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Tax Cuts and Jobs Act’s Treatment of Alimony

By: Paula E. Pitrak, Esq.

In 1942, the Revenue Act first codified treatment of alimony, making it deductible from income for the payor and includable as income for the payee. Federal courts reasoned this decision was intended to relieve the after-tax burden on the payor* and decided that a former spouse (who is receiving regular sums of money from a former spouse) should be regarded as having taxable income as the sole person benefitting from the alimony**.

The Domestic Relations Tax Reform Act of 1984 and the Tax Reform Act of 1986 gave divorcing spouses new tax options. For decades, the payor of alimony was allowed a deduction for those payments pursuant to Section 215(a) of the Internal Revenue Code, and the payee was required to report the payments as income pursuant to Section 71(a) of the Internal Revenue Code. Under this structure, the Internal Revenue Service subsidizes part of the alimony payment if and when the payor was in a higher tax bracket than the payee. This tax subsidy was intended to make easier for the payor his payments of support to his or her former spouse.

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This tax savings eased the burden on the payor for the benefit of both parties, and the federal courts found this a legitimate consideration when setting alimony. Since child support has always been includable as income to the payor and deductible to the payee, it became common for states to calculate child support, based on the parties’ net income, after maintenance adjusted both parties’ respective gross incomes.

Many states have adopted the maintenance formula proposed by American Academy of Matrimonial Lawyers (AAML), which calculates the amount of maintenance by considering Thirty Percent (30%) of the payor’s gross income less Twenty Percent (20%) of the payee’s gross income—which, when added to the gross income of the payee, shall not result in the recipient receiving in excess of 40 percent of the combined gross income. This formula attempted to streamline the amount and duration of maintenance upon the finding that maintenance in appropriate in a specific case.

With the advent of no-fault divorce, many states award maintenance as a means for one party to become self supporting and self sufficient—not as a penalty—considering factors such as the lifestyle enjoyed during the course of the marriage, the parties’ present and future income earning potential, and any impairment of the parties’ present and future earning capacities due to a devotion of time to domestic duties.

On December 22, 2017, Donald J. Trump signed into law the Tax Cuts and Jobs Act (TCJA) —a comprehensive overhaul of the federal income tax code. The repeal of Sections 61, 71 and 215 of the Internal Revenue Code regarding alimony, or maintenance, came as a shock to many practitioners, but this repeal has been in the works for years. In 2014 the U.S. House of Representatives Committee on Ways and Means proposed legislation entitled “The Tax Reform Act of 2014” that included the recommendation of “ending the tax code’s ‘divorce subsidy’ which benefits divorce lawyers while helping to break up families that allow divorcing couples to get a tax break for alimony payments”.

Essentially, maintenance and child support will now be treated the same for federal income tax. For the maintenance recipient who also receives child support, this could mean paying no income tax on any money received from a former spouse, even if the amount totals Forty Percent (40%) of the former spouse’s annual income. States across the country will likely need to modify their maintenance and child support laws to conform to the new federal income tax implications to avoid gross unfairness to spouses who pay both maintenance and child support.


**Paula E. Pitrak** practices family law in Chicago, Illinois. She is an active member of and serves in numerous leadership roles with the American Bar Association, Chicago Bar Association, and Illinois State Bar Association.

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Alaska: The New Frontier for Pet Custody
By: Marie Sarantakis

Approximately 68% of U.S. households own a pet.¹ It has become increasingly common for pet parents to share a meal, trip, and even a bed with their furry children. While pets are being treated more like kids and less like a tangible good, family law statutes throughout the United States fail to treat a dog or a cat any different than a lamp when it comes to divorce. Courts have remained detached from hearing, ruling, or enforcing pet custody and/or visitation arrangements. The household pet is simply another asset to be allocated.

Legally speaking pets in a divorce proceeding have been callously deemed to be personal property, rather than something sentient. The seminal Florida First District case of Bennett v. Bennett summed up pet parents’ rights as follows, “[w]hile a dog may be considered by many to be a member of the family, under Florida law, animals are considered to be personal property. … There is no authority which provides for a trial court to grant custody or visitation pertaining to personal property.” Furthermore the Court goes on to say, “Determinations as to custody and visitation lead to continuing enforcement and supervision problems. Our courts are overwhelmed with the supervision of custody, visitation, and support matters related to the protection of our children. We cannot undertake the same responsibility as to animals.”³ The tenor in Bennett has in essence been uniformly adopted as the approach towards pets throughout the United States. However, Alaska is now chartering a new frontier.

Alaska may have been one of the last States to join the union, but it is the first to treat pets like family in the eyes of the law. On January 17, 2017, Alaska became the first state to enact pet custody legislation.⁴ While this is a quantum leap in and of itself, Alaska took things one step further by instructing the Courts that pet custody disputes are to be decided based on what is in the best interests of the animal, rather than the interests of the parties to the divorce. Courts in years past were hesitant to become entangled in the fray of pet custody and visitation, but now Alaska has codified the Court’s review of an animal’s welfare in family disputes. The Animal Legal Defense Fund has commended Alaska’s approach as being “groundbreaking”.

