$100. Deviation will be available in appropriate situations.

Example of determination of Basic Child Support Obligation:

PRP’s Adjusted Gross Income (see previous example)	\$1,641
ARP’s Adjusted Gross Income (see previous example)	+ <u>\$2,617</u>
Combined Adjusted Gross Income	\$4,528

Child Support Schedule shows for the Combined Adjusted Gross Income of \$ 4,528, the basic child support obligation for one child would be: **\$749**

Rounding Rule – When the Combined Adjusted Gross Income falls between amounts shown in the Schedule, round up to the next amount of Combined Adjusted Gross Income. **Reference 1240-2-4-.04(7)(b)**

4. The same line will be used for all parenting type situations, *i.e.*, standard, 50-50, split parenting, and non-parent caretakers.
 - a. In standard parenting, the amount will be placed in the column of the PRP. No amount will be entered in the ARP column.
 - b. **50 / 50 situations**
 - (1) The amount will be placed in the Mother’s column.

(2) If support is being calculated for a 50 / 50 situation in conjunction with a standard or split parenting situation, the amount will be placed in the Mother's column unless the Father is the primary parent in the standard parenting situation.

c. In split parenting, an amount will be entered for each parent as a PRP.

d. If there is a non-parent caretaker associated with the case, the amount will always be entered in Column C.

B. Line 4a – Share of BCSO owed to primary parent

This amount is the ARP's pro-rata share of the total BCSO entered on Line 4.

1. In standard parenting, the PRP's amount on this line will be zero.

2. In 50 / 50 situations, the Mother's amount on this line will be zero.

3. In split parenting, an amount will be entered for each parent as an ARP.

4. If both parents are available in a non-parent caretaker situation, an amount will be entered for each parent.

PI calculation in standard parenting situation –

From the example above, the BCSO amount that will be entered on Line 4 for the PRP is \$ 749. The ARP's share to be entered on Line 4a is \$ 749 x 61% or \$ 456.89.

PI calculation in a split parenting situation –

The amount to be entered on Line 4 for each parent will be determined by cross-Referencing on the Child Support Schedule the combined adjusted gross income with the number of children living with that parent more than 50% of the time.

The amount to be entered on Line 4a for each parent will be that parent's PI from Line 3 multiplied by the BCSO amount entered on Line 4 for the other parent.

C. Line 5 – Each parent’s average parenting time —

1. In standard parenting, the average for the ARP will include all the children listed in Part I of the Worksheet for whom the parent is the ARP.
2. In split parenting, the average for each parent will include all children for whom the parent is the ARP.
3. See explanation on page 10 for how to account for children spending 50% of the time with each parent.

Example for standard + 50/50 parenting –

Mother spends the following time with the children: Child A = 138 days; Child B = 86 days, and Child C = 182.5 days. The Mother average parenting time is $138 + 86 + 182.5 = 406.5 / 3 = 135$.

Example for split + 50/50 parenting –

Child A spends 138 days with Mother, Child B spends 86 days with Mother, Child C spends 182.5 days with Mother, and Child D spends 222 days with Mother. The Mother’s average parenting time is $138 + 86 = 224 / 2 = 112$. The Father’s average parenting time is $143 + 182.5 = 325.5 / 2 = 163$.

D. Line 6 – Parenting Time Adjustment (PTA) —

1. The amount of time a parent spends parenting a child is a factor to consider in the calculation of the amount of financial support that parent is obligated to provide. Under these Rules, the ARP’s pro-rata share of the BCSO is based upon the days of parenting time.
2. The amount of parenting time entered in Part I of the Child Support Worksheet is used to determine the amount of the parenting time adjustment.
3. **Adjustment for Decreasing Support**
 - a. For more than standard visitation beginning at 92 days.
 - b. A variable multiplier is applied to the BCSO to calculate the additional expenses associated with the additional parenting time of the ARP.

- c. Each parent is required to pay his / her pro-rata share of all child-rearing expenses in both households. The PTA is the PRP's pro-rata share of the ARP's child-rearing expenses.
- d. Will result in a zero obligation for basic expenses when each parent has 182.5 days of parenting time and exactly equal income
- e. May result in a PRP obligation when the ARP has a large share of parenting time and the PRP has a larger share of the income
- f. In 50 / 50 parenting situations, the adjustment will be placed in Father's column, except when combined with a standard parenting situation in which the Father is PRP for all other children.

