

# **Defensive Divorce**

## **Course Description & Study Guide**

This course will teach participants how to apply, implement, and evaluate the strategic tax aspects of marital dissolutions and living together arrangements. Current perspectives on property transfers, asset divisions, alimony, filing status, exemptions, and child support are examined with an emphasis on planning considerations. Property settlements, basis allocation, third party transfers, and purchases between spouses are explored and analyzed. Special attention is given to the division of business interests, retirement plans (including QDROs), insurance policies, and the family residence.

**Completion Deadline & Exam:** This course, including the examination, must be completed within one year of the date of purchase. In addition, unless otherwise indicated, no correct or incorrect feedback for any exam question will be provided.

**Course Level:** Overview. This program is appropriate for professionals at all organizational levels.

**Field of Study:** Taxes

**Prerequisite:** General understanding of federal income taxation.

**Advanced Preparation:** None

## **Learning Assignments & Objectives**

As a result of studying each assignment, you should be able to meet the objectives listed below each assignment.

### **ASSIGNMENT**

### **SUBJECT**

#### **Chapter 1**

#### **Basic Marital Tax Matters**

At the start of Chapter 1, participants should identify the following topics for study:

- \* Marital status
- \* Joint return
- \* Separate returns
- \* Head of household
- \* Exemptions
- \* Divorce costs
- \* Withholding & estimated tax
- \* Community property states
- \* Ending the community
- \* Living together

### **Learning Objectives**

After reading Chapter 1, participants will be able to:

1. Specify multiple tax implications to consider when going through a divorce, and recognize the requirements and effects of filing as married or unmarried.
2. Identify the requirements of filing a joint return noting how to avoid being penalized.
3. Determine the key elements of filing separate returns including what items to report and identify whether or not married taxpayers should file separate returns.
4. Cite the requirements for filing as head of household and the tax advantages and disadvantages of this filing status.
5. Recognize the phaseout of exemptions noting its affects on taxpayers, identify when exemptions can be taken for spouses, and determine reporting requirements for dependent exemptions.
6. Identify the requirements for pre-2005 dependency particularly relationship, married person, citizen or resident and income and, specify the former regular and special method for determining support noting complications from back child support.
7. Determine the current “qualified child” standard using residency, relationship, age, and joint return prohibition, and identify requirements that must be met for parents to treat a child as a qualifying child of a non-custodial parent.
8. Identify deductible and nondeductible divorce expenditures noting which spouse is subject to tax imposed upon withheld wages, and specify the effects of making separate estimated tax payments or joint declarations of estimated tax.
9. Determine community property and the community property states, and identify the effects of conversion and commingling of property and how to avoid such marital property issues.

**10.** Identify community income earned by married couples for reporting purposes by:

**a.** Specifying reporting guidelines, recognizing the allocation of income earned and received into community property and separate property and what income and property belongs to which spouse when they have different residency statuses;

**b.** Recalling the requirements for the special community income allocation rules of §66(a), determining what constitutes community property termination and specifying the treatment of alimony payments; and

**c.** Recognizing the use of statements and records to provide estimates of a former spouse's income and identifying conditions for greater tax relief.

**11.** Identify the effect of living together on filing statuses and dependency, determine differences between the married tax rate and other tax rates, recognize the tax consequences of having a living together contract to avoid tax traps, and specify the results of *Marvin v. Marvin*.

After studying the materials in Chapter 1, answer the exam questions 1 to 30.

**ASSIGNMENT**

**SUBJECT**

**Chapter 2**

**Transfers Incident to Divorce**

At the start of Chapter 2, participants should identify the following topics for study:

- \* Property rights
- \* Premarital agreements
- \* Application of §1031
- \* Incident to divorce
- \* Property basis
- \* Purchases of residence between spouses
- \* Purchases of business interests between spouses
- \* Selected asset divisions of residence & business interests
- \* Real & personal property
- \* Pension benefits

**Learning Objectives**

After reading Chapter 2, participants will be able to:

- 1.** Identify types of marital property and their likely division in marital property settlements and specify the legal principles used in dividing assets and providing support on divorce or separation.

