Section 4

TAX AND FINANCIAL PLANNING IMPACTS OF PAYING SUPPORT AND SPOUSAL MAINTENANCE

Nicholas V. Rothschild
GEARY, PORTER & DONOVAN, PC
16475 Dallas Parkway
Suite 400
Addison, Texas 75001
Telephone (972) 931-9901
Facsimile (972) 931-9208

TAX CONSEQUENCES OF PROPERTY DIVISION, SPOUSAL MAINTENANCE, AND CONTRACTUAL ALIMONY

I. PURPOSE

Questions regarding federal income tax liability frequently arise in connection with dividing property and paying or receiving post-divorce contractual alimony and spousal maintenance. The purpose of this article is to provide counsel with an overview of these issues. The article explains how to avoid tax liabilities in connection with dividing property, and how to ensure that alimony and spousal maintenance payments will be taxable to the recipient and deductible to the payor. The article further explains potential traps in connection with drafting and negotiating alimony and maintenance agreements, and provides drafting tips regarding the same.

II. TAX CONSEQUENCES OF PROPERTY DIVISION

A. Consideration of Potential Tax Liabilities to Achieve a "Just and Right" Division

The Family Code authorizes the trial court to consider whether a specific asset will be subject to taxation when conducting a "just and right" division of the estate. TEX. FAM. CODE §7.008(1)(2). Property divided pursuant to a divorce decree or agreement incident to divorce ("AID") typically is not subject to federal income tax liability. I.R.C. § 1041(a)(2). Nevertheless, divided assets may contain latent income tax liabilities. For example, stock which is awarded to a spouse which is thereafter liquidated is subject to capital gains tax. I.R.C. §1001. Additionally, a spouse may incur income tax liability if she sells an asset awarded to her and realizes a gain in connection with the sale. *Id.* With certain exceptions (such as the marital residence) a divided asset will frequently maintain its original tax basis, which is typically the asset's cost to the owner (with several exceptions). The recipient spouse's tax basis in the transferred asset is equal to the basis that existed immediately prior to divorce and, if the spouse thereafter sells the asset at a price which exceeds the original basis, the realized gain may be subject to taxation. I.R.C. §§1012; 1041(b)(2).

To comply with the general rule, property transferred to a spouse must be "incident to divorce." I.R.C. § 1041. As such, the transfer must occur within one (1) year after the date on which the marriage ceases, or is related to the cessation of the marriage. I.R.C. §10.41(c)(1)(2). "Related to the cessation of marriage" means that the transfer is: (1) pursuant to a divorce or separation instrument; and

(2) occurs not more than six (6) years after the date on which the marriage terminates. *See* Temp. Treas. Reg. A-7 of § 1.1041-1T.

B. Taxability of Cash Payments to Equalize Property Division

Spouses often agree to "buy-out" the other spouse's interest in an asset. Depending on the buy-out's structure, the payment may be subject to taxation if it is not made in connection with the "just and right division" of the estate. The marital residence is a common example. In exchange for a one hundred percent (100%) undivided separate property interest in the marital residence, the spouse receiving the home agrees to pay cash (or other liquid assets) in exchange for the other spouse's community interest in the same. As discussed in more detail below, post-divorce cash payments can constitute alimony, which is taxable to the recipient and deductible from the payor's gross income, if certain requirements are met. To avoid these concerns, the decree or AID should clearly state that the cash payment(s) are made as part of the "just and right division" of the marital estate. In that regard, counsel may consider structuring the payments as follows:

Equalization Payments

For the purpose of a just and right division of property made in this Decree, the Court finds that the Parties have agreed that [H/W] shall receive certain additional payments from [H/W] following the Parties' divorce as a means of equalizing the values of property taken by each Party pursuant to this Decree. The payment obligations of [H/W] embodied herein are related to the division of the community property estate, are intended to constitute a form of payment in connection with the divorce for rights and interests of [H/W] in the community property estate and the payment obligations are not intended to represent any form of alimony payments.

The Court finds that the Parties have agreed and, based on such agreement, IT IS THEREFORE ORDERED AND DECREED that [H/W] pay to [H/W] the following amounts totaling ____________ Dollars and No/100 ($__________.00) on the due dates set out below:

(a) __________________ and No/100 Dollars ($________.00) due and payable on the date on which the court signs this Agreed Final Decree of Divorce; and

(b) ________________ and No/100 Dollars ($_________.00) due and payable on or before [within one (1) year after the date on which the court signs the decree].

