

Family Law Forum

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Tax Issues that Intersect Family Law

Letter from the Editor <i>Linda L. Wold</i>	2
Divorcing a Tax Cheat: Now What? <i>Claudia M. Revermann</i>	3
Tax Implications of Cancelled Debt Due to Short Sales & Foreclosures <i>Karen Kugler</i>	9
Explaining the Dependency Exemption and the Implications of Releasing the Exemption <i>Teresa Molinaro</i>	12
The Tax Benefits of Qualifying Children <i>Mary Kate Kelley-Scheidler, Esq.</i>	19
Tax Consequences of Distributions of Retirement Benefits Pursuant to Divorce <i>Mary Kate Kelley-Scheidler, Esq.</i>	37

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Letter from the Editor

Linda Wold

Welcome to the Family Law Forum and its topic: **Tax Issues that Intersect Family Law**. This edition contains both a variety of articles and interviews. Family Law cases generally involve some tax implications and this edition is offered to help you navigate some of those issues and questions. We hope you will refer to the articles during the year in preparation for and with your client's tax issues.

The topic for the last edition for this 2009-2010 season is **Times They are 'a Changing: Gender Roles**. Several authors are submitting a broad variety of articles that should make for a very interesting edition.

We look forward to hearing your comments as well as any suggestions for future topics, authors, and of course any questions you might have regarding the Family Law Forum.

Linda Wold

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Divorcing a Tax Cheat: Now What?

Claudia M. Revermann

Married taxpayers who file a separate tax return are not liable for the accuracy of their spouse's returns or for the payment of their spouse's tax. However, many married taxpayers choose to file a joint tax return because of certain preferences this filing status provides. In this case, both taxpayers are jointly and severally liable for any tax, interest, and penalties on the joint return. This liability extends after divorce even when the divorce decree provides for a differing allocation of liability.

Aside from seeking assistance in district court, what else can a spouse do to settle the matter with the Internal Revenue Service (IRS)? Well, in certain cases a spouse may receive relief from joint and several liability after making a request of the taxing authorities.

Such relief may be available in three possible forms:

1. **Innocent Spouse Relief.** A joint filer, whether currently married or not, may elect to limit their liability for unpaid taxes attributable to an understatement arising from erroneous items on a joint return.¹ Erroneous items include failure to report income, improper reporting of income, or overstatement of deductions or credits.² It retains the requirement that the individual did not know, and had no reason to know, of an understatement attributable to erroneous items.³
2. **Separation of Liability Relief.** With respect to deficiencies of a taxpayer who

is no longer married to, is legally separated from,⁴ or has been living apart for at least 12 months from the person with whom the taxpayer originally filed the joint return,⁵ such taxpayers may elect to limit their liability to the portion of the deficiency that is attributable to items specifically allocable to the taxpayer.⁶ Items are generally allocated between spouses in the same manner as they would have been allocated had the spouses filed separate returns.⁷ The burden of proof as to the allocation of the deficiency is on the taxpayer claiming relief.⁸

3. **Equitable Relief.** If the previous two forms of relief are either denied or inapplicable, the taxpayer may still request relief based on the facts and circumstances showing it would be inequitable to hold the individual liable for all or part of any unpaid tax or deficiency arising from a joint return.⁹ This differs specifically from innocent spouse relief and separation of liability relief in that it applies to both an understatement of tax and an underpayment of tax. The other types of relief may not be used to create a refund, or to direct a refund to a particular spouse.

Making the Claim

An innocent spouse may seek relief by filing Form 8857, *Request for Innocent Spouse Relief (and Separation of Liability, and Equitable Relief)*, or other similar statement signed under penalties of perjury within two

years of an assessment of additional tax.¹⁰ However, a claim may be made prior to assessment, such as during an audit examination. For this reason, it is advisable for a former joint filer to participate as early as possible in the audit process in the event it is necessary to contest the propriety of an additional assessment of tax.

Alternatively, a taxpayer may make the separation of liability election any time after he or she is divorced, widowed, legally separated, or has been living apart from the spouse for at least 12 months, but the effect of that election occurs only after there is a deficiency. A deficiency only arises when the IRS has assessed the tax.

Determining Factors

The following is a partial list of the positive and negative factors that will be taken into account by the IRS in determining whether to grant full or partial relief to a requesting taxpayer. No single factor is determinative in any particular case. Rather, all factors will be considered and weighed appropriately.

1. Marital status. Is the requesting spouse separated (whether legally separated or living apart) or divorced from the nonrequesting spouse?

This factor is a prerequisite for separation of liability relief as the parties may not be married or living together at the time the request is made. For innocent spouse relief and equitable relief, marital status will be considered to the extent requesting spouse continues to expose herself/himself to potential liabilities and to benefit from the understatement of tax liability.

2. Abuse. Was the requesting spouse abused by the nonrequesting spouse, and

did such abuse amount to duress?

The Tax Court has considered evidence of domestic abuse in its review of the IRS' denial of relief.¹¹ Where requesting spouse asserted no direct allegation of abuse, she did submit evidence of a police report with respect to her former husband's treatment of her. While the IRS contended that the fact that the lack of evidence that her former husband threatened, forced, or coerced the requesting spouse into executing the joint return weighed against granting relief, the Court observed that lack of spousal abuse was not a factor listed by the IRS in this case as weighing against relief.¹²

3. Requesting or nonrequesting spouse's legal obligation. Was the legal obligation for payment of the outstanding tax liability allocated to either spouse pursuant to a divorce decree or agreement? If it was allocated to nonrequesting spouse, did the requesting spouse reasonably believe nonrequesting spouse would pay the liability?

The fact that the nonrequesting spouse was legally obligated under the terms of the divorce decree to pay the subject tax liability was sufficient in itself to find the IRS to have abused its discretion when it denied relief.¹³ Likewise the inverse would be true. If a divorce decree places the obligation to pay the tax on the requesting spouse, then that fact would weigh against granting relief.¹⁴

4. Knowledge or reason to know. Did the requesting spouse know or have reason to know of the item giving rise to a deficiency or that the reported liability would be unpaid at the time the return was signed?

The intentionally ignorant are not protected. If requesting spouse, as a reasonably prudent taxpayer, *knew or should have known* of an item giving rise to a deficiency, he or she is precluded from receiving innocent spouse relief.¹⁵ The Tax Court has held that a former spouse was entitled to relief for the deficiency and penalties arising from her ex-husband's business because she had no actual knowledge of the factual circumstances making the business expenses either overstated or unallowable as deductions.¹⁶ This standard of review applied because the taxpayer was no longer married at the time of the application for relief.¹⁷ Keep in mind, however, that mere knowledge of the source of income but not the amount will not necessarily constitute actual knowledge, and requesting spouse may be permitted to claim innocent spouse protection.¹⁸

While innocent spouse relief was denied in a situation in which the spouse knew that a retirement distribution was not included on the joint tax return but reasonably believed that the ex-spouse had consulted an accountant and was told that the portion of the distribution used to pay off the mortgage on their home was not taxable, the lack of knowledge of the tax consequences did not provide a lack of knowledge for innocent spouse relief. The knowledge requirement does not require the electing spouse to possess knowledge of the tax consequences resulting from the item giving rise to the deficiency or that the item reported on the return is incorrect. Rather, the statute mandates only a showing that the requesting spouse actually knew of the item on the return that gave rise to the deficiency (or portion thereof).¹⁹

Note however that the requesting spouse continues to have available separate liability treatment or equitable relief if he or she had reason to know, but did not have actual knowledge of the potential for a deficiency.²⁰ Take for example a deficiency assessed after an IRS audit of a joint return. Ex-husband had prepared the tax return, including his spouse's Schedule C business, based on the bank statements, Forms 1099, W-2, and computer-generated bank records provided by his ex-wife. Because he had access to the business' financial records, he had reason to know that ex-wife may have omitted income; but because he *did not actually know* about the discrepancy, he was awarded separate liability protection.²¹

5. Significant benefit. Has the requesting spouse significantly benefited (beyond normal support) from the unpaid liability or items giving rise to the deficiency?

An ex-spouse was granted innocent-spouse relief with respect to his ex-spouse's omission of distributions from her deceased father's estate. He had had conversations with his wife, the estate counsel, and a retired IRS special agent that they were nontaxable.¹⁹ Beyond that, an evaluation of the evidence regarding the taxpayer's lifestyle, expenditures, and other financial matters indicated that he did not substantially benefit from the understatement. The family home was purchased with his own funds, which he used to pay the mortgage during the marriage. When the family home was sold, he retained none of the proceeds. Following separation, the wife remained in the house, did not pay mortgage obligations, and ultimately sold the house, and the taxpayer did not receive any of the benefits. She had purchased

furnishings for the house and her own automobile with the funds received from her father's estate. Neither his use of the family home and its furniture and furnishings, nor his receipt of a few items of furniture and equipment as part of his divorce settlement amounted to a substantial benefit, particularly when his overall financial contribution to that household was taken into account.

The Tax Court reached the opposite conclusion where the spouse remained married because she could not pass the inequitable requirement by reason of the substantial benefits she had received. Transfers of property to the requesting spouse are relevant in determining the existence of a significant benefit, and such transfers are not limited to the tax years to which the understatement relates. Because the taxpayer's spouse had contributed \$500,000 to her business over a span of 15 years, she had received obvious benefit.²²

6. Economic hardship. Will the requesting spouse experience economic hardship if relief from the liability is not granted?

An economic hardship due to the financial condition of an individual taxpayer is created whenever the satisfaction of the liability in whole or in part will cause an individual taxpayer to be unable to pay the individual's reasonable basic living expenses. The determination of a reasonable amount for basic living expenses will vary according to the unique circumstances of the individual taxpayer. Unique circumstances, however, do not include the maintenance of an affluent or luxurious standard of living.

In determining a reasonable amount for

basic living expenses, information provided by the taxpayer will be considered, including the taxpayer's age, employment status and history, ability to earn, number of dependents, necessary monthly payments expended, any extraordinary circumstances such as special education expenses, a medical catastrophe, or natural disaster; and any other factor that the taxpayer claims bears on economic hardship.

7. Noncompliance with federal laws, including income tax laws. Has the requesting spouse made a good-faith effort to comply with federal income tax laws in the subsequent tax year(s) to which the request for relief relates? Have spouses appropriately applied for the relief?

The Tax Court granted relief to taxpayer who always filed timely federal income tax returns. She was not late or in arrears on any of her separate tax obligations.²³ However, when taxpayer did not timely file her individual income tax returns or timely pay her tax for two subsequent years, and offered no reason for late filing, relief was denied.²⁴

In addition, if the IRS can show that assets were transferred between the spouses in a fraudulent scheme joined in by both spouses, neither spouse is eligible to make the election (and consequently joint and several liability applies to both spouses).²⁵

Relief Procedures for Nonrequesting Spouse

The nonrequesting spouse clearly has an interest in the proceeding to determine innocent spouse relief for the requesting spouse. When the IRS receives an election, or a request for relief, it must send a notice to

the nonrequesting spouse's last known address that informs the nonrequesting spouse of the requesting spouse's claim for relief. The notice must provide the nonrequesting spouse with an opportunity to submit any information that should be considered in determining whether the requesting spouse should be granted relief from joint and several liability. However, a nonrequesting spouse is not required to submit information and failure to do so does not affect his or her ability to seek a separate application for relief. The IRS has the discretion to share with one spouse any of the information submitted by the other spouse. At the request of one spouse, the IRS will omit from shared documents the spouse's new name, address, employer, telephone number, and any other information that would reasonably indicate the other spouse's location.²⁶

While the IRS must notify the nonrequesting spouse of its final determination with respect to the requesting spouse's claim for relief, the nonrequesting spouse is not permitted to appeal such determination.²⁷ However, the nonrequesting spouse may file a written protest and receive an appeals conference with respect to the IRS' decision to grant partial or full relief to the requesting spouse. In addition, the nonrequesting spouse may intervene in a deficiency proceeding where the ex-spouse was claiming innocent spouse protection.²⁸

Minnesota Procedures

Minnesota has its own relief process with its Joint Spouse Allocation program, pursuant to Minn.Stat. §289A.31, subd. 2. A written request is made to the Minnesota Department of Revenue's Taxpayer Rights Advocate Office, which includes copies of the joint tax returns (federal and state), the parties' divorce decree, and any other applicable

information to assist the Department in allocating the tax liability.

Once the request is made, the nonrequesting spouse is notified. A determination letter will be sent to both parties, who will have 30 days to respond with any additional information for the Department to consider. Upon final assessment, the Department will update its records for the reallocation of tax liability, if applicable.

