

2005 FAMILY LAW AND THE MILITARY

CALCULATING MILITARY CHILD SUPPORT

BY

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Your client is the wife of a servicemember who has been in the military service for 22 years. He holds the rank of Master Sergeant (E-8). He receives all of his authorized pay and allowances. Your client wants to know what she can expect in the amount of child support.

In order to answer her question one must have access to the basic state law and Army regulations pertaining to the computation of net resources available for the payment of child support, **TFC 154.061**. What are "Net Resources?" **TFC 154.062**; what additional factors can the court consider in determining child support, **TFC 154.123**; and, what are the alternative methods of computing support for children in more than one household? **TFC 154.129**.

<http://www.capitol.state.tx.us/statutes/fatoc.html>

Additionally, one must know and understand the ramifications of the types of pay and allowances that are available to the servicemember;

definitions of certain terms and the impact those definitions have on the amount of child support one's client is to receive. One must know that not only is the servicemember's rank and time in service important, but where he resides and the type of job or skill determines the amount of money he makes and the child support your client will receive. One must have basic tools in order to have a reasonable chance of rendering a credible calculation of child support. Some of the basic tools consist of the servicemember's Leave and Earning Statement (LES) or the Retirement Account Statement; the latest Military Pay Chart; the Attorney General Tax Chart; the BAH and Overseas BAH Query sites or the printed BAH rates. A federal income tax return may expose some additional income but it has little or no value in the computation of military child support.

Lastly, a standard, reliable step-by-step guide that is routinely followed in calculating military child support is needed. Due to the many variables,

regulations and interpretations, calculating military child support is an imprecise art; however, one must have enough knowledge to show a basic competence in the area and to ensure that the client gets the representation and the support she deserves.

A reading of the Texas Family Code provisions concerning “net resources” and calculating child support leaves one with an understanding that the courts have wide discretion and latitude of the factors taken into consideration in setting the child support. As a practical matter, all sources of income are included in the calculation of child support unless specifically excluded by law.

This section explores the various pays and allowances that are available to military personnel to use in the child support calculation.

BASE PAY-The fundamental and largest component of a servicemember’s compensation. It is based on a member’s grade/rank and the years he has served in the military. (<http://www.dod.mil/militarypay/pay/bp/index.html>)

SPECIALTY PAY- Based on special qualifications, events and duties. This category will find pay for hardship and/or imminent danger; pilots, parachutists; diving duty; foreign duty; medical and dental officers and nuclear-qualified officers to name a few. **DOD Financial Management Regulation, Volumes 7A, Chapter 10**. Typically, “pays” are taxable.

ALLOWANCES- The second most important element of a servicemember’s pay. Allowances are normally provided when the

government does not provide for a specific need. While there are a number of allowances, the three most common are Basic Allowance for Housing (BAH); Basic Allowance for Subsistence (BAS) and the annual Clothing Allowance. Most servicemembers receive at least the BAS and some form of BAH. Most allowances are non-taxable. (http://www.dod.mil/militarypay/pay/ta/x/01_allowances.html)

BAH II-A housing allowance for members in particular circumstances, members returning to the U. S. from overseas, reservists on active duty less than 20 weeks, a member with a court ordered child support obligation. It is based on rank only and does not vary by geographic location. BAH-II is normally the value attributed to the housing or government quarters supplied by the military for a servicemember and his family. It is the new name for the old BAQ. BAH II is published on the annual military pay charts. The amount or value of the BAH II will not be reflected on the LES of a servicemember residing in military housing.

BAH-A permanent duty servicemember stationed in the continental U. S. (CONUS) not residing in government housing is allotted BAH at the “with” dependents rate or “without” if he is single. This money is paid to compensate for housing on the commercial market. BAH depends on the rank and location of the servicemember. There is also an Overseas Housing Allowance. BAH is normally reflected as income on the LES.

