

**DELAWARE TRIBE OF INDIANS**

**TITLE \_\_\_\_  
CHILD SUPPORT**

**CHAPTER 1  
Article 1 - GENERAL PROVISIONS**

**Section 101. Title.**

This chapter may be referred to as the “Delaware Tribe of Indians Child Support Enforcement Code” or “Child Support Code.”

**Section 102. Authority.**

Article V of the Constitution of the Delaware Tribe of Indians (hereafter the “Tribe”) enumerates the responsibility and duties of the Tribal Council to exercise lawmaking powers. Among other powers, the Tribal Council shall have the duty “to represent the Delaware Tribe and act in all matters that concern the general welfare of the tribe, and to make decisions not inconsistent with or contrary to this Constitution and Bylaws or the Constitution and laws of the United States of America.”

**Section 103. Purpose.**

The purpose of this chapter is to:

- (A) Establish a tribal child support enforcement program as authorized under section 455 (f) of the Social Security Act;
- (B) Designate the Tribe’s Child Support Enforcement Program (DCSE) as the child support enforcement agency for the Tribe with the authority granted to it in accordance with Title IV-D of the Social Security Act, 42 U.S.C. 651§651 et. seq., as amended, and Title IVD rules and regulations;
- (C) Provide for the establishment of paternity in accordance with the laws, customs and traditions of the Delaware Tribe of Indians;
- (D) Provide for the establishment, modification, and termination of child support orders;
- (E) Provide for the enforcement of child support orders;
- (F) Provide for the collection and distribution of child support payments;

(G) Provide for the location of parents and assets; and

(H) Provide for the administrative and judicial procedures for the establishment, modification, termination, and enforcement of child support.

#### **Section 104. Construction, Uniformity and Interpretation; Severability.**

(A) **Interpretation.** This chapter shall be liberally construed to provide child support for minor children under the jurisdiction of the Tribe.

(B) **Consistency with Other Laws.** This chapter and in congruence with all the law and order codes of the Delaware Tribe establishes the Tribe's child support laws as mandated under Title IV-D of the Social Security Act and in a form generally consistent with Oklahoma and Kansas statutes concerning child support in order to provide uniformity in the child support laws applied by the Tribe, other tribes and the States of Oklahoma and Kansas, unless otherwise expressly provided.

(C) **Other Laws.** If there is a child support issue that this chapter does not address, the Tribe's Judiciary may apply any other applicable law of the Tribe and/or any federal law concerning such child support issue to the extent mandated by Title IV-D of the Social Security Act. If a child support issue is not addressed by the Tribe's law or federal law, the Judiciary may consider any state or other tribal law concerning such child support issue as a guideline to make a determination in a child support action.

(D) **Severability.**\_\_ If any provision of this chapter is determined by a court of competent jurisdiction to be invalid for any reason, the remainder of the provisions shall remain in full force and effect and shall not be affected.

#### **Section 105. Definitions.**

(A) **"IV-D Child Support Enforcement Program"** means the federal, state and tribal child support programs established under Title IV-D, 42 USC §651 et seq., as amended, and Title IV-D rules and regulations, 45 CFR 302.00 et seq.

(B) **"IV-D Services"** means the services that are authorized or required for: the establishment of paternity; establishment, modification, and enforcement of support orders; and, location of noncustodial parents under Title IV-D, 42 USC §651 et seq., as amended, and Title IV-D rules and regulations, 45 CFR 302.00 et seq.

(C) **"Acknowledged Father"** means a man who has established a father-child relationship.

**(D) “Adjudicated Father”** means a man who has been adjudicated by a court of competent jurisdiction to be the father of a child.

**(E) “Alleged Father”** means a man who alleged himself to be, or is alleged to be, the genetic father or a possible genetic father of a child, but whose paternity has not been determined. The term does not include: a.) a presumed father, b.) a man whose parental rights have been terminated or declared not to exist, or c.) a male donor.

**(F) “Administrative Procedure”** means a method by which support orders are made and enforced by an executive agency rather than by courts and judges.

**(G) “Arrearage”** means the total amount of an unpaid child support obligation by a parent who is obligated to pay.

**(H) “Assignment”** means any transfer of rights to child support by a custodial parent to the Tribe or other state or federal agency.

**(I) “Assignment of Support Rights”** means the legal procedure by which a person receiving public assistance agrees to turn over to the Tribe or state any right to child support, including arrearages, paid by the obligated parent in exchange for receipt of a cash assistance grant and other benefits. The money is used to defray the public assistance costs.

**(J) “Child”** means an individual of any age whose parentage may be determined under this Act.

**(K) “Child Support”** means the financial obligation a noncustodial parent has towards his or her child(ren) whether entered into voluntarily or ordered by a court or administrative agency.

**(L) “Child Support Order and Child Support Obligation”** means a judgment, decree or order, whether temporary, final or subject to modification, issued by a court of competent jurisdiction, tribunal or an administrative agency for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing jurisdiction, or of the parent with whom the child is living, which provides for monetary support, health care, arrearages, or reimbursement, and which may include related costs and fees, interest and penalties, income withholding, attorney’s fees and other relief.

**(M) “Child Support Enforcement (CSE) Agency”** means an agency that exists under Title IV-D of the Social Security Act that locates noncustodial parents or putative fathers, establishes, enforces and modifies child support, and collects and distributes child support money. A CSE agency is operated by state, local or tribal governments according to the Child Support Enforcement Program guidelines as set forth in Title IV-D of the Social Security Act.

**(N) “Consumer Credit Protection Act (CCPA)”** means the federal law that limits the amount that may be withheld from earnings to satisfy child support obligations under §303(b) of the CCPA, 15 USC §1673(b).

**(O) “Consumer Reporting Agency”** means any person which for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports under 15 USC §1681a(f).

**(P) “Court”** means the Delaware Tribe of Indians Judiciary.

**(Q) “Custodial Parent (CP)”** means the parent with legal custody of the child(ren) or who exercises physical custody of the child(ren), may be a parent, relative, legal guardian, or custodian appointed by a court.

**(R) “Default”** means failure of a defendant to appear, or file an answer or response in a civil case, after having been properly served with a summons and complaint.

**(S) “Default Judgment”** means a decision made by the tribunal when the defendant fails to respond.

**(T) “Disestablishment”** means a procedure by which a tribunal can nullify an order or a determination of paternity generally.

**(U) “Delinquency”** means any payment under an order for support which becomes due and remains unpaid. See Arrearage.

**(V) “Department”** means, unless otherwise indicated, the Tribal Child Support Enforcement Program.

**(W) “Determination of Parentage”** means the establishment of the parent-child relationship by the signing of a valid acknowledgment of paternity or adjudication by the court.

**(X) “Judge”** means the presiding judge of the sitting Court of the Delaware Tribe of Indians.

**(Y) “Enforcement”** means the application of remedies to obtain payment of a child support or medical support obligation contained in a child and/or spousal support order.

**(Z) “Establishment”** means the process of determining paternity and/or obtaining a

court or administrative order for child support.

**(AA) “Genetic Testing”** means an analysis of genetic markers to exclude or identify a man as a father or a woman as the mother of the child. The term includes an analysis of one or a combination of the following: a.) deoxyribonucleic acid, b.) blood-group antigens, red-cell antigens, human-leukocyte antigens, serum enzymes, serum proteins, or red-cell enzymes.

**(AB) “Income Assignment”** means an assignment by operation of law or by court or administrative order of a portion of the monies, income or periodic earning and due and owing to the noncustodial parent, to the person entitled to the support or to another person designated by the support order or assignment. An income assignment may be for payment of current support, arrearages, or both.

**(AC) “Income Withholding”** means the automatic deductions made from wages or income to pay a debt such as child support. Income withholding usually is incorporated into the child support order and may be voluntary or involuntary. An employer must withhold support from a non-custodial parent’s wages and transfer that withholding to the appropriate agency.

**(AD) “Indian Country”** as defined in 18 USC §1151.

**(AE) “Indian Tribe”** means any Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe and includes in the list of federally recognized Indian Tribal governments as published in the Federal Register pursuant to 25 U.S.C. §479a-1.

**(AF) “Intercept”** means a method of securing child support by taking a portion of non-wage payments made to a non-custodial parent. Non-wage payments subject to interception include federal tax refunds, state tax refunds, unemployment benefits, and disability benefits.

**(AG) “Location”** means information concerning the physical whereabouts of the noncustodial parent, or the noncustodial parent’s employer(s), other sources of income or assets, as appropriate, which is sufficient and necessary to take the next appropriate action in a case.

**(AH) “Lien”** means a claim upon property to prevent sale or transfer of that property until a debt is satisfied.

**(AI) “Medical Support”** means health or dental insurance coverage or health benefits ordered to be paid by a parent(s) for the benefit of a minor child(ren).

**(AJ) “Minor Child”** means any infant or person who is under the age of 18 which is herein considered the age of legal competence.

**(AK) “Non-Custodial Parent”** means a parent who does not have legal or physical custody of the child(ren) and has an obligation to pay child support. Also referred to as the obligor.

**(AL) “Non-Cash Support”** means support provided to a family in the nature of goods and/or services, rather than in cash and has a certain and specific dollar value.

**(AM) “Obligee”** means a person or entity to whom child support is owed. Also referred to as the custodial parent or CP.

**(AN) “Obligor”** means the person who is obligated to pay child support. Also referred to as the non-custodial parent or NCP.

**(AO) “Offset”** means an amount of money intercepted from a noncustodial parent’s state or federal tax refund or from an administrative payment such as federal retirement benefits to satisfy a child support debt.

**(AP) “Past Support”** means past-due support or support for a prior period. See “Arrearage.”

**(AQ) “Paternity Judgment”** means legal determination of fatherhood.

**(AR) “Payment Plan”** means, but is not limited to, a plan approved by a judicial or administrative court or a child support enforcement agency to make periodic payments of past due support to reduce the obligor’s arrearage. A payment plan usually consists of a monthly payment plan that includes current support and past due support. The plan may provide for an income assignment or similar plan to insure the past due support will be paid.

**(AS) “Presumed Father”** means a man who, by operation of law, is recognized as the father of a child until that status is rebutted or confirmed in a judicial proceeding.

**(AT) “Public Assistance”** means benefits granted from tribal, federal or state programs to aid eligible recipients (eligibility requirements vary between particular programs). Applicants for certain types of public assistance (e.g. TANF) are automatically referred to their tribal or state IV-D agency for child support services.

**(AU) “Signatory”** means an individual who authenticates a record and is bound by its terms.

**(AV) “State”** means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the

jurisdiction of the United States.

**(AW)** “**Temporary Assistance for Needy Families**” means the Temporary Assistance for Needy Families program as found at section 401 et seq. of the Social Security Act (42 U.S.C. 601 et seq.).

**(AX)** “**Tribunal**” means a court or administrative agency authorized to establish, enforce or modify support orders, or determine parentage.

**Section 106. Designation of the Delaware Tribe of Indians Child Support Enforcement Program as a Title IV-D Program.**

The Delaware Tribe of Indians Child Support Program (DCSE) shall be the designated Title IV-D agency for the Delaware Tribe of Indians with all the authority granted to it in accordance with Title IV-D of the Social Security Act, 42 USC §651 et seq., Title IV-D rules and regulations, and applicable laws of the Tribe, including these Codes.

**Section 107. Powers and Duties of the Delaware Child Support Enforcement Program.**

The DCSE shall be authorized to provide Title IV-D child support services that include, but are not limited to:

**(A)** Administer and manage the plan and services of its tribal IV-D program;

**(B)** Establish administrative procedures for paternity establishment and establishment, modification, termination and enforcement of child support orders consistent with these Codes and the rules and regulations set forth by Title IV-D of the Social Security Act, 42 USC §651 et seq.;

**(C)** Establish paternity in accordance with this Code;

**(D)** Establish, modify, and terminate child support orders through court or administrative action;

**(E)** Enforce child support orders through court or administrative actions;

**(F)** Initiate legal action to provide child support services, including appeals;

**(G)** Adopt policies and procedures for the Tribe for child support services;

**(H)** Adopt rules and regulations for child support services, subject to the approval of the Delaware Tribal Council;

- (I) Negotiate agreements and or contracts as necessary for child support services under tribal and federal law, subject to the approval of the Delaware Tribal Council;
- (J) Establish and maintain child support records, files and accounting;
- (K) Provide location services for parents and assets; and
- (L) Collect and distribute child support payments.

**Section 108. Services.**

(A) **Services Provided.** The Delaware Child Support Enforcement program may provide the following Title IV-D services that include, but are not limited to:

- (1) The location of the parents and their assets through local, state and federal agencies and private sources;
- (2) The establishment of paternity through court or administrative action in accordance with these Codes and the rules and regulations of Title IV-D of the Social Security Act, 42 USC §651 et seq.;
- (3) The establishment and modification of child support obligations through court or administrative action;
- (4) The enforcement of child support orders through court or administrative action;
- (5) A review of child support orders for modification; and
- (6) The collection and distribution of child support payments.

(B) **Services Not Provided.** The Delaware Child Support Enforcement program shall not provide services for the following:

- (1) The establishment or modification of visitation rights or custody;
- (2) The establishment or modification of spousal support;
- (3) The dissolution of a marriage;
- (4) Enforce marital property settlements, or
- (5) Provide legal advice to custodial and non-custodial parties.

(C) **Termination of Service.** The Delaware Child Support Enforcement program may terminate child support services under the following circumstances:

- (1) When the Program receives a written request for termination of services from the person to whom services are being provided;
- (2) When the minor child is no longer eligible for child support or entitled to child support, or

(3) When an applicant receiving services has violated any term or condition set forth by the DCSE program.

**Section 109. Eligibility, Assignment.**

(A) Eligibility and Application. Child support services are available to an applicant who qualifies under Title IV-D laws and regulations.

(B) Assignment. An applicant for child support services shall assign his/her child support rights to the Tribe, which shall distribute the payment to the appropriate agency or individual.

(C) Tribe has Priority. An assignment of child support to the Tribe shall have first priority over any prior or subsequent assignments.

**Section 110. Application Fee.**

The DCSE shall not charge an application fee for child support services.

**Section 111. Intergovernmental Procedures, Full Faith and Credit.**

(A) **Intergovernmental Procedure.** DCSE Child Support Program shall extend the full range of services available under its Tribal IV-D plan to respond to all requests from and cooperate with other tribal and state IV-D agencies.

(B) **Full Faith and Credit.** The Tribe shall recognize child support orders issued by other tribes and tribal organizations and by states, in accordance with the requirements under the Full Faith and Credit for Child Support Orders Act, 28 U.S.C. 1738(B).

**Section 112. Confidentiality of Records.**

(A) All applications, information and records received or obtained by the DCSE are confidential and shall only be opened under authorized tribal or federal laws in accordance with Title IV-D rules and regulations.

(B) The use or disclosure of personal information received or maintained by the DCSE is limited to purposes directly connected with the administration of the program, or Titles IV-A and XIX with the administration of other programs or purposes prescribed by the Secretary in regulations.