Taxpayers are not refunded any payments made prior to the request; however, amounts paid in after the request will be refunded after a final determination is made.

Be Diligent and Patient

Spousal relief is known to be one of the more complex types of relief to obtain from the IRS. The process is slow, cumbersome and difficult to navigate. Currently, applications for Innocent Spouse Relief are taking 12 to 24 months to process. In addition, keep in mind that most often administrative requests are denied and only when they are presented to the bench are they more typically granted. Many cases are denied because of mistakes made during the filing and because of lack of adequate representation. Each such case must be carefully analyzed based upon the particular facts and circumstances.

Notes

¹ I.R.C. §6015(b)(1).

² I.R.C. §6662(a)(2)(D).

³ I.R.C. §§6015(b)(1)(B) and (C).

⁴ I.R.C. §6015(c)(3)(A)(i)(I).

⁵ I.R.C. §6015(c)(3)(A)(i)(II).

⁶ I.R.C. §§6015(a)(2) and (c)(1).

⁷ I.R.C. §6015(d)(3)(A).

⁸ I.R.C. §6015(c)(2).

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- ⁹ I.R.C. §6015(f).
¹⁰ I.R.C. §6015(b)(1)(E).
¹¹ *Washington v. Commissioner*; 120 T.C. No. 9 (2003).
¹² Rev. Proc. 2000-15, 2000-1 C.B. at 449.
¹³ *Gay v. Commissioner*; T.C. Summary Opinion 2003-36.
¹⁴ Rev. Proc. 2000-15 §4.03(2)(f), 2000-1 C.B. at 449.
¹⁵ I.R.C. §6015(c)(3)(C).
¹⁶ *Gillispie v. Commissioner*, T.C. Summary Opinion 2002-34.
¹⁷ I.R.C. §6015(c).
¹⁸ *Martin v. Commissioner*, T.C. Memo. 2000-346.
¹⁹ *Cheshire v. Commissioner*, 115 T.C. No. 15 (2000).
²⁰ *Wiksell v. Commissioner*, T.C. Memo. 1999-32 on reconsideration of T.C. Memo. 3; see also *Wiksell v. Commissioner*, T.C. Memo. 1994-99, rev'd. and remanded 90 F.3d 1459 (9th Cir. 1996).
²¹ *Charlton v. Commissioner*, 114 T.C. 333 (2000).
²² *Von Kalinowski v. Commissioner*, T.C. Memo. 2001-21.
²³ *Washington v. Commissioner*; 120 T.C. No. 9 (2003).
²⁴ *Fox v. Commissioner*; T.C. Memo. 2006-22.
²⁵ I.R.C. §6015(d)(3)(C).
²⁶ Prop. Regs. §1.6015-7(a)(1).
²⁷ Prop. Regs. §1.6015-7(a)(2).
²⁸ *King v. Commissioner*, 115 T.C. 118 (2000), acq. See also *Corson v. Commissioner*, 114 T.C. 354 (2000).

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Tax Implications of Cancelled Debt Due to Short Sales & Foreclosures

Karen Kugler

In those halcyon days when I started practicing family law, now about a decade ago, the issue of the parties' homestead was rarely a cause for concern. Foreclosures were rare, and my clients often had a number of options regarding their homestead – they could refinance and “buy out” their spouse or sell the home for a profit. With the arrival of the Great Recession, the housing market bubble burst. Nationwide about 7.5 million¹ homeowners are “upside down” or “underwater,” and the encumbrances outweigh the value of their home. This has led to a record number of short-sales and foreclosures. Unfortunately, negative tax consequences can occur when the selling price² is less than the mortgage(s) (including interest and penalties).³

Cancellation of Debt

Generally, forgiven debt for which a person is personally liable is considered income for income tax purposes.⁴ Debt for which the person is personally liable is called “recourse debt.” Debt for which the individual is not personally liable is called “non-recourse debt.” If the creditor discounts the principal loan balance or agrees to a loan modification which reduces the principal balance of the loan; the amount of the discount or principal reduction is cancelled debt and considered income unless an exception applies. Prior to 2007, when a client lost their home due to foreclosure, the client would generally have to have to pay income tax on the excess amount of the canceled debt over the fair market value of the property.⁵ Cancelled debt is reported by the taxpayer on Form 982

which is attached to the party's tax return.

Example 1

In 1995, Sue bought her homestead for \$210,000 -- she made a \$10,000 down payment and took out a first mortgage for \$200,000. In 2005, Sue's home was foreclosed upon. Her mortgage balance at the time of foreclosure was \$180,000. The selling price (fair market value of the property) was \$150,000. Sue's cancelled debt was \$30,000. Sue had taxable income of \$30,000.

Amount of mortgage at cancellation:	\$180,000
Selling price of home:	- \$150,000
Taxable portion of cancelled debt:	\$ 30,000

I.R.S. Form 1099-C

Whenever, a creditor cancels debt in an amount of \$600 or above, the creditor is required to file a 1099-C and provide a copy of the form to the debtor. The creditor lists the amount of debt cancelled in Box 2 of the 1099-C. Presuming that the creditor's calculation is accurate and the client does not meet one of the exceptions discussed below; this amount is ordinary taxable income to the debtor.

Exceptions to Inclusion of Cancelled Debt in Income

Cancelled debt is not always taxable-- here are the most common exceptions⁶:

1. The client falls into the exception created by the Mortgage Forgiveness Debt Relief Act of 2007 (and Emergency

- Economic Stabilization Act of 2008);
2. The client discharges the debt through title 11 bankruptcy;
 3. The client is insolvent⁷ when the debt is cancelled;
 4. The debt is a non-recourse loan⁸;
 5. The debt is a qualifying farm debt; or
 6. The debt is qualified principal residence indebtedness.

Mortgage Forgiveness Debt Relief Act & Emergency Economic Stabilization Act

The Mortgage Forgiveness Debt Relief Act became law on December 20, 2007⁹, and changed the often grim picture for former homeowners with cancelled debt related to their homestead. The Act generally allows a client to exclude from income, cancelled debt caused by mortgage restructuring or foreclosure for their principal residence for the tax years 2007, 2008 & 2009. The relief provided under the Mortgage Forgiveness Debt Relief Act was extended through the 2012 tax year by the Emergency Economic Stabilization Act of 2008.¹⁰

Example 2

In 1995, Jim bought his homestead for \$210,000 -- he made a \$10,000 down payment and took out a first mortgage for \$200,000. In 2000, Jim took out a second mortgage in the amount of \$20,000 and used the funds to put in a new furnace and upgrade the electrical system in his house. In 2007, Jim sold his home in a short sale. His mortgage balance at the time of the short sale was \$190,000. The selling price (fair market value of the property) was \$150,000. Jim's cancelled debt was \$40,000. Jim had no taxable income.

Amount of mortgage at cancellation:	\$190,000
Amount of qualifying mortgage debt:	<u>-\$190,000</u>
Taxable portion of cancelled debt:	\$0

There is a “catch” to the relief provided under the act – the act only applies to cancelled debt used to buy, build or substantially improve the person’s principal residence. During the housing boom, many people refinanced their homes and used their equity to pay off consumer debt and credit cards. However, this portion of their cancelled debt is still considered income. Debt used to refinance qualifying debt is also eligible for the exclusion, but only up to the amount of the old mortgage principal, just before the refinance occurred.

Example 3

In 1995 Bob bought his homestead for \$210,000 -- he made a \$10,000 down payment and took out a first mortgage for \$200,000. In 2000, Bob took out a second mortgage in the amount of \$20,000 and put a new roof and siding on his house. In 2005, when Bob owed \$185,000 on his first mortgage and \$15,000 on his second mortgage (\$200,000 total), Bob refinanced the two mortgages into one and took out additional funds in the amount of \$50,000 to pay off credit cards and consumer debt. Bob’s new mortgage balance was \$250,000. In 2009, Bob’s home was foreclosed upon. His mortgage balance at the time of foreclosure was \$225,000. The selling price (fair market value of the property) was \$150,000. Bob’s cancelled debt was \$75,000. Bob had taxable income of \$25,000.

Amount of mortgage at cancellation:	\$225,000
Amount of qualifying mortgage debt:	<u>-\$200,000</u>
Taxable portion of cancelled debt:	\$25,000

The relief provided by the Mortgage Forgiveness Debt Relief Act and the Emergency Economic Stabilization Act does not extend to cancelled debt relating to: rental property, investment property, commercial property, second or vacation

homes, or real property that is not used as the client's principal residence. For parties with jumbo loans, it is important to note that the maximum amount that can be treated as qualified principal residence indebtedness is \$2 million (or \$1 million if married filing separately).

Conclusion

Foreclosures and short-sales pose a number of complicated and difficult issues for our clients. It is important for the client to consider and be aware of all of the ramifications of proceeding with a foreclosure or short-sale of their home.

Notes

¹ Les Christie, *7.5 million homeowners 'underwater,'* CNNMONEY.COM, Oct. 31, 2008, at http://money.cnn.com/2008/10/30/real_estate/underwater_borrowers/index.htm

²The selling price in foreclosure will likely be much lower than the home's true market value, exacerbating the problem of cancelled debt and the related tax liability.

³ In this article I only address the tax consequences of cancelled debt. However, the practitioner also should be aware of the impact of a gain or a loss from the sale of the home. The gain or loss from a foreclosure is calculated in the same way as a gain or loss from a sale. See I.R.S. Publications 523, 544 & 4681.

⁴ See I.R.S. Publication 4681; 26 U.S.C. § 61(a)(12)

⁵ See I.R.S. Publication 4681; Rev. Rul. 90-16, 1990-1 CB 12.

⁶ 26 U.S.C. § 108

⁷ An individual is insolvent with their total debts are more than the fair market value of their total assets.

⁸ As discussed above, a non-recourse loan is a type of loan in which the lender's only recourse when a party defaults is to repossess the property that was used as collateral. See Tufts v. Comm'r, 651 F.2d 1058 (5th Cir 1981).

⁹ Mortgage Forgiveness Debt Relief Act, Pub. L. No. 110-142.

¹⁰ Emergency Economic Stabilization Act, Pub. L. No. 110-343

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Explaining the Dependency Exemption and the Implications of Releasing the Exemption

Teresa Molinaro

Jane Doe retains you to represent her in her divorce from her husband, John Doe. Jane and John have one child, Janet, who is eighteen years old and is a full-time student. Both parents want to claim Janet as a dependent on their tax return. The issue is contested and significant time is spent deciding the issue. Finally, you prevail and Jane is awarded the dependency exemption for Janet until Janet reaches the age of 24. Jane is pleased with the result until she goes to her CPA to get her taxes done. Her refund is only \$661 and is unaffected by the dependency exemption. Her refund would have been \$661 even if she had not claimed Janet.¹ Now she is not so pleased and is wondering why you spent so much time (and money) trying to get her the dependency exemption when it had no value to her. Although this is an extreme example and unlikely in most cases, it does illustrate that it is important to understand how the dependency exemption works and whether it is always worth fighting for.

Definition of Exemption

The first thing to understand is how an exemption works. Taxpayers start with their gross income, which is usually wages from their job, self-employment income, unemployment income, interest income, capital gains, etc. This income is then adjusted by items such as IRA deductions, student loan interest, etc. to arrive at the taxpayer's adjusted gross income. Once the adjusted gross income is computed, taxpayers are allowed to further reduce this income amount by taking a standard deduction or

itemizing deductions (items such as mortgage interest, property taxes, charitable contributions, etc.) and exemptions. Each taxpayer is allowed an exemption for themselves and for any dependents they are legally entitled to claim. In 2009, the amount allowed for each exemption is \$3,650. After reducing their adjusted gross income by the standard or itemized deduction and the exemption amount, the taxpayer's taxable income is arrived at. This is the amount on which they will pay taxes (before taking into account any credits, such as the child tax credit or earned income credit). The following example illustrates an exemption:

Example – John and Jane Doe are married taxpayer with one minor child. The child lives with the couple and they provide all of the child's support. John and Jane's adjusted gross income is \$38,600 before taking an exemption deduction. In 2009, John and Jane are allowed two personal exemptions for themselves, for a total of \$7,300. They are also allowed a dependent exemption of \$3,650 for their minor child. Their total exemption deduction is \$10,950. They are allowed to reduce their adjusted gross income of \$38,600 by \$10,950. Their taxable income after the exemption deductions is \$27,650. Their federal tax due is calculated based on taxable income of \$27,650, instead of \$38,600.

As the example illustrates, it is beneficial to have an exemption deduction. Therefore, it may become a contested issue in divorce proceedings where both spouses would like to claim any qualifying dependents in order to receive the dependent exemption deduction.