The decree should also state that the parties do not intend for the payment(s) to be taxable to either party, or to constitute alimony pursuant to the Internal Revenue Code. In the absence of such language, the cash payment may be taxable. Form 23-1 of the *Texas Family Law Practice Manual* contains a provision which awards the spouse being "bought out," a money judgment and lien to equalize division. Judgments and liens are burdensome to collect and foreclose on, so obtaining cash or other liquid assets, rather than a judgment, is preferred when possible.

C. Transfer of Retirement Benefits

Even though paid after divorce, retirement benefits are community assets to the extent they are derived from a spouse's employment during marriage. *Cearley v. Cearley*, 544 S.W.2d 661, 662 (Tex. 1976). As such, retirement benefits are often one of the most significant assets which a divorce decree divides. Broadly speaking, retirement benefits are derived from either defined benefit plans or defined contribution plans. A defined benefit plan is a retirement plan to which the employer makes periodic contributions for the employee's benefit, and the amount of benefits to be paid upon retirement are determined by formula. Common examples of defined benefit plans are annuities, pensions, and profit-sharing plans. Defined contribution plans are those in which the participant contributes a portion of their earnings during marriage. Depending on the plan, (i.e. Traditional 401(k) and Roth 401(k)) contributions can be made with before or after tax dollars. Examples of defined contribution plans are individual retirement accounts ("IRAs"), Keoghs, and SEP plans. If the defined contribution or defined benefit plan is qualified under the Employer Retirement Income Security Act of 1974 ("ERISA"), it will be subject to division by a Qualified Domestic Relations Order ("QDRO"), which is beyond the scope of this article. However, the Internal Revenue Code specifically provides for non-taxable transfers of IRAs between spouses. I.R.C. §408. Pursuant to the Code, an IRA transfer which complies with the Code requirements will not be a taxable event at the time of transfer. *See* I.R.C. §71(b)(2)(A). The transferee spouse may be taxed upon receipt of the retirement benefits depending on whether the contributions were made with before or after tax dollars. Additionally, a spouse who obtains a right to

benefits from a qualified defined contribution plan (such as a 401(k)) will be taxed upon receipt of the benefits in the same manner.

III. TAX CONSEQUENCES OF CONTRACTUAL ALIMONY AND SPOUSAL MAINTENANCE

A. Purpose of Contractual Alimony

Frequently, the property division will not provide a divorcing spouse with sufficient assets to meet her monthly cash flow needs. As such, the spouse with insufficient funds may request monthly cash payments for a finite time period. A divorcing spouse typically will be more inclined to agree to the requested payments if they will be deductible at the end of the tax year. The Family Code authorizes parties to enter into written agreements for the "[m]aintenance of either spouse. . ." and, the payments can be deducted from the payor's gross income and reported on the recipient's return. *See* I.R.C. § 71, § 215; TEX. FAM. CODE §7.006(a). Payments which qualify as alimony are not subject to withholding, so the recipient must make estimated tax payments to the IRS on a quarterly basis in connection with receipt of same. As a general rule, the amount of estimated tax payments must be no less than ninety percent (90%) of the taxpayer's previous year's tax liability. Failure to make the appropriate amount of estimated payments can result in a penalty assessed against the recipient of alimony payments. I.R.C. §6554.

B. I.R.C. Requirements for Payments to be Taxable to Recipient and Deductible to Payor

The Internal Revenue Code allows the payor to deduct the amount of annual alimony payments from his gross income, and requires the recipient to report same, provided that the decree or AID strictly complies with the Internal Revenue Code's requirements. See I.R.C. §§71 and 215. If any of the requirements are not satisfied, the payments will not constitute "alimony," and will not be deductible/taxable. Melvyn B. Frumkes, author of the legal treatise "*Frumkes on Divorce Taxation,*" summarizes the taxable/deductible requirements as the "7Ds":

1) Dollars – payments must be in the form of cash received by or on behalf of a spouse; *See* I.R.C. § 71(b)(1) (only cash payments can qualify as taxable alimony). (Checks and money orders satisfy this requirement.)

2) Documents – under a divorce separation instrument;

See I.R.C. § 71(b)(1)(A) (Payments must be received under a qualified divorce or separation instrument).

