

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov/policyadmin-invitationstocomment.htm

INVITATION TO COMMENT SPR18-21

Title	Action Requested
Family Law: Income and Expense Declaration	Review and submit comments by June 8, 2018
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revise form FL-150	January 1, 2019
As Proposed by	Contact
Family and Juvenile Law Advisory Committee	Gabrielle D. Selden, 415-865-8085 gabrielle.selden@jud.ca.gov
Hon. Jerilyn L. Borack, Cochair	Bonnie Hough, 415-865-7668 bonnie.hough@jud.ca.gov
Hon. Mark A. Juhas, Cochair	

Executive Summary and Origin

The Family and Juvenile Law Advisory Committee recommends making time-sensitive revisions to *Income and Expense Declaration* (form FL-150) to implement the recent changes to the tax treatment of alimony (spousal support) under the Internal Revenue Code of 1986, which becomes effective January 1, 2019. In addition, the committee recommends changes to update the reference to a military housing allowance acronym which may lead to confusion. The committee is considering proposing more substantial revisions to the FL-150 in the future and welcomes additional suggestions for the form.

Background

New Federal Tax Treatment for Spousal Support Payments

Public Law 115-97 (commonly referred to as “The Tax Cuts and Jobs Act”) amends the spousal support provisions of the Internal Revenue Code of 1986 (IRC) by repealing the income tax deduction to the person who pays spousal support under a divorce or separation instrument. In addition, the new law repeals the corresponding inclusion of spousal support in the gross income of the recipient. These amendments apply to: (1) Any divorce or separation instrument executed after December 31, 2018, and (2) Any modification of divorce or separation instrument that expressly provides that the amendments made by this section of the IRC apply to such modifications.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

The California Revenue and Taxation Code has not yet been amended to reflect the new federal tax treatment of spousal support. Thus, it appears that spousal support (and domestic partner support)¹ will continue to be taxable as income to the recipient and tax deductible to the payor for state tax purposes after December 31, 2018.

Military Housing Benefits

The term “Basic Allowance for Quarters” (BAQ) is now known as “Basic Allowance for Housing” (BAH). It describes several types of allowances that partially reimburse military personnel for their housing if they live in civilian communities.² This term is included on the form FL-150 as one source of income.

The Proposal

Changes to Income and Expense Declaration

Changes regarding spousal support items

Item 5 (Income) on form FL-150 requires the party completing the form to list all income received last month and on an average monthly basis for all categories listed in this item. Item 5e requires a party receiving spousal support to state how much support was received last month and on an average monthly basis. The item appears on the form as follows:

“Spousal support from this marriage from a different marriage”

To determine the after-tax income of the person completing the form, the court will need to know whether that spousal support is taxable or not. A party receiving spousal support under a divorce or separation decree entered *before* December 31, 2018, will continue to pay income tax on those support payments. Persons who receive spousal support from a divorce or separation decree entered *after* December 31, 2018, will *not* have to declare a spousal support payment as federal taxable income, but will continue to include that amount on form FL-150 at item 5e, just as other non-taxable sources of income, such as TANF and SSI must be reported.

Parties who modify their spousal support judgments after January 1, 2019 may choose to follow the new federal law and make the support payments non-deductible to the payor (and taxable to the recipient), otherwise, the payments will remain tax deductible to the payor (and taxable to the recipient). Thus, just listing the date of the order may not be determinative as to tax status. To conform item 5e to the changes in federal law, the committee recommends that the item be revised as follows:

“Spousal support from this marriage from a different marriage federal taxable”

¹ In California, alimony payments between registered domestic partners are treated the same as alimony payments between spouses. However, for federal purposes, the treatment may not be the same because the IRC identifies alimony as a payment to a spouse under a divorce or separation instrument.

² The types of BAH are listed at: http://militarypay.defense.gov/Pay/Allowances/BAH_Types.aspx

Item 10 (Deductions) on form FL-150 also needs to be changed to reflect the new federal tax law. Item 10e. requires a party to declare the amount of spousal support paid the last month (from the date the form was signed). To conform to the new tax law, item 10e would be revised as follows:

“Spousal support that I pay by court order from a different marriage. federal tax deductible”

Changes regarding military benefits reference

The term “Basic Allowance for Quarters” (BAQ) is now known as “Basic Allowance for Housing (BAH). The acronym BAQ is found on form FL-150 (at item 5.I); however, the reference is intended to serve as an example of other items that are attributed as income to a party in a family law proceeding. There are other military allowances such as “Basic Allowance for Subsistence” (BAS). The committee proposes that the term BAQ be replaced with “military allowances.” This will help persons who are not in the military understand what the example refers to and avoids confusion among military members as to why only one allowance is referenced.

