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JANUARY 2013

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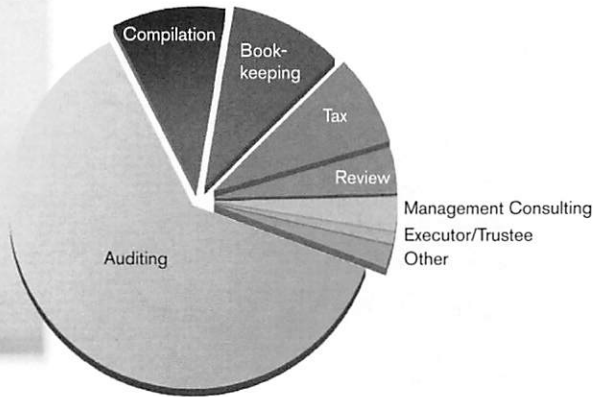
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Family Law Accounting

(When “Death Do Us Part” Is Just Too Far Away)

by David Cantor, CPA

When a couple gets divorced, the biggest issue to resolve usually involves money. Unfortunately, financial issues in a divorce are like an onion. Besides making both parties want to cry, there are often times hidden layers of financial implications that are not obvious at first. This article will touch upon a few of those issues and hopefully make you, as a Forensic Expert, aware of what may lie beneath the surface.

The first step to approaching your assignment is to meet or talk with your client’s attorney. This is a crucial step in that it will lay out the known issues in the case as well as providing you with a timeline of future Court dates or other relevant dates. Realistically, you need to work closely with the attorney to ensure that you both are on the same page. Lack of communication or miscommunication can potentially lead to catastrophic errors for your client and very possibly your ability to collect your fees. Communication is the key ...

Identifying the issues is only the beginning of the accounting process. Besides being expected to adequately prepare schedules, exhibits and reports, you also need to be able to identify other more subtle issues that may exist, but nobody brought to your attention or even knew about. This is where you must have the experience and knowledge in this field before accepting a Family Law engagement.

There are very few hard and fast rules on accounting in Family Law matters. With that said, there is case law, both Arizona and other states, as well as Arizona Statutes (specifically Title 25) that will offer guidance in your work. But it will still be incumbent upon you to apply these resources to your case in the fairest way to present the court with an accurate picture of the financial issues. Remember, *you are an advocate for the court, not your client*. That is the attorney's job.

Let's look at some common issues, with hidden implications:

Support/Maintenance – This is probably one of the most common issues that you will see. Usually it is driven by the income of the parties. But when there is a disparity between income and lifestyle, a Marital Standard of Living may need to be prepared. Additionally, income may be impacted by perquisites paid by a spouse's business.

Employee Stock Options – While it may be easy to identify all stock options, grant dates, vesting dates and strike prices, what about allocation between community property and separate property? Just because an option was granted during marriage doesn't necessarily mean that it is community. What if it was compensation for past services provided prior to marriage, or for future services to be provided after separation? Then an allocation will be necessary.

Personal Residence – While it is not our job to appraise the value of a residence, we may be asked to incorporate an appraisal into a community balance sheet that we are preparing. But what

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if the residence was purchased prior to marriage by one party, but community funds were used to pay down the mortgage? Or, flip it around ... the house was bought during marriage, is titled in both names, but separate funds were used to pay down the mortgage. In both cases, some type of allocation may be necessary to accurately determine the community interest vs. separate property interest in the residence.

Business Valuation(s) – This can be one of the most complex, as well as disputed, issues in a case. Preparing a business valuation requires experience and education. However, besides the basic valuation issues you may be confronted with, you may also be asked to deal with Family Law business valuations issues. What if the business was started prior to marriage? What about personal loans to/from the business? Were any perquisites paid by the business (this not only impacts your value but can also be an important factor in determining support and maintenance)? Is the business more a service business or a capital intensive business? These are just a few factors that can turn a business valuation into a major Family Law issue.

Commingled Funds – If there is separate property monies mixed with community funds, all may not be lost for the separator. Assuming all bank records are available, there is the distinct possibility of carving out a separate property interest in a community account by preparing a Tracing. Believe it or not, the accounting part is the easy step (again,

assuming all records are available). Then what? Every transaction needs to be reviewed and allocated between separate and community. Now this is where it gets complicated; transfers between accounts must maintain their character; or if there were both community and separate funds available, who had the right to buy that stock that went up 10 fold in three days. Oh, and my favorite, after spending weeks preparing a 10-year tracing that included seven bank and brokerage accounts, my client shows up with a document that changes the character of a deposit made in the first year. That one deposit can change every aspect of the tracing from that date forward (make sure when they give you that document they also hand you a check for your fees to adjust the tracing).

The bottom line is that each case has its own unique facts and circumstances and this is what will ultimately dictate how you approach your case. Knowing these facts and circumstances, working closely with your attorney and having experience in Family Law accounting will enable you to provide the best service possible to your client, but also maintain your professional integrity and respect of your peers. **AZ CPA**

David Cantor is the founder of Forensic Accounting Consulting, LLC and has more than 15 years of Family Law accounting experience in both Arizona and California. Cantor can be reached at david@forensicacctconsult.com or (480) 620-8486. You can also visit his website at www.forensicacctconsult.com.