BAH-DIFF-The allowance for members who are assigned to single-type quarters and have been authorized a BAH solely by reason of having a child support payment. A member is not entitled to BAH-Diff if the monthly rate of the child support is less than the BAH-Diff. BAH-Diff is equal to the difference between BAH-II "with" dependents rate and BAH-II "without" dependents rate for the member's rank and grade.
(http://www.dod.mil/militarypay/pay/bah/02_types.html)

COMBAT ZONE EXCLUSION-A combat zone is any area the President of the United States designates by Executive Order as an area in which the U. S. Armed Forces are engaging or have engaged in combat. An area usually becomes a combat zone and ceases to be a combat zone on the dates the President designates by Executive Order.

Any servicemember who serves in a combat zone during any part of a month will have all of the pay for that month excluded from income. Also excluded if collected or earned in a qualifying combat zone month will be reenlistment bonuses; specialty pay and bonuses; pay for accrued leave; pay received as a member of the Armed Forces in clubs, messes, post and station theaters and other non-appropriated fund activities; awards for suggestions, inventions or scientific achievements submitted in a month served in a combat zone; some student loan repayments;

pay accrued while hospitalized in a combat zone or after leaving a combat zone may be excluded(http://www.dod.mil/militarypay/pay/tax/10_combatzone.html).

Wages shown in box 1 of the Form W-2 should not include military pay excluded from income under combat zone exclusion provisions. **IRS Publication 3, Armed Forces Tax Guide**
(<http://www.irs.gov/pub/irs-pdf/p3.pdf>)

OTHER ALLOWANCES
Moving Allowances
Family Allowances
Death Allowances
Travel Allowances

In addition to the liberal interpretation of the Texas law, military regulations state that it is not the intent of Congress or the Armed Forces for BAH to constitute full support for families. The default amount for support is the BAH absent a written agreement or a court order.**AR 608-99**(http://www.usapa.army.mil/pdffiles/r608_99.pdf)

In general all pay and allowances may be considered in setting the support obligation. It may also be appropriate under state law/guidelines to consider other factors. For example, all members receive BAS/SEP RATS or they live in government accommodations and eat in the mess hall for free. This "in kind" compensation may justify an upward adjustment of cash income in setting the support obligation. Thus, the BAH and BAS/SEP RATS amount should be constructively added to the member's pay as the reasonable

value of the “in kind” income even if he is not receiving these. U. S. Department of Health and Human Services, Office of Child Support Enforcement; A Caseworker’s Guide to Child Support Enforcement and Military Personnel(<http://www.acf.hhs.gov/programs/cse/fct/militaryguide2000.htm#collectPersonnel>)

TOOLS TO DETERMINE THE SERVICEMEMBER’S INCOME

To get the best picture of a servicemember’s income, it is advisable to utilize at least three primary sources in order to make an informed opinion concerning child support. They are:

1. the LES
2. the Military Pay Chart, and
3. the Income Tax Return

The income tax return is probably the least reliable source to determine true military pay. No allowances, no veterans’ disability pay and no income excluded by the combat zone exclusion will be reflected on the income tax return. The income tax return will reveal other traditional sources of income that is not militarily related.

The LES can also be limited in that the BAH-II of a servicemember living in government housing will not be listed as income on the LES. A monthly LES will not have the annual Clothing Allowance that is normally paid in October of each year. A single LES may not have the annual specialty bonuses received by the medical professionals; yet, it may be included as income on the income tax return. The LES will show:

- ✓ the monthly BAH and BAS of a servicemember not

living in family government housing.

- ✓ any allotments the servicemember has going to commercial institutions.
- ✓ any debt to the government.
- ✓ the home of record (HOR) of the servicemember that may be useful in determining jurisdiction.
- ✓ accrued leave that may assist in a decision concerning the Servicemembers Civil Relief Act.

It is advisable to get a number of months of the LES or twelve months so that an average can be taken. This is readily available by having the servicemember access his **myPay** account. **myPay** is a secure electronic compilation of the servicemember’s pay and tax information accessed by a username and password <http://www.dfas.mil/mypay/>. It is available to all DOD personnel and those receiving payments from the Defense Finance and Accounting Service (DFAS).