The important thing to remember in regards to exemptions is that you have to have income in order for it to be a benefit. As in the case of Jane Doe above, her income was only \$10,000. The standard deduction for 2009 is \$8,350 for a taxpayer filing as head of household. Her income is reduced to \$1,650 after the standard deduction. She is also able to reduce that amount by the personal exemption, or \$3,650. This reduces her taxable income to zero. Thus, claiming her daughter as a dependent is not beneficial to Jane unless Jane is entitled to a refundable credit because of her daughter, which will be discussed later.

Definition of Dependent – Qualifying Child or Qualifying Relative

Suppose that Janet lived on her own and provided her own support. Or suppose that Janet not a full-time student and was nineteen years old. In both of these circumstances, Janet is not considered a dependent, so fighting over which parents can claim her as a dependent is fruitless. There are two ways in which an individual can qualify as the dependent of another: as a (1) qualifying child, or (2) a qualifying relative. I.R.C. §152(a).

There are five components of the qualifying child test: relationship, age, principal place of abode, support, and joint return.

1. Relationship – the child must be a son, daughter, stepson, stepdaughter or a descendant of such child; or a brother, sister, stepbrother, stepsister, or a descendant of such relative. I.R.C. §152(c). The relationship test includes foster children and adopted children. I.R.C. §152(f).
2. Age – the child must be younger than the taxpayer, must not have attained the age of 19, or must be a student that has not attained the age of 24 by the end of the year. I.R.C. §152(c)(3).

3. Principal place of abode – the child must have the same principal place of abode as the taxpayer for more than one-half of the year. I.R.C. §152(c)(1)(B).²
4. Support – the child must not provide more than one-half of their own support for the year. I.R.C. §152(c)(1)(D).
5. Joint Return –the child cannot have filed a joint return with their spouse except as a claim for refund. I.R.C. §152(a)(1)(E).

If an individual fails to qualify as a qualifying child, they may still qualify as a dependent as a qualifying relative. It is probably unlikely that individual divorcing will be fighting over a dependency exemption for a qualifying relative, but it is still helpful to know the definition, even for advising clients. It might apply for example if a long-term couple is divorcing and the wife has been taking care of the husband's mother-in-law and is planning to continue doing so. Take note that per the definition unmarried couples can claim one another as long as the other's income is lower than \$3,650 per year. In order to qualify as a qualifying relative, an individual must satisfy four tests: relationship, gross income, support, and dependency. I.R.C. §152(d), discussed infra:

1. Relationship – the individual must fall within one of the following relationships: a child or a descendant of such child; a brother, sister, stepbrother or stepsister; father, mother, or an ancestor of either; stepfather or stepmother; son or daughter of a brother or sister of the taxpayers; son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law; or an individual that for the tax year has the same principal place of abode as the taxpayer and is a member of the taxpayer's household. I.R.C. §152(d)(2).
2. Gross Income – the individual must have less than income than the exemption

amount in the calendar year; \$3,650 in 2009 and 2010. I.R.C. §152(d)(1)(B); Rev. Proc. 2008-66; Rev. Proc. 2009-50.

3. Support – over half of the dependent’s total support for that calendar year must have been furnished by the taxpayer. I.R.C. §52(d)(1)(C).
4. Dependency – the individual must not be the qualifying child of the taxpayer or of any other taxpayer for the tax year. I.R.C. §152(d)(1)(D).

Example – if Jane received scholarships that provided over half of her support or lived at college, that doesn’t disqualify her as a dependent.

Two or More Taxpayers Claiming the Same Qualifying Child

Jane Doe calls you and says she got a divorce from her husband, John Doe, a few years ago. She says she has custody of their two daughters, but the two never came to an agreement regarding which parent would claim the daughters and their dependents. She wants to know who is legally entitled to claim the daughters. Frequently two people will both claim a qualifying child if there is no agreement in place as to which parent is entitled to claim the dependent. As a result, the IRS has issued rules governing this situation. If one of the individuals claiming the child is not a parent and the other is a parent, the parent is entitled to the exemption. I.R.C. §152(c)(4)(A). If both taxpayers claiming the exemption are a parent, the taxpayer whom with the child resided for the longer period of time is entitled to the exemption. I.R.C. § 152(c)(4)(B). If the child resides with both parents equally, the parent with the higher adjusted gross income is entitled to the exemption. *Id.*

Children of Divorced or Legally Separated Parents

The IRS provides guidance to parents who are divorced or legally separated as to which

parent is entitled to claim the dependent. In general, the parent who has custody of the child of the majority of the year is entitled to the dependency exemption. I.R.C. §152(e). In cases of split custody, the custodial parent is considered the parent who has the physical custody of the child for the greater portion of the year; it is determined by the number of nights in which the child resided with the parent. Treas. Reg. §1.152-4.

As discussed supra, the definition of a dependent requires that the person claiming the dependent provide over half of the dependent’s total support for that calendar year. I.R.C. §152(d)(1)(C). Thus, if the parents are not providing over half of the child’s support, neither of the parents are entitled to claim the child.

Example – John and Jane Doe were married and had one child during the marriage, Janet. John and Jane later divorced and their divorce decree did not discuss the dependency exemption. Janet began living with her grandparents, who provided all of Janet’s support. Neither John nor Jane is entitled to claim Janet as a dependent, because they do not provide over one-half of Janet’s support nor does Janet live with either of her parents for more than one-half of the calendar year. Janet’s grandparents would be entitled to the exemption. Even if John and/or Jane Doe had provided over half of Janet’s support, they would not be entitled to the exemption because they do not meet the custody requirement.

There are three exceptions to the rule that a custodial parent is entitled to the dependency exemption:

1. When there is a multiple support agreement that allows the qualifying child to be claimed as a dependent by a taxpayer other than the custodial parent. Reg. §1.152-4T.³

2. When the custodial parent of a dependent child transfers the right to claim the dependency exemption to the non-custodial parent by signing a written waiver (Form 8332, Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent). The waiver must be attached to the non-custodial parent's tax return. The parents do not need a written divorce decree or separation agreement containing the non-custodial parent's right to the exemption and the waiver does not need to be permanent. Reg. §1.152-4T.⁴
3. When a pre-1985 divorce decree or separation agreement between the parents grants the exemption to the non-custodial parent and the non-custodial parent provides at least \$600 for the support of the child for the year in question. Reg. §1.152-4T.⁵

Tax Credits and their Relationship to the Dependency Exemption

There are two types of tax credits: refundable and non-refundable credits. Non-refundable credits are those that reduce a taxpayer's liability, but not below zero. A refundable credit is one that can reduce a taxpayer's income below zero and thus result in a refund for a taxpayer. Credits are different than deductions; they actually reduce the amount of tax you owe, instead of merely reducing your taxable income. Certain credits are only eligible to the taxpayer who is holds the dependency exemption.

Example – Jane Doe made \$10,000 at her job last year. After taking the standard deduction and reductions for her exemptions (herself and her daughter), her taxable income is zero. Although she paid \$2,500 in daycare expenses for her daughter, her taxable income is already zero so she cannot apply this credit. However, she does qualify for the earned

income credit in the amount of \$261 and will get a refund of this amount, plus any other applicable credits. Thus, the dependent care credit is a non-refundable credit and the earned income credit is a refundable credit.

When parents of a child are divorced or legally separated, it is not always necessary to claim the child as a dependent to take advantage of certain tax credits. The tax credits related to children are (1) child and dependent care expenses, (2) child tax credit/additional child tax credit, and (3) earned income credit.

Child and Dependent Care Expenses Credit – Not Tied to Dependency Exemption

If a taxpayer incurs expenses for the purpose of allowing the taxpayer to be gainfully employed, a portion of those expenses may be claimed as a nonrefundable credit. I.R.C. §21. An example of this type of expense would be daycare. In order to claim this credit, a taxpayer must have earned income. The taxpayer claiming the credit does not have to claim the child as a dependent in order to claim the credit. In addition, the person for whom the expenses are incurred does not have to be the taxpayer's child; the person must be a qualifying individual.

A qualifying individual is:

1. A dependent of the taxpayer who has not attained the age of 13, or
2. A dependent of the taxpayer who is physically or mentally incapable of caring for himself or herself who has the same principal place of abode as the taxpayer for more than one-half of the year⁶, or
3. The spouse of the taxpayer, if the spouse is physically or mentally incapable of caring for himself or herself and who has the same

principal place of abode as the taxpayer for more than one-half of the year. I.R.C. §21(b).

The maximum amount of this credit is \$3,000 if one qualifying individual is involved or \$6,000 if two or more qualifying individuals are involved. I.R.C. §21(c). The credit is tied to the taxpayer's adjusted gross income. Thus, the credit amount is reduced as the taxpayer's gross income increases. Taxpayers with adjusted gross income of \$15,000 get the maximum credit amount. Taxpayers with adjusted gross income of

over \$43,000 are allowed a maximum credit amount of \$1,050 for one dependent and \$2,100 for two or more qualifying dependents. An important thing to remember is that both parents must have earned income, so if a stay at home parent is present, there can be no dependent care expenses. However, if the expenses are incurred while one taxpayer is looking for work, expenses during that period can qualify, but only if the spouse has some earned income for the year. In addition, the amount of the expenses cannot exceed your earned income (or the lower of your income if you both work).

The following chart illustrates the percentage of the dependent care expense that is allowed based on the taxpayer's adjusted gross income.

Dependent Care Expenses Credit⁷

Adjusted Gross income is over:	But not over:	Percentage is:
\$17,000	\$19,000	33%
\$19,000	\$21,000	32%
\$21,000	\$23,000	31%
\$23,000	\$25,000	30%
\$25,000	\$27,000	29%
\$27,000	\$29,000	28%
\$29,000	\$31,000	27%
\$31,000	\$33,000	26%
\$33,000	\$35,000	25%
\$35,000	\$37,000	24%
\$37,000	\$39,000	23%
\$39,000	\$41,000	22%
\$41,000	\$43,000	21%
\$43,000	No Limit	20%

In conclusion, the dependent care expense credit can be claimed by a divorced or legally separated taxpayer regardless of whether they claim the child as a dependent. The taxpayer who actually pays the expense is the taxpayer who is allowed to take the tax credit.

Earned Income Credit – Not Tied to Dependency Exemption

The earned income credit is a tax credit for certain people who work and have earned income under \$48,279⁸. This is a valuable credit because it is a refundable credit and can result in a large refund. For 2009, the maximum credit for one child is \$3,043, and for two or more qualifying children is \$5,028. The custodial parent is entitled to this credit, even if they do not hold the dependency exemption. I.R.C. §32(c) (3). A taxpayer can qualify for the earned income credit even if they do not have a child. However, if a taxpayer does have a child, they can qualify for a larger credit. In order to qualify for the larger credit, the taxpayer must have a

child, not a qualifying dependent.

Example – John & Jane Doe are contemplating a divorce. They have one child, Jill. John Doe makes \$75,000 per year at his job. Jane Doe only makes \$10,000. Both John and Jane would like to claim Jill as a dependent in order to reduce their taxable income. However, even if Jane did not claim Jill as a dependent but was the custodial parent, she would receive a refund of \$595 (2009). If she were to claim Jill as a dependent, her refund would be \$661⁹. The difference for John would be almost \$1,000 if her were able to claim Jill versus not claiming Jill. Thus, it would be much more beneficial for John to claim Jill than Jane.

The following table illustrates the earned income credit:

Earned Income Credit in a Nutshell ¹⁰				
First, you must meet all the rules in this column		Second, you must meet all the rules in <i>one</i> of these columns, whichever applies		Third, you must meet the rule in this column.
Chapter 1. Rules for Everyone		Chapter 2. Rules if you have a Qualifying Child	Chapter 3. Rules if you do not have a Qualifying Child	Chapter 4. Figuring and claiming the EIC
1. Your adjusted gross income (AGI) must be less than: · \$43,279 (\$48,279 for married filing jointly) if you have three or more qualifying children, · \$40,295 (\$45,295 for MFJ) if you have two qualifying children · \$35,463 (\$40,463 for MFJ) if you have one qualifying child, or · \$13,440 (\$18,440 for MFJ) if you do not have a qualifying child	2. You must have a valid social security number 3. Your filing status cannot be “Married Filing Separate” 4. You must be a US citizen or resident alien all year 5. You cannot file Form 2555 or Form 2555-EZ 6. Your investment income must be \$3,100 or less. 7. You must have earned income.	8. Your child must meet the relationship, age, residency, and joint return tests 9. Your qualifying child cannot be used by more than one person to claim the EIC 10. You cannot be a qualifying child of another person	11. You must be at least age 25 but under age 65 12. You cannot be the dependent of another person 13. You cannot be a qualifying child of another person 14. You must have lived in the United States more than half of the year	15. Your earned income must be less than: · \$43,279 (\$48,279 for married filing jointly) if you have three or more qualifying children, · \$40,295 (\$45,295 for MFJ) if you have two qualifying children · \$35,463 (\$40,463 for MFJ) if you have one qualifying child, or · \$13,440 (\$18,440 for MFJ) if you do not have a qualifying child

Child Tax Credit & Additional Child Tax Credit – Tied to Exemption

The child tax credit is comprised of two components: a non-refundable credit and a refundable credit. Taxpayers who have one or more qualifying children that they may claim as dependents under I.R.C. §151 may be entitled to a child tax credit of \$1,000 per child through 2010. I.R.C. §24(a). In 2011, the credit decreases to \$500 per qualifying child. This credit is only allowed for children under the age of 17. I.R.C. §152(c). Only the parent who has the dependency exemption qualifies for the child tax credit.

