



net income calculations of child support. For the reasons stated below, we affirm.

¶ 3

### ANALYSIS

¶ 4 We conclude that the circuit court properly considered the income tax refunds Randall received. Joyce argued that Randall had excessive federal income tax withheld yielding a lower net and resulting in a lesser amount of child support. Randall on the other hand argues that the actions he took as to his taxes and deductions were legitimate and, therefore, the refunds he received were appropriate and the circuit court erred in considering them. After reviewing the authorities relied upon by the circuit court and argued in Randall's brief, we conclude that we need not reach the question of the appropriateness of Randall's deductions. Randall in fact did receive refunds and the applicable statute concerning this question requires properly calculated withholdings. Whether improperly calculated withholding results from a conscience effort to lessen the taxpayer's net income or whether the withholding results from uninflated appropriate deductions is not a relevant consideration in determining this question.

¶ 5 Section 505(a)(3) of the Illinois Marriage and Dissolution of Marriage Act (cited by the circuit court) indicates:

" ' "Net income" is defined as the total of all income from all sources, minus the following deductions:

(a) Federal income tax (properly calculated withholding or estimated payments);

(b) State income tax (properly calculated withholding or estimated payments); \*\*\*' " *In re Marriage of Davis*, 287 Ill. App. 3d 846, 852, 679 N.E.2d 110, 114 (1997) (quoting 750 ILCS 5/505(a)(3) (West 1994)).

In *Davis*, we stated:

"Although neither party mentions this particular issue, we note that it is very

important that a review of Duane's 1994 income tax return shows that he overpaid his federal income taxes by \$8,712. A review of Duane's Illinois income tax return shows that he overpaid the State of Illinois by \$794. According to sections 505(a)(3)(a) and (b), net income is to be determined by subtracting *properly calculated withholding* from federal and state income taxes. In order to determine the proper method of computing net income, one must calculate the amount of federal and state income tax that a person actually pays by taking into consideration the disparity that exists between the amount of tax actually withheld and the tax eventually paid. See *Pylawka*, 277 Ill. App. 3d at 732-33. If a noncustodial parent overwithholds, thereby overpaying income tax, that amount should be added back to his net income for the purposes of determining his support obligation pursuant to section 505(a) of the Act. *Pylawka*, 277 Ill. App. 3d at 733.

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\*\*\* The circuit court should also consider Duane's tax refunds when determining his net income [upon remand]." (Emphasis in original.) *In re Marriage of Davis*, 287 Ill. App. 3d at 855-56, 679 N.E.2d at 117.

¶ 6 In the case cited in *Davis*, *In re Marriage of Pylawka*, 227 Ill. App. 3d 728, 661 N.E.2d 509 (1996), the court noted:

"The proper method of computing net income is to calculate the amount of Federal and State income tax which a person actually pays by taking into consideration the disparity that may exist between the amount of tax withheld, as reflected on a W-2 form, and the tax eventually paid. [Citation.] Thus, if the noncustodial parent overwithholds on his W-2, thereby overpaying his Federal income tax, the amount should be added back to his net income for purposes of determining his support obligation under section 505(a) of the Act." *In re Marriage of Pylawka*, 227 Ill. App.

3d at 732-33, 661 N.E.2d at 509.

We note in reviewing both *Davis* and *Pylawka* that the determination of the question before us rested on the record of tax actually paid and not on a determination of whether the withholding that resulted in a refund was legitimate or an exercise in avoidance. Randall in his brief to this court indicated "[Joyce] does not consider the basis for a refund, namely exemptions, credits, itemized deductions, spousal business, depreciations and losses, or charitable gifts." We do not go into detail examining whether the record in this case substantiates Randall's position. Our examination of *Davis* and *Pylawka* indicates that the controlling factor is whether Randall received a refund, not what that refund was based upon.

¶ 7 Accordingly, for the reasons stated above, we affirm the judgment of the circuit court of Williamson County.

¶ 8 Affirmed.