Process for calculating parenting time credit –

$2 / 182.5 = .0109589$
 $.0109589 \times \text{No. of days of PT} = \text{variable multiplier (VM)}$
 $\text{VM times BCSO} = \text{Adjusted BCSO}$
 $\text{Adjusted BCSO} - \text{BCSO} = \text{ARP's additional child-rearing expenses}$
 $\text{Times PRP's PI} = \text{PRP's share of additional expenses} = \text{PTA}$
 $\text{ARP's share of BCSO} - \text{PTA} = \text{ARP's adjusted BCSO}$

Example –

$\text{BCSO} = \$ 1000,$
 $\text{ARP's BCSO} = \$ 600 \text{ or } 60\%$
 $\text{PT} = 140 \text{ days}$
 $2 / 182.5 = .0109589$
 $.0109589 \times 140 = 1.534246$
 $1.534246 \times 1000 = \$ 1534.25$
 $\$ 1534.25 - \$ 1000.00 = \$ 534.25$
 $\$ 534.25 \times 40\% = \$ 213.70$
 $\$ 600 - \$ 213.70 = \$ 386.30$

3. Adjustment for Increasing Support

- a. For less than standard visitation beginning at 68 days.
- b. Serves as a penalty – does not represent an adjustment to child rearing expenses.

Process for calculating parenting time (PT) penalty –

69 – No. of days of PT
Divided by 365 = multiplier
Multiplier times parent's share of BCSO = dollar increase
Added to BCSO

Example –

ARP's BCSO = \$ 600
PT = 64 days
69 days – 64 = 5 days
 $5/365 = .0136986$
 $0109589 \times \$ 600 = \$ 8.22$
 $\$ 8.22 + \$ 600 = \$ 608.22$

4. No PTA is calculated for parenting time between 68 and 92 days.
5. Parents may rebut the presumption that additional parenting time results in more expenses to an ARP or that less parenting time should be penalized.
6. **Reminder** – 182.5 days for each parent is not the same as split parenting - *Neal v Neal*, M2003-02703-COA-R3-CV, (Tenn. Ct. App. August 25, 2005), 2005 Tenn. App. LEXIS 453, confirms that child support must be addressed according to the Guidelines in every case - even with equal parenting time.

D. Line 7 – Adjusted BCSO —

1. Share of the BCSO, adjusted for parenting time, owed to the other parent.
2. In standard parenting situations, the amount in the PRP's column will be zero.
3. After application of the PTA, any negative amount shall be entered as a positive amount in the column of the other parent.
4. In 50 / 50 parenting situations, the obligation for the BCSO will be owed by the parent with the larger PI on Line 3.
5. If the parents have exactly the same income, and parenting time, each parent's share of the BCSO will be zero.
6. If the PRP has a larger income and the ARP has a large share of parenting time, support could be owed by the PRP to the ARP.

VI. Child Support Worksheet – Part IV – Additional Expenses

A. General Information.

1. There are certain expenses associated with the cost of rearing a child that are not included in the BCSO. The CS Schedule does not include the cost of the child's health insurance premium, work-related childcare costs, the children's uninsured medical costs, or extraordinary educational costs, because the actual cost of these expenses varies widely from household to household across the state. Health care related expenses and work-related child care are mandatory expenses that must be considered in calculating the child support obligation.
2. The Income Shares model includes in the child support obligation actual amounts paid by the parents or the non-parent caretaker for the child's share of a health insurance premium, recurring uninsured medical expenses, and work-related childcare.
3. Expenses should be averaged over one year to determine a monthly amount.
4. Both parents and / or non-parent caretaker are permitted to claim actual expenses in appropriate categories. [Rule 1240-2-4-.04(6)(f)(8)]
5. Expenses paid by a non-parent caretaker shall be entered on the appropriate line in Column C.
6. Expenses paid by a stepparent are not included in the calculation.
7. If the parenting plan specifies that either the PRP or the ARP is to pay 100% of an expense, no amount for that expense should be entered in Part IV so that payment of the expense will not be pro-rated between the parents. The parent responsible for payment of the expense should be specified in the Comment Section of the Worksheet and in the order.