The Military Pay Chart is a general compilation of all pay and allowances. It can show and determine the amount of BAH-II that is not on the LES or the income tax return. It can supply the amounts of the annual Clothing Allowance so that the fact finder can pro rate it over a period of one year for support purposes. The Clothing Allowance will not be on the income tax return and only one month in the year on the LES. The Military Pay Chart will provide the amounts of

the various professional pays that may not be reflected on a particular monthly LES but may be on the income tax return.

Other sources: since the BAH varies from location to location, one should have access to the **Department of Defense Per Diem, Travel and Transportation Allowance Committee Rate Query** website <https://secureapp2.hqda.pentagon.mil/perdiem/bah.html>. That site will reveal the BAH amount if the zip code and rank is submitted and entered. The site also has in a printed format all of the zip code locations and BAH by rank in CONUS (<http://141.116.74.201/bah/acrobot/2005/2005-BAH-Rates-With-Dependents.pdf>). There is a similar site for the Overseas Housing Allowance (OHA). <https://secureapp2.hqda.pentagon.mil/perdiem/ohaform.html>

Practical Guide to Choose Correct BAH

It is quite confusing to determine which BAH to use in calculating child support. Below is an unofficial practical guide to consult when attempting this inexact endeavor.

SM STATUS

Unmarried, single quarters
 Unmarried, others off
 Temp Orders, Divorce on
 Temp Orders, Divorce off
 Divorce, w/others on post
 Divorce, w/others off
 Divorce, single off
 Modif/SM single w/no
 Modif/SM/w on post
 Modif/SM/w off post

WHICH BAH?

BAH-II w/o +Diff =BAH-II/w
 BAH
 BAH-II/w
 BAH
 BAH-II/w
 BAH
 BAH-wo+Diff =BAH-II/w
 BAH-IIwo+Diff=BAH-II/w
 BAH-II/w
 BAH

TOOLS USED TO CALCULATE MILITARY CHILD SUPPORT

1. Military Pay Charts
<http://www.dfas.mil/money/milpay/pay/paytable2005.doc>
2. OAG Tax Charts
http://www.oag.state.tx.us/AG_Publications/pdfs/2004taxcharts.pdf
3. Circular E, Employer's Tax Guide
<http://www.irs.gov/pub/irs-pdf/p15.pdf>
4. Leave and Earning Statement (LES)
http://www.dfas.mil/money/milpay/les_djms.pdf

STEP-BY-STEP CALCULATION OF MILITARY CHILD SUPPORT

1. Determine service member's base or other pays and bonuses. To do this, one will need the servicemember's rank and time in service found on the LES which is the primary source to use. Based on the facts of the case a number of previously issued LESs throughout the year may be needed, since some pays and bonuses are situational and paid annually or periodically. Most military raises are effective on January 1st of each year. Until the LESs can be accumulated, the yearly Military Pay Chart

can be another great source for information. The service member's income tax return from the previous year is of little value in determining the current child support obligation. As a general rule, pay and bonuses ARE taxable; however, there are some exceptions. (see **Volume 7A-Military Pay Policies and Procedures-Active Duty and Reserve Pay**) <http://www.dod.mil/comptroller/fmr/07a/index.html>

2. Determine the service member's allowances. Again, the best source to use for finding the allowances is the LES. Some allowances are paid annually and may not be listed on the latest LES. Other allowances such as BAH II will not be listed on the service member's LES if the service member resides in government housing. If the service member resides in government quarters, it is advisable to use the Military Pay Chart to determine the BAH II. If the service member resides off post, then one should use the zip code, MHA or Overseas Housing Allowances calculators to determine the right amount to consider for child support. Since BAH varies depending on the rank and location of the service member, it is not on the Military Pay Chart but

can be accessed on the DFAS website or as an appendix submitted with this paper. As a general rule, allowances are NOT taxable; however, there are exceptions. (see **Volume 7A-Military Pay Policies and Procedures-Active Duty and Reserve Pay**) <http://www.dod.mil/comptroller/fmr/07a/index.html>

A detailed examination of the LES will render the taxable and non-taxable income received by the service member.

