Income Calculation for the Right to Counsel Program: RTC Providers

I. Eligibility for RTC Services

To be financially eligible for RTC services, a client must either receive a qualifying source of public assistance OR be **200% or below** of the Federal Poverty Level after federal tax deductions described below. New Legal Server changes allow for calculation of income after federal tax withholdings.

- Look for Right to Counsel eligibility on the last page of intake
- If a client is 200% or below gross of the Federal Poverty Level, they are automatically financially eligible for RTC

II. Eligible Taxes for RTC:

Only federal income tax withholding, Medicare deductions, and Social Security deductions are subtracted from gross income to determine eligibility for RTC. A client may have other deductions on their pay stub, but these will not be used for calculating RTC eligibility. This means that no other deductions should be considered to determine "net" income even if it reduces the total amount of client's pay each pay period, i.e., insurance premiums, retirement plan contributions, garnishments, WA State Family Leave, Cares LTC, etc.

Summary: RTC eligibility based on annual income = Gross Income - (Federal Income Tax Withholding + Medicare Deduction + Social Security Deduction)

III. Expenses in Legal Server Allow for Calculations

In order to calculate RTC eligibility based on federal deductions, new additions were made to the Legal-Server financial page. Four new expenses are listed in Legal-Server. These expenses allow for deductions to be entered into legal server in addition to gross income. Each of these deductions will function to change the "Net Income" percentage listed on that page. Legal Server will use this Net Income percentage to confirm whether the client is RTC eligible (in addition to the summons received/UDA filed check boxes).

The new expenses are the following:

RTC Taxes & Deductions – Federal Income Tax Withholdings

RTC Taxes & Deductions – Medicare

RTC Taxes & Deductions – Social Security

RTC Taxes and Deductions- FICA (if SS/Medicare combined on paystub)

Percentage of Net Income is located under "financial income" block

Income Totals	Annual Income: $29,120.00 Monthly Income: $2,426.66 Percentage of Poverty: 214.28% Percentage of Net Income: 195.72% Family Size: 1 (1 over 18, 0 under 18)

Financial Information

Number of People 18 and Over	1
Number of People under 18	0
Income Totals	Annual Income: $29,120.00 Monthly Income: $2,426.66 Percentage of Poverty: 214.28% Percentage of Net Income: 185.48% Family Size: 1 (1 over 18, 0 under 18)

Household Income:* You must fill in at least one income, or select 'No Income'

Income Entry*	Employment Freq
Do you have reason to believe that your ncome is likely to change significantly in the near future?*	○ Yes ● No

Allowable Expenses

Test warning here

Total Expenses	Total Annual Expenses: $3,913.00 Total Monthly Expenses: $326.08 Adjusted Annual Income: $29,120.00 (for referral purposes only) Adjusted Monthly Income: $2,426.66 (for referral purposes only) Adjusted Percentage of Poverty: 214.28% (for referral purposes only)
Expense Entry	RTC Taxes & Deductions - Federal Income Tax Withholdings Freq
Expense Entry	RTC Taxes & Deductions - FICA (if SS/Medicare Combined on Paystub) Freq

IV. RTC Eligibility: Where Client has received a Summons or a UDA has been filed

1. If the client’s gross income is 200% or below, the client is eligible for RTC. There is no need to calculate net income/taxes.
2. If client receives an eligible public benefit, they are automatically eligible for RTC even if otherwise over 200% FPL. See RCW 59.16.840(a): Receiving one of the following types of public assistance: Temporary assistance for needy families, aged, blind, or disabled assistance benefits, medical care services under RCW **74.09.035**, pregnant women assistance benefits, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, Medicaid, or supplemental security income;
3. If CL is over 200.01% FPL use the “RTC Taxes & Deductions” as an expense on the financial information page of Legal Server. ***This will adjust the Net Percentage of Poverty amount based on the amount of taxes entered.*** Client will be eligible for RTC if their “net” income (after federal tax/deductions) is under 200%.

