

VALUATION OBSERVATIONS

*Some practical observations from a practicing
business appraiser.*

VLC

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PICK YOUR POISON INCOME AVERAGING V. NONRECURRING

Courts may average gross income over a number of years when they deem it appropriate, according to ORC 3119.05(H). ORC 3119.01(7)(e) states that “gross income” for purposes of determining child support does not include “nonrecurring or unsustainable income...” These are two very well versed code sections. But they are separate code sections that apply to different issues. Enter Dr. Patel in State ex rel. Athens Cty. Child Support Enforcement Agency v. Patel, 2006-Ohio-2951.

Dr. Patel cited a “substantial decrease” in his income as his reason for requesting a reduction in his child support obligations in 2005 to 1/3 of the court ordered amount. He had opened a new medical practice, and it was taking time to begin collecting payments from insurance companies. In the meantime, his income was such that he believed a child support reduction was warranted.

He goes on to argue that CSEA should not have used the amount on Schedule C of his 2004 income tax return because that figure includes Medicare reimbursements for work done in 2003. He claims this to be “nonrecurring income” that should be excluded from income for child support purposes and that the better method to calculate his income is to “average” his 2003 and 2004 income.

Dr. Patel proposes that “gross receipts” should be averaged over two or more years to alleviate a problem with nonrecurring income items. Let’s first take a quick look at nonrecurring income items. This is defined as: “an income or cash flow item that the parent receives in any year or for any number of years not to exceed three years that the parent does not expect to continue to receive on a regular basis.” The Court was not persuaded that the Medicare payments could be characterized as nonrecurring items.

This medical practice is a cash basis taxpayer, reporting Medicare payments when they are received rather than when the account receivable is accrued. From year to year, he will continue to earn income in one tax year, but not collect it until the following year. Dr. Patel billed for services rendered in the last quarter of 2003 but did not receive payment for those services, nor declare those payments as income for tax purposes or child support computation purposes until 2004. One can assume that he will continue to render services during one calendar year, but not be paid for those services until the following calendar year. This is a rolling affect, from one year to the next, continuing on and on. The Court found nothing “nonrecurring” about the income from Medicare.

So what did Dr. Patel want? First, he wanted the Medicare payments to be excluded from his income altogether. Then, he wanted his most recent year of income to be averaged with an earlier year when he

first started his new medical practice. Sound like a stretch? The 4th District Court of Appeals thought so. The good doctor's assignment of error was overruled on both counts.

If you would like additional information, or have a question, please do not hesitate to call.

Very truly yours,

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Terri Lastovka is the founder of Valuation & Litigation Consulting, LLC. Her practice focuses on business valuations and litigation consulting in the areas of domestic relations, gift and estate tax, probate, shareholder disputes, economic damages, and forensic accounting. She draws from a wide range of experiences, including public accounting, law, banking, and CFO. She has received extensive training from the American Society of Appraisers in the area of business valuation and works closely with members of the bar to effectuate practical settlements. Terri also serves as the Director of Legal & Finance for Journey of Hope, a grass roots non-profit organization providing financial support to cancer survivors.