Child Tax Credit – Non-Refundable Portion

In order to claim the credit, the child must be a qualifying child, as defined in IRC §151. The child tax credit begins to phase-out when the taxpayer's modified adjusted gross income reaches \$110,000 for joint filers, \$55,000 for married taxpayers filing separately and \$75,000 for single taxpayers. If the income exceeds the above limits, the credit is reduced by \$50 for every \$1,000 that exceeds the income guidelines.

Additional Child Tax Credit – Refundable Portion

The additional child tax credit is available for taxpayers who were unable to take the full amount of the child tax credit. Qualifying for the additional child tax credit has the same qualifying and income guidelines. The additional child tax credit is equal to the lesser of the unallowed child tax credit or 15% of the taxpayer's earned income that is more than \$3,000.

In conclusion, it is important to understand how the different tax credits work in order to properly advise your client whether they should argue for the dependency exemption.

Notes

¹ Janet's income for the purpose of the example for the year was \$10,000.

² A child is considered to have lived with a taxpayer during periods of time when they are temporarily absent due to special circumstances such as education. IRS Publication 17, 2009.

³ A multiple support agreement is an agreement between two or more people as to who can claim a dependent when two or more people provide more than half of the dependent's support.

⁴ "If the divorce decree or separation agreement went into effect after 1984 and before 2009, the noncustodial parent can still attach certain pages from the decree or agreement instead of Form 8332 provided that these pages are substantially similar to Form 8332." *New Rules for Children of Divorced or Separated Parents*. Internal Revenue Service. <http://www.irs.gov/formspubs/article/0,,id=207333,00.html>.

⁵ When a parent remarries, the support received from the parent's spouse is treated as received from the parent. I.R.C. §152(d)(5)(B).

⁶ This definition of dependent is determined without regard to whether the individual may be claimed as a dependent by another taxpayer, has income in excess of \$3,650 in 2009, or files a joint return with his or her spouse.

⁷ IRS Publication 596.

⁸ IRS Publication 596, page 3.

⁹ For purposes of this example, the child tax credit was not computed.

¹⁰ Table taken from IRS Publication 596.

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The Tax Benefits of Qualifying Children

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INTRODUCTION

The Working Families Tax Relief Act of 2004 significantly changed the Internal Revenue Code regarding tax benefits for qualifying children. The reference to court orders designating which parent was entitled to the dependency exemption for a qualifying child was removed. Instead, a definition for the custodial parent and non-custodial parent was added. IRS Form 8332 was made available as a release of the dependency exemption to the non-custodial parent for tax purposes.

Prior to the Working Families Tax Relief Act of 2004, both parents could claim the Child and Dependent Care Credit for childcare expenses they paid. The Working Families Tax Relief Act changed this so that only the custodial parent for tax purposes is eligible to claim the Child and Dependent Care Credit and only for those expenses s/he actually pays.

Prior to the Working Families Tax Relief Act of 2004, parents of a qualifying child could choose not to claim the Earned Income Credit for a qualifying child so that another taxpayer with whom they lived could claim the Earned Income Credit for the qualifying child. After the Working Family Tax Relief Act of 2004, the custodial parent for tax purposes can claim the Earned Income Tax Credit for a qualifying child. The circumstances for relatives claiming the Earned Income Credit for a qualifying child are much more restrictive.

When parties divorce, the issue of how tax benefits for qualifying children will be shared or not shared by the parties needs to be addressed. For pre-college age children, there are six tax benefits associated with each qualifying child. These tax benefits are (a) Head of Household filing status (for qualifying parent); (b) Child and Dependent Care Credit; (c) Earned Income Credit; (d) dependency exemption; (e) Child Tax Credit; and (f) Additional Child Tax Credit.

TAX BENEFITS FOR EACH QUALIFYING CHILD COME IN CLUSTERS

These tax benefits for each qualifying child can be thought of in clusters that cannot be broken apart. The first “cluster” of tax benefits are the (a) Head of Household filing status; (b) Child and Dependent Care Credit; and (c) Earned Income Credit. These three tax benefits for each qualifying child can only be claimed by the parent that meets the definition of custodial parent for tax purposes pursuant to Internal Revenue Code § 152(e) (4)(A). The custodial parent for tax purposes is the parent with whom the qualifying child lives for the greater part of the tax year. Even if the custodial parent for tax purposes does not use all of the tax benefits in this cluster, the other parent (the non-custodial parent for tax purposes) cannot use the unused tax benefits. If both parents claim some of the tax benefits in this cluster, but do not claim the same tax benefits, they will be audited by the IRS or MN Department of Revenue because in essence both parents are claiming

to be the custodial parent for tax purposes in a given tax year.

There can only be **one** custodial parent for tax purposes for each qualifying child in a given tax year. If the qualifying child lives with both parents for equal amounts of time, the tie breaker rule for parents will apply. The tie breaker rule is that if a qualifying child lives with both parents for equal amounts of time during a given tax year, the parent with the highest Adjusted Gross Income (AGI) is entitled to claim the tax benefits associated with the qualifying child.

The practical implication is that when 50/50 parenting plans are written, family law practitioners and parties need to understand that only one parent can be considered the custodial parent for tax purposes of each qualifying child in a given tax year. The parties will need to cooperate with one another so that they alternate tax years (when there is only one qualifying child) when each of them will fulfill the requirements for being the custodial parent for tax purposes in odd or even tax years. In addition, family law practitioners and parties need to understand that if it is the tax year in which one of the parties is entitled to claim the tax benefits associated with being the custodial parent for tax purposes, the other party cannot claim any of those benefits. For example, if it is Party A's turn to claim the tax benefits associated with being the custodial parent for tax purposes for the qualifying child and Party A uses Head of Household filing status, Party B cannot use Single Filing Status and claim the Child and Dependent Care Credit and Earned Income Credit. If Party B claims the Child and Dependent Care Credit and Earned Income Credit, Party B is essentially claiming that s/he is the custodial parent for tax purposes in that tax year.

The second cluster of tax benefits are: (d) the

dependency exemption; (e) the Child Tax Credit; and (f) the Additional Child Tax Credit. The custodial parent for tax purposes is entitled to claim the dependency exemption for a qualifying child unless s/he waives her/his right to claim the dependency exemption for said qualifying child. Divorces finalized after December 31, 2008, can no longer be used by the non-custodial parent to claim the dependency exemption.

“Beginning with 2009 tax returns, the noncustodial parent can no longer attach pages from the decree or agreement instead of Form 8332 if the decree or agreement went into effect after 2008. The noncustodial parent will have to attach Form 8332 or a similar statement signed by the custodial parent and whose only purpose is to release a claim to exemption.”

See IRS Publication 501, page 21.

The Child Tax Credit and the Additional Child Tax Credit follow the dependency exemption. The Child Tax Credit is a valuable credit against tax of up to \$1,000.00 per qualifying child. The Child Tax Credit begins to phase-out at \$110,000.00 for Married Filing Joint filing status, \$75,000.00 for Qualifying Widow(er) or Head of Household filing status and \$55,000.00 for Single or Married Filing Separate filing status. The Additional Child Tax Credit is a refundable credit for the unused portion of the Child Tax Credit. If the custodial parent for tax purposes releases the dependency exemption for a qualifying child, s/he cannot claim either the Child Tax Credit or Additional Child Tax Credit for the qualifying child.

Just remember that tax benefits for qualifying children come in two clusters of three. These

clusters of tax benefits can only be claimed by one of the parents in a given tax year. Think of the clusters as apples and oranges or fingers on the right and left hand.

The cluster of tax benefits for each qualifying child consisting of: (a) Head of Household filing status; (b) Child and Dependent Care Credit; and (c) Earned Income Credit can only be claimed in a given tax year by the parent that fulfills the requirements of the custodial parent for tax purposes. Unused tax benefits from this cluster cannot be used by the other parent.

The same is true for the second cluster of tax benefits for each qualifying child consisting of: (d) the dependency exemption; (e) the Child Tax Credit; and (f) the Additional Child Tax Credit. Only the parent entitled to claim the dependency exemption may claim these tax benefits.

TAX BENEFITS COME IN CLUSTERS BUT CHILDREN DO NOT

While the tax benefits for each qualifying child comes in clusters, if there is more than one qualifying child, the parties can more easily share the tax benefit associated with qualifying children. While this is not a new concept, it is important to consider some certain factors.

Use language in the Conclusions of Law section in the Judgment and Decree to clearly explain the tax benefits for each qualifying child and which parent is entitled to claim which benefits. If there is more than one qualifying child and each parent can claim one of the children as a dependent in a given tax year, provide language that alternates years for claiming the child dependency exemption when only one of the parties' children can be claimed as a dependent. Designate which parent can claim the child in odd or even tax years instead of using

language that awards the dependency exemption to parents in alternating years.

Most importantly, if the dependency exemption is to be released to the non-custodial parent for tax purposes and the non-custodial parent for tax purposes must pay child support, condition the signing of Form 8332 by the custodial parent for tax purposes upon the non-custodial parent being current in her/his child support. Conditioning the signing of Form 8332 by the custodial parent for tax purposes upon the non-custodial parent for tax purposes being current in child support is not conditioning the release of the dependency exemption. The release of the dependency exemption is a signed Form 8332 itself.

Please be mindful of the fact that your clients understand tax law and its intersection with family law even less than you do. By including a brief explanation within the Judgment and Decree regarding the tax benefits for qualifying children and which parent is entitled to which tax benefits for each qualifying child, you can prevent unnecessary post-dissolution squabbles over these tax benefits.

You will never see most of the post-dissolution disagreements your clients will have over the tax benefits for qualifying children but tax professionals, the IRS and MN Department of Revenue have front row seats to these disagreements. The IRS and MN Department of Revenue and tax professionals do not want to settle these disagreements. This is why pages from divorce decrees can no longer be used by non-custodial parents for tax purposes as consent by the custodial parent for tax purposes regarding the release of dependency exemptions.

If a client comes to you with a post-dissolution

problem regarding the custodial parent for tax purposes not releasing the dependency exemption, the remedy is motioning District Court to compel the custodial parent for tax purposes to sign Form 8332. Some custodial parents believe that changes in tax law regarding the release of dependency exemptions means that District Court does not have authority to designate dependency exemptions. This is not true. The changes in the law regarding release of dependency exemptions is aimed at arguments being settled between parents in District Court instead of parents expecting tax professionals, the IRS or MN Department of Revenue to be arbiters over disputes that arise regarding which parent gets to claim which tax benefits for a qualifying child.

ADDENDUM: RELEVANT INTERNAL REVENUE CODE SECTIONS

I. Definition of Qualifying Child: Internal Revenue Code § 152(c):

“(c) QUALIFYING CHILD – For purposes of this section –

- (1) **IN GENERAL** – The term “qualifying child” means, with respect to any taxpayer for any taxable year, and individual –
 - (A) who bears a relationship to the taxpayer described in paragraph (2),
 - (B) who has the same principal place of abode as the as the taxpayer for more than one-half of such taxable year,
 - (C) who meets the age requirements of paragraph (3), And
 - (D) who has not provided over one-half of such individual’s own support for the calendar year in which the taxable year of the taxpayer begins.

(2) **RELATIONSHIP-** For purposes of paragraph 1(A), an individual bears

relationship to the taxpayer described in this paragraph if such individual is –

- (A) a child of the taxpayer or a descendant of such a child, or
- (B) a brother, sister, stepbrother, or stepsister of the taxpayer or a descendant of any such relative.