3) Designation – payments may not be designated as not includable in recipient's gross income under § 71 and not allowable as a deduction to payor under § 215. If the divorce decree specifically states that the payments are *not* includable in the recipient's income, and *not* deductable from the payor's income, they will *not* constitute alimony pursuant to the I.R.C.

   However, in the event the decree or separation instrument does not contain specific terms regarding the taxability/deductibility of the payments, the payments' tax ramifications, if any, will be analyzed under the formal requirements of the I.R.C. Notwithstanding any indications of the parties' intent to the contrary, the payments will only be construed as taxable/deductible alimony if each formal requirement is met. *Barrett v. United States,* 74 F.3d 661, 666 (5th Cir. 1996) (payments' characteristics determined taxability/deductibility; not label which divorce decree attached thereto).

4) Distance – spouses or former spouses cannot be members of the same household; *See* I.R.C. § 71(b)(1)(c) (spouses must live apart to be taxable/deductible).

5) Death – liability for payments must cease upon the death of the payee. The obligation to make payments must terminate upon the recipient's death, and the settlement divorce instrument must not provide a substitute for the terminated payments. *See* I.R.C. § 71(b)(1)(D).

6) Dependence – the alimony payments may not be fixed as child support. If the payments, or any portion thereof, are payable for the support of a child, the payments which are attributable to the support of the child will not qualify. I.R.C. § 71(c)(1). Additionally, if the amount of payments awarded pursuant to the divorce or separation instrument will be reduced based on the occurrence of a future event relating to a child, or if they can be "clearly associated" with the occurrence of a future contingency relating to a child (such as attaining a specific age, marrying, etc.), then the amount of the reduction attributable to the child will not constitute "alimony," and will therefore not be deductible to the payor spouse. I.R.C. § 71(c)(2).

7) Dual-- separate returns must be filed, not joint.
   If the spouses are not divorced, they must not have filed a joint income tax return for the year in which the payment was made. I.R.C. § 71(e).

The term "alimony" as used in Section 71 of the I.R.C. may include spousal maintenance payments awarded pursuant to Chapter 8 of the Texas Family Code, provided those payments comply with the above listed requirements. Although the property interests of divorcing spouses are determined by state law, federal law governs the federal income tax treatment of that property. *Hoover v. Comm'r Internal Revenue Serv*., 102 F.3d 842, 844 (6th Cir. 1996) (citing *Green v. Comm'r Internal Revenue Serv*., 855 F.2d 289, 292 (6th Cir. 1998). Despite a state court's intentions, a divorce decree or AID's compliance with federal law ultimately determines whether the payments are taxable to the recipient and deductible to the payor. *Barrett v. United* States, 74 F. 3d 661, 666 (5th Cir. 1996).

Accordingly, the taxability and deductibility of Chapter 8 spousal maintenance payments is a question of federal law. The author was unable to locate any federal or tax court opinions regarding whether Chapter 8 spousal maintenance payments awarded pursuant to the Texas Family Code can be taxable to the recipient and deductible to the payor. However, at least one Texas appellate court has indicated that spousal maintenance payments can be taxable/deductible. *See O'Carolan v. Harper*, 71 S.W.3d 529, 534 (Tex. App. – Austin 2002, no pet.)

C. Payments to 3rd Parties that are Taxable and Deductible

The payment of a spouse's debts after divorce, such as cash payments for rent, mortgage, tax or tuition liabilities of the recipient spouse, can be taxable/deductible if they are made "on behalf of a spouse" requirement contained in the I.R.C. *See* Temp. Treas. Reg. §1.71-1TA-6.

D. Payments That are Not Taxable/Deductible

The Internal Revenue Code requires alimony payments to be made "on behalf of a spouse" to be taxable and deductible. I.R.C. §71(b)(1). Frequently, the divorce decree awards one hundred percent (100%) of the marital residence to one spouse in exchange for a cash payment equal in value to the other spouse's remaining community interest. Additionally, the decree may award one spouse the marital residence, but allow for the other spouse (and likely the children) to remain in the marital residence for a certain period of time (i.e. until the child turns 18 years old). In those situations, the spouse to whom the decree awards the

residence may agree to pay the mortgage, insurance, property taxes, maintenance and repairs at the marital residence while the spouse and child remain therein. Such payments are not considered to be made "on behalf of a spouse," because the decree awards the residence to the payor, and will therefore not be taxable/deductible. *See Picou v. Comm'r*, T.C. Summ. Op. 2006-82.