(C) No employee or agent of the DCSE Child Support Program shall provide any information referred to in this Act, except as provided, to any public or private agency or individual. Information may be disclosed and shared between a state, tribal or federal

agency as necessary in the collection of child support in accordance with Title IV-D rules and regulations.

**(D)** Information shall not be released on the whereabouts of one party or the child to another party against whom a protective order with respect to the former party or the child has been entered.

**(E)** Information shall not be released on the whereabouts of one party of the child to another person if there is reason to believe that the release of the information to that party could result in physical or emotional harm to the party or the child.

**(F)** Unauthorized disclosure of any such information may subject the disclosing party to criminal and/or civil liability. Criminal Prosecution may result in conviction, punishable by a fine of up to \$5,000.00 per offense.

### **Section 113. Attorneys.**

**(A) Attorneys.** An attorney employed by or under contract with the Tribe shall represent and act on behalf of the Tribe when providing child support. An attorney-client relationship shall not exist between the attorney and any other party other than the Tribe, regardless of the name in which the action is brought.

**(B) No Representation of Parties by Tribal Attorneys.** An attorney employed to represent the Tribe in child support and related proceedings shall not provide any form of legal representation to any person who is a party, an interested party, or a beneficiary in a matter in which the Tribe is providing services. Such attorney shall not represent any party, an interested party, or a beneficiary in any other legal matters or proceedings which could reasonably be deemed a conflict of interest.

**(C) Information to be Provided to Applicants and Recipients Regarding Legal Representation.** The DCSE shall inform the applicant or recipient of child support services that no attorney-client relationship exists between the attorney and the applicant or recipient and that the attorney does not provide legal representation on behalf of the applicant.

### **Section 114. Locating Parents.**

**(A) Parent Locator Service.** The Tribe's parent locator service may be used to obtain information for paternity establishment and for other child support related proceedings.

**(B) Attempts to Locate.** Attempts to locate custodial or noncustodial parents and/or sources of income and assets shall be made when location is required to take necessary

action in a case. Reasonably available sources of information and records shall be used to locate custodial or noncustodial parents and their sources of income and assets.

**Section 115. Financial Disclosure.**

The parents shall provide a complete disclosure of assets on a financial affidavit for purposes of child support and related proceedings, except as otherwise provided.

**Section 116. Applicant Cooperation.**

An applicant shall cooperate with the DCSE in child support and related proceedings. Non-cooperation may result in the closure of the applicant's case for failure to cooperate. If notification is required for non-cooperation by other state, tribal or federal agencies, the DCSE shall notify the appropriate agency of the non-cooperation of the applicant.

**Section 117. Reasonable Costs.**

The Court may assess reasonable costs against a party in child support and related proceedings. These costs include, but are not limited to: court filing fees, process server fees, mailing fees, and genetic testing fees performed in accordance with this Code.

**Section 118. Overpayment.**

When an obligor has overpaid a child support obligation and there are no arrearages, the DCSE shall seek a refund of the amount from the obligee.

**CHAPTER 2  
JURISDICTION, CIVIL PROCEDURE, FULL FAITH AND CREDIT, SOVEREIGN  
IMMUNITY**

**Section 201. Jurisdiction.**

**(A) General.** The Court shall have jurisdiction over child support and related proceedings involving an individual who is the subject of such proceedings if one or more of the following prescribed conditions are fulfilled:

- (1)** The individual is an Indian, or eligible for membership of a federally recognized tribe who resides within lands subject to the jurisdiction of the Tribe;
- (2)** A child(ren) who is a member or is eligible for membership of a federally recognized tribe who resides within lands subject to the jurisdiction of the Tribe;
- (3)** The individual resided with the child in lands subject to the jurisdiction of the Tribe;

- (4) The individual resided on lands subject to the jurisdiction of the Tribe and provided pre-natal expenses and/or other support for the child;
- (5) The child resides on lands subject to the jurisdiction of the Tribe as a result of the acts or directives of the individual;
- (6) The individual engaged in sexual intercourse on lands subject to the jurisdiction of the Tribe and the child may have been conceived by that act of intercourse;
- (7) The individual asserted parentage in a putative father registry maintained by any state or tribal registry agency;
- (8) The individual is a member of the Delaware Tribe of Indians or the child is a member or eligible for membership in the Delaware Tribe of Indians;
- (9) The individual submits to the jurisdiction of the Court by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction; or
- (10) There is any basis consistent with the law and order codes, or the Constitution of the Delaware Tribe of Indians, the United States, or the States of Oklahoma or Kansas for the exercise of personal jurisdiction.

**(B) Personal Jurisdiction Over All Interested Parties Not Required.** Lack of personal jurisdiction over a child and the custodial parent does not preclude the Court from making a child support order binding on the noncustodial parent who is subject to the child support order.

**Section 202. Transfer.**

The DCSE may accept transfer cases from other state and tribal IV-D agencies, and may transfer cases to other state and tribal IV-D agencies, if appropriate.

**Section 203. Venue.**

Venue for all child support actions initiated by the DCSE shall be the Tribe's District Court.

**Section 204. Civil Procedure.**

The civil procedure to be followed shall be those set forth in the Delaware Tribe of Indians Law and Order Code, unless otherwise specified herein.

**Section 205. Filing Fees.**

The Clerk of the Court shall not charge filing fees for pleadings made by and for the DCSE.

**Section 206. Full Faith and Credit.**

The Tribe shall give full faith and credit to a valid court order from other tribal and state administrative bodies and courts in accordance with the federal Full Faith and Credit for Child Support Orders, 28 USC §1738B.

**Section 207. Sovereign Immunity.**

Nothing in this chapter shall be deemed a waiver of the sovereign immunity of the Tribe.

**CHAPTER 3  
PATERNITY AND GENETIC TESTING**

**Section 301. General.**

**(A) Applicability.** This article governs the establishment of parentage for a minor child as defined herein.

**(B) Authority.** The adjudicating court is authorized to adjudicate parentage under this Code.

**(C) Adjudication of parent-child relationship.** The adjudicating court shall apply the laws of the Tribe to adjudicate the parent-child relationship. The applicable laws do not depend on:

- (1)** The place of birth of the child, or
- (2)** The past or present residence of the child.

**Section 302 No Effect on Tribal Enrollment.**

Determination of paternity under this chapter has no effect on tribal enrollment or membership.

**Section 303. Parent-Child Relationship.**

**(A)** The mother-child relationship is established between a woman and a child by:

- (1)** The woman's having given birth to the child;
- (2)** Adoption of the child by the woman; or
- (3)** As otherwise provided by law.

**(B)** The father-child relationship is established between a man and a child by:

- (1) An un-rebutted presumption of the man's paternity of the child under this Code herein;
- (2) An effective acknowledgment of paternity by the man in accordance with these codes, unless the acknowledgment has been rescinded or successfully challenged;
- (3) An adjudication of the man's paternity;
- (4) Adoption of the child by the man; or
- (5) As otherwise provided by law.

**Section 304. Rights Valid Until Terminated.**

Unless parental rights are terminated, a parent-child relationship established under this Title applies for all purposes, except as otherwise specifically provided by other laws of the Tribe.

**Section 305. Presumption of Paternity - Marriage.**

- (A) A man is presumed to be the father of a child if:
- (1) He and the mother of the child are married to each other and the child is born during this marriage; or
  - (2) He and the mother of the child were married to each other and the child is born within three hundred (300) days after the termination of the marriage by death, annulment, declaration of invalidity, divorce or dissolution of marriage, or decree of separation is entered by the court; or
  - (3) Before the birth of the child, he and the mother of the child married each other in apparent compliance with the law, even if the attempted marriage is or could be declared invalid, and the child is born during the invalid marriage or within three hundred (300) days after its termination by death, annulment, declaration of invalidity, divorce or dissolution of marriage, or decree of separation is entered by the court; or
  - (4) After the birth of the child, he and the mother of the child married each other in apparent compliance with law, whether or not the marriage is or could be declared invalid, and he voluntarily asserted his paternity of the child, and:
    - (a) The assertion is on record filed with the state agency maintaining birth records;
    - (b) He agreed to be and is named as the child's father on the child's birth certificate; or
    - (c) He admitted paternity of the child under oath or by sworn testimony.

**(B)** A presumption of paternity established under these Codes may be rebutted only by an adjudication of paternity.

**Section 306. No Discrimination Based on Marital Status.**

A child born to parents who are not married to each other has the same rights under this Title as a child born to parents who are married.

**Section 307. Voluntary Acknowledgment of Paternity.**

**(A)** A man claiming to be the genetic father of the child and the mother of the child, together may sign an acknowledgment of paternity with the intent to establish the man's paternity.

**(B)** An acknowledgment of paternity must:

- (1)** Be in a record (oral or written);
- (2)** Be signed, or otherwise authenticated, under penalty of perjury by the mother and by the man seeking to establish paternity;
- (3)** State that the child whose paternity is being acknowledged:
  - (a)** Does not have a presumed father, or has a presumed father whose full name is stated; and
  - (b)** Does not have another acknowledged or adjudicated father;
- (4)** State whether there has been genetic testing and, if so, that the acknowledging man's claim of paternity is consistent with the results of the testing; and
- (5)** State that the signatories understand that the acknowledgment is the equivalent of a judicial adjudication of paternity of the child; and, that a challenge to the acknowledgment is permitted only under limited circumstances and is barred after two (2) years.

**(C)** An acknowledgment of paternity is void if it:

- (1)** States that another man is a presumed father, unless a denial of paternity signed or otherwise authenticated by the presumed father is filed with the state agency maintaining birth records;
- (2)** States that another man is an acknowledged or adjudicated father; or
- (3)** Falsely denies the existence of presumed, acknowledged or adjudicated father of the child.

**(D)** A presumed father may sign or otherwise authenticate an acknowledgment of paternity.

**(E)** Except as otherwise provided in this Title, a valid acknowledgment of paternity filed with the state agency maintaining birth records is equivalent to an adjudication of paternity of a child and confers upon the acknowledged father all of the rights and duties of a parent.

**Section 308. Denial of Paternity.**

**(A)** A presumed father may sign a denial of his paternity. The denial is valid only if:

**(1)** An acknowledgment of paternity signed, or otherwise authenticated, by another man is filed pursuant to these Codes;

**(2)** The denial is in a record, and is signed, or otherwise authenticated, under penalty of perjury; and

**(3)** The presumed father has not previously:

**(a)** Acknowledged his paternity, unless the previous acknowledgment has been rescinded, or successfully challenged pursuant to these Codes; or

**(b)** Been adjudicated to be the father of the child.

**(4)** The denial is signed not later than two (2) years after the birth of the child.

**(B)** Except as otherwise provided in these codes, a valid denial of paternity by a presumed father filed with the state agency maintaining birth records in conjunction with a valid acknowledgment of paternity is equivalent to an adjudication of the non-paternity of the presumed father and discharges the presumed father from all rights and duties of a parent.

**Section 309. Rules for Acknowledgment and Denial of Paternity.**

**(A)** An acknowledgment of paternity and a denial of paternity may be filed separately or simultaneously. If the acknowledgment and denial are both necessary, neither is valid until both are filed

**(B)** An acknowledgment of paternity or denial of paternity may be signed before the birth of the child.

**(C)** Subject to subsection A of this section, an acknowledgment or denial of paternity takes effect on the birthdate of the child or the filing of the document with the state agency maintaining birth records, whichever occurs later.

**(D)** An acknowledgment of paternity or denial of paternity signed by a minor is valid if it is otherwise in compliance with this Act.

**Section 310. Proceedings for Rescission, Rescission by Minor.**

**(A)** A signatory may rescind an acknowledgment of paternity or denial of paternity by commencing a proceeding to rescind before the earlier of:

- (1)** Sixty (60) days after the effective date of the acknowledgment or denial; or
- (2)** The date of the first hearing, in a proceeding to which the signatory is a party, before a court to adjudicate an issue relating to the child, including a proceeding that establishes support.

**(B)** A signatory who was a minor at the time of execution of the acknowledgment may rescind an acknowledgment of paternity within sixty (60) days of reaching the age of eighteen.

**Section 311. Challenges After Expiration of Period for Rescission.**

**(A)** After the period for rescission under Section 310 of this chapter has expired, a signatory of an acknowledgment of paternity or denial of paternity may commence a proceeding to challenge the acknowledgment or denial only:

- (1)** On the basis of fraud, duress, or material mistake of fact; and
- (2)** Within two (2) years after the acknowledgment or denial is filed with the state agency maintaining the birth records.

**(B)** A party challenging an acknowledgment of paternity or denial of paternity has the burden of proof.

**Section 312. Procedures for Rescission or Challenge.**

**(A)** Every signatory to an acknowledgment and any related denial of paternity must be made a party to a proceeding to rescind or challenge the acknowledgment or denial.

**(B)** For the purpose of a rescission, or challenge to, an acknowledgment of paternity or denial of paternity, a signatory submits to personal jurisdiction of the adjudicating court by signing the acknowledgment or denial effective upon the filing of the document with the state agency maintaining birth records.

**(C)** Except for good cause, during the pendency of a proceeding to rescind or challenge an acknowledgment of paternity or denial of paternity, the court may not

suspend the legal responsibilities of a signatory arising from the acknowledgment, including the duty to pay child support.

**(D)** A proceeding to rescind or to challenge an acknowledgment of paternity or denial of paternity must be conducted in the same manner as a proceeding to adjudicate parentage under this chapter.

**(E)** At the conclusion of a proceeding to challenge an acknowledgment of paternity or denial of paternity, the court shall order the state agency maintaining birth records to amend the birth record of the child, if appropriate.

**Section 313. Ratification Barred.**

A court or administrative agency conducting a judicial or administrative proceeding is not required or permitted to ratify an unchallenged acknowledgment of paternity.

**Section 314. Full Faith and Credit.**

Full faith and credit shall be given to an acknowledgment of paternity or denial of paternity effective in another tribe or state if the acknowledgment or denial has been signed and is otherwise in compliance with the law of the other tribe or state.

**Section 315. Exceptions to the Establishment of Paternity.**

The DCSE is not required to establish paternity in any case involving incest or forcible rape, or in any case in which legal proceedings for adoption are pending, if it would not be in the best interest of the child to establish paternity.

**SUBCHAPTER A  
GENETIC TESTING**

**Section 316. General.**

**(A)** This subchapter governs genetic testing of an individual to determine parentage, whether the individual is:

- (1)** voluntarily submitting to testing, or
- (2)** is tested pursuant to an order of the court.

**(B)** Traditional and customary objections to blood testing and/or DNA testing shall not be a basis for refusal to undergo such testing.

**Section 317. Order for Testing.**

**(A)** Except as otherwise provided, the court shall order the child and other designated individuals to submit to genetic testing if the request for testing is supported by a sworn statement by the party to the proceeding:

- (1)** Alleging paternity, and stating facts establishing a reasonable possibility of the requisite sexual contact between the parties; or
- (2)** Denying paternity and stating facts establishing a possibility that sexual contact between the individuals, if any, did not result in the conception of the child.

