# WEST VIRGINIA CODE: §48-1-228

**§48-1-228. Gross income defined.**

(a) "Gross income" means all earned and unearned income. The word "income" means gross income unless the word is otherwise qualified or unless a different meaning clearly appears from the context. When determining whether an income source should be included in the child support calculation, the court shall consider the income source if it would have been available to pay child-rearing expenses had the family remained intact or, in cases involving a nonmarital birth, if a household had been formed.

(b) "Gross income" includes, but is not limited to, the following:

(1) Earnings in the form of salaries, wages, commissions, fees, bonuses, profit sharing, tips and other income;

(2) Any payment from a pension plan, an insurance contract, an annuity, social security benefits, unemployment compensation, supplemental employment benefits, workers' compensation benefits and state lottery winnings and prizes;

(3) Interest, dividends or royalties;

(4) In kind payments such as business expense accounts, business credit accounts and tangible property such as automobiles and meals, to the extent that they provide the parent with property or services he or she would otherwise have to provide: Provided, That reimbursement of actual expenses incurred and documented shall not be included as gross income;

(5) Attributed income of the parent, calculated in accordance with the provisions of section 1-205;

(6) An amount equal to fifty percent of the average compensation paid for personal services as overtime compensation during the preceding thirty-six months: Provided, That overtime compensation may be excluded from gross income if the parent with the overtime income demonstrates to the court that the overtime work is voluntarily performed and that he or she did not have a previous pattern of working overtime hours prior to separation or the birth of a nonmarital child;

(7) Income from self-employment or the operation of a business, minus ordinary and necessary expenses which are not reimbursable, and which are lawfully deductible in computing taxable income under applicable income tax laws, and minus FICA and Medicare contributions made in excess of the amount that would be paid on an equal amount of income if the parent was not self-employed: Provided, That the amount of monthly income to be included in gross income shall be determined by averaging the income from such

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employment during the previous thirty-six-month period or during a period beginning with the month in which the parent first received such income, whichever period is shorter;

(8) Income from seasonal employment or other sporadic sources: Provided, That the amount of monthly income to be included in gross income shall be determined by averaging the income from seasonal employment or other sporadic sources received during the previous thirty-six-month period or during a period beginning with the month in which the parent first received such compensation, whichever period is shorter; and

(9) Spousal support and separate maintenance receipts.

(c) Depending on the circumstances of the particular case, the court may also include severance pay, capital gains and net gambling, gifts or prizes as gross income.

(d) "Gross income" does not include:

(1) Income received by other household members such as a new spouse;

(2) Child support received for the children of another relationship;

(3) Means-tested assistance such as temporary assistance for needy families, supplemental security income and food stamps; and

(4) A child's income unless the court determines that the child's income substantially reduces the family's living expenses.

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