

LETTER TO THE EDITOR

David Silverman's article in the Summer 2002 *Newsletter* is a worthwhile contribution to the discussion of issues regarding the taxation of spouses going through the painful process of divorce. I would like to expand on two points he made.

Regarding sales of the marital residence, each co-owning spouse has his or her own \$250,000 exclusion under section 121. The special \$500,000 exemption available on a joint return under section 121(b)(2) of the Code applies when only one spouse is the owner but both spouses

have resided in the property for the requisite two years.

Regarding FICA tax on the exercise of nonqualified stock options transferred to the nonemployee spouse on divorce, under Rev. Rul. 2002-22, the income recognized on such exercise "retain[s] its] character as wages of the employee spouse for purposes of FICA." Whether this must be accomplished by a reimbursement agreement between the former spouses or could be accomplished by the employer's placing the funds withheld from the non-employ-

ee in a suspense account until it is determined whether the employee's other compensation exceeds the wage base or could be done by some form of credit to be claimed by the nonemployee spouse on his or her tax return would be worth exploring before the Service issues the ruling contemplated by Notice 2002-31.

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