B. Line 8a – Health insurance premium.

1. The order must provide for the health care needs of the children by insurance, if available at reasonable cost, and by division between the parties of any uninsured medical expenses.
2. No health insurance premium should be included on the Worksheet if coverage for the child supported by this order is provided at no cost to the parent.
3. **Reminder** - A TennCare premium is an applicable expense if actually being paid by a parent – HOWEVER, TennCare does not fulfill parent's responsibility to obtain insurance for child if other insurance is available at reasonable cost. [T.C.A. § 36-5-101(h)]

4. If the parent is paying the *child's* health insurance premium by payroll deduction or by direct payment prior to the tribunal action, the parent will get credit for that payment so that the insurance coverage provided by that premium is not interrupted. Both payroll deduction and direct payment are permitted because most health insurance plans will not accept less than full payment from the responsible parent, and the Department does not want the coverage to be interrupted if interruption is not absolutely necessary.

C. Line 8b – Recurring uninsured medical expenses.

1. This section includes fixed expenses that are known to be incurred each month, not covered by insurance. For example, this would include a co-pay for a chronic condition or monthly prescriptions.
2. For non-recurring expenses, the order must still specify how expenses will be paid by parents, as a default, according to each parent's PI.
3. The child's uninsured medical expenses include, but are not limited to, health insurance co-payments (including TennCare co-pays), deductibles, and such other costs as are reasonably necessary for orthodontia, dental treatment, asthma treatments, physical therapy, vision care, and any acute or chronic medical/health problem or mental health illness, including counseling and other medical or mental health expenses, that are not covered by insurance.

D. Line 8c – Work-related childcare.

The expense will be allocated between the parents on a pro rata basis for payment to the childcare provider by the parent responsible for paying the provider..

E. Line 10 – Share of additional expenses owed.

1. Each parent's pro-rata share of the total additional expenses being paid by the other parent or non-parent caretaker.

Example of Calculation between Mother and Father:

	Mother	Father
Percentage of Income	40%	60%
Health Insurance		\$ 100
Uninsured Medicals	\$ 50	
Childcare	\$ 250	

Total	\$ 300	\$100
Share owed	\$ 40*	\$ 180**

* \$100 paid by Father X Mother's 40% PI

** \$ 300 paid by Mother X Father's 60% PI

2. Non-Parent Caretaker Situations.

- a. If only one parent is available to pay support, the parent is responsible for payment of 100% of all additional expenses.
- b. If both parents are available to pay support, each parent is responsible for his / her pro-rata share of any amount paid by the other parent or non-parent caretaker. Payment of amounts owed by one parent to the other will be accomplished through adjustment of the obligations owed to the non-parent caretaker.

– *i.e.*, Father has a PI of 60% and pays \$100 for health insurance; Mother has a PI of 40% and pays \$250 for childcare. Mother will owe Father \$40 for her share of the premium; Father will owe Mother \$150 for his share of the childcare. Father's net obligation to Mother would be \$110 (\$150 - \$40). Father's obligation to the NPC would be increased by \$ 110, and Mother's obligation to the NPC will be decreased by \$110.

Example of Calculation between Mother, Father, and Non-Parent Caretaker:

	Mother	Father	NPC
Percentage of Income	40%	60%	
Health Insurance		\$ 100	
Uninsured Medicals			\$ 50
Childcare \$ 250			
Total	\$ 250	\$100	\$ 50
Share owed	\$ < 90>*	\$ 140**	

* \$ <110> plus \$ 20 owed to NPC for uninsured medical (\$ 50 X 40%)

** \$ 110 plus \$ 30 owed to NPC for uninsured medicals (\$ 50 X 60%)

F. Line 11 – Adjusted Support Obligation (ASO).

1. The adjusted support obligation (ASO) is the basic child support obligation adjusted for parenting time, health care expenses, and work-related child care.
2. For each parent, the ASO is calculated by adding Line 10 (share of additional expenses owed) to Line 7 (share of BCSO).
3. For each parent, the amount represents an obligation owed to the other parent or to the non-parent caretaker.

**VII. Child Support Worksheet – Part V – Presumptive
Child Support Order (PCSO)**

A. Line 12 – Presumptive Child Support Obligation (PCSO).

1. Except in non-parent caretaker situations, the PCSO is the difference between the larger and smaller obligations on Line 11. The PCSO shall be entered on Line 12 in the column of the parent with the larger obligation on Line 11.
2. In non-parent caretaker situations, the amount on Line 11 for each parent represents an obligation owed to the non-parent caretaker and shall be transferred to the parent's column on Line 12.