1. Lump Sum Payments

Lump sum payment(s) will not qualify as alimony because it is an obligation that will not terminate upon the death of the recipient spouse. *See Barrett v. United States,* 74 F.3d 661, 666 (5th cir. 1996).

2. Installment Payments.

If the divorce decree or separation instrument requires the payor to continue paying alimony to the recipient after the recipient's death, the payments will not qualify as alimony pursuant to the I.R.C., and will therefore not be taxable or deductible. I.R.C. §71(b)(7)(D). Similarly, if the party agrees to pay debt of the other spouse until that debt is extinguished, and the decree or AID does not expressly state that the obligation terminates on the recipient spouse's death, those payments will not qualify as contractual alimony, and therefore will not be taxable or deductible on either spouse's income tax return. *Id.* Accordingly, counsel should carefully analyze the way in which contractual alimony payments will be made to ensure compliance with the I.R.C.

3. Temporary Spousal Support

Temporary spousal support or maintenance generally does not satisfy the taxable/deductible requirements of the I.R.C. because the order typically does not state that the payor's obligation terminates on the recipient's death.

IV. CONTRACTUAL ALIMONY DRAFTING CONSIDERATIONS

A. Ensure Compliance With the "7D's" to Make Payments Taxable and Deductible

The *Texas Family Law Practice Manual* Form 23-6 contains provisions which satisfy the formal Internal Revenue Code requirements for taxability/deductibility. However, certain traps, such as the rule against recapture exist, and caution must be taken when drafting alimony agreements. Moreover, each case presents a unique set of factual circumstances, which may dictate inclusion of additional specifying provisions into the alimony contract.

B. Avoid The Rule Against Recapture

1. Recapture

The Internal Revenue Code prohibits "excessive front loading" of alimony payments, often referred to as "recomputation" or the "rule against recapture." The purpose of the rule is "[t]o prevent payors whose divorces occur near the end of the year from making deductible property settlements at the beginning of the next year." *Melvyn B. Frumkes, Frumkes on Divorce Taxation, §3.992 (James Publishing, Inc., Rev. 10, 12/09).*

Pursuant to the recapture rule, the payor spouse is required to include any payments which are subject to the rule in her gross income. I.R.C. §71(f). A reduction in alimony payments during the recapture period (i.e. the first three (3) years of post-separation payments) are subject to recapture, and are included in the payor's gross income, to the extent the amount of reduction of the third post-separation year exceeds $15,000.00. *Id.* Frumkes explains the recapture rule as follows:

> [U]nder the 1986 TRA Rules, the payor will be required to "recapture" in the third post-separation year any "excess alimony" over the first and second post-separation years paid during post-separation years two and three. Determination is made as follows: Recapture will occur in only one year instead of a series of years, and it would be in year three. Only two calculations for recapture will be necessary. The first calculation compares the second year payments to the third payments. If the amount paid in the third year plus $15,000.00 is less than the amount paid in the second year, the excess amount will be recaptured. The second calculation compares the first year to the adjusted average of the second and third years. Payments in the second and third years will be reduced by any recapture from the first calculation. The second and third year payments will be averaged. If this average plus $15,000.00 is less than the payments in the first year, the excess amount will be recaptured.

. . . .

> [I]f the payor makes alimony payments of $50,000.00 in the first year and no payments in the second or third year, $35,000.00 will

> be recaptured. If instead the payments are $50,000.00 in the first year, $20,000.00 in the second year, and nothing in the third year, the recapture amount will consist of $5,000.00 from the second year (the excess over $15,000.00) plus $27,500.00 for the first year (the excess of $50,000.00 over the sum of $15,000.00 plus $7,500.00). (The $7,500.00 is the average payments for years two and three after reducing the payments by $5,000.00 recaptured from year two.) [Conf. Rept. No. 99-841, 99th Congress, 2nd Sess. Vol. II, p.849.]

Frumkes on Divorce Taxation, §3.92 (James Publishing, Inc., Rev. 12, 12/09).

Three exceptions exist. I.R.C. §71(f). The recapture rule will not apply if: (1) the payments cease because of either party's death or the recipient's remarriage; (2) payments are pursuant to a temporary order; or (3) payments fluctuate because they are tied to a percentage of the payor's income. *Id.* Due to the complexity of the rule, prudence dictates that a qualified tax professional (CPA or tax attorney) review proposed alimony contracts prior to execution to ensure compliance with the rules against recapture.