(3) AGE REQUIREMENTS

- (A) **IN GENERAL** – For purposes of paragraph (1)(C), an Individual meets the requirements of this paragraph If such individual –
 - (i) has not attained the age of 19 as of the close Of the calendar year in which the taxable year ofThe taxpayer begins, or
 - (ii) is a student who has attained the age of 24 as of the close of such calendar year.”

II. Definition of Custodial Parent and Non-Custodial Parent for Tax Purposes: Code § 152(e)(4) ““(4) CUSTODIAL PARENT AND NONCUSTODIAL PARENT –

- (A) **CUSTODIAL PARENT** – For purposes of this subsectionthe term “custodial parent” means the parent having custody for the greater portion of the calendar year.
- (B) **NON-CUSTODIAL PARENT** – For purposes of the subsection the term “non-custodial parent” means the parent who is not the custodial parent.”

III.Head of Household Filing Status: Code §§ 2(b), 2(c) and 7703(b)

Code § 2

(b) Definition of head of household (1) In general

For purposes of this subtitle, an individual shall be considered a head of a household if, and only if, such individual is not married at the close of his taxable year, is not a surviving spouse (as defined in subsection (a)), and either—

(A) maintains as his home a household which constitutes for more than one-half of such taxable year the principal place of abode, as a member of such household, of—

(i) a qualifying child of the individual (as defined in section [152 \(c\)](#), determined without regard to section [152 \(e\)](#)), but not if such child—

(I) is married at the close of the taxpayer's taxable year, and

(II) is not a dependent of such individual by reason of section [152 \(b\)\(2\)](#) or [152 \(b\)\(3\)](#), or both, or

(ii) any other person who is a dependent of the taxpayer, if the taxpayer is entitled to a deduction for the taxable year for such person under section [151](#), or

(B) maintains a household which constitutes for such taxable year the principal place of abode of the father or mother of the taxpayer, if the taxpayer is entitled to a deduction for the taxable year for such father or mother under section [151](#).

For purposes of this paragraph, an individual shall be considered as maintaining a household only if over half of the cost of maintaining the household during the taxable year is furnished by such individual.

(2) Determination of status

For purposes of this subsection—

(A) an individual who is legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married;

(B) a taxpayer shall be considered as not married at the close of his taxable year if at any time during the taxable year his spouse is a nonresident alien; and

(C) a taxpayer shall be considered as married at the close of his taxable year if his spouse (other than a spouse described in subparagraph (B)) died during the taxable year.

(3) Limitations

Notwithstanding paragraph (1), for purposes of this subtitle a taxpayer shall not be considered to be a head of a household—

(A) if at any time during the taxable year he is a nonresident alien; or

(B) by reason of an individual who would not be a dependent for the taxable year but for—

(i) subparagraph (H) of section [152 \(d\)\(2\)](#), or

(ii) paragraph (3) of section [152 \(d\)](#).

(c) Certain married individuals living apart

For purposes of this part, an individual shall be treated as not married at the close of the taxable year if such individual is so treated under the provisions of section [7703 \(b\)](#).

Code § 7703. Determination of marital status

(a) General rule

For purposes of part V of subchapter B

of chapter 1 and those provisions of this title which refer to this subsection—

(1) the determination of whether an individual is married shall be made as of the close of his taxable year; except that if his spouse dies during his taxable year such determination shall be made as of the time of such death; and

(2) an individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married.

(b) Certain married individuals living apart

For purposes of those provisions of this title which refer to this subsection, if—

(1) an individual who is married (within the meaning of subsection (a)) and who files a separate return maintains as his home a household which constitutes for more than one-half of the taxable year the principal place of abode of a child (within the meaning of section [152 \(f\)\(1\)](#)) with respect to whom such individual is entitled to a deduction for the taxable year under section [151](#) (or would be so entitled but for section [152 \(e\)](#)),

(2) such individual furnishes over one-half of the cost of maintaining such household during the taxable year, and

(3) during the last 6 months of the taxable year, such individual's spouse is not a member of such household, such individual shall not be considered as married.

IV. Child and Dependent Care Credit

Code § 21. Expenses for household and dependent care services necessary for gainful employment

(a) Allowance of credit

(1) In general

In the case of an individual for which there are 1 or more qualifying individuals (as defined in subsection (b)(1)) with respect to such individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the applicable percentage of the employment-related expenses (as defined in subsection (b)(2)) paid by such individual during the taxable year.

(2) Applicable percentage defined

For purposes of paragraph (1), the term “applicable percentage” means 35 percent reduced (but not below 20 percent) by 1 percentage point for each \$2,000 (or fraction thereof) by which the taxpayer's adjusted gross income for the taxable year exceeds \$15,000.

(b) Definitions of qualifying individual and employment-related expenses

For purposes of this section—

(1) Qualifying individual

The term “qualifying individual” means—

(A) a dependent of the taxpayer (as defined in section [152 \(a\)\(1\)](#)) who has not attained age 13,

(B) a dependent of the taxpayer (as defined in section [152](#), determined without regard to subsections (b) (1), (b)(2), and (d)(1)(B)) who is physically or mentally incapable of caring for himself or herself and who has the same principal place of abode as the taxpayer for more than one-half of such taxable year, or

(C) the spouse of the taxpayer, if the spouse is physically or mentally incapable of caring for himself or herself and who has the

same principal place of abode as the taxpayer for more than one-half of such taxable year.

(2) Employment-related expenses

(A) In general

The term “employment-related expenses” means amounts paid for the following expenses, but only if such expenses are incurred to enable the taxpayer to be gainfully employed for any period for which there are 1 or more qualifying individuals with respect to the taxpayer:

- (i) expenses for household services, and
- (ii) expenses for the care of a qualifying individual.

Such term shall not include any amount paid for services outside the taxpayer’s household at a camp where the qualifying individual stays overnight.

(B) Exception

Employment-related expenses described in subparagraph (A) which are incurred for services outside the taxpayer’s household shall be taken into account only if incurred for the care of—

- (i) a qualifying individual described in paragraph (1)(A), or
- (ii) a qualifying individual (not described in paragraph (1)(A)) who regularly spends at least 8 hours each day in the taxpayer’s household.

(C) Dependent care centers

Employment-related expenses described in subparagraph (A) which are incurred for services provided outside the taxpayer’s household by a dependent care center (as defined in subparagraph (D)) shall be taken into account

only if—

- (i) such center complies with all applicable laws and regulations of a State or unit of local government, and
- (ii) the requirements of subparagraph (B) are met.

(D) Dependent care center defined

For purposes of this paragraph, the term “dependent care center” means any facility which—

- (i) provides care for more than six individuals (other than individuals who reside at the facility), and
- (ii) receives a fee, payment, or grant for providing services for any of the individuals (regardless of whether such facility is operated for profit).

(c) Dollar limit on amount creditable

The amount of the employment-related expenses incurred during any taxable year which may be taken into account under subsection (a) shall not exceed—

- (1) \$3,000 if there is 1 qualifying individual with respect to the taxpayer for such taxable year, or
- (2) \$6,000 if there are 2 or more qualifying individuals with respect to the taxpayer for such taxable year.

The amount determined under paragraph (1) or (2) (whichever is applicable) shall be reduced by the aggregate amount excludable from gross income under section [129](#) for the taxable year.

(d) Earned income limitation

(1) In general

Except as otherwise provided in this subsection, the amount of the employment-related expenses incurred during any taxable year which may be taken into account under subsection (a) shall not

exceed—

(A) in the case of an individual who is not married at the close of such year, such individual's earned income for such year, or

(B) in the case of an individual who is married at the close of such year, the lesser of such individual's earned income or the earned income of his spouse for such year.

(2) Special rule for spouse who is a student or incapable of caring for himself

In the case of a spouse who is a student or a qualifying individual described in subsection (b)(1)(C), for purposes of paragraph (1), such spouse shall be deemed for each month during which such spouse is a full-time student at an educational institution, or is such a qualifying individual, to be gainfully employed and to have earned income of not less than—

(A) \$250 if subsection (c)(1) applies for the taxable year, or

(B) \$500 if subsection (c)(2) applies for the taxable year.

In the case of any husband and wife, this paragraph shall apply with respect to only one spouse for any one month.

(e) Special rules

For purposes of this section—

(1) Place of abode

An individual shall not be treated as having the same principal place of abode of the taxpayer if at any time during the taxable year of the taxpayer the relationship between the individual and the taxpayer is in violation of local law.

(2) Married couples must file joint return

If the taxpayer is married at the close of the taxable year, the credit shall be

allowed under subsection (a) only if the taxpayer and his spouse file a joint return for the taxable year.

(3) Marital status

An individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married.

(4) Certain married individuals living apart

If—

(A) an individual who is married and who files a separate return—

(i) maintains as his home a household which constitutes for more than one-half of the taxable year the principal place of abode of a qualifying individual, and

(ii) furnishes over half of the cost of maintaining such household during the taxable year, and

(B) during the last 6 months of such taxable year such individual's spouse is not a member of such household,

such individual shall not be considered as married.

(5) Special dependency test in case of divorced parents, etc.

If—

(A) Section [152 \(e\)](#) applies to any child with respect to any calendar year, and

(B) such child is under the age of 13 or is physically or mentally incapable of caring for himself, in the case of any taxable year beginning in such calendar year, such child shall be treated as a qualifying individual described in subparagraph (A) or (B) of subsection (b)(1) (whichever is appropriate) with respect to the custodial parent (as defined in

section [152 \(e\)\(4\)\(A\)](#)), and shall not be treated as a qualifying individual with respect to the noncustodial parent.

(6) Payments to related individuals

No credit shall be allowed under subsection (a) for any amount paid by the taxpayer to an individual—

(A) with respect to whom, for the taxable year, a deduction under section [151 \(c\)](#) (relating to deduction for personal exemptions for dependents) is allowable either to the taxpayer or his spouse, or

(B) who is a child of the taxpayer (within the meaning of section [152 \(f\)\(1\)](#)) who has not attained the age of 19 at the close of the taxable year.

For purposes of this paragraph, the term “taxable year” means the taxable year of the taxpayer in which the service is performed.

(7) Student

The term “student” means an individual who during each of 5 calendar months during the taxable year is a full-time student at an educational organization.

(8) Educational organization

The term “educational organization” means an educational organization described in section [170 \(b\)\(1\)\(A\)\(ii\)](#).

(9) Identifying information required with respect to service provider

No credit shall be allowed under subsection (a) for any amount paid to any person unless—

(A) the name, address, and taxpayer identification number of such person are included on the return claiming the credit, or

(B) if such person is an organization described in section [501 \(c\)\(3\)](#) and exempt from tax

under section [501 \(a\)](#), the name and address of such person are included on the return claiming the credit.

In the case of a failure to provide the information required under the preceding sentence, the preceding sentence shall not apply if it is shown that the taxpayer exercised due diligence in attempting to provide the information so required.

(10) Identifying information required with respect to qualifying individuals

No credit shall be allowed under this section with respect to any qualifying individual unless the TIN of such individual is included on the return claiming the credit.

(f) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section.

V. Earned Income Tax Credit

Please note that beginning for tax year 2009, the Earned Income Credit can cover three qualifying children.

Code § 32. Earned income

(a) Allowance of credit

(1) In general

In the case of an eligible individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the credit percentage of so much of the taxpayer’s earned income for the taxable year as does not exceed the earned income amount.

(2) Limitation

The amount of the credit allowable to a taxpayer under paragraph (1) for any taxable year shall not exceed the excess (if any) of—

(A) the credit percentage of the

earned income amount, over
(B) the phaseout percentage of so much of the adjusted gross income (or, if greater, the earned income) of the taxpayer for the taxable year as exceeds the phaseout amount.

(b) Percentages and amounts

For purposes of subsection (a)—

(1) Percentages

The credit percentage and the phaseout percentage shall be determined as follows:

(A) In general

In the case of taxable years beginning after 1995:

In the case of an eligible individual with:	The credit percentage is:	The phaseout percentage is:
1 qualifying child	34	15.98
2 or more qualifying children	40	21.06
No qualifying children	7.65	7.65

(B) Transitional percentages for 1995

In the case of taxable years beginning in 1995:

In the case of an eligible individual with:	The credit percentage is:	The phaseout percentage is:
1 qualifying child	34	15.98
2 or more qualifying children	36	20.22
No qualifying children	7.65	7.65

(C) Transitional percentages for 1994

In the case of a taxable year beginning in 1994:

In the case of an eligible individual with:	The credit percentage is:	The phaseout percentage is:
1 qualifying child	26.3	15.98
2 or more qualifying children	30	17.68
No qualifying children	7.65	7.65

2) Amounts

(A) In general

Subject to subparagraph (B), the earned income amount and the phaseout amount shall be determined as follows:

In the case of an eligible individual with:	The earned income amount is:	The phaseout amount is:
1 qualifying child	\$6,330	\$11,610
2 or more qualifying children	\$8,890	\$11,610
No qualifying children	\$4,220	\$5,280

(B) Joint returns

In the case of a joint return filed by an eligible individual and such individual's spouse, the phaseout amount determined under subparagraph (A) shall be increased by-

- (i) \$1,000 in the case of taxable years beginning in 2002, 2003, and 2004,
- (ii) \$2,000 in the case of taxable years beginning in 2005, 2006, and 2007, and
- (iii) \$3,000 in the case of taxable years beginning after 2007.