B. Modifications.

1. “Low-income” indicator.

If the party requesting modification has been deemed low-income and, therefore, qualifies for the 7.5% significant variance, enter a “Y” in the blank provided. The Worksheet will then use 7.5% for purposes of calculating the significant variance.

- 2. “Flat percentage” indicator** – If the current order was calculated using the Flat Percentage Guidelines, enter a “Y” in the blank provided. The Worksheet will then determine the amount of the actual variance entered on Line 13c by comparing Line 13a with the obligation amount from Line 4a, rather than from Line 12, since the Flat Percentage Guidelines did not include consideration of additional expenses or parenting time.

- 3.** The modification may be requested due to a change in income for either parent which results in a proposed order which meets the significant variance requirements. The birth or final adoption of a child may result in a significant variance in the support order.

4. To determine if a modification is possible, the Worksheet(s) should be completed through the PCSO on Line 12.
5. **Definition of Significant Variance.**
 - a. Orders initially established under the Flat Percentage Guidelines must comply with the heightened standard for modification under the Income Shares Guidelines.
 - (1) A fifteen percent (15%) change in ARP's gross income; **AND/OR**
 - (2) A change in the number of children who are the legal responsibility of the ARP; **AND/OR**
 - (3) A child being supported becoming disabled; **AND/OR**
 - (4) The parties voluntarily agreeing to modify support in compliance with the Guidelines and submitting the completed worksheets with the agreed order; **AND**
 - (5) A fifteen percent (15%) variance between the existing order and the proposed order, unless the person seeking the modification meets the definition in the Guidelines of "low-income," in which case the variance is seven and one half percent (7.5%).
 - b. Orders initially established under Income Shares need only demonstrate a 15% (or 7.5%) difference between the amount of the current order and the proposed new order.
 - c. If there is a change in the obligor parent, *i.e.*, the PRP changes from Father to Mother or from Mother to non-parent Caretaker, the significant variance requirement does not apply.
 - d. **Reminder** – The significant variance requirement does not apply to modifications to include payment of a child's health care related expenses or to remove a deviation once the reason for the deviation no longer exists.
 - e. **Reminder** – The amount of a deviation is not included as part of the child support obligation for purposes of determining the existence of a significant variance.

Example for variance:

The parent is currently paying \$749.00 per month for the support of one (1) child, the amount of proposed modification would have to be fifteen percent (15%) of \$749.

Current obligation	\$749.00	
Multiplied by 15%	<u>x .15</u>	
	\$ 112.35	required change (up or down)
\$749.00		\$749.00
<u>-112.35</u>		<u>+112.35</u>
\$636.65	→ Proposed amount	\$861.35 → Proposed amount
	to permit decrease	to permit increase

VIII. Child Support Worksheet – Part VI – Deviations and Final Child Support Order (FCSO)

A. Line 14 – Deviations.

1. Deviations from the Guidelines may be appropriate for reasons where the tribunal finds it in the best interest of the child. In such cases the tribunal shall consider all of the income available to the parents and make a finding that child support more or less than the amount calculated by the Guidelines is, or is not, reasonably necessary for the support of the child in the case under consideration. Deviations must include written reasons for the deviation, the amount that would have been otherwise awarded, and a written finding from the tribunal of how application of the Guidelines would be unjust or inappropriate in the particular case and how the best interest of the children is served by the deviation.

2. Provisions carried over from Flat Percentage Guidelines.

a. Time-Related Travel Expenses.

Where parenting time-related travel expenses are substantial due to the distance between the parents, the tribunal may consider a deviation.

b. Child in Legal Custody of Another Entity.

A deviation may be permitted in cases where the child is in the legal custody of the Department of Children Services, the child protection or foster care agency of another state or territory or any other child-caring entity, public or private, where the permanency plan or foster care plan for the child has a goal of returning the child to the parent(s) and a valid reason exists for deviation from the presumptive support.

c. Extreme Economic Hardship.

- (1) Extreme economic hardship, such as in cases involving extraordinary medical needs not covered by insurance or other extraordinary special needs for the child of a parent's current family may be a reason for deviation.
- (2) This provision has not changed from the Flat Percentage Guidelines.

d. Statutory Threshold for High-Income Parents.