**(B)** The DCSE may require genetic testing only if there is no presumed, acknowledged, or adjudicated father, unless for good cause shown, the DCSE believes genetic testing is in the best interests of the minor child.

**(C)** If two or more men are subject to court-ordered genetic testing, the testing may be ordered concurrently or sequentially.

**(D)** If a request for genetic testing of a child is made before the birth of the child, the court shall not order in utero testing, nor shall DCSE require in utero testing.

**Section 318. Requirements for Genetic Testing.**

**(A)** Genetic testing shall be of a type relied upon by experts in the field of genetic testing and performed in a testing laboratory accredited by:

- (1)** The American Association of Blood Banks, or a successor to its functions;
- (2)** The American Society for Histocompatibility and Immunogenetics, or a successor to its functions; or
- (3)** An accrediting body designated by the federal Secretary of Health and Human Services.

**(B)** A specimen used in genetic testing may consist of one or more samples, or a combination of samples of blood, buccal cells, bone, hair, or other body tissue or fluid. The specimen used in the testing need not be of the same kind for each individual undergoing genetic testing.

**(C)** Based on the ethnic or racial group of an individual, the testing laboratory shall determine the databases from which to select frequencies for use in calculation of the probability of paternity. If there is disagreement as to the testing laboratory's choice, the following rules apply:

(1) The individual objecting may require the testing laboratory, within thirty (30) days after receipt of the report of the test, to recalculate the probability of paternity using an ethnic or racial group different from that used by the laboratory;

(2) The individual objecting to the testing laboratory's initial choice shall:

(a) if the frequencies are not available to the testing laboratory for the ethnic or racial group requested, provide the requested frequencies compiled in a manner recognized by accrediting bodies; or

(b) engage another testing laboratory to perform the calculations.

(3) The testing laboratory may use its own statistical estimate if there is a question regarding which ethnic or racial group is appropriate. If available, the testing laboratory shall calculate the frequencies using statistics for any other ethnic or racial group requested.

(D) If, after recalculation using a different ethnic or racial group, genetic testing does not conclusively identify a man as the father of a child, an individual who has been tested may be required to submit to additional genetic testing.

#### **Section 319. Report of Genetic Testing, Chain of Custody.**

(A) A report of genetic testing shall be in a record and signed under penalty of perjury by a designee of the testing laboratory. A report made under the requirements of this section is self-authenticating.

(B) Documentation from the testing laboratory of the following information is sufficient to establish a reliable chain of custody that allows the results of genetic testing to be admissible without testimony:

(1) The names and photographs of the individuals whose specimens have been taken;

(2) The names of the individuals who collected the specimen;

(3) The places and dates the specimens were collected;

(4) The names of the individuals who received the specimens in the testing laboratory, and

(5) The dates the specimens were received.

#### **Section 320. Genetic Testing Results, Rebuttal.**

(A) A man is rebuttably identified as the father of a child if the genetic testing complies with this chapter and the results disclose that the man has:

- (1) At least a ninety-nine (99%) percent probability of paternity, using a prior probability of 0.50, as calculated by using the combined paternity index obtained in the testing; and
- (2) A combined paternity index of at least 100 to 1.

(B) A man identified under subsection A of this section as the father of the child may rebut the genetic testing results only by other genetic testing satisfying the requirements of this chapter which:

- (1) Excludes the man as a genetic father of the child; or
- (2) Identifies another man as the possible father of the child.

(C) Except as otherwise provided herein, if more than one man is identified by genetic testing as the possible father of the child, the court shall order them to submit to further genetic testing to identify the genetic father.

**Section 321. Costs of Genetic Testing.**

(A) The costs of the initial genetic testing must be advanced:

- (1) By DCSE when DCSE is providing services;
- (2) By the individual who made the request;
- (3) As agreed by the parties, or
- (4) As ordered by the court.

(B) When the cost is advanced by DCSE, DCSE may seek reimbursement from the man who is rebuttably identified as the father.

**Section 322. Additional Genetic Testing.**

(A) The court may order, or DCSE may request additional genetic testing upon the request of the party who contests the result of the original testing. If the previous genetic testing identified a man as the father of the child, the court may not order additional testing unless the party challenging the test provides advance payment for the testing.

**Section 323. Genetic Testing When Specimen Is Not Available.**

(A) Subject to subsection B of this section, if a genetic-testing specimen is not available from a man who may be the father of a child, for good cause and under circumstances the court considers to be just, the court may order the following individuals to submit specimens for genetic testing:

- (1) The parents of the man;

- (2) Brothers and sisters of the man;
- (3) Other children of the man and their mothers;
- (4) Other relatives of the man necessary to complete genetic testing; and
- (5) Any other custodians of genetic material.

(B) Issuance of a court order under this section requires a finding that the need for genetic testing outweighs the legitimate interests of the individual sought to be tested.

**Section 324. Identical Brothers, Non-genetic Evidence to Determine Father.**

(A) The court may order genetic testing of a brother of a man identified as the father of a child if the man is commonly believed to have an identical brother and evidence suggests that the brother may be the genetic father of the child.

(B) If each brother satisfies the requirements as the identified father of the child under §324, without consideration of another identical brother being identified as the father of the child, the court may rely on non-genetic evidence to adjudicate which brother is the father of the child.

**Section 325. Release of Report of Genetic Testing.**

Release of a genetic testing report for parentage is pursuant to policy and procedure promulgated by the DCSE.

**SUBCHAPTER B  
PROCEEDINGS TO ADJUDICATE PARENTAGE**

**Section 326. Civil Proceeding to Adjudicate Parentage.**

A civil procedure may be maintained to adjudicate parentage of a child. The proceeding is governed by Civil Procedure Code of the Delaware Tribe, unless otherwise specified herein.

**Section 327. Standing to Maintain Proceeding.**

Except as otherwise stated a proceeding to adjudicate parentage may be maintained by:

- (1) The child;
- (2) The mother of the child;
- (3) A man whose paternity of the child is to be adjudicated;
- (4) The DCSE; or

- (5) A representative authorized by law to act for an individual who would otherwise be entitled to maintain a proceeding but who is deceased, incapacitated, or a minor.

**Section 328. Parties to Proceeding.**

The following individuals must be joined as parties in a proceeding to adjudicate parentage:

- (1) The mother of the child; and
- (2) A man whose paternity of the child is to be adjudicated.

**Section 329. No Limitation: Child Having No Presumed, Acknowledged or Adjudicated Father.**

An adjudication proceeding to determine the parentage of a child having no presumed, acknowledged, or adjudicated father may be commenced at any time, even after:

- (1) The child becomes an adult, but only if the child initiates the proceeding; or
- (2) An earlier proceeding to adjudicate paternity has been dismissed based upon the application of a statute of limitation then in effect

**Section 330. Limitation: Child Having Presumed Father.**

(A) Except as otherwise provided in subsection B of this section, a proceeding brought by a presumed father, the mother or another individual to adjudicate the parentage of a child having a presumed father must be commenced not later than two (2) years after the birth of the child.

(B) A proceeding seeking to disprove the father-child relationship between a child and the child's presumed father may be maintained at any time if the court determines that:

- (1) The presumed father and the mother of the child neither cohabited nor engaged in sexual intercourse with each other during the probable time of conception; and
- (2) The presumed father never openly held out the child as his own.

(C) A proceeding seeking to disprove the father-child relationship between a child and the child's presumed or acknowledged father may be maintained at any time if the court determines the biological father, or the presumed or acknowledged father, and the mother agree to adjudicate the biological father's parentage.

(1) If the presumed or acknowledged father or mother is unavailable, the court may proceed if it is determined that diligent efforts have been made to locate the unavailable party and it would not be prejudicial to the best interest of the child to proceed without that party.

(2) In a proceeding under this section, the court shall enter an order either confirming the existing father-child relationship or adjudicating the biological father as the parent of the child. A final order under this section shall not leave the child without an acknowledged or adjudicated father.

**Section 331. Authority to Deny Motion for Genetic Testing, Factors to Consider.**

(A) In a proceeding to adjudicate the parentage of a child having a presumed father or to challenge the paternity of a child having an acknowledged father, the court may deny a motion seeking an order for genetic testing of the mother, the child and the presumed or acknowledged father if the court determines that:

(1) The conduct of the mother or the presumed or acknowledged father estops that party from denying parentage; and

(2) It would be inequitable to disprove the father-child relationship between the child and the presumed or acknowledged father or otherwise against the best interests of the minor child.

(B) In determining whether to deny a motion seeking an order for genetic testing under this section, the court shall consider the best interest of the child, including the following factors:

(1) The length of time between the date of the parentage adjudication proceeding and the date of notification to the presumed or acknowledged father that he may not be the genetic father;

(2) The length of time the presumed or acknowledged father assumed the role of father of the child;

(3) The facts surrounding the presumed or acknowledged father's discovery of his possible non-paternity;

(4) The nature of the relationship between the child and the presumed or acknowledged father;

(5) The age of the child;

(6) The harm that may result to the child if presumed or acknowledged paternity is successfully disproved;

(7) The nature of the relationship between the child and any alleged father;

(8) The extent to which the passage of time reduces the chances of establishing the paternity of another man and a child-support obligation in favor of the child; and

(9) Other factors that may result from a disruption of the father-child relationship or the chance of harm to the child.

(C) In a proceeding involving the application of this section, a minor or incapacitated child shall be represented by a guardian ad litem.

(D) If the court denies a motion seeking an order for genetic testing, it shall issue an order adjudicating the presumed or acknowledged father to be the father of the child.

**Section 332. Limitation: Child Having Acknowledged or Adjudicated Father.**

(A) When a child has an acknowledged father, a signatory to the acknowledgment of paternity or denial of paternity may commence a proceeding to rescind the acknowledgment or denial or to challenge the paternity of the child but only within the time allowed under §310 or §311 of this act.

(B) When a child has an acknowledged or adjudicated father and an individual, other than the child seeks an adjudication of paternity of the child and who is neither a signatory to the acknowledgment of paternity nor a party to the adjudication the individual shall commence proceedings not later than two (2) years after the date of acknowledgment or adjudication.

**Section 333. Joinder of Proceedings.**

Except as otherwise provided, a proceeding to adjudicate parentage may be joined with a proceeding for adoption, termination of parental rights, child custody or visitation, child support, divorce, annulment, legal separation or separate maintenance, probate or administration of an estate or other appropriate proceedings.

**Section 334. Commencement of Proceeding.**

A proceeding to determine parentage may be commenced after the birth of the child.

**Section 335. Child as Party: Representation.**

(A) A minor child is a permissible party, but is not a necessary party to a proceeding under this chapter.

(B) The court shall appoint a guardian ad litem to represent a child if the child is a party or if the court determines that the interests of the child are not adequately represented.

**Section 336. Admissibility of Results of Genetic Testing.**

(A) Except as otherwise provided in subsection C of this section, a record of a genetic testing expert is admissible as evidence of the truth of the facts asserted in the report unless a party objects to its admission within fourteen (14) days after its receipt by the objecting party and cites specific grounds for exclusion. The admissibility of the report is not affected by whether the testing was performed:

- (1) Voluntarily or pursuant to an order of the court or as requested by the child support enforcement agency; or
- (2) Before or after the commencement of the proceeding.

(B) A party objecting to the results of genetic testing may call one or more genetic-testing experts to testify in person or by telephone, videoconference, deposition or another method approved by the court. Unless otherwise ordered by the court, the party offering the testimony bears the expense for the expert testifying.

(C) If a child has a presumed, acknowledged or adjudicated father, the results of genetic testing are inadmissible to adjudicate parentage unless performed pursuant to an order of a Court of competent jurisdiction.

**Section 337. Consequences of Declining Genetic Testing.**

(A) An order for genetic testing is enforceable by contempt.

(B) If an individual whose paternity is being determined declines to submit to a court order for genetic testing, the court may adjudicate parentage contrary to the position of that individual, pursuant to the following conditions are met:

- (1) The court finds, by clear and convincing evidence, the individual is more likely than not to be the parent of the child; and
- (2) The adjudication is not contrary to the best interests of the child.

(C) Genetic testing of the mother of a child is not a condition precedent to testing the child and a man whose paternity is being determined. If the mother is unavailable or declines to submit to genetic testing, the court may order the testing of the child and every man whose paternity is being adjudicated.

**Section 338. Admission of Paternity Authorized.**

(A) A respondent in a proceeding to adjudicate parentage may admit to the paternity of a child by filing a pleading to that effect or by admitting paternity under penalty of perjury in an affidavit filed in the case, or by sworn testimony before the presiding court.

**(B)** If the court finds that the admission of paternity satisfies the requirements of this section and finds that there is no reason to question the admission, the court shall issue an order adjudicating the child to be the child of the man admitting paternity.

**SUBCHAPTER C**  
**SPECIAL RULES FOR PROCEEDING TO ADJUDICATE PARENTAGE**

**Section 339. Rules for Adjudication of Paternity.**

**(A)** The court shall apply the following rules to adjudicate the paternity of a child:

**(1)** The paternity of a child having a presumed, acknowledged or adjudicated father may be disproved only by admissible results of genetic testing excluding that man as the father of the child or identifying another man as the father of the child.

**(2)** Unless the results of genetic testing are admitted to rebut other results of genetic testing, a man identified as the father of a child under Section 321 of this Act must be adjudicated the father of the child.

**(3)** If the court finds that genetic testing under Section 321 neither identifies nor excludes a man as the father of a child, the court may not dismiss the proceeding. In that event, the results of genetic testing, and other evidence, are admissible to adjudicate the issue of paternity.

**(4)** Unless the results of genetic testing are admitted to rebut other results of genetic testing, a man excluded as the father of a child by genetic testing shall not be adjudicated to be the father of the child.

**Section 340. Court Shall Adjudicate.**

The court, without a jury, shall adjudicate paternity of a child.

**Section 341. Hearings, Records, Reports, Public Record.**

**(A)** Upon the request of a party and for good cause shown, the court may close a proceeding under this chapter.

**(B)** A final order in a proceeding under this chapter is available for public inspection. Other records, reports and papers are available only with the consent of the parties or an order of the court for good cause.

**Section 342. Default Order.**

**(A)** The court may issue an order adjudicating the paternity of a man who:

- (1) After service of process, is in default; and
- (2) Is found by the court to be the father of a child by clear and convincing evidence.

(B) All orders issued under this section shall be in writing and shall include the following provision: "Paternity in this matter was adjudicated by default. This order shall not be used when determining eligibility for tribal membership."

**Section 343. Dismissal Only Without Prejudice.**

The court may dismiss a proceeding under this chapter for want of prosecution only without prejudice. An order of dismissal for want of prosecution purportedly with prejudice is void and has only the effect of a dismissal without prejudice.

**Section 344. Order Adjudicating Parentage.**

(A) The court shall issue an order adjudicating whether a man alleged or claiming to be the father is the parent of the child.

(B) An order adjudicating parentage must identify the child by name and date of birth.