(c) Definitions and special rules

For purposes of this section—

(1) Eligible individual

(A) In general

The term “eligible individual” means—

- (i) any individual who has a qualifying child for the taxable year, or
- (ii) any other individual who does not have a qualifying child for the taxable year, if—
 - (I) such individual’s principal place of abode is in the United States for more than one-half of such taxable year,
 - (II) such individual (or, if the individual is married, either the individual or the individual’s spouse) has attained age 25 but not attained age 65 before the close of the taxable year, and
 - (III) such individual is not a dependent for whom a deduction is allowable under section [151](#) to another taxpayer for any taxable year beginning in the same calendar year as such taxable year.

For purposes of the preceding sentence, marital status shall be determined under section [7703](#).

(B) Qualifying child ineligible

If an individual is the qualifying

child of a taxpayer for any taxable year of such taxpayer beginning in a calendar year, such individual shall not be treated as an eligible individual for any taxable year of such individual beginning in such calendar year.

(C) Exception for individual claiming benefits under section 911

The term “eligible individual” does not include any individual who claims the benefits of section [911](#) (relating to citizens or residents living abroad) for the taxable year.

(D) Limitation on eligibility of nonresident aliens

The term “eligible individual” shall not include any individual who is a nonresident alien individual for any portion of the taxable year unless such individual is treated for such taxable year as a resident of the United States for purposes of this chapter by reason of an election under subsection (g) or (h) of section [6013](#).

(E) Identification number requirement

No credit shall be allowed under this section to an eligible individual who does not include on the return of tax for the taxable year—

- (i) such individual’s taxpayer identification number, and
- (ii) if the individual is married (within the meaning of section [7703](#)), the taxpayer identification number of such individual’s spouse.

(F) Individuals who do not include TIN, etc., of any qualifying child

No credit shall be allowed under this section to any eligible

individual who has one or more qualifying children if no qualifying child of such individual is taken into account under subsection (b) by reason of paragraph (3)(D).

(2) Earned income

(A) The term “earned income” means—

(i) wages, salaries, tips, and other employee compensation, but only if such amounts are includible in gross income for the taxable year, plus

(ii) the amount of the taxpayer’s net earnings from self-employment for the taxable year (within the meaning of section [1402 \(a\)](#)), but such net earnings shall be determined with regard to the deduction allowed to the taxpayer by section [164 \(f\)](#).

(B) For purposes of subparagraph (A)—

(i) the earned income of an individual shall be computed without regard to any community property laws,

(ii) no amount received as a pension or annuity shall be taken into account,

(iii) no amount to which section [871 \(a\)](#) applies (relating to income of nonresident alien individuals not connected with United States business) shall be taken into account,

(iv) no amount received for services provided by an individual while the individual is an inmate at a penal institution shall be taken into account,

(v) no amount described in subparagraph (A) received for service performed in work activities as defined in

paragraph (4) or (7) of section 407(d) of the Social Security Act to which the taxpayer is assigned under any State program under part A of title IV of such Act shall be taken into account, but only to the extent such amount is subsidized under such State program, and

(vi) a taxpayer may elect to treat amounts excluded from gross income by reason of section [112](#) as earned income.

(3) Qualifying child

(A) In general

The term “qualifying child” means a qualifying child of the taxpayer (as defined in section [152 \(c\)](#)), determined without regard to paragraph (1)(D) thereof and section [152 \(e\)](#)).

(B) Married individual

The term “qualifying child” shall not include an individual who is married as of the close of the taxpayer’s taxable year unless the taxpayer is entitled to a deduction under section [151](#) for such taxable year with respect to such individual (or would be so entitled but for section [152 \(e\)](#)).

(C) Place of abode

For purposes of subparagraph (A), the requirements of section [152 \(c\) \(1\)\(B\)](#) shall be met only if the principal place of abode is in the United States.

(D) Identification requirements

(i) In general A qualifying child shall not be taken into account under subsection (b) unless the taxpayer includes the name, age, and TIN of the qualifying child on the return of tax for the taxable year.

(ii) Other methods The

Secretary may prescribe other methods for providing the information described in clause (i).

(4) Treatment of military personnel stationed outside the United States

For purposes of paragraphs (1)(A)(ii) (I) and (3)(C), the principal place of abode of a member of the Armed Forces of the United States shall be treated as in the United States during any period during which such member is stationed outside the United States while serving on extended active duty with the Armed Forces of the United States. For purposes of the preceding sentence, the term “extended active duty” means any period of active duty pursuant to a call or order to such duty for a period in excess of 90 days or for an indefinite period.

(d) Married individuals

In the case of an individual who is married (within the meaning of section [7703](#)), this section shall apply only if a joint return is filed for the taxable year under section [6013](#).

(e) Taxable year must be full taxable year

Except in the case of a taxable year closed by reason of the death of the taxpayer, no credit shall be allowable under this section in the case of a taxable year covering a period of less than 12 months.

(f) Amount of credit to be determined under tables

(1) In general

The amount of the credit allowed by this section shall be determined under tables prescribed by the Secretary.

(2) Requirements for tables

The tables prescribed under paragraph (1) shall reflect the provisions of subsections (a) and (b) and shall have

income brackets of not greater than \$50 each—

(A) for earned income between \$0 and the amount of earned income at which the credit is phased out under subsection (b), and

(B) for adjusted gross income between the dollar amount at which the phaseout begins under subsection (b) and the amount of adjusted gross income at which the credit is phased out under subsection (b).

(g) Coordination with advance payments of earned income credit

(1) Recapture of excess advance payments

If any payment is made to the individual by an employer under section [3507](#) during any calendar year, then the tax imposed by this chapter for the individual’s last taxable year beginning in such calendar year shall be increased by the aggregate amount of such payments.

(2) Reconciliation of payments advanced and credit allowed

Any increase in tax under paragraph (1) shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit (other than the credit allowed by subsection (a)) allowable under this part.

[(h) Repealed. Pub. L. 107–16, title III, § 303(c), June 7, 2001, 115 Stat. 55]

(i) Denial of credit for individuals having excessive investment income

(1) In general

No credit shall be allowed under subsection (a) for the taxable year if the aggregate amount of disqualified income of the taxpayer for the taxable year exceeds \$2,200.

(2) Disqualified income

For purposes of paragraph (1), the term “disqualified income” means—

(A) interest or dividends to the extent includible in gross income for the taxable year,

(B) interest received or accrued during the taxable year which is exempt from tax imposed by this chapter,

(C) the excess (if any) of—

(i) gross income from rents or royalties not derived in the ordinary course of a trade or business, over

(ii) the sum of—

(I) the deductions (other than interest) which are clearly and directly allocable to such gross income, plus

(II) interest deductions properly allocable to such gross income,

(D) the capital gain net income (as defined in section [1222](#)) of the taxpayer for such taxable year, and

(E) the excess (if any) of—

(i) the aggregate income from all passive activities for the taxable year (determined without regard to any amount included in earned income under subsection (c)(2) or described in a preceding subparagraph), over

(ii) the aggregate losses from all passive activities for the taxable year (as so determined).

For purposes of subparagraph (E), the term “passive activity” has the meaning given such term by section [469](#).

(j) Inflation adjustments

(1) In general

In the case of any taxable year beginning after 1996, each of the

dollar amounts in subsections (b)(2) and (i)(1) shall be increased by an amount equal to—

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section [1](#) (f)(3) for the calendar year in which the taxable year begins, determined—

(i) in the case of amounts in subsections (b)(2)(A) and (i)(1), by substituting “calendar year 1995” for “calendar year 1992” in subparagraph (B) thereof, and

(ii) in the case of the \$3,000 amount in subsection (b)(2)(B)

(iii), by substituting “calendar year 2007” for “calendar year 1992” in subparagraph (B) of such section [1](#).

(2) Rounding

(A) In general

If any dollar amount in subsection (b)(2)(A) (after being increased under subparagraph (B) thereof), after being increased under paragraph (1), is not a multiple of \$10, such dollar amount shall be rounded to the nearest multiple of \$10.

(B) Disqualified income threshold amount

If the dollar amount in subsection (i)(1), after being increased under paragraph (1), is not a multiple of \$50, such amount shall be rounded to the next lowest multiple of \$50.

(k) Restrictions on taxpayers who improperly claimed credit in prior year

(1) Taxpayers making prior fraudulent or reckless claims

(A) In general

No credit shall be allowed under this section for any taxable year in

the disallowance period.

(B) Disallowance period

For purposes of paragraph (1), the disallowance period is—

(i) the period of 10 taxable years after the most recent taxable year for which there was a final determination that the taxpayer's claim of credit under this section was due to fraud, and

(ii) the period of 2 taxable years after the most recent taxable year for which there was a final determination that the taxpayer's claim of credit under this section was due to reckless or intentional disregard of rules and regulations (but not due to fraud).

(2) Taxpayers making improper prior claims

In the case of a taxpayer who is denied credit under this section for any taxable year as a result of the deficiency procedures under subchapter B of chapter 63, no credit shall be allowed under this section for any subsequent taxable year unless the taxpayer provides such information as the Secretary may require to demonstrate eligibility for such credit.

(l) Coordination with certain means-tested programs

For purposes of—

(1) the United States Housing Act of 1937,

(2) title V of the Housing Act of 1949,

(3) section 101 of the Housing and Urban Development Act of 1965,

(4) sections 221(d)(3), 235, and 236 of the National Housing Act, and

(5) the Food and Nutrition Act of

2008,

any refund made to an individual (or the spouse of an individual) by reason of this section, and any payment made to such individual (or such spouse) by an employer under section 3507, shall not be treated as income (and shall not be taken into account in determining resources for the month of its receipt and the following month).

(m) Identification numbers

Solely for purposes of subsections (c)(1)(E) and (c)(3)(D), a taxpayer identification number means a social security number issued to an individual by the Social Security Administration (other than a social security number issued pursuant to clause (II) (or that portion of clause (III) that relates to clause (II)) of section 205(c)(2)(B)(i) of the Social Security Act).

VI. Release of Dependency Exemption

Code § 152

(e) SPECIAL RULE FOR DIVORCED PARENTS, ETC. –

(1) IN GENERAL -Notwithstanding subsection (c)(1)(B), (c)(4), or (d)(1)(C), if –

(A) a child receives over one-half of the child's support during the calendar year from the child's parents –

(i) who are divorced or legally separated under a decree of divorce or separate maintenance,

(ii) who are separated under a written separation agreement, or

(iii) who live apart at all times during the last 6 months of the calendar year, and –

(B) such child is in the custody of 1 or both of the child's parents for

more than one-half of the calendar year, such child shall be treated as being the qualifying child or qualifying relative of the qualifying relative of the noncustodial parent for a calendar year if the requirements described in paragraph (2) or (3) are met.

(2) EXCEPTION WHERE CUSTODIAL PARENT RELEASES CLAIM TO EXEMPTION FOR THE YEAR – For purposes of Paragraph (1), the requirements described in this paragraph are met with respect to any calendar year if –

- (A) the custodial parent signs a written declaration (in such manner and form as the Secretary may by regulations prescribe) that such custodial parent will not claim such child as a dependent for any taxable year beginning in such child as a dependent for any taxable year beginning in such calendar year, and
- (B) the noncustodial parent attaches such written declaration to the noncustodial parent’s return for the taxable year beginning during such calendar year.

VII. Child Tax Credit and Additional Child Tax Credit

Code § 24. Child tax credit

(a) Allowance of credit

There shall be allowed as a credit against the tax imposed by this chapter for the taxable year with respect to each qualifying child of the taxpayer for which the taxpayer is allowed a deduction under section [151](#) an amount equal to \$1,000.