Request for Comments to Improve Income and Expense Declaration

Form FL-150 was last revised January 1, 2007, and the committee is aware that court professionals have suggested substantive and formatting changes in recent cycles. Although the form is being circulated for a focused reason, the committee would like to take the opportunity to gather information from all persons who are familiar with the form about how to improve it in a future cycle. Additional proposed changes to the form that are received from public comment will not be implemented effective January 1, 2019, but will be considered by the committee for modification in the future.

Because form FL-150 is an essential form in nearly all family law actions, the committee would like to receive suggestions from parties and attorneys who use the form, court professionals who assist self-represented parties complete the form, and judicial officers who review the form to make court orders relating to the parties’ finances.

Alternatives Considered

Revisions to form FL-150 are needed to implement the recent changes to the tax treatment of alimony (spousal support) in the Internal Revenue Code of 1986, effective January 1, 2019. The committee considered two alternatives:

- (1) Recommending technical changes directly to the Judicial Council without circulating the form with the proposed changes for public comment; or
- (2) Circulating the form to request specific comment on the proposed changes and requesting comments for generally improving the form in a future cycle.

The committee chose the second option, as it would enable the committee to obtain suggestions for alternative language to help implement the new tax laws while gathering input on the form for future revisions.

Implementation Requirements, Costs, and Operational Impacts

The committee anticipates that this proposal will result in minor costs incurred by the courts to revise the form. Those costs are likely outweighed by the time saved by the court in obtaining the information necessary to make appropriate orders including the taxability of the parties' income.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Are there other ways to change the form to comply with the new tax laws?
- What other changes are suggested for improving the form in a future cycle?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

Form FL-150, at pages 5–8

Attachment A³: Public Law 115-97, Section 11051, at pages 9-11

³ The full text of Public Law 115-97 may be found at <https://www.congress.gov/bill/115th-congress/house-bill/1>

PARTY WITHOUT ATTORNEY OR ATTORNEY STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY DRAFT Not approved by the Judicial Council 3/20/2018
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/CLAIMANT:	
INCOME AND EXPENSE DECLARATION	CASE NUMBER:

1. **Employment** (Give information on your current job or, if you're unemployed, your most recent job.)

Attach copies of your pay stubs for last two months (black out Social Security numbers).

- a. Employer:
- b. Employer's address:
- c. Employer's phone number:
- d. Occupation:
- e. Date job started:
- f. If unemployed, date job ended:
- g. I work about _____ hours per week.
- h. I get paid \$ _____ gross (before taxes) per month per week per hour.

(If you have more than one job, attach an 8 1/2-by-11-inch sheet of paper and list the same information as above for your other jobs. Write "Question 1—Other Jobs" at the top.)

2. **Age and education**

- a. My age is (specify): _____
- b. I have completed high school or the equivalent: Yes No If no, highest grade completed (specify): _____
- c. Number of years of college completed (specify): _____ Degree(s) obtained (specify): _____
- d. Number of years of graduate school completed (specify): _____ Degree(s) obtained (specify): _____
- e. I have: professional/occupational license(s) (specify): _____
 vocational training (specify): _____

3. **Tax information**

- a. I last filed taxes for tax year (specify year): _____
- b. My tax filing status is single head of household married, filing separately
 married, filing jointly with (specify name): _____
- c. I file state tax returns in California other (specify state): _____
- d. I claim the following number of exemptions (including myself) on my taxes (specify): _____

- 4. **Other party's income.** I estimate the gross monthly income (before taxes) of the other party in this case at (specify): \$ _____
 This estimate is based on (explain): _____

(If you need more space to answer any questions on this form, attach an 8 1/2-by-11-inch sheet of paper and write the question number before your answer.) Number of pages attached: _____

I declare under penalty of perjury under the laws of the State of California that the information contained on all pages of this form and any attachments is true and correct.

Date: _____

_____ _____
 (TYPE OR PRINT NAME) (SIGNATURE OF DECLARANT)

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/CLAIMANT:	CASE NUMBER:
--	--------------

Attach copies of your pay stubs for the last two months and proof of any other income. Take a copy of your latest federal tax return to the court hearing. (Black out your Social Security number on the pay stub and tax return.)