- (1) T.C.A. § 36-5-101(e)(1)(B) applies to Income Shares guidelines. In the event the PCSO exceeds the statutory child support threshold as established by the statute, the parent receiving support has the opportunity / burden to prove by a preponderance of the evidence that more support is reasonably necessary to provide for the needs of the child. If the burden is satisfied, additional amounts can be added to the PCSO as a deviation. The court may require that sums paid pursuant to this provision be placed in an educational or other trust fund for the child's benefit.
- (2) For purposes of rebuttal, the threshold support amounts are:

One child = \$ 2100;
Two children = \$ 3200;
Three children = \$ 4100;
Four children = \$ 4600; and
Five or more children = \$5000.
- (3) If the burden of proof is not met, the FCSO will be the same as the threshold amount, absent deviation for another reason.

Example of High-Income Threshold:

Father's ASO on Line 11 for the support of two children is \$3527 (pro-rata share of BCSO and childcare expenses). Mother's ASO on Line 11 is \$23 (her pro-rata share of the health insurance premium paid by Father). After subtracting the smaller amount from the larger on Line 11, the amount of Father's obligation is \$3504. After application of the high-income threshold, the amount entered on Line 12 as the PCSO would be \$ 3200. If the Mother rebuts this \$ 3200 as the appropriate amount of support, additional amounts would be added to the PCSO as a deviation on Line 14.

- (4) In split parenting cases only, because each parent is an ARP for at least one child, the high-income threshold could be applied to either or both obligations on Line 11.

Example of High-Income Threshold – split parenting:

There are two children subject to the child support order, one residing with Mother more than 50% of the time and the other residing with Father more than 50% of the time. Mother's ASO on Line 11 is \$983.15. Father's ASO on Line 11 is \$2218. Father's ASO is capped at \$2100 – the appropriate threshold since Father is ARP for only one child – then Mother's ASO is subtracted from the \$2100. The PCSO amount entered on Line 12 to be paid by Father is \$1117 (\$1116.85 rounded to the nearest whole dollar).

3. Provisions new to Income Shares Guidelines.

a. Low-Income Persons.

A parent is considered to be a low income person if his/her annual adjusted gross income is at or below the federal poverty level for a single person as established by the federal Poverty Guidelines - currently \$ 10,400. Under these circumstances, a deviation may be permitted, but there is a minimum basic support obligation of \$100 per month if the parent has non-exempt gross income greater than zero.

Example for low income deviation:

PRP has AGI of \$2500. ARP has AGI of \$750 per month (\$9,000 /year). The BCSO for one child is \$632. ARP's PI is 23%. ARP is employed to his full capability. PRP pays \$100 month for the child's health insurance coverage and \$150 month for after school by the care. ARP's PCSO is \$203 monthly, which the ARP claims is burdensome due to ARP's low income. Following a hearing on the issue, the tribunal agrees and grants a 5% deviation. The final child support amount is reduced to \$193.00.

b. Extraordinary Expenses.

- (1) Accounting for extraordinary expenses that are specific to each family makes the child support obligation more expressly representative of the complete financial picture of the child's needs and the parent's ability to support the child.

(2) Extraordinary Expenses are discretionary with the tribunal – even if the expense was incurred prior to separation.

(3) **Extraordinary Educational Expenses.**

Where the parents incur extraordinary educational expenses such as reasonable and necessary expenses associated with special needs education or private elementary and secondary schooling that are appropriate to the parents’ financial abilities and to the lifestyle of the child if the parents and child were living together, this may be considered as a deviation. If a deviation is allowed, a monthly average of these expenditures shall be based on evidence of prior and/or anticipated expenses and added to the PCSO.

Example of Extraordinary Educational Expense:

The parents of one child have a combined monthly adjusted gross income of \$17,510. The PRP’s PI is 20% or \$3510, and the ARP’s PI is 80% or \$14,000. The BCSO is \$1561; the child’s health insurance premium is \$300 / month; there is no work-related childcare. The ASO is \$1,488.

The child has been in private school for all grades, and is now entering the 10TH grade. Private school tuition, books, and fees cost \$1250 averaged as a monthly cost on a twelve (12) month basis. The tribunal grants the deviation for this extraordinary educational expense, requiring the ARP to pay 100% of the expense.