(b) Limitations

(1) Limitation based on adjusted gross income

The amount of the credit allowable

under subsection (a) shall be reduced (but not below zero) by \$50 for each \$1,000 (or fraction thereof) by which the taxpayer’s modified adjusted gross income exceeds the threshold amount. For purposes of the preceding sentence, the term “modified adjusted gross income” means adjusted gross income increased by any amount excluded from gross income under section [911](#), [931](#), or [933](#).

(2) Threshold amount

For purposes of paragraph (1), the term “threshold amount” means—

- (A) \$110,000 in the case of a joint return,
- (B) \$75,000 in the case of an individual who is not married, and
- (C) \$55,000 in the case of a married individual filing a separate return.

For purposes of this paragraph, marital status shall be determined under section [7703](#).

(3) Limitation based on amount of tax

In the case of a taxable year to which section [26 \(a\)\(2\)](#) does not apply, the credit allowed under subsection (a) for any taxable year shall not exceed the excess of—

- (A) the sum of the regular tax liability (as defined in section [26 \(b\)](#)) plus the tax imposed by section [55](#), over
- (B) the sum of the credits allowable under this subpart (other than this section and sections [23](#), [25B](#), [25D](#), and [30D](#)) and section [27](#) for the taxable year.

(c) Qualifying child

For purposes of this section—

(1) In general

The term “qualifying child” means a qualifying child of the taxpayer (as defined in section [152 \(c\)](#)) who has

not attained age 17.

(2) Exception for certain noncitizens

The term “qualifying child” shall not include any individual who would not be a dependent if subparagraph (A) of section [152 \(b\)\(3\)](#) were applied without regard to all that follows “resident of the United States”.

(d) Portion of credit refundable

(1) In general

The aggregate credits allowed to a taxpayer under subpart C shall be increased by the lesser of—

(A) the credit which would be allowed under this section without regard to this subsection and the limitation under section [26 \(a\)\(2\)](#) or subsection (b)(3), as the case may be, or

(B) the amount by which the aggregate amount of credits allowed by this subpart (determined without regard to this subsection) would increase if the limitation imposed by section [26 \(a\)\(2\)](#) or subsection (b)(3), as the case may be, were increased by the greater of—

(i) 15 percent of so much of the taxpayer’s earned income (within the meaning of section [32](#)) which is taken into account in computing taxable income for the taxable year as exceeds \$10,000, or

(ii) in the case of a taxpayer with 3 or more qualifying children, the excess (if any) of—

(I) the taxpayer’s social security taxes for the taxable year, over

(II) the credit allowed under section [32](#) for the taxable year. The amount of the credit allowed under this subsection

shall not be treated as a credit allowed under this subpart and shall reduce the amount of credit otherwise allowable under subsection (a) without regard to section [26 \(a\)\(2\)](#) or subsection (b)(3), as the case may be. For purposes of subparagraph (B), any amount excluded from gross income by reason of section [112](#) shall be treated as earned income which is taken into account in computing taxable income for the taxable year.

(2) Social security taxes

For purposes of paragraph (1)—

(A) In general

The term “social security taxes” means, with respect to any taxpayer for any taxable year—

(i) the amount of the taxes imposed by sections [3101](#) and [3201 \(a\)](#) on amounts received by the taxpayer during the calendar year in which the taxable year begins,

(ii) 50 percent of the taxes imposed by section [1401](#) on the self-employment income of the taxpayer for the taxable year, and

(iii) 50 percent of the taxes imposed by section [3211 \(a\)](#) on amounts received by the taxpayer during the calendar year in which the taxable year begins.

(B) Coordination with special refund of social security taxes

The term “social security taxes” shall not include any taxes to the extent the taxpayer is entitled to a special refund of such taxes under section [6413 \(c\)](#).

(C) Special rule

Any amounts paid pursuant to an agreement under section [3121 \(l\)](#) (relating to agreements entered into by American employers with respect to foreign affiliates) which are equivalent to the taxes referred to in subparagraph (A)(i) shall be treated as taxes referred to in such subparagraph.

(3) Inflation adjustment

In the case of any taxable year beginning in a calendar year after 2001, the \$10,000 amount contained in paragraph (1)(B) shall be increased by an amount equal to—

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section [1 \(f\)\(3\)](#) for the calendar year in which the taxable year begins, determined by substituting “calendar year 2000” for “calendar year 1992” in subparagraph (B) thereof.

Any increase determined under the preceding sentence shall be rounded to the nearest multiple of \$50.

(4) Special rule for 2008

Notwithstanding paragraph (3), in the case of any taxable year beginning in 2008, the dollar amount in effect for such taxable year under paragraph (1)(B)(i) shall be \$8,500.

(e) Identification requirement

No credit shall be allowed under this section to a taxpayer with respect to any qualifying child unless the taxpayer includes the name and taxpayer identification number of such qualifying child on the return of tax for the taxable year.

(f) Taxable year must be full taxable year

Except in the case of a taxable year closed by reason of the death of the taxpayer, no credit shall be allowable

under this section in the case of a taxable year covering a period of less than 12 months.

Internal Revenue Service Publications

Child and Dependent Care Credit:

IRS Publication 503

Earned Income Credit:

IRS Publication 596

IRS Publication 17

Tax Topic 601

Filing Statuses and Dependency Exemption:

IRS Publication 501

Child Tax Credit and Additional Child

Tax Credit:

IRS Publication 972

Education Credits:

IRS Publication 970

Mary Kate Kelley-Scheidler attended the University of Minnesota Twin Cities Campus and earned a Bachelor of Science (a teaching degree) with a major in English Literature, a minor in Speech Communications and focus areas of study in Linguistics and Theater. Ms. Kelley-Scheidler earned her Juris Doctor at Hamline University School of Law. Ms. Kelley-Scheidler is a solo practitioner in Family Law with a practice focused on retirement benefits and tax. Seasonally she is employed by H&R Block as a Tax Professional and is in the process of acquiring a Circular 230 designation, which will allow her to practice before the Internal Revenue Service and the Minnesota Department of Revenue. Ms. Kelly-Scheidler loves gardening and is in the process of creating gardening spaces in her backyard using plants indigenous to the Midwest to attract birds and beneficial insects. Ms. Kelley-Scheidler lives in New Brighton, Minnesota with her husband Ray and has two grown children.

Tax Consequences of Distributions of Retirement Benefits Pursuant to Divorce

Interview with:

Barry L. Oxtan, CPA, CRPC
Ameriprise Financial Advisor
New Brighton, MN 55112

Dan Grassman, AAMS, CRPC
Ameriprise Financial Advisor
New Brighton, MN 55112

Mary Kate Kelley-Scheidler, Esq.

The following is a transcription of a taped interview with Barry L. Oxtan and Dan Grassman, Ameriprise Financial Advisors

Mary Kate: I am currently in the office of Barry L. Oxtan and Dan Grassman, Ameriprise Financial Advisors. First of all, Barry, can you briefly tell me your credentials before we start?

Barry: I am a Financial Advisor here at Ameriprise. I am licensed [with security licenses] Series 7 and [Series] 66, as well as, whole life and health, registered with Department of Commerce State of Minnesota, as well as in other states, a Certified Public Accountant in inactive status, and also a Chartered Retirement Planning Counselor.

Mary Kate: Thank you Barry. Dan, tell us a little about yourself.

Dan: My name is Dan Grassman and I also am an Ameriprise Financial Advisor; same security licenses that Barry mentioned, Series 7, Series 66, Life and health, long term care insurance, I also am a Chartered Retirement Planning Counselor and an Accredited Asset

Management Specialist. Both Barry and I have been working here at Ameriprise for a little while.

Mary Kate: Thank you. First of all, the reason I am here is that I wanted to discuss with both of you, because you are retirement planning specialists, what happens in divorces where marital retirement benefits are used for marital equalization payments, or to pay off marital debt; those kinds of situations.

Barry, what would happen in a divorce where an IRA was used for a marital equalization payment for a spouse and she was going to take receipt of monies directly from the IRA.

Barry: In a situation where there is an IRA, an Individual Retirement Account, you typically have to transfer assets from IRA to IRA and not have any penalties or taxes [incurred] under the general guidelines. Now there are exceptions [to distributions] such as age 59.5 years, hardship, for purchase of a main house or for education, which are ways to get around the 10% penalty but you would still have to pay taxes.

If you take funds straight out of an IRA, the IRA is going to be the owner's IRA making a distribution to the ex-spouse. The actual owner of the IRA would incur the tax so they [plan administrator] would withhold on that [distribution]. The other spouse that is getting the payment would get a [payment] reduced by that amount [of taxes withheld on distribution to IRA owner]. Now that is a situation with an IRA.

For a qualified plan like 401(k)'s or 403(b)'s, a qualified domestic relations order is necessary to treat the former spouse as a participant and special distribution rules apply to them. For an IRA, [these special distribution rules] it do not apply. The IRA is the owner's IRA.

Dan: In some situations I have seen it where even though it [the distribution] is coming out of an IRA, the amount that a former spouse will be getting from the ex-spouse [owner of the IRA] will be transferred to an IRA set up for the former spouse. The divorce decree must specifically state that the amount distributed to the former spouse [non-owner spouse] from the IRA owned by the other spouse [owner spouse] will be rolled over to an IRA set up for the benefit of the former spouse. The rollover is not a taxable event. It is simply a transfer from one IRA to another IRA.

Once the funds have been transferred, the former spouse can choose do whatever s/he wants to do with that money. The former spouse could take it as income by taking a distribution out of the IRA with the tax consequences associated with the distribution. The 10% penalty would apply if the former spouse is not yet 59.5 years old and none of the other exceptions to the 10% penalty apply to the distribution. In addition, the former spouse would pay income tax on the distribution at her/his normal income tax

rate on the distribution.

Barry: Dan is absolutely correct. You must go from IRA to IRA to avoid unintended tax consequences to the owner of the original IRA. For example, an amount from the husband's IRA is awarded to the wife and the wife is required to open up an IRA for the distribution from her husband's IRA. Once the rollover has taken place, it is the wife's IRA. She can take distributions from the IRA as she sees fit.

In the example Dan used, if you take a distribution directly out of the husband's IRA, the husband will be taxed on the distribution and you will not achieve the intended outcome.

Mary Kate: Are you saying that if the distribution from the husband's IRA is made directly to the wife from the husband's IRA that the husband will be taxed on the distribution?

Barry: Yes, the husband will be taxed on the distribution and withholding [of the taxes] on the distribution will be made to offset taxes that must be paid on the distribution. After the taxes have been withheld on that [the distribution from husband's IRA] the wife will receive the lesser amount [distribution less withheld taxes].

Dan: And I have seen this in my own practice in a letter I will receive from a lawyer in a divorce stating that I should directly distribute a certain amount to the former wife from the former husband's IRA. There is no way that I will do this because of the unintended tax consequences to the former husband of a direct distribution from his IRA to the former wife. This could pin an additional \$100,000.00 distribution on the former husband income plus a 10% penalty in a given tax year.

Instead, I will set up an IRA for the former wife and do a direct rollover from the former husband's IRA to the former wife's IRA. Then the former wife can do whatever she wants with the money in her IRA without unintended tax consequences to the former husband. The former husband has then complied with the terms of the divorce decree without any of the unintended tax consequences being incurred by husband on the distribution to the former wife.

Barry: Attorneys need to be very careful about how a distribution from an IRA is worded in the divorce decree. If the wording in the divorce decree states that a distribution is to be made from a former husband's IRA to a former wife, some financial advisors will simply make a distribution from the former husband's IRA to the former wife. It is not in the best interests of either party at that point.

Mary Kate: Just to clarify, there is actually potential for unanticipated tax consequences from these IRA distributions. There could be the 10% penalty from this distribution, for example, if there is no exception to the 10% penalty.

Barry: Yes.

Mary Kate: Would you explain the tax ramifications apart from the 10% penalty? and again we are talking about IRA's.

Barry: A distribution from a traditional IRA in a given year is considered income in that given year. Let's say you have income of \$30,000.00 a year and you take a distribution from a traditional IRA of \$100,000.00. Your income has just gone from \$30,000.00 for that year to \$130,000.00 for that year. This could jump you up several tax brackets to the higher tax brackets and even to the highest tax bracket. So now you have just incrementally increased your taxes on that

distribution also.

That's why the other idea is that if you go from one IRA to another IRA for distributions out of that original IRA, using a rollover for the distribution allows you to have more control over the tax consequences of that original distribution. You can use that money distributed and rolled over to a second IRA on an as needed basis. Instead of taking \$100,000.00 out of that IRA in a given year you are taking \$15,000.00 out of the IRA over several years.