(C) Except as otherwise provided in subsection D of this section, the court may assess filing fees, reasonable attorney's fees, fees for genetic testing, other costs, including necessary travel and other reasonable expenses incurred in a proceeding under this subchapter.

(D) The court may not assess fees, costs or expenses against any Title IV-D support-enforcement agency of this tribe or another tribe or state, except as provided by other law.

(E) On request of a party and for good cause shown, the court may order that the name of the child be changed.

(F) If the order of the court is at variance with the child's birth certificate, the court shall order the state agency maintaining birth records to issue an amended birth registration.

**CHAPTER 4  
CHILD SUPPORT ESTABLISHMENT**

**Section 401. General.**

This article governs the establishment of child support for a minor child as defined herein.

**(A) Applicability.** The Delaware Tribe of Indians' jurisdiction lies within the states of Kansas and Oklahoma and calculation of child support guidelines shall be consistent with the attached schedule regardless of the state of residency.

**(B) Orders.** In all child support cases, the Delaware Tribe of Indians Court shall order the payment of child support pursuant to the child support guidelines established in this Title and the child support schedule attached as Addendum I to this Code.

**(C) Initiation of Action.** The Tribe, mother, father, guardian, custodian, child, or other agency responsible for the support of the child may initiate an action for child support.

**(D) Age Requirement.** An action to establish child support shall be initiated before the minor child reaches the age of eighteen (18) years of age.

**(E) Parent Requirement.** Child support shall only be established for a biological or legally adopted child of the parents.

**(F) No Support of Stepchildren Required.** A parent shall not be responsible or liable for the support of a step-child(ren).

**(G) Adopted Children.** Parents have the same legal duty of support for an adopted child as for a biological child.

**(H) Obligors and Obligees.** In the payment and receipt of child support, the noncustodial parent or the person responsible for the payment of child support shall be designated the "obligor" and the custodial parent or the person who receives the child support shall be designated the "obligee."

#### **Section 402. Child Support, Age of Majority, Minor Parents, Emancipation.**

**(A) Age Limitation.** A child shall be entitled to support by his/her parents until such child reaches eighteen (18) years of age or is emancipated. If a child is regularly enrolled and attending high school or an alternative high school education program as a full-time student, the child shall be entitled to support by the parents until the child graduates from high school, is emancipated, or reaches the age of twenty (20) years, whichever occurs first. Full time attendance shall include regularly scheduled breaks from the school year. No hearing or further order shall be required to extend support pursuant to this subsection after the child reaches the age of eighteen (18).

**(B) Minor Parents.** Minor parents are responsible for the financial support of their child. The Court may deviate from the child support guidelines if the minor parents are attending high school. When the minor parent emancipates, the Court may modify the order in accordance with the child support guidelines.

**(C) Emancipation.** A child shall be considered emancipated when said child either reaches the age of eighteen (18) or is regularly enrolled and attending high school until the age of twenty (20) whichever occurs first pursuant to subsection (A) of this section; or when the child enlists in the military, or marries, or is emancipated by an order from the Court.

### **Section 403. Child Support Obligations and Guidelines.**

**(A) Purpose.** The purposes of the child support guidelines are to:

- (1)** Establish as policy an adequate standard of support for minor children, subject to the ability of parents to pay;
- (2)** Make support payments equitable by ensuring consistent treatment of persons in similar circumstances; and
- (3)** Improve the efficiency of the court process by promoting settlements and giving guidance in establishing levels of child support to the Court, DCSE and the parties.

**(B) Child Support Worksheet.** The worksheet should contain the actual calculation of the child support based on Child Support Income, Work-Related Child Care Costs, Health, Dental, Orthodontic, and Optometric Insurance Premiums, and any Child Support Adjustments. (See Addendum I).

**(C) Use of Child Support Schedule.** In any action to establish or modify child support, the child support instructions as set forth in Addendum I shall be applied to determine the child support due and shall be a rebuttable presumption for the amount of such child support. The child support schedule shall be used for temporary and permanent orders, separations, dissolutions, and support decrees arising despite non-marriage of the parties. The child support schedule shall be used as the basis for reviewing the adequacy of child support levels in non-contested cases as well as contested hearings. A specific amount of child support should always be ordered, no matter how minimal, to establish the principle of that parent's obligation to provide monetary support to the child.

**(D) Base Monthly Child Support Amount.** A child support obligation shall provide for a base monthly child support amount, which shall be calculated using the child support computation schedule, the computation formula, and income guidelines for employed and self-employed parents. The computation formula computes the base monthly child support amount based on the domestic gross income of both parents, which shall be calculated in accordance with this section.

**(E) Sources for Determination of Gross Income Amounts.** Gross income shall be derived, but shall not be limited, to the following sources: salaries, wages, tips, commissions, bonuses, severance pay, dividends, pensions, interest income, trust income, annuities, capital gains, alimony or maintenance received, social security benefits, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, gifts, prizes, Individual Indian Money accounts, and per capita payments. For income from self-employment, rent, royalties, proprietorship of a business or joint ownership of a partnership or closely held corporation, "gross income" means gross receipts minus ordinary and necessary expenses required to produce such income; provided that ordinary and necessary expenses do not include expenses determined by the Court to be inappropriate for purposes of calculating child support. If the parent is unemployed, the minimum wage rate shall be used to compute the income of that parent, if the parent is physically capable of working, unless otherwise provided under these guidelines.

**(F) Excluded Sources for Determination of Gross Income Amounts.** Gross income shall not be derived from the following sources: actual child support received for children not before the Court; Temporary Assistance for Needy Families (TANF); Supplemental Security Income (SSI); food stamps; general assistance, and state supplemental payments for the aged, blind and disabled.

**(G) Computation of Domestic Gross Income.** The domestic gross income to be used for the purpose of determining the base monthly child support amount described in subsection (B) of this section shall be calculated as follows:

**(1)** In computing gross income for a child support obligation from sources such as those described in subsection (E) of this section, the one of the following types of income may be used, whichever is most equitable: (i) all earned and passive income; (ii) all passive and earned income equivalent to a forty-hour week plus such overtime and supplemental income as the Court deems equitable; (iii) the average of the gross monthly income for the time actually employed during the previous three years; or (iv) the minimum wage paid for a forty-hour work week. If a party is unemployed, the Court may impute a minimum wage for income. If a parent is permanently, physically or mentally incapacitated, the child support obligation shall be computed on the basis of actual monthly gross income.

**(2)** The amount of any preexisting court order for current child support for children, not before the Court, shall be deducted from gross income, if actually paid. The amount of reasonable expenses of debt service for preexisting, jointly acquired debt of the parents may be deducted from gross income, if actually paid.

**(H) Basic Child Care Obligations.** A child support order shall provide for child care expenses reasonably necessary to enable both parents to be employed, seek employment, or attend school or training to enhance employment income. The actual child care costs

incurred shall be allocated and paid monthly in the same proportionate share as the child support. Upon reasonable request by the obligor, the obligee shall provide the obligor with timely documentation of any change in the amount of the child care costs. If the Court finds that it will not cause detriment to the child or will not cause undue hardship to either parent, in lieu of payment of child care expenses incurred during employment, employment search, or while the obligee is attending school or training, the obligor may provide for the child care during that time.

**(I) Basic Medical Support Obligation.** A child support obligation shall provide for medical and dental insurance and unreimbursed medical and dental expenses. Medical support may be provided through employer insurance or group insurance or through an alternative private source or through the Indian Health Service. The actual medical and dental premiums are to be allocated between the parents in the same proportion as their adjusted gross income and added to the base child support obligation. An Indian Health Service facility, including such facility operated by an Indian tribe, and/or services may be used for both medical and/or dental service, if agreed by both the obligor and obligee.

**(J) Other Expenses Not Covered by Basic Child Support Obligations.**

**(1) Medical Expenses Not Covered by Insurance.** Reasonable and necessary medical, dental, orthodontic, optometric, psychological, or any other physical or mental health expenses of the child incurred by either parent and not reimbursed by insurance shall be allocated in the same proportion as the parents' adjusted gross income as separate items that are not added to the base child support obligation. The parent who incurs the expense shall be reimbursed by the other parent within thirty (30) days of receipt of documentation of the expense. If a clinic, hospital, or program provides health services as described in this subsection utilizing direct or contract health care funding provided through the Indian Health Service, both parties shall be liable for any medical and dental expenses resulting from, but not covered by, such services, or otherwise unreimbursed with funding through the Indian Health Service, in the same proportionate share as the child support.

**(2) Travel Expense.** A child support obligation may provide for transportation and communication expenses necessary for long distance visitation or time divided in proportion to each parent's adjusted gross income.

**(3) Extraordinary Educational Expenses.** A child support order may provide for any extraordinary educational expenses for children of the parties.

**(K) Deviations.** The Court may order child support in an amount different from that which is provided in these guidelines, if:

**(1)** (i) There is a presumption of hardship because application of the child support guidelines would require the non-custodial parent to pay the custodial

parent more than forty percent (40%) of his gross income for a single child support obligation for current support; (ii) a minor custodial and noncustodial parent are regularly attending high school; (iii) the court makes a finding that the parents of the minor parents are responsible for the financial support of the child; or (iv) application of the guidelines would be inappropriate or unjust in the particular case due to other circumstances; and

(2) Deviation is in the best interest of the children for whom the child support obligation is being established; and

(3) The award order states the amount the award would be if it were calculated by application of the guidelines; and

(4) The award order states the amount of child support which is actually awarded after the deviation; and

(5) The award order contains written findings regarding items (1) through (4) above.

#### **Section 404. Address Requirement For Service.**

(A) **Address Information.** All child support orders shall require the parties to keep the DCSE informed of their current addresses and an address of record for service. An address of record for service may be different from a party's physical address.

(B) **Change of Address.** Any change of address shall be provided to the DCSE program within thirty (30) days of the change. The address of a party shall be protected from disclosure if evidence of domestic violence or child abuse is found or it is determined that disclosure could be harmful to a party or child.

(C) **Service.** The address of record may be used for service of notices and orders in accordance with these Codes.

#### **Section 405. Child Support Order.**

(A) **Contents of Child Support Order.** A child support order shall provide the following:

(1) the names of the obligor and obligee;

(2) the name or names of the child(ren) before the court;

(3) a provision for the monthly child support amount;

(4) a provision for the amount of any past due support and a payment plan for the past due support, if applicable;

(5) a provision for a judgment for past due support and a payment plan for the past due support, if applicable;

(6) a provision for medical and dental insurance;

(7) a provision for unreimbursed medical expenses;

- (8) a provision for immediate income withholding;
- (9) a provision for child care costs, if applicable;
- (10) a provision for a current address and an address for service; and
- (11) such other information or requirements as determined appropriate and reasonable by the Court or the DCSE.

**(B) Commencement of Obligation.** The obligations shall commence, unless otherwise ordered, on the first day of the month immediately following the month in which the child support order was issued.

**(C) Statement of Amount.** The amount of a child support order shall not be construed to be an amount per child unless specified by the Court. If there is more than one child in the child support order and one of the children has attained the age of majority or is no longer entitled to support, the child support order may be modified.

**(D) Support of the Child.** The child support order may include a provision, if the Court deems it appropriate, to assure that the child support payment shall be used for the support of the child.

**Section 406. Arrearage.**

A judgment for arrearage may be included in each child support order if there is past due child support owed as well as a payment schedule for the judgment. Failure to state a past due amount in the order does not bar collection of the amount.

**Section 407. Non-cash Support.**

**(A) Non-cash Support.** The Court may allow part of the child support obligation to be paid with non-cash support, if the obligee agrees to the use of a non-cash payment being used, and the child support order states:

- (1) the specific dollar amount of the support obligation; and
- (2) the type and amount of non-cash support that will be permitted to satisfy the child support obligation.

**(B) Satisfaction of Public Assistance Monies.** Non-cash payments shall not be permitted to satisfy any tribal, state or federal public assistance monies.

**(C) Types of Non-Cash Support Permitted.** Non-cash support may be considered in the following circumstances: repairs to home or vehicle; resources for heating or utility reduction assistance; cultural or regalia contributions; and fish, wildlife or vegetation as food sources; provided however, that all non-cash support is credited consistent with subsection (A) herein.

**Section 408. Payments.**

Child support payments shall be made to the Delaware Tribe of Indians CSE, except as otherwise provided. When payments are made to the Delaware Tribe of Indians CSE, CSE shall distribute the payment to the appropriate agency or individual.

**Section 409. Judge's Signature.**

The judge shall sign the child support order and the child support computation form which establishes or modifies child support.

**Section 410. Voluntary Agreement.**

Parents may establish child support through a voluntary agreement in accordance with the child support guidelines. In the event of such agreement, the parties shall sign and date the child support order, the child support computation form, and a waiver of right to service of process before submission to the Court. Once signed, the agreed order, computation form, and waiver shall be submitted to the Court for approval and signature, including any evidence, for approval without the parties being present at a court hearing.

**Section 411. Rebuttable Presumption.**

There shall be a rebuttable presumption in any proceeding for child support that the amount of the award is the correct amount of child support to be awarded.

**Section 412. Liability for Past Support.**

In an establishment case for child support, the court may award an additional judgment to reimburse the expenses of support and education of the child from the date of birth to the date the order is entered. If the determination of paternity is based upon a presumption arising under Chapter 330 of this code, the court shall award an additional judgment to reimburse all or part of the expenses of support and education of the child from at least the date the presumption first arose to the date the child support order is entered, except that no additional judgment need be awarded for amounts accrued under a previous order for the child's support.

**Section 413. Termination of Parental Rights, Adoption.**

**(A) Termination of Parental Rights.** When a parent terminates his or her parental rights, the termination does not end the duty of either parent to support his or her child. The duty ends when a court terminates the parent's duty to support his or her child, or if there is a signed written agreement between the parties to terminate the duty to support and approved by a court. If there is a child support arrearage, the arrearage shall be due

until paid in full unless waived by the court or by a signed written agreement between the parties that waives the past arrearage and that is approved by a court.

**(B) Adoption.** If an adoption of a child is pending, a child support order shall remain in effect until notice is received that the final decree of adoption has been entered by the applicable court. If there is a child support arrearage, the arrearage shall be due until paid in full, unless waived by the court or by a signed written agreement between the parties that waives the arrearage and approved by the court.

**Section 414. Modification.**

**(A) Petition to Modify.** A child support order may be modified upon petition of an obligor, obligee or DCSE.

**(B) Modification Upon Material Change in Circumstances.** Child support orders may be modified upon a material change in circumstances that includes, but is not limited to:

- (1)** An increase or decrease in income; or
- (2)** When a child reaches the age of majority; or
- (3)** When a child ceases to be entitled to support pursuant to the support order,  
or
- (4)** A change in child care costs or medical support.

**(C) Effective Date of Modification.** An order of modification shall be effective upon the date the motion to modify was filed, unless the parties agree to another or the Court finds that the material change of circumstances did not occur until later date.

**(D) Voluntary Modification.** If the parties agree to a modification, the court shall review the modification to insure that it complies with the child support guidelines.