PCSO	= \$ 1488	Private Education	= \$ 1250
Total obligation:	= \$ 2738		

(4) **Special Expenses.**

(1) Special expenses may include, but are not limited to, summer camp, music or art lessons, travel, school-sponsored extra-curricular activities, such as band, clubs, and athletics, and other activities intended to enhance the athletic, social or cultural development of a child, but do not otherwise qualify as mandated expenses like health insurance premium and work-related childcare costs.

(2) A portion of the basic child support obligation is intended to cover average amounts of these special expenses incurred in the rearing of a child. Where special expenses

exceed seven percent (7%) of the monthly basic child support obligation, then the tribunal shall consider additional amounts as a deviation.

Example of Special Expenses:

The BCSO for one child is \$1085. The child has sung with the school choir since elementary school and has now been accepted for the high school “Show Choir.” This group travels in-state to various competitions, and stages 2 performances per school year. The cost is averaged over the school year to \$175 per month. PRP requests a deviation for special expenses.

BCSO: $\$ 1085 \times 7\% = \$ 75.95$ minimum amount needed to consider special expenses.

Actual expense: $\$ 175 / \$ 1085 = 16\%$ of BCSO
The special expense may be added to the PCSO as a deviation.

b. Hardship Deviation.

- (1) This provision is available to reduce the impact of any hardship (either a substantial increase or decrease in the current support amount) that might result from application of the Income Shares Guidelines to orders initially established under the Flat Percentage Guidelines, unless application of this provision would seriously impair the ability of the custodial parent to maintain minimally adequate housing, food, and clothing for the children being supported by the order and/or to provide other basic necessities, as determined by the court.
- (2) **Reminder** – The Hardship Deviation is available to protect either parent against any significant change in the amount of the support obligation due to application of the Income Shares Guidelines.
- (3) The deviation is available to any order initially established under the Flat Percentage Guidelines.
- (4) The Guidelines no longer limit availability of this deviation to the first modification under Income Shares.

Example for Hardship:

The parties have one child (age 14) together. Neither parent has other children. Based on a net income of \$9,988 (\$14,100 gross), the ARP is currently paying \$2,098.00 per month on an order established under the Flat Percentage Guidelines. The ARP is also paying \$200 per month for health insurance for the child.

A Petition to Modify Support is filed by the ARP on February 1, 2005 because the ARP's gross income is now reduced to \$12,000 per month, and evidence has been offered to this effect. This is the first modification under the Income Shares model for an order that had been previously established under the Flat Percentage model. The ARP's current gross income of \$12,000 per month is a change in gross income of \$2,100 ($\$14,100 - \$12,000 = \$2,100$), or a 15% decrease in gross income from the time the previous order was set.

Therefore, the order is eligible to be considered for modification. The PRP's current gross is \$3,500 per month. The combined Adjusted Gross Income (AGI) is, therefore, \$15,500 ($\$12,000 + \$3,500$). Pursuant to the CS Schedule the BCSO for a combined AGI of \$15,500 is \$1,467 for one child.

The PRP's PI is 23% ($\$3,500 / \$15,500$), and the PRP's share of the BCSO is \$337 ($\$1,467 \times 23\%$)

The ARP's PI is 77% ($\$12,000 / \$15,500$), and the ARP's share of the BCSO is \$1,130 ($\$1,467 \times 77\%$)

Current obligation is $\$2,098.00 \times 15\% = \$314.70 \rightarrow$ minimum difference between the current order and the proposed new order required for modification

The ARP's PCSO is calculated as follows: \$1,130 (BSCO) minus \$46 (Mother's 23% of \$200 health insurance premium paid by Father) = \$1084.

The difference between the proposed order and the current order = a **DECREASE** of \$1,014 ($\$2,098 - \$1,084 = \$1,014$) or a 48% decrease from the prior order entered under the Flat Percentage model, qualifying for a modification under the significant variance definition – $48\% > 15\%$.

The tribunal finds, however, that a 48% **reduction** in the obligation would be a **hardship** to the PRP, and for this reason the court decides to deviate from the presumptive guideline amount under the new Income Shares (\$1,084), and instead grants a downward modification of the prior order in the amount of \$209.80 (10%) which reduces the order to \$1,888 (instead of \$1,084). The court, therefore, has deviated **upward** by \$874 [$\$1,888$ (what was actually ordered) minus $\$1,014$ ($\$2,098 - \$1,084$, the amount of the full reduction that would have been ordered but for the deviation)].