On January 1, 2018, Illinois recognized pet custody and now Wisconsin legislators are discussing the prospect of enacting a similar law. The legal climate regarding how pets fit into the divorce schema is changing. Practitioners across the nation wait to see if Alaska’s approach will have a significant influence on divorce laws affecting pets throughout the nation.

². 655 So.2d 109, 110 (Fla. 1st DCA 1995).
³. Id.

Marie Sarantakis is the Founding Attorney of Sarantakis Law Group, Ltd. located in the Chicago suburbs. She is Co-Chair of the American Bar Association’s Young Lawyers Division Family Law Committee, an appointed member of the Illinois State Bar Association Young Lawyers Division, and Co-Chair of the Chicago Bar Association’s Law Student Division. To learn more about Ms. Sarantakis, visit www.sarantakislaw.com.

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Primer on Pensions: Maturation and Valuation (Part 2 of 4)
By: Paula E. Pitrak, Esq.

In our previous Newsletter we addressed pension terminology and basic classification, leaving off at the distinction between a vested pension and a matured pension. A vested pension is one in which the Participant has earned certain rights to receive present or future benefits that cannot be taken away from him, even if he quits or is discharged. A matured pension is one in which the Participant has attained an age, or a combination of age and years of service, or satisfied other conditions that are sufficient to entitle him to retire immediately and to begin receiving benefits right away—there is an unconditional right to immediate payment. A plan can be vested but not yet matured, but a matured plan is always vested.

For a plan to be mature, the retirement age must be met. ERISA defines the normal retirement age as the earlier of A: the date a Participant attains the normal retirement age specified in the plan; or B: the later of the date a Participant attains age 65 or the Fifth Anniversary of the time the Participant began to participate in the plan. ERISA defines the earliest retirement age as the earlier of A: the date on which the Participant is first entitled to receive a distribution from the plan; or B: the later of the date a Participant attains age 50 or the earliest date on which the Participant could begin receiving plan benefits if the Participant separated from service (ceased to be employed by the Plan Sponsor). It is important to note that the Alternate Payee may usually begin receiving payments under a Qualified Domestic Relations Order when the Participant attains (or would have attained if he or she has predeceased) the Earliest Retirement Age, whether the Participant actually retires at that time or not.

A defined benefit plan normally requires expert valuation to determine its value, which is a projected amount at retirement based upon the specific plan formula. To determine a cash value from that estimate, an actuary will need to calculate the present cash value from the benefit that the plan estimates to pay at retirement. The actuary will need to determine the amount of the Plan Sponsor contributes each year, and will take into consideration the number of years the Participant worked for the Plan Sponsor, the morality of the Participant; the amount of employee attrition/turnover; the number of employees whom are married or for whom a form of a joint and survivor benefit may be paid; the expected time of payment; interest rate earned on the investments in the fund; and Participant’s salary in his or her last year of employment or the average of several years of salary.

A defined contribution plan is a relatively easy valuation since this type of plan has an individual account balance for the Participant. The value of the plan is the amount contributed to the plan plus any earnings growth or loss. The value can be located on the most recent account statement.

The general consensus is that non-vested pension rights, to the extent that such rights accrued during the period of the marriage, are considered marital property, and a non-vested pension should not be considered entirely marital property, only such portion of the non-vested benefits that are attributable to service performed during the marriage should be included in the marital estate. The value of the non-marital portion of a pension will be valued separately from the marital portion and likely will be considered when determining the distribution of marital property.

The next newsletter will focus on the different ways to distribute the pension values to the parties.
NEWS AND ANNOUNCEMENTS

2018 Section of Family Law Spring CLE Conference
By: Paula E. Pitrak, Esq.

This American Bar Association’s 2018 Section of Family Law Spring CLE Conference will be held from May 9, 2018 to May 12, 2018 in Nashville, Tennessee at the Omni Nashville Hotel, which is located at 150 3rd Ave. S., Nashville, TN 37201.

YLD Assembly and Business Meetings at the ABA Midyear Meeting
By: Paula E. Pitrak, Esq.

This American Bar Association’s Midyear meeting will include the YLD Assembly and Business Meetings. The meeting will be held from February 2, 2018 to February 4, 2018 in Vancouver, British Columbia—registration and hotel accommodations to come.

YLD Spring Conference
By: Paula E. Pitrak, Esq.

This American Bar Association YLD Spring Conference will be held from May 10, 2018 to May 12, 2017 in Louisville, Kentucky—registration and hotel accommodations to come.

2018 ABA Chicago Annual Meeting
By: Paula E. Pitrak, Esq.

This American Bar Association Chicago Annual Meeting will be held from August 2, 2018 to August 7, 2018 in Chicago, Illinois at the Hyatt Regency Chicago.