- 2.** Determine the benefits of premarital agreements and the requirements and permissible provisions for a valid and comprehensive agreement under the Uniform Premarital Act.
- 3.** Specify the position of *U.S. v. Davis* on interspousal transfers noting the changes made by §1041, and identify the requirements of §1041 and the scope of its application.
- 4.** Select factors that determine whether a property transfer is incident to divorce and identify how to meet these factors or avoid §1041 altogether when desired.
- 5.** Determine the application of §1041 to transfers in trust under §1041(e) and to third party transfers on behalf of a spouse or former spouse.
- 6.** Recognize deferred tax liability by identifying property basis for the transferor spouse and transferee spouse under §1041 after a property settlement.
- 7.** Specify the application of §1041 to property transfers where the transferee assumes liabilities encumbering the property, and the holding period for an asset transferred between spouses or former spouses incident to divorce.
- 8.** Recognize the dangers of purchasing a former spouse's interest in property particularly a marital residence and its tendency to create deferred tax liability.
- 9.** Determine tax effects of purchasing an interest in personal or real property used in a business or held for investment, recognize potential recapture and identify the use of an exchange to dispose of low-basis property received in a §1041 transfer.
- 10.** Specify common disposition alternatives available on divorce and identify the home sale exclusion requirements and the tax treatment and use of installment obligations under §453 in divorce.
- 11.** Recognize sale, redemption, recapitalization, liquidation and third-party transfers as methods of dividing a business in a marital settlement citing unique provisions under §302, §736 and §754.
- 12.** Identify whether gain or loss on a sale of real or personal property is capital or ordinary and, recognize the tax treatment of such gain or loss and the role and tax treatment of life insurance in property settlements.
- 13.** Specify popular methods of dividing retirement benefits in a divorce or separation action identifying the requirements and tax consequences of a “qualified domestic relations order (QDRO).
- 14.** Identify an overall tax and economic strategy for the division of pension benefits in a marital settlement by:

- a. Specifying the pros and cons of deferred, present, and alternate property division arguments;
- b. Determining the treatment of IRAs at divorce considering the IRA deduction limit and rollovers;
- c. Specifying strategies for retirement planning after divorce;
- d. Recognizing the Social Security benefits, military pensions, civil service pensions, or railroad pensions that may be available to a former spouse; and
- e. Identifying debts incurred during a divorce which are dischargeable in bankruptcy.

After studying the materials in Chapter 2, answer the exam questions 31 to 69.

**ASSIGNMENT**

**SUBJECT**

**Chapter 3**

**Spousal & Child Support**

At the start of Chapter 3, participants should identify the following topics for study:

- \* Divorce or separation instrument
- \* Alimony requirements of instruments executed after 1984
- \* Alimony requirements of instruments executed before 1984
- \* Deducting alimony paid & reporting alimony received
- \* Recapture of alimony for type A & B agreements
- \* Alimony substitution trusts & annuities
- \* Alimony paid by estate
- \* Child support
- \* COBRA coverage
- \* Qualified medical child support orders

**Learning Objectives**

After reading Chapter 3, participants will be able to:

1. Determine “alimony” and “separate maintenance payments” under §71 noting their deduction or income treatment under §215.
2. Specify types of §71 “divorce or separation instruments” and determine how having an invalid decree, an amended instrument, or a pre-marital agreement impacts such an instrument.
3. Identify variables that impact whether a payment is alimony since 1984 and whether a cash payment is deemed made to or on behalf of a former spouse.
4. Determine the tax treatment of housing costs for the family residence noting the impact of ownership by contrasting when the nonoc-

cupying spouse owns the home with when the occupying spouse owns the home.

**5.** Identify what rent or resident cost payments can be alimony when a family residence is jointly owned and occupied by a spouse or a taxpayer is required to make rent payments for a spouse.