3. When calculating military child support, segregate the pay and allowances in the following order.
 - A. Place all of the taxable income on one side and all of the non-taxable income on the other.
 - B. Add all of the gross taxable income to determine an annual income.
 - C. Divide that annual income by 12 to determine the gross monthly amount.
 - D. Take that monthly amount and determine the net monthly income by using the Attorney General Annual Tax Charts. Some use the tax tables of the IRS Circular E, Publication

15 (standard deduction for a single person with one exemption, 6.2% deducted for social security and 1.45% deduction for medicare) for a more accurate calculation. To determine the net resources, use the **Texas Family Code, Chapter 154, § 154.062** Net Resources.

- E. Determine the annual allowances and divide by 12. **DO NOT DEDUCT ANY TAXES FROM THE ALLOWANCES.** Add the monthly allowances to the net pay amount.
- F. Multiply this adjusted net income by the relevant percentage based on the number of children before the court or the relevant percentage based on the multiple family guidelines.

The result is the child support obligation.

Sample Computations

Going back to the prospective client at the beginning of the paper and the question that was asked, it is apparent that there is not enough information to adequately answer her question; however, the tools now exist to place her in a credible range of prospective support payments. There are a number of questions that should be asked.

1. Do you have a copy of his LES?
2. Do you have a copy of the latest Income Tax Return?
3. Where does the servicemember reside?
4. Does he live on post or off-post?
5. Are there any other children outside of this marriage that he has a legal obligation to support?
6. Does he have a specialty?
7. Does he receive some sort of specialty bonus?
8. Is he in a combat zone or has he been in one any time within the last year?

Now there is enough information to calculate the support and answer the original question.

Facts: Rank: Master Sergeant (E-8)
Time in service: 22 years
Residence: El Paso, Texas Off Post
One child before the court; two outside the court
No additional specialty pays
No combat within the last 2 years

One of the more popular methods of calculating child support when representing the servicemember is to use the **BASE PAY ONLY** method.

E-8 w/ 22 years Base Pay: **\$4,125.90**
Using the Tax Chart = net of **\$2954.21** x 16% (two other children outside of court)=**\$472.67** in child support.

The second most popular method when representing the servicemember is to add the **BASE PAY plus the ALLOWANCES** and then **TAX the ENTIRE AMOUNT**. (BASE) \$4125.90 + (BAH) 1048 + (BAS) \$267.18 + (C/A ANNUAL \$468/12)+\$39= \$5480.08. Using the Tax Chart = net **\$3737.17** x 16%= **\$597.95** in child support.

The last example, that has been taught here, is the legally acceptable method of calculating military child support.

(BASE) \$4125 > **Use AG Tax Chart to determine net= \$2954.21.**
Add the ALLOWANCES + \$1048 (BAH with) + \$267.18 (BAS) + \$39 (Pro rated Clothing Allowance)= \$4308.39 x 16%= **\$639.34** is the correct amount of child support that should be received.

Conclusion

It is my common practice to tell the client that is receiving child support a range of money that could be obtained, i.e. in the range from **\$500.00** to **\$640.00** as calculated above.

It is also my practice to tell the paying servicemember the highest possible amount.

It is never my practice to intentionally calculate the child support incorrectly and then send it to the other side for approval.

If representing the obligor servicemember in negotiations or mediations, it may be advisable to allow the opposing side to set the

child support. Do not make an offer. If they do not know how to correctly set the amount, you may walk out paying substantially less than what you know it should be or what you correctly told your client it could be.

Based on the many variables, it is apparent that determining child support is NOT an exact science, but being able to calculate it and understand it is an art.