**Section 415. No Retroactive Modification.** A child support order shall not be modified retroactively.

**Section 416. Temporary Orders.**

**(A)** The court may upon proper application establish a temporary order for child support in accordance with the child support guidelines.

**(B)** A temporary order may be vacated or modified prior to or in conjunction with a final order or decree.

**(C)** A temporary order terminates when the final judgment on all issues, except attorney fees and costs, is rendered or when the action is dismissed.

**Section 417. Prior Born Children.**

If an obligor has a child support order and later has additional children born or adopted, the obligor may not be permitted to modify the order for the prior born child to support a child born or adopted later.

**Section 418. Past Due Support.**

A final order for modification shall state whether past due support is owed and set a payment schedule. The failure to state a past due amount does not bar an action to collect the past due amount.

**Section 419. Review of Child Support Orders, Review of Guidelines.**

(A) The DCSE shall conduct a review of a child support order at least once every four (4) years to ensure that the child support order is in accordance with the child support guidelines and Title IV-D rules and regulations.

(B) If the DCSE determines that the child support order is not in accordance with the child support guidelines, DCSE shall initiate action to modify the child support order.

(C) An order of modification shall be effective upon the date the motion to modify the child support order was filed.

(D) Either a noncustodial or custodial party may request a review of the child support order.

(E) DCSE shall conduct a review at least once every four years to insure the child support guidelines are appropriate child support award amounts and in accordance with Title IV-D rules and regulations.

**Section 420. Redirection of Child Support Upon Change in Physical Custody.**

Whenever physical custody of the child is changed, the child support payments shall be redirected to the new custodian, except for the amount of unpaid support still owed to the previous custodian or to the tribal or state child support agency.

**Section 421. No Statute of Limitations.**

Court ordered child support shall be owed until paid in full and it shall not be subject to a statute of limitation.

**Section 422. TANF Money Owed to a State or Tribe.**

When a state or tribe expends TANF money for the benefit of a dependent child, the payment of the TANF money creates a support debt owed to a state or tribe by the person(s) responsible for the support of the dependent child. The amount of the amount of support debt shall be equal to the amount of TANF money expended for the benefit of the dependent child, unless otherwise provided through a court or administrative order.

**Section 423. Income Assignment.**

**(A)** Every child support order or a modification of such order shall provide for an immediate income assignment provision, regardless of whether support payments are in arrears.

**(B)** The income assignment shall withhold the necessary amount to comply with the child support order for the monthly obligation. If there is overdue child support, the income assignment must withhold an amount to be applied toward satisfaction of the arrears.

**(C)** The total amount to be withheld from an individual's income for current and past due support shall not exceed the maximum amount permitted under §303(b) of the Consumer Credit Protection Act, 15 USC §1673(b).

**(D)** Income shall not be subject to withholding in any case where:

**(1)** Either the custodial or noncustodial parent demonstrates, and the court finds there is good cause not to require immediate income withholding; or

**(2)** A signed written agreement is reached between the custodial and noncustodial parent, which provides for an alternative arrangement, and is approved by the court.

**(E)** If the obligor has multiple withholding orders, the DCSE shall allocate amounts to be withheld from each order to ensure that all orders are implemented. In no case shall an allocation result in a support obligation not being implemented.

**(F)** Where immediate income withholding is not in place, the income of the obligor shall become subject to withholding on the date on which the payments the obligor has failed to make are at least equal to the support payable for one month.

**(G)** The only basis for contesting a withholding order is a mistake of fact, which means:

**(1)** An error in the amount of current or overdue support, or

**(2)** In the identity of the alleged obligor.

(H) DCSE shall terminate income withholding in cases where there is no longer a current order for support and all arrearages have been satisfied.

(I) DCSE shall seek a refund from the obligee for amounts which have been improperly withheld.

(J) DCSE shall be responsible to receive and process income withholding orders from any state, tribe, or other entity; and to ensure such orders are properly and promptly registered in the Delaware Tribe of Indians Court and served on employers located within the Tribe's jurisdiction.

(K) The income assignment issued pursuant to this section shall remain in effect as long as any support monies are owed. Payment of any support monies shall not prevent the income assignment from taking effect.

(L) Nothing in this section shall limit the authority of DCSE to use its administrative powers conferred by law to collect delinquent support without the necessity of a court order.

#### **Section 424. Voluntary Income Assignment.**

An obligor may execute a voluntary income assignment at any time. The voluntary assignment shall be filed with the court and take effect after service on the employer.

#### **Section 425. Employer, Notice of Income Assignment, Requirements.**

(A) DCSE shall send the employer notice of the income assignment using the standard federal form prescribed by United States Secretary of Department of Health and Human Services.

(B) The income withholding shall take effect on the next pay period of the obligor after the employer receives notice. The employer shall withhold the amounts specified in the notice on each pay period. The amounts withheld shall be sent to DCSE within seven (7) business days after the date upon which the obligor is paid. The employer shall include with each payment a report that states the date the amount was withheld from the obligor's income.

(C) The amount withheld, including any fee under this section, by the employer shall not exceed the limits permitted under §303(b) of the Consumer Credit Protection Act, 15 U.S.C. 1673 (b).

(D) If the amount of support due in the notice exceeds the maximum authorized under

subsection C of this section, the employer shall pay the amount due up to the statutory limit and send written notice to DCSE or person designated to receive payments that the amount due exceeds the amount subject to withholding.

**(E)** The employer shall notify DCSE within ten (10) days of the date when the obligor terminates employment and provide the obligor's last known address and the name and address of the obligor's new employer, if known.

**(F)** If the employer fails to withhold in accordance with the provisions of the income assignment order, the employer will be liable for the accumulated amount the employer should have withheld and paid from the obligor's income.

**(G)** The employer may not discipline, suspend, discharge or refuse to employ an obligor because of an income assignment. Any employer who violates this section shall be subject to a civil fine of \$500 for the unlawful discipline, suspension, discharge, or refusal to employ.

**(H)** The employer may combine withheld amounts from two or more obligors' income in a single payment to each appropriate agency requesting withholding and separately identify the portion of the single payment which is attributable to each individual obligor.

**(I)** The income assignment is binding on the employer until further notice by DCSE.

**(J)** Any payment made pursuant to the provisions of this section by the employer shall be made payable to DCSE.

**(K)** An income assignment issued pursuant to this section shall have priority over any other subsequent garnishments against the same income.

**(L)** The employer may deduct from an income of the obligor a sum not exceeding Five Dollars (\$5.00) per pay period but not to exceed Ten Dollars (\$10.00) per month as reimbursements for costs incurred by the employer in complying with the income assignment.

**(M)** The income assignment applies to any current or subsequent employer. If the obligor changes employment where an income assignment is in place, DCSE shall notify the new employer pursuant to this section that the income assignment is binding on the new employer.

**(N)** Two or more income assignments may be levied concurrently. Any current support due shall be paid before the payment of any arrearages or support debt payment.

**(O)** The employer shall verify the obligor's address, employment, earnings, income,

benefits, and dependent health insurance information upon request of DCSE.

**Section 426. Registration of Foreign Child Support Oder.**

(A) Any other state or tribal child support order shall be registered with the court for the purpose of obtaining jurisdiction for enforcement of the withholding.

(B) After registration of a foreign child support order, the DCSE shall notify the obligor that the child support order has been registered with the Tribe and is a valid order and enforceable as if originally issued in the Tribe's court.

**CHAPTER 26-5  
CHILD SUPPORT ENFORCEMENT**

**Section 501. General.**

(A) DCSE may initiate an enforcement proceeding that includes, but is not limited to:

- (1) enforcement of current child support payments;
- (2) establishment and enforcement of a child support judgment, and
- (3) review and modification of child support orders.

(B) DCSE may use applicable child support enforcement remedies in accordance with Title IV-D rules and regulations that include, but are not limited to: income withholding; requesting revocation of a state issued driver's license, hunting and fishing licenses, and professional licenses; consumer credit reporting; request passport denial; use of cooperative state and federal income tax refund intercept programs; use of lien and levy; contempt proceedings; and, any other civil remedy available for the enforcement of a child support order or judgment.

(C) An action to enforce child support may be brought by the DCSE, parent, guardian, child, or other public agency responsible for the support of the child.

(D) The DCSE is authorized to initiate legal action and appeal orders as necessary to implement the provisions of this section.

**Section 502. Judgment For Arrearage.**

(A) When an obligor fails to pay current child support and an arrearage accumulates, said arrearage becomes a judgment by operation of law, and becomes effective on and after the scheduled payment date in the child support order.

**(B)** A party or the DCSE may initiate an action to obtain a formal order of judgment from the Court; however a judgment by operation of law shall have the full force and effect of a judgment of the court and shall be enforced under the laws of the Tribe and/or in accordance to the laws of the adjudicating court.

**(C)** A judgment shall be accorded full faith and credit with other tribes and states.

**(D)** A child support judgment is not subject to retroactive modification by the tribe or by any other tribe or state except that the court may permit a modification with respect to any period during which there is pending a petition for modification, but only from the date that notice of such petition has been given to the obligee or (where the obligee is the petitioner) to the obligor.

**(E)** A child support judgment shall not become dormant for any purpose. DCSE shall follow applicable laws regarding judgments and liens.

**(F)** Except as otherwise provided, a judgment for past due child support shall be enforceable until paid in full.

**Section 503. Arrearage.**

**(A)** The court shall determine the amount of arrearage of any child support obligation and set a payment schedule.

**(B)** The parties may voluntarily agree on an arrearage payment schedule, subject to approval by the court.

**(C)** Any amounts determined to be past due by the court may be subsequently enforced by indirect civil contempt proceedings.

**Section 504. Liens, Workers Compensation, Release.**

**(A)** Liens arise by operation of law against real and personal property for amounts of overdue support owed by an obligor who resides or owns property within a state.

**(B)** Past due child support shall become a lien by operation of law upon the real and personal property of the obligor at the time they become past due.

**(C)** A judgment or order for current support or an arrearage of child support shall be a lien upon real property owned by the obligor or upon any real property which may be acquired by the obligor prior to the release of the lien.

(D) The DCSE shall comply with the rules and procedures regarding the recording and service of a lien or extension of a lien on personal and real property within a state or tribe in accordance with the applicable law.

(E) The judgment or order shall not become a lien for any sums prior to the date they severally become due and payable.

(F) A judgment for an arrearage of child support shall become a lien upon benefits payable as a lump sum received from a worker's compensation claim of the obligor. The filing and service for a workers compensation claim for child support shall follow applicable state workers compensation statutes.

(G) The provisions of this section shall not authorize a sale of any property to enforce a lien which is otherwise exempted by tribal, state or federal law.

(H) A lien shall be released upon the full payment of the amount of the arrearage.

(I) All liens shall be given full faith and credit.

**Section 505. Tribal and Individual Exempted Property.**

Tribal religious and/or ceremonial property, individual tribal trust property, individual religious and/or ceremonial property, and Individual Indian Money (IIM) accounts are exempt from liens.

**Section 506. Initiated Income Assignment, Notice, Hearing.**

(A) If an income assignment has not been ordered for the collection of child support, DCSE shall initiate an income assignment when the obligor has failed to make a child support payment at least equal to the support payable for one month, regardless of whether support payments are in arrears.

(B) The only basis for contesting a withholding order under this section is a mistake of fact which means an error in the amount of current or overdue support or in the identity of the alleged obligor.

(C) In cases where the DCSE initiates an income assignment, notice to obligor shall be given and served according to law. The notice shall inform the obligor at a minimum that:

(1) The withholding has commenced;

(2) The amount of overdue support that is owed, if any, and the amount of wages that will be withheld;

- (3) The provision for withholding applies to any current or subsequent employer or period of employment;
- (4) The procedures available for contesting the withholding, and the only basis for contest of such withholding is a mistake of fact;
- (5) The assignment shall remain as long as the support order is in effect;
- (6) The payment of any support monies will not prevent an income assignment from taking effect; and,
- (7) The obligor shall be required to keep the DCSE informed of the name and address of the current employer and health information.

(D) If the obligor challenges the income assignment, the obligor may request a hearing by giving written notice to the DCSE. The obligor has fifteen (15) days from the date of service of the notice to request a hearing. On receipt of the request for a hearing, the DCSE shall schedule the request on the next available court date.

(E) The court shall hear the matter and unless the obligor successfully shows there is a mistake of fact, the court shall enter an order that grants an income assignment and a judgment for arrearage, if any, and a payment schedule for the arrearage.

(F) The order shall be a final judgment for purposes of appeal.

(G) If within fifteen (15) days of date of service of the notice, the obligor fails to request a hearing, pursuant to this section, or after having requested a hearing fails to appear at the hearing, the court shall enter an order that grants an income assignment and a judgment for arrearage, if any, and a payment schedule for the arrearage.

(H) A copy of the order shall be served upon the obligor certified mail return receipt restricted delivery or if the DCSE has an address of record, through regular mail.

(I) The obligor may voluntarily request an income assignment be initiated for the next due date, or earlier if so requested.

#### **Section 507. Spousal Support.**

The DCSE is authorized to enforce an established spousal support obligation as long as a child support obligation is being enforced by DCSE and the minor child lives with the spouse or former spouse.

#### **Section 508. Revocation or Suspension of Licenses.**

(A) The DCSE may initiate enforcement proceedings for the suspension or revocation of a professional license, hunting and fishing license, or drivers license of an obligor who is in noncompliance of a child support order.

**(B)** Before DCSE initiates proceedings for the suspension or revocation of a license(s), DCSE shall issue a notice to the obligor that states suspension of his/her license(s) will be sought within twenty (20) days after service, unless the obligor notifies DCSE within those twenty (20) days and:

- (1)** Pays the entire past-due support or enters into a payment plan approved by DCSE; and/or
- (2)** Complies with all orders and subpoenas regarding paternity or child support.

**(C)** The notice to the obligor shall be served according to law.

**(D)** The obligor may submit a written request for a hearing to DCSE within twenty (20) days after the date of service of the notice. Upon receipt of the request for hearing, DCSE shall schedule a hearing on the next available court date.

**(E)** The court shall determine whether the obligor is in noncompliance with an order for support and whether an action seeking suspension or revocation of a license is appropriate or whether probation is appropriate.

**(F)** If an obligor fails to respond to the notice issued under this section, fails to request a timely hearing, or fails to appear at a scheduled hearing, the court shall enter an order of suspension, revocation, non-issuance, or non-renewal of a license to the licensing board and to the obligor.

**(G)** The order for suspension or termination of a license for noncompliance of a child support order shall be sent to the appropriate state or tribal licensing board.

**(H)** For licenses issued by the state, DCSE shall follow applicable state statutes.

**Section 509. Probation.**

The Court may grant probation if the obligor enters into a court ordered payment plan to repay past due support and provides proof that the obligor is complying with all other orders for support. Probation shall be conditioned upon full compliance with the order(s). If the court grants probation, the probationary period shall not exceed three years and the terms of the probation shall provide for alternative sentencing, revocation of licenses or any other enforcement provision if the obligor does not fully comply with the order.