C. <u>Child Support Cannot Be Taxable/Deductible</u>

If paid for the support of a child, alimony will not be taxable or deductible. IR.C. §71(c)(1). As referenced above, the IRS can disallow a payor's deductions if the alimony payments are construed to be payable for the support of a child, or if the amount of payments will be reduced based on the occurrence of a future event relating to a child. Accordingly, references to children or to events relating to children should be avoided in the alimony contract.

D. <u>Additional Drafting Considerations</u>

An important distinction exists between spousal maintenance, which is awarded pursuant to Chapter 8 of the Texas Family Code, and contractual alimony, which requires an agreement between the parties. Spousal maintenance can be court-ordered or agreed to by the parties, and the rules relating to the enforcement, modification, and termination of the payment obligation will vary depending upon whether the payments are "C*ourt-Ordered Spousal Maintenance,"* which must be specifically pled for and proven, "*Agreed Spousal Maintenance*," which may or may not be taxable/deductible, and "*Agreed Contractual Alimony*," which will be taxable/deductible if it satisfies the requirements for deductibility/taxability contained in the I.R.C.

Alimony contracts are governed by contract law, not the Family Code. *See, Cardwell v. Sico-la-Cardwell*, 978 S.W.2d 722, 724 (Tex. App.--Austin 1998, pet. denied)*, Allen v. Allen*, 717 S.W.2d 311, 313 (Tex. 1986). Therefore, a contractual alimony agreement is not enforceable by contempt, and a trial court lacks authority to modify its terms, unless the contract so provides. *McCollough v. McCollough*, 212 S.W.3d 638, 648 (Tex. App. – Austin 2006, no pet.) (contractual alimony agreement in decree not subject to Chapter 8 termination and modification provisions). An alimony agreement is subject to contractual defenses, including ambiguity. Accordingly, no contractual terms should be left open for future interpretation.

1. <u>Define Payor's "Income"</u>

The amount of contractual alimony to be paid will sometimes consist of a percentage of the payor spouse's income. In addition to avoiding recapture, basing the amount on the payor's income is mutually beneficial because it allows for a reduction in the payor's monthly obligation if his or her income decreases, and also allows the recipient to benefit from increase(s) in the same.

If the amount to be paid will fluctuate based on future income, the term "income" should be specifically defined within the contract. The definitions of what constitutes "income" will vary depending on the form of compensation the payor spouse receives. For example, if the payor owns a closely held corporation, his or her "income" may correspond with the business's profitability. Alternatively, income which primarily consists of salary, wages, commissions or bonuses would require a distinct definition. The contract should contain a detailed, specific definition of "income," which the circumstances of each case will dictate. Additionally, the contract should include procedures which authorize the payee to verify the payor's income (i.e. allow for inspection of business financial records or payroll records on a quarterly or annual basis.).

2. <u>Obtain Security for Payments</u>

Whenever parties agree to a long-term payout, such as alimony, the failure of future performance is always an inherent risk. Accordingly, the recipient should consider requiring a security interest in an asset, which is equal or greater in value than the payments owed. Alternatively, a payee spouse may wish to have life insurance to provide payment if the payor dies before his or her contractual alimony obligation is satisfied. Additionally, it appears that the recipient may secure the payment obligation with a qualified retirement plan pursuant to a QDRO. The Internal Revenue Service has previously approved the use of a

QDRO to obtain a security interest in a qualified retirement plan to secure a spouse's payment obligations pursuant to a divorce decree. *See Frumkes*, Section 13.10.1, *citing* Priv. Ltr. Rul. 9234014 (May 21, 1992)(security arrangement pursuant to QDRO approved as an assignment permitted by I.R.C. §401(a)(13)(B).

Another potential source of security is a life insurance policy on the payor's life. To satisfy the "on behalf of a spouse" requirements, the most prudent course is for the payee to own the life insurance policy on the payor's life. Assuming all other requirements are met for taxability and deductibility purposes, the payor can deduct the amount of premiums paid. 26 C.F.R. §1.71-1T(b). However, counsel should advise the recipient that any life insurance benefits paid after the payor's death might be taxable to the recipient and deductible to the deceased payor.