V. Tax Calculation

Clients will likely need to reference a document in order to determine deductions, and federal taxes and deductions should be calculated for all adults who are part of the Legal Server household. Household definition under OCLA/LFW is more expansive than that which restricts IRS joint filers and dependents, so multiple sources of documentation may be needed.

Suggested language for paystub review:

1. *I need to ask you about taxes you might pay to determine eligibility.*
2. *Is this paystub an average of your usual pay? (If no, use YTD information)*
3. *How frequently are you paid?*
4. *Can you locate the deductions and withholdings on your paystub? (*
5. *Please read the deduction for Federal income tax withholding*
6. *Please read the deduction for Medicare and Social Security withholding. These may be combined or separate.*

Reviewing a Paystub

1. Identify the amount of Federal income tax withholding (this may be listed as FED / FIT /FITW).
2. Identify the amount of Medicare (MED) and Social Security withholding (this may be listed as OASDI / SS / SOCSEC). They may also be listed as one item called FICA.
3. Determine client’s frequency of pay for Legal Server:
   a. Biweekly: this person is paid every two weeks, paydays occurring on the same day each week (set frequency at 26 pay periods per year)
   b. Semimonthly: this person is paid twice a month, paydays occurring often on the 15^{th} and the last day of the month (set frequency at 24 pay periods per year)

   c. Weekly: this person is paid once a week, set frequency at 52
   d. Monthly: this person is paid once a month, set frequency at 12.
4. Alternatively, look at the YTD (year to date) totals for both Federal Income Tax withholding and FICA. Divide this number by the total number of weeks between January 1 and the end of the pay period of the paystub provided for a weekly average. Set frequency at 56. Example: paystub is for period 2/26-3/11. Divide the YTD totals by 10, as there are 10 weeks between January 1 and March 11.

Reviewing a Tax Return (1040 +W2)

Reliance on a previous tax return is acceptable when it is accompanied by a representation that nothing substantial has changed. Clients should be instructed to gather the prior year's 1040 form (note that 1040 EZ is no longer in use) AND any corresponding W-2 forms. Before using a tax return to calculate RTC taxes, three things must be confirmed:

- Client's current income must not be substantially different to what it was the prior year.
- All of client's sources of income must be the same as the prior year.
- If there are any joint filers on the tax return they must also be included in the Legal Server household (to ensure income/taxes aren't calculated for non-household members)
    1. Have client identify Line 24 of 1040 (on the second page). This lists the total tax. Ask the client if there is a number in line 34 (amount overpaid) or line 37 (amount owing). If so, subtract line 34 from line 24, or add line 37 to 24.
    2. List total as federal withholding. Set frequency to 1 (annual).
    3. If Federal Withholding alone does not bring client below 200% net, review attached W-2 for Social Security and Medicare deductions.
    4. Have client identify Box 4 on each W-2 (Social Security Tax Withheld). List total as RTC Expense Social Security, set frequency to 1 (annual)
    5. Have client identify Box 6 on each W-2 (Medicare Tax Withheld). List total as RTC Expense Medicare, set frequency to 1 (annual)

Calculating Taxes from Unemployment Benefits

1. Client may have taxes withheld from their weekly benefits, but if they do not or are unable to give accurate information, calculate federal withholding as 10%.
2. 10% = total weekly benefit x .1
3. Enter 10% as RTC Taxes and Deductions: Federal Withholding. Ensure the frequency matches the frequency of income. Unemployment benefits are not subject to FICA deductions.