**Section 510. Reinstatement, Termination of Orders.**

(A) An obligor whose license(s) have been revoked or suspended may request in writing to DCSE that the license(s) be reinstated.

(B) The court may order reinstatement of the obligor's license, if the obligor has paid either:

(1) The current child support and monthly arrearage payments for the current month and two months immediately preceding, or

(2) Paid an amount equivalent to three months of child support and arrearage payments, and

(3) Is in full compliance with other provisions of the support order.

(C) If DCSE proceeds to terminate an order for revocation or suspension of a license, DCSE shall serve on the obligee a copy of the motion for reinstatement of the obligor's licenses and notice of hearing. The motion and notice may be sent by regular mail if there is an address of record on file with DCSE or served according to law.

(D) If the license is reinstated, a copy of the order reinstating a license shall be sent to the obligee and obligor and appropriate state or tribal licensing board.

(E) If the obligor's license is reinstated and he/she fails to make child support payments, the obligor's license(s) may again be suspended or revoked.

(F) DCSE shall proceed to terminate an order for suspension or revocation when the obligor has paid his child support debt in full, without the necessity of a hearing. The order to reinstate a license shall be sent to the obligor and obligee and appropriate state or tribal licensing board.

(G) For licenses issued by the state or another tribe, DCSE shall follow applicable state or tribal statutes.

## **Section 511. Employment, Find-job Order.**

(A) **Employment Requirement.** A person who is ordered to pay child support through either court or administrative action shall be required to maintain employment to meet his or her child support obligation.

(B) **Action for Order for Employment.** If an obligor is in arrears for child support in an amount greater than three (3) times the obligor's total monthly support payments and is not in compliance with a written payment plan, and the obligor claims inability to pay court-ordered child support because of unemployment or underemployment, DCSE may initiate an action to obtain an order to require an unemployed or underemployed obligor to find employment through job search programs or job-training programs. To initiate

such action, the DCSE must schedule an administrative conference with the obligor or a court hearing to determine if he or she is noncompliance because of unemployment or underemployment.

**(C) Notice to Obligor.** Notice of the administrative conference or court hearing shall be sent to the obligor in noncompliance with a child support order because of unemployment or underemployment through one of the following methods: (i) first-class mail to the obligor's last known address with a certificate of mailing; (ii) certified mail, return receipt restricted delivery; or (iii) personal service with proof of service certificate. The notice shall include the following information:

- (1) The name of the obligor;
- (2) The name of the obligee and the child or children for whom support is owed;
- (3) The telephone number and contact number for DCSE; and
- (4) Statements that the obligor is in noncompliance with a court or administrative support order and the amount of the past due support; the time, date and place of a court hearing set in said matter, the consequences of the obligor's failure to appear at the said hearing or conference, the obligor's burden of proof at the hearing or conference, and a description of the order that may be issued following the hearing or conference, all as set forth in sub-sections (D) and (E) of this section;

**(D) Hearing; Order.** The obligor shall be responsible for providing documentation for good cause not to participate in an employment search or job training program. If the obligor fails to appear at the hearing or appears and is determined to be unemployed or underemployed, the Court shall enter a find-job order setting forth such findings and directing the obligor to participate in job-finding or job-training programs and accept available employment. Such order may require the obligor to register with a state and/or tribal employment agency for employment or job training. The order shall require the obligor to file a weekly report with DCSE showing at least five (5) attempts to find employment, including the name, address and phone number of a contact person with whom the obligor sought employment. A copy of the order will be mailed to the obligor by first-class mail with a certificate of mailing.

**(E) Failure to Comply.** If an obligor fails to report or otherwise comply with a find-job order without good cause, enforcement proceedings may be initiated against the obligor. The obligor shall be responsible for the verification of any reason for noncompliance with a find-job order.

**(F) Order Duration.** The duration the order shall not exceed three (3) months.

**Section 512. Passport Denial.**

DCSE may refer a judgment for child support to the Secretary of Health and Human Services for passport denial, revocation or restriction pursuant to Title IV-D rules and regulations.

**Section 513. Reporting to Consumer Reporting Agency.**

(A) DCSE may report to a consumer reporting agency of the name of an obligor who is delinquent in the payment of support and the amount of overdue support owed by the obligor.

(B) The obligor shall be notified before the release of the information to the consumer reporting agency and given a reasonable opportunity to contest the accuracy of such information.

(C) Information shall be given only to an entity that has furnished evidence satisfactory to the DCSE that it is a consumer reporting agency as so defined in 15 USC §1681a(f).

**Section 514. State and Federal Tax Offset Programs, Administrative Offset.**

(A) DCSE may use a state tax intercept program by agreement of the state to collect child support debts.

(B) DCSE may use the federal tax intercept program through a cooperative agreement with the state, or other means, to collect child support debts.

(C) DCSE may use administrative offsets to collect child support debts.

**Section 515. Indirect Civil Contempt.**

(A) DCSE may initiate indirect civil contempt proceedings or any other pleading to secure compliance with a child support order.

(B) In a proceeding for indirect contempt, the pleading must be verified through affidavit of the party initiating the proceeding. The obligor shall be served by personal service or certified mail, return receipt.

(C) In a proceeding for contempt, prima facie evidence of an indirect civil contempt of court shall be held when:

(1) Proof that :

- (a) The child support order was made, filed and served on the obligor; or
- (b) The obligor had actual knowledge of the existence of the order; or
- (c) The order was granted by default after prior due process notice to the parent; or
- (d) The parent was present in court at the time the order was announced, and

(2) The obligor is in noncompliance with the order.

(D) Unless otherwise provided by law, punishment for direct or indirect contempt shall be the imposition of a fine in a sum not exceeding Five Hundred Dollars (\$500.00) or by imprisonment in jail not exceeding six (6) months, or by both, at the discretion of the court.

(E) If a contemner is committed to the custody of the sheriff to serve the sentence imposed by the court, the contemner may thereafter only be discharged from the custody of the sheriff:

- (1) Upon payment in full of the adjudicated arrearage;
- (2) Upon serving the full sentence; or
- (3) Upon an agreement by the parties as to payment of the arrearages, subject to any conditions and approval by the court;
- (4) Upon payment of a lump sum amount to be determined by the Court. The Court shall determine the amount by:

- (a) the circumstances giving rise to the contempt;
- (b) the total amount of the adjudicated arrearage; and
- (c) evidence of the obligor's attempts to reduce the arrearage prior to the contempt proceeding.

(F) Contemners incarcerated pursuant to this section shall not be given credit for good time, trustee time, or any other credit for time served. Contemners incarcerated pursuant to the provisions of this section shall serve flat time; and

(G) Contemners shall be required to reimburse the Delaware Tribe for any and all incarceration fees.

**Section 516. Purge Fee, Referral.**

(A) When an obligor is found guilty of indirect contempt of court for failure to pay child support or other court ordered provisions for child support, the obligor may purge the contempt through a payment plan that requires:

(1) The obligor to make current support payments as well as paying the arrearage or some portion thereof by either paying the full amount of the arrearage or if the full amount of the arrearage is not paid in a lump sum, then by making additional monthly payments, exclusive of day care expenses.

(2) The arrearage payments made under this section shall be applied to reduce the amount of child support arrearage.

(B) The arrearage payments made under this section shall continue until the child support arrearage has been paid in full, at which time the contempt shall be deemed purged.

(C) If an obligor is found guilty of indirect contempt, the court may refer the contemner to a state or tribal employment program, in accordance with Section 511 for employment services or training as a condition of probation. If the obligor fails to comply with the state or tribal employment program requirements, the obligor shall be sentenced accordingly.

**Section 517. Waivers or Credits, Payments to Children.**

(A) The obligee may waive or give credit for past due child support.

(B) No waiver or credit is allowed for tribal, federal or state owed money, unless waived by the tribal, state or federal agency that issued the money.

(C) Payments made directly to child(ren) are considered gifts to the child(ren).

(D) Payments made directly to the Obligee shall be considered a gift unless the Obligee executes the appropriate documentation of direct pay.

**Section 518. Exceptions to Enforcement Proceedings.**

(A) An obligor who currently receives TANF payments or any other state or tribal public assistance benefits, shall not be subject to contempt proceedings.

(B) An obligor who claims unemployment because of a physical and/or mental health problem shall provide documentation of such claim by a licensed physician or licensed mental health professional. The obligor shall be responsible for providing documentation of the physical or mental health treatment plan with the time it may take to complete the plan. Upon completion of the treatment plan, the terms regarding unemployment in subsection D of this section shall be in force.

(C) An obligor who claims unemployment because of a physical or mental disability shall provide documentation that he or she has applied for disability determination with the Social Security Administration. The obligor shall provide to the court documentation that he or she has applied to an agency offering rehabilitation services for assistance in becoming employable. If the obligor is determined to be employable by the rehabilitation services program, the obligor shall provide documentation that such parent has made every effort to cooperate in obtaining employment pursuant to subsection D of this section.

(D) An obligor who claims unemployment in subsection B and C shall be required to register with the state employment security commission or a state and/or tribal employment agency for employment. The obligor is responsible for making a good faith effort to obtain employment either through the employment services and personal initiative, providing documentation of employment registration to the court, and providing documentation of an employment application. The obligor must demonstrate he or she is actively seeking employment and/or training as provided by the employment agency and is willing to work.

(E) These provisions shall not apply to an only parent caring for the child or children in the home, when daycare services are not available or when it is unreasonable to place the child or children in day care services.

(F) Child Support obligations shall continue to accrue at the amount of the most recent order until such time as the case is modified or meets the requirements for case closure subject to the federal requirements. Enforcement actions, with the exception of contempt, shall continue until and such time as the Court orders otherwise.

**Section 519. Interest.**

DCSE shall not charge interest on past due support obligations stemming from tribal court orders; however, DCSE shall charge the statutory rate of interest on state-owed, or other tribal-owed judgments as required by full faith and credit.

**Section 520. Expedited Procedures.**

(A) DCSE has the authority to enter orders in the following actions without the necessity of obtaining an order from any other judicial or administrative court:

(1) To require both parents to appear for genetic testing in cases where paternity has not been established or admitted.

(2) To subpoena any financial or other information needed to establish, modify or enforce a support order, provided that the subpoena complies with applicable tribal, federal or state statutes.

- (3) In cases where there is support arrearages, to secure assets by:
- (a) intercepting or seizing periodic or lump-sum payments from:
    - (i) a state or local agency, including unemployment compensation, workers' compensation, and other benefits; and
    - (ii) judgments, settlements, and lotteries.
  - (b) attaching and seizing assets of the obligor held in financial institutions.
  - (c) attaching public and private retirement funds; and
  - (d) imposing liens in accordance with this Code.
- (4) To increase the amount of monthly support payments to include amounts for the purpose of securing overdue support.
- (5) If an income assignment is not ordered or in place by operation of law, DCSE is authorized to implement income withholding.
- (6) To obtain access, subject to safeguards on privacy and information security, and subject to the non-liability of entities that afford such access under this subparagraph, to information contained in the following records.

- (a) Records of other state and local government agencies, including:
  - i.) vital statistics; ii.) state and local tax and revenue records; iii.) records concerning real and titled personal property; iv.) records of occupational and professional licenses, and records concerning the ownership and control of corporations, partnership and other business entities; v.) employment security records; vi.) records of agencies administering public assistance programs; vii.) records of the motor vehicle department; and viii.) corrections records.
- (b) Certain records held by private entities with respect to individuals who owe or are owed support, consisting:
  - i.) the names of addresses of such individuals and the names and addresses of the employers of such individuals, as appearing in customer records of public utilities and cable television companies, pursuant to an administrative subpoena; and ii.) information on such individuals held by financial institutions.

(B) Such procedures listed in subsection A of this section shall follow due process safeguards, including (as appropriate) notice to the obligor, opportunity for obligor to contest the action and opportunity for appeal.

### **Section 521. Reimbursement of Costs.**

DCSE shall seek reasonable costs against the obligor in the enforcement of child support cases. These costs include, but are not limited to: court filing fees, process server fees, mailing fees, genetic testing fees and incarceration fees.

**Section 522. Bankruptcy.**

Current and past due child support owed on behalf of a child is not dischargeable by bankruptcy.

**ADDENDUM I**

**GENERAL INSTRUCTIONS FOR USE OF CHILD SUPPORT COMPUTATION**

The Delaware Tribe of Indians Child Support Guidelines are the basis for establishing and reviewing child support orders, including cases settled by agreement of the parties. Judges and/or hearing officers must follow the guidelines and the court shall consider all relevant evidence presented in setting an amount of child support.

The Net Parental Child Support Obligation is calculated by completing a Child Support Worksheet (Addendum I).

The calculation of the respective parental child support obligations on Line D.9 of the worksheet is a rebuttable presumption of a reasonable child support order. If a party alleges that the Line D. 9 support amount is unjust or inappropriate in a particular case, the party seeking the adjustment has the burden of proof to show that an adjustment should apply. If the court finds from relevant evidence that it is in the best interest of the child to make an adjustment, the court shall complete Section E of the Child Support Worksheet. The completion of Section E of the worksheet shall constitute the written findings for deviating from the rebuttable presumption.

**DEFINITIONS AND EXPLANATION**

**A. Child Support**

The purpose of child support is to provide for the needs of the child. The needs of the child are not limited to direct expenses for food, clothing, school, and entertainment. Child support is also to be used to provide for housing, utilities, transportation, and other indirect expenses related to the day-to-day care and well-being of the child.

## **B. Child Support Worksheet**

The worksheet should contain the actual calculation of the child support based on Child Support Income, Work-Related Child Care Costs, Health, Dental, Orthodontic, and Optometric Insurance Premiums, and any Child Support Adjustments.

## **C. Child Support Schedules**

The Child Support Schedule is adopted by the Delaware Tribe of Indians. The schedule is based upon national data regarding average family expenditures for children, which vary depending upon three major factors: the parents' combined income, the number of children in the family, and the ages of the children. The schedules take into consideration that income deductions for social security, federal retirement, and federal and state income taxes, as well as property taxes on owner-occupied housing, are not available to the family for spending. Thus, although the schedules use combined gross monthly income as an index that identifies values in the child support schedules, the entries in the schedules used to calculate the actual child support obligation are based upon either consumption spending or after-tax income, whichever is lower. The schedules also include a built-in reduction from average expenditures per child (the dissolution burden), because of the financial impact on the family of maintaining two households instead of one.

## **D. Domestic Gross Income--Wage Earner**

The Domestic Gross Income for the wage earner is income from all sources, including that which is regularly or periodically received, excluding public assistance and child support received for other children in the residency of either parent. For purposes of these guidelines, the term "public assistance" means all income, whether in cash or in-kind, which is received from public sources and for which the recipient is eligible on the basis of financial need. It includes, but is not limited to, Supplemental Security Income (SSI), Earned Income Credit (EIC), food stamps, Temporary Assistance for Needy Families (TANF), General Assistance (GA), Medicaid, Low Income Energy Assistance Program (LIEAP), Section 8, and other forms of public housing assistance.