3. Abatement Clause

If representing the payor, counsel may consider including an abatement or forgiveness clause, which provides contingencies in the event the payor spouse is unable to make the requisite payments under the contract.

4. Include Specific Termination Provisions

In addition to termination upon the receiving spouse's death, alimony contracts often contain provisions which provide for termination if future events occur. Common examples are "remarriage" or "cohabitation" by the recipient spouse. Although it seems unlikely, some parties may find "cohabitation" to be an ambiguous term.

The author recently tried a case in which the sole issue was whether the recipient was "cohabitating" with her romantic partner. The recipient was involved in a relationship with her next door neighbor, and slept at his house several nights a week. The couple frequently assisted each other with their respective parenting duties. Relying on an antiquated dictionary definition of the word cohabitation, the payor quit paying alimony, and contended that his alimony obligation terminated based on the recipient's alleged "cohabitation" with her neighbor. The payor contended that the recipient shared a "community of life" with her neighbor, which he alleged constituted "cohabitation" and terminated his alimony obligation.

What initially appeared very basic (whether cohabitation requires living together in one dwelling) resulted in a year-long lawsuit, allegations that "cohabitation" was an ambiguous contractual term, several motions for summary judgment, and a final trial on the merits.

Although the recipient ultimately prevailed, the author believes the entire dispute (and corresponding legal fees) could have been avoided with a more specific definition of the term "cohabitation." Accordingly, counsel should consider utilizing the spousal maintenance termination provision contained in Chapter 8 of the Texas Family Code, which states in relevant part, as follows:

> [t]he court shall terminate the maintenance order if the obligee cohabits with another person in a permanent place of abode on a continuing, conjugal basis.

TEX. FAM. CODE §8.056(b); *See also Allen v. Allen*, 966 S.W.2d 658 (Tex. App. San Antonio 1998, no writ). ("cohabitation" not ambiguous and must encompass more than frequent overnight guests and storing property at another residence).

5. Anticipate Default

Any alimony contract should define what constitutes a default. Additionally, the payee should consider an acceleration clause which provides for the acceleration of all future payments if default occurs. The *Texas Family Law Practice Manual* Form 23-6 contains a default and acceleration provision in its form alimony agreement, and it also provides a warning that acceleration before three calendar years may violate the rule, so beware.

6. Provide for Interest on Missed Payments

A specific rate of interest for delayed or missed payments should also be considered.

7. Specify Remedies Available After Breach

A specific measure of damages in the event of breach should be included. Things to consider are whether a default will be treated as an anticipatory repudiation, or if each failure to make a specified payment will constitute a separate and distinct breach. Depending upon the circumstances, remedies would typically be a money judgment for damages, attorneys' fees and expenses, and pre- and post-judgment interest, at a specified rate. Counsel should include a

provision which provides for attorneys' fees if a breach occurs pursuant to Section 38.001 of the Texas Civil Practices and Remedies Code.

8. <u>Include Mediation and Binding Arbitration Provisions</u>

The alimony contact may also contain provisions for requiring mediation and, in the event mediation is unsuccessful, binding arbitration in the event future disputes pertaining to the alimony contract.

V. ADDITIONAL RESOURCES

For a more detailed analysis of the various tax issues which may arise in connection with the division of complex marital estates, and the rules relating to the payment of contractual alimony and spousal maintenance, see *Frumkes, Melvyn B., "Frumkes on Divorce Taxation,"* (Nov. 8, 2007); *Wilhite, Randall B., et. al., "Family Law and Tax – 25 Tax Questions – 17 Tax Answers*," 35th Annual Adv. Family Law Course (San Antonio, 2009); and *Gagnon, Stewart, et. al., "Tax Planning for Divorces*," *New Frontiers in Marital Property Law (Scottsdale, AZ 2010).*

VI. CONCLUSION

Federal income tax questions can be complex, especially those involving the transfer of stock options, accounts receivable, retirement accounts, profit sharing plans, annuities and corporate assets. Accordingly, prudence dictates that counsel advise the client, in writing, that he is not an expert in federal tax law, and that the client should therefore obtain an opinion regarding the federal income tax consequences of the proposed property division from a Certified Public Accountant, or an attorney specializing in federal tax law. Counsel should further advise the client that failure to retain a tax professional could result in receiving assets at a lesser total value than expected, or other possible adverse tax consequences.

Notes