5. **Income** (For average monthly, add up all the income you received in each category in the last 12 months and divide the total by 12.)

	Last month	Average monthly
a. Salary or wages (gross, before taxes).....	\$ _____	_____
b. Overtime (gross, before taxes).....	\$ _____	_____
c. Commissions or bonuses.....	\$ _____	_____
d. Public assistance (for example: TANF, SSI, GA/GR) <input type="checkbox"/> currently receiving	\$ _____	_____
e. Spousal support <input type="checkbox"/> from this marriage <input type="checkbox"/> from a different marriage <input checked="" type="checkbox"/> federal taxable	\$ _____	_____
f. Partner support <input type="checkbox"/> from this domestic partnership <input type="checkbox"/> from a different domestic partnership	\$ _____	_____
g. Pension/retirement fund payments.....	\$ _____	_____
h. Social Security retirement (not SSI).....	\$ _____	_____
i. Disability: <input type="checkbox"/> Social Security (not SSI) <input type="checkbox"/> State disability (SDI) <input type="checkbox"/> Private insurance	\$ _____	_____
j. Unemployment compensation.....	\$ _____	_____
k. Workers' compensation.....	\$ _____	_____
l. Other (military allowances, royalty payments, etc.) (specify):	\$ _____	_____

6. **Investment income** (Attach a schedule showing gross receipts less cash expenses for each piece of property.)

a. Dividends/interest.....	\$ _____	_____
b. Rental property income.....	\$ _____	_____
c. Trust income.....	\$ _____	_____
d. Other (specify):	\$ _____	_____

7. **Income from self-employment, after business expenses for all businesses**..... \$ _____

I am the owner/sole proprietor business partner other (specify): _____

Number of years in this business (specify): _____

Name of business (specify): _____

Type of business (specify): _____

Attach a profit and loss statement for the last two years or a Schedule C from your last federal tax return. Black out your Social Security number. If you have more than one business, provide the information above for each of your businesses.

8. **Additional income.** I received one-time money (lottery winnings, inheritance, etc.) in the last 12 months (specify source and amount): _____

9. **Change in income.** My financial situation has changed significantly over the last 12 months because (specify): _____

10. **Deductions**

	Last month
a. Required union dues.....	\$ _____
b. Required retirement payments (not Social Security, FICA, 401(k), or IRA).....	\$ _____
c. Medical, hospital, dental, and other health insurance premiums (total monthly amount).....	\$ _____
d. Child support that I pay for children from other relationships.....	\$ _____
e. Spousal support that I pay by court order from a different marriage <input checked="" type="checkbox"/> federal tax deductible	\$ _____
f. Partner support that I pay by court order from a different domestic partnership.....	\$ _____
g. Necessary job-related expenses not reimbursed by my employer (attach explanation labeled "Question 10g").....	\$ _____

11. **Assets**

	Total
a. Cash and checking accounts, savings, credit union, money market, and other deposit accounts.....	\$ _____
b. Stocks, bonds, and other assets I could easily sell.....	\$ _____
c. All other property, <input type="checkbox"/> real and <input type="checkbox"/> personal (estimate fair market value minus the debts you owe).....	\$ _____

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/CLAIMANT:	CASE NUMBER:
--	--------------

12. The following people live with me:

Name	Age	How the person is related to me (ex: son)	That person's gross monthly income	Pays some of the household expenses?
a.				<input type="checkbox"/> Yes <input type="checkbox"/> No
b.				<input type="checkbox"/> Yes <input type="checkbox"/> No
c.				<input type="checkbox"/> Yes <input type="checkbox"/> No
d.				<input type="checkbox"/> Yes <input type="checkbox"/> No
e.				<input type="checkbox"/> Yes <input type="checkbox"/> No