**6.** Specify the tax treatment of life insurance premium payments, voluntary payments and payments to a remarried spouse noting advantages and disadvantages to each spouse.

**7.** Determine how to recharacterize otherwise deductible alimony payments as nondeductible, identify whether spouses are members of different households, and identify the alimony pitfall of being required to make payments after a former spouse's death.

**8.** Specify the differences between child support and alimony noting their tax treatment to avoid reporting errors.

**9.** Identify the alimony and child support tax provisions that currently apply from those that applied to instruments executed prior to 1985 by:

**a.** Specifying the pre-1985 alimony requirements, and determining periodic payments and whether certain payments would have qualified under these rules; and

**b.** Recognizing the marital or familial relationship and the similarities and differences in the treatment of child support under current law and previous law.

**10.** Identify the deduction of alimony paid and the reporting of alimony received on the proper forms noting required information.

**11.** Specify the alimony recapture rule for various marital agreements and its impact on the tax treatment of past payments.

**12.** Recognize the use of alimony trusts to realize tax advantage and security, determine the use of annuity contracts, and specify the proper tax treatment of alimony paid by an estate to a former spouse of a decedent.

**13.** Identify the tax treatment of child support and circumstances where a payment will be fixed as child support, and specify events that determine whether a contingency is clearly child-related noting how to rebut this presumption of child support.

**14.** Recognize the COBRA and qualified medical child support order rules by:

**a.** Identifying whether COBRA rules apply to different plans including notice & deadline requirements and specifying situations that may result in a termination of continuing coverage; and

- b. Determining what constitutes “qualified medical child support orders” noting differences with other similar orders and identifying the procedures, requirements and jurisdiction of QMCSOs.

After studying the materials in Chapter 3, answer the exam questions 70 to 99.

**ASSIGNMENT**

**SUBJECT**

**Chapter 4**

**Selected Marital Tax Issues Outside of Divorce**

At the start of Chapter 4, participants should identify the following topics for study:

- \* Marriage penalty
- \* Spousal travel
- \* Dower & curtesy
- \* Joint interests and powers of appointment
- \* Life insurance
- \* Marital deduction
- \* Tax basis for estate assets
- \* Business interests upon death of a spouse
- \* Gift taxes
- \* Social Security survivors’ benefits

**Learning Objectives**

After reading Chapter 4, participants will be able to:

1. Identify the marriage penalty and marriage bonus associated with filing a joint return by:
  - a. Recognizing how standard deductions and bracket breakpoints for some filers follow certain customary ratios; and
  - b. Recalling the effects the 2001 EGTRRA and HR2 had on the standard deductions and bracket breakpoint for married filing jointly.
2. Determine the tax treatment of spousal travel including additional cost limitations and identify the benefits of husband and wife partnerships particularly with regards to Social Security qualification.
3. Recognize the application of federal estate tax on couples and where estate planning may be necessary as a result of marital status including the unique application of dower and curtesy.
4. Specify the treatment of co-tenancies with or without a right of survivorship noting qualified joint interests, recognize the impact on value of a general power of appointment, identify what insurance proceeds are included in the gross estate because of incidents of ownership and

cite the community property issue involved with ownership of life insurance.

5. Determine the impact of the marital deduction on the gross estate noting outright transfer methods and specify the use of a “marital deduction (QTIP) trust” and a “qualified terminable interest trust.”

6. Identify marital deduction variables including deduction limitations and specify the federal income tax treatment and gift tax treatment of non-citizen spouses.

7. Recognize the effect common transactions and community property have on §1014 property basis and the benefits of a bypass trust noting its effect on the marital deduction.

8. Determine the purposes of the federal gift tax noting its computational methods and applicable exclusions, specify the advantages of splitting gifts and the gift tax marital deduction noting warnings as to “excess” gifts and terminable trusts and identify Social Security eligibility for family members of a system participant.

After studying the materials in Chapter 4, answer the exam questions 100 to 120.

### **Notice**

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