This hardship deviation is available at any time for orders initially established under the Flat Percentage model.

For the next modification petition, the amount of the *upward* deviation \$874 (\$1,888 – \$1,014) granted by the court in this case is *not* included in calculating the amount of the variance between the existing and the proposed orders in the next modification request. The next variance would, instead, be calculated based upon *\$1,014 (for either party) because the amount of the variance in a subsequent modification request is determined without consideration of the amount of the difference in the existing and the proposed order caused only by the \$874 deviation made under the existing order.*

Otherwise, a subsequent downward modification could be requested and granted simply due to the amount of the deviation, which in this example was 43%, without any other change in the circumstances of the parties, such as a change in income or a change the amount of support a parent is providing for a qualified other child.

4. Enter in the space provide on Line 14 the amount that is to be added to or subtracted from the obligation of the paying parent. This line is automated to add to or subtract from the obligation. The automation does not pro-rate an expense between the parents since the method for pro-ration is within the discretion of the court. The full amount of the expense, along with a description, can be entered on the lines provided.
5. A deviation cannot be utilized to demonstrate a significant variance in a subsequent action for modification.

B. Line 15 – Final Child Support Order (FCSO)

If the tribunal deviates from the amount of the PCSO to account for extraordinary or special expenses, or for any other reason provided for in the Guidelines, the resulting support obligation after application of the deviations becomes the Final Child Support Order. **If there are no deviations**, the amount of the PCSO will be the same as the Final Child Support Order.

C. Line 16 – FCSO adjusted for federal benefit.

1. Any amount entered on Line 1a and added to the gross income of the obligor parent is credited towards payment of the child support obligation and will be subtracted from the amount of the FCSO.
2. If the amount on Line 1a is smaller than the amount of the FCSO on Line 15, then the amount on Line 16 is the difference between Line 1a and Line 15. This is the amount the obligor must pay out of pocket.

3. If the amount on Line 1a is greater than the amount of the FCSO on Line 15, then the amount on Line 16 will be zero.

IX. Miscellaneous Provisions

A. Order Requirements.

1. All orders must state a specific dollar amount of support that is to be paid by the responsible party on a weekly, bi-weekly, semi-monthly, or monthly basis. The final child support order shall not be expressed as a percentage of the parent's income.
2. Agreed orders must be approved by the court after review to determine conformity with the Guidelines, or, if deviations are proposed, to review those and enter written findings in the support order stating the amount of the deviation, what the order would have been if there had been no deviations and why the deviation is appropriate for the child and the parties.
3. Every order must also designate financial responsibility for the child's non-recurring uninsured medical expenses. The parents will divide these expenses according to each parent's PI, unless otherwise pro-rated by the tribunal.

B. Retroactive support.

1. Presumption of Retroactive Support to Birth, Separation or Abandonment Absent Deviation Criteria.

a. Presumption Absent Deviation Criteria.

Unless the rebuttal provisions of T.C.A. §36-2-311(a)(11) or T.C.A. §36-5-101(e) regarding paternity are established by clear and convincing evidence, then in cases where initial support is being set, a judgment must be entered to include monthly support for the child for all periods up to the date of the order from the date of the child's birth, the date of separation or abandonment of the child and remaining spouse of the parties in a divorce or annulment.

- ##### **b. Deviations/Written Findings to Support Deviations.**
- Deviations as described in the statutory criteria must include written justification for the deviation, the amount that would have been otherwise awarded, and a written finding from the tribunal of how application of the Guidelines would be unjust or inappropriate in the particular case and how the best interest of the children is served by the deviation. **See: CS Worksheet, Line 19**

2. Method of Calculation.

- a.** Using the Income Shares Guidelines, calculate current support.
- b.** Using the Income Shares Guidelines, calculate the retro obligation on a separate worksheet –
 - (1)** For gross income on Line 1, use an average of each parent’s monthly income, calculated over a two-year period (unless the court directs otherwise), to determine the BCSO;
 - (2)** Multiply the ARP’s share of the BCSO times the number of months in the retro period;
 - (3)** To this amount add the ARP’s share of additional expenses incurred by the PRP during the retro period, *i.e.*, healthcare expenses, birth expenses, and other statutorily allowed expenses.
- 3.** The order should direct the ARP to pay the current amount and make payments towards the retro obligation.