13. Average monthly expenses Estimated expenses Actual expenses Proposed needs

- | | |
|--|---|
| a. Home:
(1) <input type="checkbox"/> Rent or <input type="checkbox"/> mortgage..... \$ _____
If mortgage: \$ _____
(a) average principal: \$ _____
(b) average interest: \$ _____
(2) Real property taxes..... \$ _____
(3) Homeowner's or renter's insurance
(if not included above)..... \$ _____
(4) Maintenance and repair..... \$ _____
b. Health-care costs not paid by insurance..... \$ _____
c. Child care..... \$ _____
d. Groceries and household supplies..... \$ _____
e. Eating out..... \$ _____
f. Utilities (gas, electric, water, trash)..... \$ _____
g. Telephone, cell phone, and e-mail..... \$ _____ | h. Laundry and cleaning..... \$ _____
i. Clothes..... \$ _____
j. Education..... \$ _____
k. Entertainment, gifts, and vacation..... \$ _____
l. Auto expenses and transportation
(insurance, gas, repairs, bus, etc.)..... \$ _____
m. Insurance (life, accident, etc.; do not include
auto, home, or health insurance)..... \$ _____
n. Savings and investments..... \$ _____
o. Charitable contributions..... \$ _____
p. Monthly payments listed in item 14
(itemize below in 14 and insert total here).... \$ _____
q. Other (specify): \$ _____
<div style="border: 1px solid black; padding: 5px; margin-top: 5px;"> r. TOTAL EXPENSES (a-q) (do not add in the amounts in a(1)(a) and (b)) \$ _____ </div> s. Amount of expenses paid by others \$ _____ |
|--|---|

14. Installment payments and debts not listed above

Paid to	For	Amount	Balance	Date of last payment
		\$	\$	
		\$	\$	
		\$	\$	
		\$	\$	
		\$	\$	
		\$	\$	

15. Attorney fees (this information is required if either party is requesting attorney fees):

- a. To date, I have paid my attorney this amount for fees and costs (specify): \$
- b. The source of this money was (specify):
- c. I still owe the following fees and costs to my attorney (specify total owed): \$
- d. My attorney's hourly rate is (specify):

I confirm this fee arrangement.

Date:

_____ (TYPE OR PRINT NAME)

▶

_____ (SIGNATURE OF DECLARANT)

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/CLAIMANT:	CASE NUMBER:
--	--------------

CHILD SUPPORT INFORMATION
(NOTE: Fill out this page only if your case involves child support.)

16. Number of children

- a. I have *(specify number)*: _____ children under the age of 18 with the other parent in this case.
- b. The children spend _____ percent of their time with me and _____ percent of their time with the other parent.
(If you're not sure about percentage or it has not been agreed on, please describe your parenting schedule here.)

17. Children's health-care expenses

- a. I do I do not have health insurance available to me for the children through my job.
- b. Name of insurance company:
- c. Address of insurance company:

- d. The monthly cost for the **children's** health insurance is or would be *(specify)*: \$ _____
(Do not include the amount your employer pays.)

18. Additional expense for the children in this case

- | | Amount per month |
|---|------------------|
| a. Childcare so I can work or get job training..... | \$ _____ |
| b. Children's health care not covered by insurance..... | \$ _____ |
| c. Travel expenses for visitation..... | \$ _____ |
| d. Children's educational or other special needs <i>(specify below)</i> | \$ _____ |

19. Special hardships. I ask the court to consider the following special financial circumstances

(attach documentation of any item listed here, including court orders):

- | | Amount per month | For how many months? |
|--|------------------|----------------------|
| a. Extraordinary health expenses not included in 18b..... | \$ _____ | _____ |
| b. Major losses not covered by insurance (examples: fire, theft, other insured loss)..... | \$ _____ | _____ |
| c. (1) Expenses for my minor children who are from other relationships and are living with me..... | \$ _____ | _____ |
| (2) Names and ages of those children <i>(specify)</i> : | | |

(3) Child support I receive for those children..... \$ _____

The expenses listed in a, b, and c create an extreme financial hardship because *(explain)*:

20. Other information I want the court to know concerning support in my case *(specify)*:

**Shown Here:
Public Law No: 115-97 (12/22/2017)**

ATTACHMENT A

(This measure has not been amended since the House agreed to the Senate amendment without amendment on December 20, 2017. The summary of that version is repeated here.)

This bill amends the Internal Revenue Code (IRC) to reduce tax rates and modify policies, credits, and deductions for individuals and businesses. It also establishes an oil and gas leasing program for the Coastal Plain of the Arctic National Wildlife Refuge (ANWR) in Alaska.

(Unless otherwise specified, provisions referred to in this summary as temporary or as a suspension of an existing provision apply for taxable years beginning after December 31, 2017, and before January 1, 2026.)