It may be necessary for the court to consider historical information and the seasonal nature of employment. For example, if overtime is regularly earned by one of the parties, then a historical average of one year should be considered.

In instances where one or both of the parties is employed by a branch of the armed forces or is called to active duty by a branch of the armed forces, then the court shall include the basic pay of the party plus Basic Allowance for Housing (BAH) and Basic Allowance for Subsistence (BAS). The court may consider cost of living differences in determining the Domestic Gross Income.

Frequently, a wage earner's income is adjusted for a salary reduction arrangement for qualified benefits offered under a cafeteria plan. In such cases, the use of gross wages (total income before any salary reduction amounts) results in the simplest and fairest application of the guidelines. Therefore, the gross income of the wage earner, regardless of whether it is taxable or nontaxable, is to be used to compute child support payments.

#### **E. Income Computation - Self-Employed**

**(1) Self-Employment Gross Income.** Self-Employment Gross Income is income from self-employment and all other income including that which is regularly and periodically received from any source excluding public assistance and child support received for other children in the residency of either parent.

**(2) Reasonable Business Expenses.** In cases of self-employed persons, Reasonable Business Expenses are those actual expenditures reasonably necessary for the production of income. Depreciation shall be included only if it is shown that it is reasonably necessary for production of income. Reasonable Business Expenses shall include the additional self-employment tax paid over and above the FICA rate.

**(3) Domestic Gross Income - Self-Employed Domestic Gross Income** for self-employed persons is self-employment gross income less Reasonable Business Expenses.

#### **F. Imputed Income**

**(1)** Income may be imputed to the parent not having primary residency in appropriate circumstances, including the following:

**(a)** Absent substantial justification, it should be assumed that a parent is able to earn at least the federal minimum wage and to work 40 hours per week.

**(b)** When a parent is deliberately unemployed, although capable of working full-time, employment potential and probable earnings may be based on the parent's recent work history, occupational skills, and the prevailing job opportunities in the community.

**(c)** If a parent is terminated from employment for misconduct, rather than laid off, their previous wage may be imputed, but shall not be less than federal minimum wage.

**(d)** When a parent receives significant in-kind payments that reduce personal living expenses as a result of employment, such as a company car, free housing,

or reimbursed meals, the value of such reimbursement should be added to gross income.

(e) When there is evidence that a parent is deliberately underemployed for the purpose of avoiding child support, the court may evaluate the circumstances to determine whether actual or potential earnings should be used.

(2) Income may be imputed to the parent having primary residency in appropriate circumstances, but should not result in a higher support obligation for the other parent.

### **G. Child Support Income**

Child Support Income is the Domestic Gross Income after adjustments for child support paid in other cases and for maintenance paid or received in the present case or other cases.

### **H. Child Support Adjustments**

Child Support Adjustments are considerations of additions or subtractions from the Net Parental Child Support Obligation to be made if in the best interests of the child.

## **GENERAL INSTRUCTIONS**

### **A. Documentation**

The DCSE shall present to the court a child support computation. The information required shall be attached to the application for support or motion to modify support.

A computation approved by the court shall be filed in every case where an order of child support is entered.

### **B. Applications**

(1) **Rounding:** Calculations should be rounded to the nearest tenth for percentages. Calculations should be rounded to the nearest dollar in all instances. In using the Child Support Schedules for income amounts not shown, it may be necessary to round to the nearest basic child support obligation amounts.

(2) **Age** In determining the age of a child: use the age on the child's nearest birthday.

(3) **Income Beyond the Child Support Schedule:** If the Combined Child Support Income exceeds the highest amount shown on the schedules, the court should exercise its discretion by considering what amount of child support should be set in addition to the highest amount on the Child Support Schedule. For the convenience of the parties, a

formula is contained at the end of each child support schedule to compute the amount that is not set forth on the schedules.

**(4) More than Six Children:** If the parties share legal responsibility for more than six children, support should be based upon the established needs of the children and be greater than the amount of child support on the Six Child Families' Schedule.

**(5) Divided Residency Situations:** Divided Residency is when parents have two or more children and each parent has residency of one or more of the children. For Divided Residency, if each parent has primary residency of one or more children, a worksheet should be prepared for each family unit using the Child Support Schedule which corresponds with the total number of children of the parties living in each family unit. If the parties' children are covered by the same health insurance policy, the cost should be prorated based upon the number of children in each family unit. Upon completion of the two worksheets, the lower Net Parental Child Support Obligation is subtracted from the higher amount. The difference is the amount of child support the party having the higher obligation will pay to the party with the lower obligation.

**(6) Multiple-Family Application** The Multiple-Family Application may be used to adjust the child support obligation of the parent not having primary residency when that parent has legal financial responsibility for the support of other children who reside with that parent. The Multiple-Family Application may be used only by a parent not having primary residency when establishing an original order of child support or an increase in support is sought by the parent having primary residency. If using the Multiple-Family Application will result in a gross child support obligation (Line D.3 in the Child Support Worksheet) below the poverty level, the use of the Multiple-Family Application is discretionary. For the Multiple-Family Application, if the parent not having primary residency has children by another relationship who reside with him/her, use the Child Support Schedule representing the total number of children the parent not having primary residency is legally obligated to support to determine the basic child support obligation. If the wife of the parent not having primary residency or the parent not having primary residency herself is pregnant at the time of the motion to increase child support, the court shall complete two Child Support Worksheets, one with Multiple-Family Application including the unborn child, and one without the unborn child. The court shall then order that, until the birth of the child, the child support amount from the Child Support Worksheet (without a Multiple-Family Application based on the new child) will be utilized. Beginning with the first payment following the birth of the child, the child support amount from the Child Support Worksheet including the new child shall be utilized. In the instance of shared residency or divided residency, the Multiple-Family Application is available to either party in defense of a requested child support increase.

**(7) Shared Expense Formula** Parents who share the children's time equally or nearly equally may be eligible for a parenting time adjustment (see Section IV, E. 2) or use the shared expense formula, but not both. In most cases, parents who share their children's time equally or nearly equally should consider requesting a parenting time adjustment provided for in Section IV. E. 2 rather than use the shared expense formula. Sharing expenses and using the Shared Expense Formula is an alternative method of paying

expenses related to the children. Sharing expenses and using the shared expense formula is complicated and requires parents to communicate and cooperate regularly. Sharing expenses and using the formula should only be attempted by parents who communicate well, who are highly cooperative co-parents, who have the ability and willingness to keep accurate records for the period of time necessary to raise their children, who will timely share the children's direct expenses, who have similar values and tastes, who have considered the current and future needs of their children carefully, and who are willing and able to resolve minor problems without the intervention of others.

**C. Court Approval:** No shared expense formula shall be ordered without the court having approved the following four requirements:

**(1) Equal parenting time.** A court must have made a determination that equal parenting time is in the best interests of the minor children. The children's time with each parent must be regular and equal or nearly equal rather than equal based on a non-primary residency extended parenting time basis (i.e., summer visitation, holidays, etc.).

**(2) Agreed Detailed Plan.**

**(a)** The parties have executed a detailed written agreement to share the direct expenses of the child on an equal or nearly equal basis. Direct expenses include, but are not limited to, clothing and education expenses, but do not include food, transportation, housing, or utilities.

**(b)** Unreimbursed health expenses (Section IV, Specific Instruction for the Worksheet, subsection D.4.b) should continue to be shared in proportion to the parties' income. See worksheet Line D.2.

**(c)** Direct expenses may be shared by dividing each expense or by offsetting expenses.

**(3) Worksheet:** The parties must present a child support worksheet using the shared expense formula.

**(4) Alternative dispute provision:** The parties shared expense agreement must include an alternative dispute process for any disagreements the parents may have concerning the children's expenses.

**B. Sanctions:** Failure to share expenses pursuant to the expense sharing agreement or failure to abide by the time sharing agreement may result in termination of the use of the shared expense formula or other appropriate sanctions.

**C. Shared Expense Formula:** The support is calculated using one worksheet. The amount of the lower Net Parental Child Support Obligation (Line F.3) is subtracted from the higher amount and the difference is then multiplied by .50. The resulting amount is the child support the party having the higher obligation will pay to the party with the lower obligation. This amount is entered on Line F.4 of the child support worksheet for the parent with the higher adjusted subtotal on line F.3.

**D. Equal Parenting Time Formula:** Unless otherwise ordered by the Court, if the Equal Parenting Time formula is used to set child support, the parent with the lower net child support obligation from Line F.6, (the parent receiving support), shall be responsible for all direct expenses.

**The Equal Parenting Time Formula calculation shall consist of three steps:**

**Step 1:** A child support worksheet shall be prepared. The amount of the lower adjusted subtotal on Line F.3 shall be subtracted from

10the higher adjusted subtotal on Line F.3. The resulting figure shall be divided by two and shall constitute the first portion.

Choose either Step 2.a. or 2.b. depending on whether the parents have a written agreement that they each provide clothing for the child in their own home.

**Step 2.a:** Absent a written agreement for each parent to provide the child's clothing in their own home, the Line D.3., child support obligation amount, will be multiplied by one of the following percentages:

13% if total combined monthly child support income on Line D.1. is equal to or less than \$4,690;

15% if total combined monthly child support income on Line D.1. is more than \$4,690 and less than \$8,125;

18% if total combined monthly child support income on Line D.1. is equal to or greater than \$8,125, or;

**Step 2.b:** Parents have a written agreement to each provide clothing for the child in their own home, the Line D.3 child support obligation figure will be multiplied by one of the following percentages: 11% if total combined monthly child support income on Line D.1. is equal to or less than \$4,690; 13% if total combined monthly child support income on Line D.1. is more than \$4,690 and less than \$8,125; 16% if total combined monthly child support income on Line D.1. is equal to or greater than \$8,125, or;

Choose either Step 3.a or 3.b. depending on which parent is designated to pay the direct expenses for the child.

**Step 3.a.** If the parent with the lower adjusted subtotal from Line F.3 of the child support worksheet (the parent receiving support) is responsible for paying all direct expenses of the child, the resulting figure from Step 1 shall be added to the resulting figure from either Step 2.a or Step 2.b. This result shall be the amount the higher income parent pays to the lower income parent before the child support enforcement fee is calculated. This amount is entered on Line F.4 of the child support worksheet. The Equal Parenting Time worksheet, or a worksheet in substantially the same form, shall be filed with the child support worksheet.

**Step 3.b.** If the parent with the higher adjusted subtotal from Line F.3 (the parent paying support) is responsible for purchasing paying all the direct expenses of the child, the resulting figure from either Step 2.a or Step 2.b shall be subtracted from the resulting figure from Step 1. This result, which shall not be less than zero, shall be the amount the higher income parent pays

to the lower income parent before the child support enforcement fee is calculated. This amount is entered on Line F.4 of the child support worksheet. The Equal Parenting Time worksheet, or a worksheet in substantially the same form, shall be filed with the child support worksheet.

**(1) Residence with a Third Party.** If the child is residing with a third party, the court shall order each of the parties to pay to the third party their respective amounts of child support as determined by the worksheet.

**(2) Interstate Pay Differential:** The cost of living may vary among states. The “Average Annual Pay by State and Industry” as reported by the United States Department of Labor Statistics can be used to compute a value for the interstate pay differential. The Addendum attached hereto provides instructions and an example. The adjusted monthly income figure is entered on Line A.1, Line B.1, or Line C.5, as appropriate. There is a rebuttable presumption that the adjusted pay amount reflects the variance in average pay. The application of the Interstate Pay Differential is discretionary. The income of the parties will not be subject to an interstate pay differential if both parties live in Kansas or reside in the same metropolitan statistical area (MSA).

**(3) Birth Expenses.** If a judgment for birth expenses is awarded, the presumed amount is the parent's proportionate share as reflected in Line D.2 of the Worksheet. If a parent's proportionate share of the birth expenses is more than 5% of the parent's current gross annual income projected over five years, the parent may request deviation from the presumed amount.

## **SPECIFIC INSTRUCTIONS FOR THE WORKSHEET**

### **A. Income Computation - Wage Earner (Section A)**

Section A of the worksheet determines the Domestic Gross Income for wage earners. Federal and State withholding taxes and Social Security are already considered within the Child Support Schedules. The amount of the Domestic Gross Income is entered on Line A.1 and also on Line C.1

### **B. Income Computation - Self-Employed (Section B)**

Section B of the worksheet determines the Domestic Gross Income (Line B.3) for self-employed persons. Reasonable Business Expenses (Line B.2) will be deducted from the Self-Employment Gross Income (Line B.1).C. Adjustments to Domestic Gross Income (Section C)

### **C. Domestic Gross Income (Section C)**

This section contains adjustments to Domestic Gross Income for individuals who are wage earners in Section A or self-employed persons in Section B of the worksheet. The payments of child support arrearages shall not be deducted. The following adjustments to Domestic Gross Income may be appropriate in individual circumstances:

- (1) **Domestic Gross Income (Line C.1)** This amount is transferred from either Line A.1 or Line B.3 above or both, if applicable.
- (2) **Court-Ordered Child Support Paid (Line C.2)** Child support obligations in other cases shall be deducted to the extent that these support obligations are actually paid. These amounts are entered on Line C.2. The payment of child support arrearages shall not be deducted.
- (3) **Court-Ordered Maintenance Paid (Line C.3)** The amount of court-ordered maintenance paid pursuant to a court order in this or a prior divorce case shall be deducted to the extent that the maintenance is actually paid. This amount is entered on Line C.3. The payments of court-ordered maintenance arrearages shall not be deducted.
- (4) **Court-Ordered Maintenance Received (Line C.4)** The amount of any court-ordered maintenance received by a party pursuant to a court order in this or a prior divorce case shall be added as income to the extent that the maintenance is actually received and is not for arrearages. This amount is entered on Line C.4.
- (5) **Child Support Income (Line C.5)** The result of the adjustments to the Domestic Gross Income is entered on Line C.5 of the worksheet and then transferred to Line D.1.

#### **D. Computation of Child Support (Section D)**

##### **(1) Child Support Income (Line D.1)**

The Child Support Income amount is transferred from Line C.5. The amounts for the Petitioner and the Respondent are added together for the Combined Child Support Income amount.

##### **(2) Proportionate Shares of Combined Income (Line D.2)**

To determine each parent's proportionate share of the Combined Child Support Income, each parent's Child Support Income is divided by the total of the Combined Child Support Income. These percentages are entered on Line D.2.

##### **(3) Gross Child Support Obligation (Line D.3)**

The Gross Child Support Obligation is determined using the Child Support Schedules. The Child Support Schedules have three major factors: The number of children in the family, the Combined Child Support Income, and the age of each child. The Child Support Schedule corresponding to the total number of children for whom the parents share responsibility should be found. If the Multiple-Family Application applies, then the Child Support Schedule for the number of children the parent not having primary residency is supporting under the Multiple-Family Application should be used. (If using the Multiple-Family Application will result in a gross child support obligation (Line D.3) below the poverty level shown on the applicable Child Support Schedule, the use of the Multiple-Family Application is discretionary.)

