

In re Marriage of Riddle (1/14/05 - 125 Cal.App.4th 1075)

Discussed what is meant by “income” as a term pertains to the family law statutes. “Cash flow is not necessarily ‘income’”.

Husband’s taxable income consisted of:

1. Forgiveness of debt on an advance received and presumably spent during marriage (currently no cash received).
2. Forgiveness of interest on the debt (no cash received).
3. Regular monthly draw (cash received).
4. Variable actual commission earned (fluctuating cash received).

The trial court set Husband’s income based on the last six weeks of commissions and draws. The trial court excluded the forgiveness of debt and interest – but Wife did not appeal these items. The appellate court indicated that had the non-inclusion of this phantom income been appealed, there would have been basis to include it for support purposes.

A. What is taxable income?

1. “While we recognize that family lawyers and forensic accountants sometimes use the phrase ‘cash flow’ as a sloppy synonym for the word ‘income’ as it appears in the support statutes, it isn’t.”
2. “In particular, the support laws (see Fam. Code §§4058, 4059) are very exacting as to the definition of income. The language was ‘lifted’ straight from the Internal Revenue Code.”

Query – What about capital gains recognized for taxes but generally not for support purposes. What about non-taxable interest income excluded from taxes but included for support. What about vested, but unexercised stock options excluded from taxable income but often included for support purposes. What about a §179 deduction for tax purposes on a financed asset?

B. What time period should be used?

1. “Time samples must be fair and representative to determine fluctuating income.”
2. “A properly representative sample.”
3. The court discussed that a 12 to 14 month sample would be more appropriate.