TITLE I

Subtitle A-- Individual Tax Reform

Part V--Deductions And Exclusions

SEC. 11051. REPEAL OF DEDUCTION FOR ALIMONY PAYMENTS.

(a) IN GENERAL.—Part VII of subchapter B is amended by striking section 215 (and by striking the item relating to such section in the table of sections for such subpart).

(b) CONFORMING AMENDMENTS.—

(1) CORRESPONDING REPEAL OF PROVISIONS PROVIDING FOR INCLUSION OF ALIMONY IN GROSS INCOME.—

(A) Subsection (a) of section 61 is amended by striking paragraph (8) and by redesignating paragraphs (9) through (15) as paragraphs (8) through (14), respectively.

(B) Part II of subchapter B of chapter 1 is amended by striking section 71 (and by striking the item relating to such section in the table of sections for such part).

(C) Subpart F of part I of subchapter J of chapter 1 is amended by striking section 682 (and by striking the item relating to such section in the table of sections for such subpart).

(2) RELATED TO REPEAL OF SECTION 215.—

(A) Section 62(a) is amended by striking paragraph (10).

(B) Section 3402(m)(1) is amended by striking “(other than paragraph (10) thereof)”.

(C) Section 6724(d)(3) is amended by striking subparagraph (C) and by redesignating subparagraph (D) as subparagraph (C).

(3) RELATED TO REPEAL OF SECTION 71.—

(A) Section 121(d)(3) is amended—

(i) by striking “(as defined in section 71(b)(2))” in subparagraph (B), and

(ii) by adding at the end the following new subparagraph:

“(C) DIVORCE OR SEPARATION INSTRUMENT.—For purposes of this paragraph, the term ‘divorce or separation instrument’ means— ‘

‘(i) a decree of divorce or separate maintenance or a written instrument incident to such a decree,

“(ii) a written separation agreement, or

“(iii) a decree (not described in clause (i)) requiring a spouse to make payments for the support or maintenance of the other spouse.”.

(B) Section 152(d)(5) is amended to read as follows:

“(5) SPECIAL RULES FOR SUPPORT.—

“(A) IN GENERAL.—For purposes of this subsection— H. R. 1—37

“(i) payments to a spouse of alimony or separate maintenance payments shall not be treated as a payment by the payor spouse for the support of any dependent, and

“(ii) in the case of the remarriage of a parent, support of a child received from the parent’s spouse shall be treated as received from the parent.

“(B) ALIMONY OR SEPARATE MAINTENANCE PAYMENT.— For purposes of subparagraph (A), the term ‘alimony or separate maintenance payment’ means any payment in cash if—

“(i) such payment is received by (or on behalf of) a spouse under a divorce or separation instrument (as defined in section 121(d)(3)(C)),

“(ii) in the case of an individual legally separated from the individual’s spouse under a decree of divorce or of separate maintenance, the payee spouse and the payor spouse are not members of the same household at the time such payment is made, and

“(iii) there is no liability to make any such payment for any period after the death of the payee spouse and there is no liability to make any payment (in cash or property) as a substitute for such payments after the death of the payee spouse.”.

(C) Section 219(f)(1) is amended by striking the third sentence.

(D) Section 220(f)(7) is amended by striking “subparagraph (A) of section 71(b)(2)” and inserting “clause (i) of section 121(d)(3)(C)”.

(E) Section 223(f)(7) is amended by striking “subparagraph (A) of section 71(b)(2)” and inserting “clause (i) of section 121(d)(3)(C)”.

(F) Section 382(l)(3)(B)(iii) is amended by striking “section 71(b)(2)” and inserting “section 121(d)(3)(C)”.

(G) Section 408(d)(6) is amended by striking “subparagraph (A) of section 71(b)(2)” and inserting “clause (i) of section 121(d)(3)(C)”.

(4) ADDITIONAL CONFORMING AMENDMENTS.—Section 7701(a)(17) is amended—

(A) by striking “sections 682 and 2516” and inserting “section 2516”, and

(B) by striking “such sections” each place it appears and inserting “such section”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to—

(1) any divorce or separation instrument (as defined in section 71(b)(2) of the Internal Revenue Code of 1986 as in effect before the date of the enactment of this Act) executed after December 31, 2018, and

(2) any divorce or separation instrument (as so defined) executed on or before such date and modified after such date if the modification expressly provides that the amendments made by this section apply to such modification.