



THE SENATE OF MARYLAND  
ANNAPOLIS, MARYLAND 21401

February 7th, 2024

Testimony in Support of SB390

Family Law – Child Support - Actual Income

Dear Chairman Smith, Vice Chair Waldstreicher, and Members of the Committee:

This legislation is necessary to provide an equitable solution in child support determinations by giving Courts the discretion to weigh, compare and consider both the taxable and non-taxable earned income of each parent in the same manner.

According to Maryland Code, Family Law Article § 12-201, the Courts must consider the “Actual Income” in determining the income of each parent for child support purposes. However, the income the Court considers for child support is gross earned income and not non-taxable earned income.

In other words, non-taxable earned income of a parent is not presently “grossed up” to be in alignment with the earned taxable income of the other parent due to Maryland case law.

Specifically, the Maryland Appellate Courts have made it clear that the trial Courts do not have discretion to adjust a party’s income except as allowed by statute. See Ruiz v. Kinoshita, 239 Md. App. 395 (2018) and Lemly v. Lemly, 102 Md. App. 266 (1994).

SB 390 will add language to the definition of “Actual Income” to address the tax which would be paid on non-taxable earned income by a parent, thereby giving the Courts the discretion necessary to weigh and compare the earned income of both parents in an equitable manner.

To further clarify this additional language, the Family Law Section Council (“FLSC”) of the Maryland State Bar Association has requested a friendly amendment:

**(xvii) for a parent with non-taxable, earned income from an employer, the amount of federal, state, and local taxes and FICA, including any additional Medicare taxes, that would be withheld if the earned income were taxable.**

This amendment is acceptable as it will provide a clear guidance to the trial Courts as to the type of non-taxable earned income and the types of taxes that should be included in the calculation to “gross-up” earned non-taxable income for child support purposes.

For the reasons stated above, I urge a favorable committee report with the amendment.