Dan: You might see a situation where you compound the penalties and taxes. For illustration purposes, let's say for the \$100,000.00 distribution you are going to incur the 10% penalty and your Federal taxes on top of everything are at the highest income tax bracket plus in Minnesota, State income tax. This can mean that in the end, the party taking receipt of that money might end up paying \$40,000.00 - \$45,000.00 in taxes and actually only receive \$55,000.00 - \$60,000.00 of that money. While the party receiving the money may need some of that money for various reasons, taking this kind of a tax hit means losing the bulk of the distributions to taxes.

You may want to consider alternative ways for the party to take receipt of the \$100,000.00. There are ways to avoid this situation with a little tax planning on the part of the parties. If the transfer of funds is from an IRA, you want that transfer to be an IRA to IRA rollover. If the transfer of funds is from a qualified retirement plan such as a 401(k), you may want to consider a rollover to an IRA. If the party receiving the funds needs money, that person can choose to take distributions over a period of years instead of all at once. When it comes to a marital dissolution we want to make sure everything is done properly so that both parties are in the

best financial situation possible given the distribution of monies from qualified retirement plans or accounts. This means tax planning is part of financial planning.

Mary Kate: How can situations be dealt with where the marital debt is such that the parties do not have the ability to pay the debt. The parties may look at an IRA or 401(k) distribution as a way to pay off the marital debt. Can you think of any solutions in these kinds of situations that will limit the tax liability to both of the parties?

Dan: I would say when you are looking at these types of situations you want to consider what will yield the best financial results. If there is large marital debt, consider what that debt is – is it credit card debt?; student loans? You need to factor all of this into the equation. Are there alternative ways of providing some liquidity to this situation? The first consideration is to research alternatives to cash flow besides distributions from qualified retirement accounts to pay off marital debt. If there are no alternative sources of cash flow, consider transferring the monies to an IRA and taking a series of distributions from the IRA instead of taking receipt of the entire amount of the debt. This is especially true if there is large credit card debt that needs to be paid off. Credit card companies will accept greatly reduced lump sums to pay off credit card debt in lieu of a series of payments. That credit card debt could be negotiated down to 50 -60% of what the outstanding balance on debt is instead of paying the entire balance due. If you time distributions from the IRA correctly, not all distributions would need to be in the same tax year. This would be a way to stagger distributions and greatly lessen the tax consequences of distributions to pay off marital debt.

Barry: Dan is absolutely right here. If the

marital debt is largely consumer debt, there may be a line of credit on the home or the possibility of a home equity loan that could be used to pay off at least part of the debt. Now a days, equity in home might not be available to pay off other consumer debt because house values are upside down. However, it's always best to consider other alternatives for paying off marital debt before you start using distributions from qualified retirement accounts.

Mary Kate: If the husband is the owner of a large IRA and there is a lot of marital consumer debt, what do you think about splitting the consumer debt between the spouses and transferring 50% of the husband's IRA to an IRA setup for the benefit of the wife and each of the parties taking distributions from their IRA's to payoff marital debt?

Barry: That is the exact thing to do. Make sure if you take a distribution from the IRA, make sure it goes into an IRA for the spouse because then there might be an exception that applies in their case to an exception for the 10% penalty. Then they would be able to take out only the portion that they need to pay off debt. This is much more beneficial than taking receipt of the whole distribution and getting hit with the tax consequences.

Say you receive \$100,000.00 and you only need \$20,000.00 to satisfy marital debt; Transfer the \$100,000.00 to an IRA and only take a distribution of \$20,000.00 to pay the marital debt. Now you have only increased your taxable income by \$20,000.00 instead of \$100,000.00. The simple IRA to IRA solution may allow the person using \$20,000.00 from the IRA to pay off marital debt to claim a hardship distribution for that year and not be subject to the 10% penalty.

Mary Kate: As we deal with IRA's, what

are the two things you would like family lawyers to know?

Dan: The bottom line is that every situation is so completely different. What works in one situation could prove disastrous in another. You certainly want to work with your Attorney, and I don't want this to sound like a plug, and that attorney will seek out the advice of a financial advisor and a competent tax professional. The financial advisor and the competent tax professional will be able to point out some of the unanticipated outcomes that can result from distributions from qualified retirement accounts.

Be careful in this regard because there are securities brokers who refer to themselves as advisors but all they actually do is advise clients regarding which investments bring the greatest yields. There is a place for securities brokers. However, securities brokers do not have the same training as a financial advisor. A financial advisor and a securities broker are not one and the same. A financial advisor is trained to see the overall picture of how this will impact the clients as far as taxes and long term financial planning is concerned.

Obviously, Barry and I do this kind of work. However, what I want to emphasize is that it is important to get a financial advisor or competent tax professional involved that you trust and are comfortable with to provide the kind of information that we have been talking about today. It's easy to miss the fact that a direct distribution from for example a husband's IRA directly to the wife will result in tax consequences to the husband. The simple solution is the IRA to IRA rollover. You cannot anticipate what you do not know. Get other professionals involved that you trust that have the expertise to help clients.

Barry: Yes, that's what I would advise also. Get a tax advisor or financial advisor that you

trust and have confidence in to review the situation. It's important to thoughtfully divide assets anticipating the tax consequences of the division of the assets.

Mary Kate: What do you think about grossing up the total by 30% to cover all the taxes in a situation where the distribution from a qualified retirement account is going to be Used to pay off marital debt?

Dan: As a rule of thumb that would work. Obviously, rule of thumbs do not always work. Each situation is different and you need consider what the ultimate tax consequences for clients to receive the optimum benefit from a distribution from a qualified retirement account.

Mary Kate: Well, we've talked about IRA's, let's go to qualified plans that could be used for marital equalizations payments, paying off marital debt or for property awards dividing qualified marital retirement accounts in a divorce. What do you have to say about qualified retirement Plans?

Dan: Qualified retirement plans I see as very similar to IRA's. The Plan Administrator is the one that is going to separate out the award to the receiving spouse. That person would get their own account in the 401(k) that they could choose to do whatever they wanted to with the funds. It may be rolled out into an IRA. Many of the considerations for a qualified retirement plan, 401(k), 403(b) or profit sharing plan are the same as for an IRA. In order to get money out of the plan it is going to be taxed.

Mary Kate: What about the 10% penalty with the qualified retirement plan?

Barry: There is an exception to the 10% penalty for distributions from a qualified retirement plan made pursuant to a divorce.

This is one of the main differences between a qualified retirement plan and a Traditional IRA. While there are exceptions to the 10% penalty from a Traditional IRA, there is no exception for a distribution made pursuant to a divorce decree.

A Qualified Domestic Relations Order is needed for a division of qualified retirement benefits under a qualified retirement plan. The Plan Administrator under ERISA needs the Qualified Domestic Relations Order to recognize the other spouse as having a spousal interest or an alternate party with a right to a portion of the participant's retirement benefits.

You can take a distribution from the spouse's 401(k) or 403(b) and roll that into an IRA or segregating the retirement benefits awarded to the spouse as an actual participant in the plan even though they have never been employed by the employer. Now that person can be subject to the terms of the plan and can take different distributions from the plan. So when you talk about distributions you need to talk about what kind of a distribution. If the funds awarded to the spouse have been segregated in the plan, the spouse can take distributions from the segregated funds without the 10% penalty.

If the party takes receipt of a distribution from a qualified retirement plan, that party has sixty days to roll those funds over to an IRA. The amount of the rollover after the party takes direct receipt of the funds must be 100% of the gross distribution.

By Federal law withholding of 20% for Federal income tax of a distribution directly to a party is required. This means the party taking the direct distribution will only receive 80% of the gross distribution. S/he will have to make up the other 20% that was withheld for Federal income tax. If s/he is unable to

make up the 20% that was withheld for taxes, the rollover within the sixty days will not be effective. In others words, the party directly taking receipt of a distribution from a qualified retirement plan must fund a Traditional IRA within sixty days of the gross distribution amount or they will be taxed on the entire gross distribution.

It is much preferable to do a direct rollover from qualified retirement plan to IRA. With a direct rollover to a Traditional IRA the party receiving the distribution is not put in the position of having to make up for the amount that was withheld from the gross distribution from the qualified retirement plan.

Dan: One of the potential nice features of a qualified retirement plan is that it may allow for a loan on the qualified retirement account. This is something that could be used to pay off marital debt as opposed to taking a distribution from the qualified retirement account to pay off marital debt. It may be more beneficial to take out a loan on this situation than to take a distribution at this point.

Mary Kate: So it may be a possibility for a participant to take out a loan on a 401(k) account and to be reimbursed from some other asset instead of taking a distribution from the 401(k) account.

Mary Kate: The 10% penalty is not the worst that can happen when it comes to tax consequences resulting from distributions from qualified retirement plans. What do you think of the income tax consequences from distributions from qualified retirement accounts?

Dan: Distributions from qualified retirement plans can bump up your normal income tax rate to the higher or highest income tax

brackets. If you are being taxed at the 15% income tax rate and because of a distribution from a qualified retirement plan you are bumped up to the 25%, 28%, 33% or even 35% income tax bracket, a lot more money will go to pay taxes than when your income was such that you were taxed at the 15% tax rate.

It affects other taxes as well. If you have any capital gains during the tax year that you received a distribution from a qualified retirement plan, the amount of tax you pay for capital gains will be dramatically affected by your ordinary income tax rate. For 2009 if your income tax rate on taxable income was 10% or 15% and you had long term capital gains, the capital gains rate was 0%. If your tax rate on your taxable income was bumped up to 33% because of a distribution from qualified retirement plan you now will owe capital gains taxes at 15% capital gains tax rate as opposed to 0% capital gains rate. This can impact other parts of your financial situation as well.

Mary Kate: What about non-qualified plans such as Employee Stock Ownership Plans, Stock Options, private industry Deferred Compensation 457 Plans as it relates to the tax consequences of trying to divvy this up in a divorce?

Dan: Qualified Domestic Relations Orders do not pertain to non-qualified employer plans. However, Domestic Relations Orders can be applied to these plans.

Barry: I have dealt with a lot of non-qualified employer sponsored plans that have not honored divorce decrees and the subsequent Domestic Relations Orders that have awarded spouses an interest in employees' accounts in non-qualified employer sponsored plans. Some executive compensation plans flatly state that they will

not honor Domestic Relations Orders that award a share of the executive account/compensation to the spouse. These are situations where it can get really ugly if the plan administrator will not honor a domestic relations order that awards a spouse an interest in a non-qualified employer sponsored plan.

Mary Kate: What about a situation where a spouse is awarded shares of stock in an Employee Stock Ownership Plan, which is a non-qualified retirement plan?

Dan: An Employee Stock Ownership Plan which is a non-qualified retirement plan is one where you could not rollover shares of stock to an IRA. Shares of stock awarded to a spouse from an employee's account in an Employee Stock Ownership Plan would be securities (stock) that would need to be held in a non-qualified brokerage account. The basis in the stock for the spouse receiving shares of stock in a divorce would be the basis of the employee in the stock. Upon sale, any gain would be subject to capital gains rates.

Barry: If readers get nothing out of this discussion I would like to just say it is usually best for a party to a divorce not to take direct receipt of a distribution from a qualified retirement plan or a Traditional IRA. This whole area of financial planning and tax consequences associated with a party to a divorce taking receipt of a distribution from a qualified retirement plan or Traditional IRA is a mine-field of unanticipated consequences. Let's say it is best if a party to a divorce does not take direct receipt of a distribution from a qualified retirement plan or Traditional IRA.

It's very important that the language in the divorce decree is very specific. Make sure you get the name of the plan right; the name

of the participant and the alternate payee right; and make sure to specify a valuation date. If it is a non-qualified plan you may want to provide that shares of stock will be transferred to the spouse from the employee's account in the plan rather than the stock being liquidated and the cash being distributed to the spouse. A distribution of cash from a non-qualified account, where shares of stock are sold, may end up with the employee as responsible for the capital gains on sale of those shares of stock.

Dan: There are different rules that apply to different types of employer sponsored plans. You need to be aware of which rules apply to which employer sponsored plans. Not all employer sponsored plans are qualified retirement plans. Qualified retirement plans are retirement plans that provide pre-tax savings for employees for retirement. Profit Sharing plans may be part of a 401(k) plan or they may be a non-qualified plan. An Employee Stock Ownership Plan is a non-qualified plan and there are rules regarding what happens if shares of stock are transferred to a spouse versus liquidating shares of stock and the spouse receiving a distribution of cash instead of shares of stock. Just be aware of what rules are triggered by differing plans.

Mary Kate: Thank you gentlemen for your time. This discussion has been most enlightening. I am sure readers will appreciate its content.

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