The Combined Child Support Income amount should be identified in the left-hand column of the applicable child support schedule. The amount for each child should be identified in the appropriate age column for each child. The amounts for all of the children should be added together to arrive at the total Gross Child Support Obligation.

The total Gross Child Support Obligation is entered on Line D.3. If there is divided residency as defined in Section III, subsection B.5, two child support schedules must be prepared.

**(4) Health, Dental, Orthodontic and Optometric Expenses (Line D.4)**

**(a) Health, Dental, Orthodontic and Optometric Premiums**

The cost to the parent or parent's household to provide for health, dental, orthodontic or optometric insurance coverage for the child is to be added to the Gross Child Support Obligation. If coverage is provided without cost to the parents or parent's household, then zero should be entered as the amount. If there is a cost, the amount to be used on Line D.4 is the actual cost for the child or children.

The court has the discretion to determine whether the proposed insurance cost is reasonable, taking into consideration the income and circumstances of each of the parties and the quality of the insurance proposed, and to make an adjustment as appropriate. The cost of insurance coverage should be entered in the column of the parent or parent's household which is providing it, and the total is entered on Line D.4.

**(b) Unreimbursed Health Costs**

In all residential arrangements, including shared residency, the court shall provide that all necessary medical expenses (including, but not limited to, health, dental, orthodontic, or optometric) not covered by insurance (including deductible) should be assessed to the parties in accordance with the parties' proportional share on Line D.2 of the worksheet.

**(5) Work-Related Child Care Costs (Line D.5)**

Actual, reasonable, and necessary child care costs paid to permit employment or job search of a parent should be added to the support obligation. "Paid" means the net amount after deducting any third party reimbursements. The court has the discretion to determine whether proposed or actual child care costs are reasonable, taking into consideration the income and circumstances of each of the parties. The monthly figure is the averaged annual amount, including variations for summer.

Projected child care expenses should be reduced by the anticipated tax credit for child care before an amount is entered on the worksheet

- (a)** The annual Adjusted Gross Income, as defined by the IRS, of the party incurring the child care costs should be used to determine the applicable percentage.
- (b)** The appropriate percentage should be applied to the monthly child care costs incurred for children under 13 years of age. The tax credit applies to actual child care expenditures up to \$250 per month for one child or \$500 per month for two or more children receiving child care.
- (c)** In addition to the federal credit determined above, a credit shall be applied based on the state child care credit. This credit shall be applied by multiplying the federal credit calculated in subsection b above in this section by 25% (.25).

- (d) Both the federal credit (subsection b. above) and the state credit (subsection c. above) are to be subtracted from the monthly child care costs to determine the basic child care costs entered on Line D.5 of the worksheet.
- (e) Note that the amounts and percentages used in subsections b. and c. of this section may change from time to time due to changes in federal and/or state tax law. Current tax law should be reviewed for any potential changes.

**(6) Parents' Total Child Support Obligation (Line D.6)**

The Parents' Total Child Support Obligation is the sum of the Gross Child Support Obligation (Line D.3), the health, dental, orthodontic and optometric premiums (Line D.4), and the Work-Related Child Care Costs (Line D.5). This amount is entered on Line D.6.

**(7) Parental Child Support Obligation (Line D.7)**

The support obligation for each parent is determined by multiplying each parent's proportionate share shown on Line D.2 by the Parents' Total Support Obligation (Line D.6). The result is entered on Line D.7.

**(8) Adjustment for Health, Dental, Orthodontic and Optometric Premiums and Work-Related Child Care Costs (Line D.8)**

If costs of Health, Dental, Orthodontic and Optometric Premiums and/or Work-Related Child Care Costs are included in the total child support obligation, the parent or the parent's household actually making the payment is credited. The amount paid is entered in the column of the parent(s) providing the payment on Line D.8.

**(9) Basic Parental Child Support Obligation (Line D.9)**

The Basic Parental Child Support Obligation is the Parental Child Support Obligation (Line D.7) minus the Adjustment for Health, Dental, Orthodontic and Optometric Premiums and Work-Related Child Care Costs (Line D.8) and is entered on Line D.9. The parent having primary residency retains his/her portion of the net obligation. The net obligation of the parent not having primary residency becomes the rebuttable presumption amount of the support order.

**E. Child Support Adjustments (Section E)**

Child support adjustments apply only when requested by a party. If no adjustment is requested, this section does not need to be completed. All requested adjustments are discretionary with the court. The party requesting the adjustment is responsible for proving the basis for the adjustment. The court shall determine if a requested adjustment should be granted in a particular case based upon the best interests of the child. If granted, the court has discretion to determine the amount to be allowed as either an addition or a subtraction. The amount granted for each requested Child Support Adjustment should be entered on the appropriate line in Section E. All adjustments shall be totaled on Line E.7.

**(1) Long-Distance Parenting Time Costs (Line E.1)**

Any substantial and reasonable long-distance transportation/communication costs directly associated with parenting time shall be considered by the court. The amount allowed, if any, should be entered on Line E.1.

**(2) Parenting Time Adjustment (Line E.2)**

The court may allow a parenting time adjustment to a parent under the following subsections. The court may allow a parenting time adjustment in favor of the parent not having primary residency using either subsection IV.E.2.a or subsection IV.E.2.b below but not both. The court may allow an Extended Parenting Time Adjustment pursuant to IV.E.2.c. The court may allow a Non-Exercise of Parenting Time adjustment to the parent having primary residency pursuant to IV.E.2.d.

The parenting time adjustment, like all other adjustments, is subject to the 10% rule. Because the adjustment is prospective and assumes that parenting time will occur, the court may consider the historical exercise or historical non-exercise of parenting time as a factor in denying, limiting, or granting an adjustment under this section. Adjustments under this section may be prorated over twelve months unless the parent having primary residency requests otherwise. If the Shared Expense Formula (subsection B.7) applies, no parenting time adjustment may be made under this section.

**(a) Actual Cost Adjustment:** The court may consider: 1) the fixed obligations of the parent having primary residency that are attributable to the child; and 2) the increased cost of additional parenting time to the parent having non-primary residency. Any adjustment should be prorated over twelve months unless the parent having primary residency requests otherwise.

**(b) Time Formula Adjustment:** The court may consider the amount of time that the parent spends with the child. If the child spends 35% or more of the child's time with the parent not having primary residency, the court shall determine whether an adjustment in child support is appropriate. In calculating the parenting time adjustment, the child's time at school or in day care shall not be considered. To assist the court, the following table may be used to calculate the amount of parenting time adjustment. The adjustment percentage should be averaged if there is more than one child and if the percentages are not the same for each child. The Basic Child Support Obligation (line D.9) is then multiplied by the appropriate Parenting Time Adjustment Percentage using the following table. The Parenting Time Adjustment Percentage and the amount is entered on Line E.2.

Non Residential Parent's % of Child's Time	Parenting Time Adjustment
---	------------------------------

- |    |         |      |
|----|---------|------|
| 1. | 35%-39% | -5%  |
| 2. | 40%-44% | -10% |
| 3. | 45%-49% | -15% |

**(c) Extended Parenting Time Adjustment:** In situations where a child spends fourteen (14) or more consecutive days with the parent not having primary residency, the support amount of the parent not having primary residency, the support amount of the parent not having primary residency from Line F.5 (calculated without a Parenting Time adjustment) may be proportionately reduced by up to 50% of the monthly support from Line F.5. Brief parenting time with the parent having primary residency shall not be deemed to interrupt the consecutive nature of the time. The amount allowed should be entered on Line E.2.

**(d) Non-Exercise of Parenting Time Adjustment:** The court may make an adjustment based on the historical non-exercise of parenting time as set forth in the parenting plan. The amount allowed should be entered on line E.2 of the child support worksheet.

**(3) Income Tax Considerations (Line E.3)**

The parties are encouraged to maximize the tax benefits of the dependency exemption for a minor child and to share those actual economic benefits. If the parties do not agree to share the actual economic benefits of the dependency exemption for a minor child, or after agreeing, the parent having primary residency refuses to execute IRS Form 8332, the court shall consider the actual economic effect to both parties and may adjust child support.

The party seeking the Income Tax Consideration Adjustment shall have the burden of proof.

The court also may consider any other income tax impacts, regardless of an agreement upon the dependency exemption issue.

**(4) Special Needs (Line E.4)**

Special needs of the child are items which exceed the usual and ordinary expenses incurred, such as ongoing treatment for health problems, orthodontist care, special education, or therapy costs, which are not considered elsewhere in the support order or in computations on the worksheet. The amount allowed should be entered on Line E.4.

**(5) Support of Children Beyond the Age of Majority (Line E.5)**

If the parties have a written agreement for a parent to continue to support a child beyond the age of majority, it may be considered in setting child support.

The fact that a parent is currently supporting a child of the parties in college (or past the age of majority) may be considered if the parent having primary residency seeks to increase the child support for the benefit of any children still under the age of eighteen. The amount allowed should be entered on Line E.5.

**(6) Overall Financial Conditions of the Parties (Line E.6)**

The financial situation of the parties may be reason to deviate from the calculated Basic Parental Child Support Obligation if the deviation is in the best interests of the child. The amount allowed should be entered on Line E.6

**(7) Total (Line E.7)**

The Total of all Child Support Adjustments allowed should be entered on Line E.7. The Total(s) specified on this line should be transferred to Line F.2 below.

**F. Deviation(s) From Rebuttable Presumption Amount (Section F)**

The final part of the worksheet shows the adjustments allowed under Section E to the Basic Parental Child Support Obligation, and any enforcement fee charged against payments in IV-D cases and cases assigned to a court trustee for enforcement.

**(1) Basic Parental Child Support Obligation (Line F.1)**

The amount from Line D.9 above is transferred to Line F.1.

**(2) Total Child Support Adjustments (Line F.2)**

The amount from Line E.7 above is transferred to Line F.2.

**(3) Adjusted Subtotal (Line F.3)**

The result of adding or subtracting the Total Child Support Adjustments on Line F.2 to or from the Basic Parental Child Support Obligation is entered on Line F.3.

**(4) Net Parental Child Support Obligation (Line F.5)** The Net Parental Child Support Obligation is determined by adding the Enforcement Fee Allowance (Line F.4), if any, to the Adjusted Subtotal on Line F.3. The resulting amount is entered on Line F.5 and becomes the amount of the child support order.

**G. Payment of Child Support**

(1) Except for good cause shown, every order requiring payment of child support shall require that the support be paid through the Delaware Tribe of Indians' Payment Center for collection and disbursement of support payments.

**CHILD SUPPORT COMPUTATION**

**IN THE DISTRICT COURT OF THE DELAWARE TRIBE OF INDIANS**

**IN THE MATTER OF:**

\_\_\_\_\_

**and**

**CASE NO.** \_\_\_\_\_

\_\_\_\_\_

		<u>MOTHER</u>	<u>FATHER</u>
A	<u>INCOME COMPUTATION -WAGE EARNER</u>	\$ _____	\$ _____
	1. Domestic Gross Income (Insert on Line C.1. below)*		
B.	<u>INCOME COMPUTATION -SELF EMPLOYED</u>		
	1. Self-Employment Gross Income*	_____	_____
	2. Reasonable Business Expenses (-)	_____	_____
	3. Domestic Gross Income	_____	_____
	(Insert on Line C.1 below)		
C.	<u>ADJUSTMENTS TO GROSS INCOME</u>		
	1. Domestic Gross Income	_____	_____
	2. Court-Ordered Child Support Paid (-)	_____	_____
	3. Court-Ordered Maintenance Paid (-)	_____	_____
	4. Court-Ordered Maintenance Received (+)	_____	_____
	5. Child Support Income	_____	_____
	(Insert on Line D.1. below)		
D.	<u>COMPUTATION OF CHILD SUPPORT</u>		
	1. Child Support Income	_____	+ _____
			= _____

2. Proportionate Shares of Combined Income \_\_\_\_\_% \_\_\_\_\_%
3. Gross Child Support Obligation\*\*

(Using the combined income from Line D.1., find the amount for each child and enter total for all children)

Age of Children	0-5		6-11		12-18		Total
Number Per Age Category	_____		_____		_____		
Total Amount	_____	+	_____	+	_____	=	_____

- \*Interstate Pay Differential Adjustment? \_\_\_\_\_ Yes \_\_\_\_\_ No
- \*\*Multiple Family Application? \_\_\_\_\_ Yes \_\_\_\_\_ No

	<u>MOTHER</u>		<u>FATHER</u>
4. Health and Dental Insurance Premium	\$ _____	+	\$ _____
		=	_____
5. Work-Related Child Care Costs	_____		_____
Formula Amt. - ((Amt. X %) + .25 x (Amt. x %)) =			_____
Example: 200 - (( 200 x .30%) + (.25 x (200 x .30%))			_____
6. Parent's Total Child Support Obligation (Line D.3. plus Lines D.4 & D.5)			_____
7. Parental Child Support Obligation (Line D.2 times Line D.6 for each parent)	_____		_____
8. Adjustment for Insurance and Child Care (Subtract for actual payment made for items D.4 and D.5)	(-) _____		_____
9. Basic Parental Child Support Obligation ( Line D.7 minus Line D.8.; Insert on Line F.1 below)	_____		_____

E. CHILD SUPPORT ADJUSTMENTS

			AMOUNT ALLOWED	
APPLICABLE	N/A	CATEGORY		
MOTHER	FATHER			
1. _____	_____	Long distance parenting costs	(+/-) _____	(+/-) _____
2. _____	_____	Parenting time adjustment	(+/-) _____	(+/-) _____
3. _____	_____	Income Tax Considerations	(+/-) _____	(+/-) _____
4. _____	_____	Special Needs	(+/-) _____	(+/-) _____
5. _____	_____	Agreement Past Majority	(+/-) _____	(+/-) _____
6. _____	_____	Overall Financial Condition	(+/-) _____	(+/-) _____
7. TOTAL (Insert on Line F.2. below)			_____	_____

F. DEVIATIONS FROM REBUTTABLE PRESUMPTION AMOUNT

AMOUNT ALLOWED

	MOTHER	FATHER
1. Basic Parental Child Support Obligation (Line D.9 above)	_____	_____
2. Total Child Support Adjustments (+/-) (Line E.7. from above)	_____	_____
3. Adjusted Subtotal (Line F.1 +/- Line F.2)	_____	_____
4. Enforcement Fee Allowance** Percentage _____% (Applied to Nonresidential Parent) Flat Fee\$ _____ (Line F.3 x Collection Fee %) x 5 or (Monthly Flat Fee x .5) (+)	_____	_____
5. Net Parental Child Support Obligation (Line F.3 + Line F.4)	_____	_____

\*\*Parent with non-primary residency

\_\_\_\_\_  
JUDGE OF THE DISTRICT COURT

DATE: \_\_\_\_\_

\_\_\_\_\_  
DCSE ATTORNEY

\_\_\_\_\_  
Petitioner

\_\_\_\_\_  
Respondent

\_\_\_\_\_  
Attorney for Petitioner

\_\_\_\_\_  
Attorney for Respondent