Notes on Income Sources:

- **Employment: independent contractors/gig work**

    - If Client states that they do not pay taxes on their income (and do not expect to at the year's end) do not enter any deductions.
    - If clients pay estimated taxes, this amount can be used as current taxes paid.
- **Stock options, dividends, interest**
    - Income is reported on yearly 1099-R form. This income is not subject to FICA deductions.
- **Commissions**
    - Commissions may be paid for by a client's employer, in which case they may appear on a paystub.
    - Commissions may also be paid to the employee on a 1099 form.
    - Commissions should be averaged on a monthly or annual basis.
- **Tips**
    - Tips may be reported on a paystub. Otherwise, tips are subject to taxes at the same rate as hourly income. However, if clients do not report their tips on their annual taxes, no deductions should be entered.
- **Retirement Accounts**
    - Pension, 401k, and IRA distributions are subject to federal taxes (but not FICA) and are reported on a 1099-R annually.
    - ROTH IRA distributions are not subject to taxes or FICA.
- **Royalties**
    - Treated as self-employment income (see below)
- **Tribal per capita**
    - In general, the per capita payments issued to a member of Indian tribes are not subject to federal income tax, unless they are from gaming proceeds.
    - The EDSL is treating all tribal per capita as non-taxable per guidance from OCLA, but RTC providers may want to inquire into whether this source is actually taxed to help qualify a potential client.
- **Spousal Maintenance**
    - Divorce decrees from before January 1, 2019 are still taxable (unless modified since then). But all maintenance ordered after that time is non-taxable.
    - The EDSL is treating all spousal maintenance as non-taxable per guidance from OCLA, but RTC providers may want to inquire into whether this source is actually taxed to help qualify a potential client.
- **Other student grants**
    - These are generally non-taxable, but only if they are used for study or research by a degree-seeking student who spent the funds to pay qualified expenses at an eligible educational organization.
    - The EDSL is treating all student grants as non-taxable per guidance from OCLA, but RTC providers may want to inquire into whether this source is actually taxed to help qualify a potential client.

- **Self-employment**
    - Taxes on self-employment income vary based on business structure. Income to the client often appears on a personal 1040 return, though additional returns or schedules may be needed.
    - Many small businesses pay estimated taxes on a quarterly basis through a 1040-ES form
    - See also: https://www.irs.gov/businesses/small-businesses-self-employed/self-employed-individuals-tax-center
- **Rental Income**
    - Rental income is taxed and reported as regular income, but taxable income is determined after subtraction of allowable expenses associated with property and depreciation.
    - Details are reported on IRS Schedule E.
- **Social Security and SSDI**
    - May become taxable when the benefits, plus all other household income, exceeds an income threshold based on tax filing status.
        - up to 50 percent of benefits are taxable:
            - if client's income is $25,000 to $34,000 for an individual filing single, head of household, or widower
            - if client's income is $25,000 to $34,000 and they lived separately from their spouse for the entire previous year and are married filing separately for tax purposes.
            - If client is married filing jointly with partner and income is between $32,000 to $44,000 income.
        - up to 85 percent of benefits are taxable if:
            - If client is filing single, head of household or a qualifying widow or widower with more than $34,000 income.
            - Client is married filing jointly with more than $44,000 income.
            - Married filing separately and lived apart from their spouse for all of the previous (and current) year with more than $34,000 income.
            - Or if client is married filing separately and lived with their spouse at any time during the previous year (or current year).
- **Non-taxable Income Sources:**
    - Washington State ABD (Aged, Blind, Disabled) (Needs Based)
    - ARENS (Additional Requirements for Basic Needs) (Needs Based)
    - Diversion Cash Assistance (DCA)
    - Consolidated Emergency Assistance Program (CEAP).
    - CVR (County Veterans Relief) (Needs Based)
    - HEN (Housing and Essential Needs) (Needs Based)
    - PEG (Pell Educational Grants) (Needs Based)
    - PWA (Pregnant Women Assistance) (Needs Based)
    - VDPB (Veterans Disability Pension Benefits) (Needs Based)

- Veterans Benefits (non-disability related)
- Workers Compensation (L&I)
- Child Support
- SSI (Needs Based)
- TANF
- Refugee Cash Assistance
- Life Insurance Proceeds
- Foster Care Payments or Adoption Support Payments
- State Family Assistance (SFA)