

# Your Practice and Divorcing Clients

---

JUNE 2021

BETH LOGAN, EA

LOGAN@KOZLOG.COM

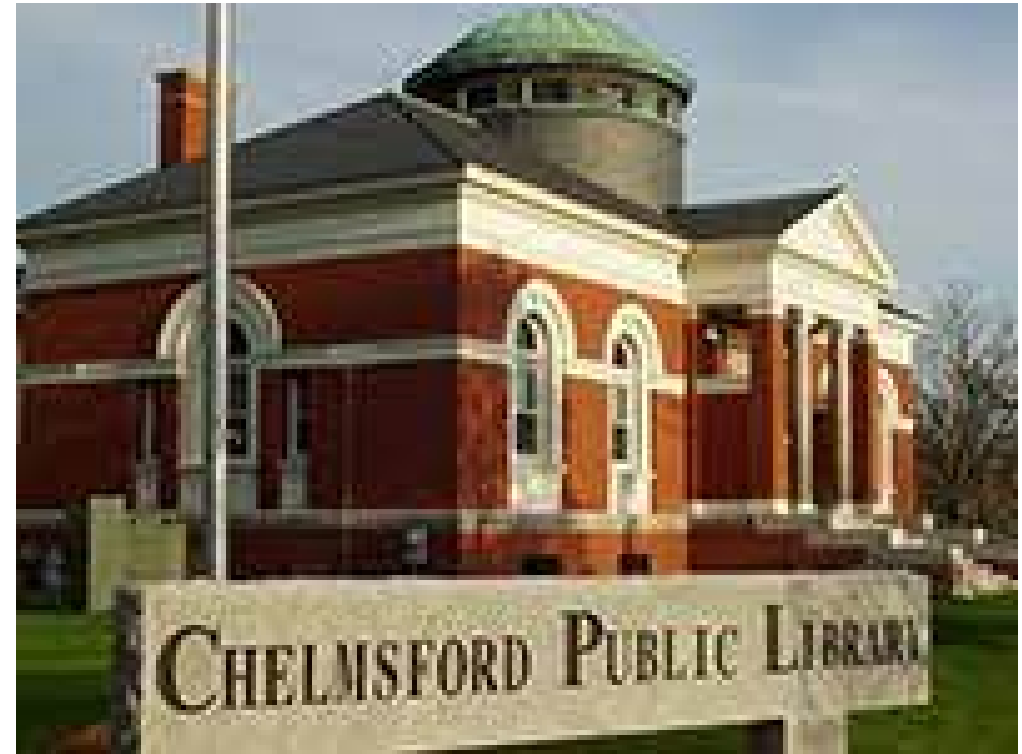
# About Me

---

- Enrolled Agent since 2013
- Business in Chelmsford, MA but clients are around the world, literally
- Author of 3 books on taxes (only 1 is still published)
- Presenter and article author on tax topics
- Education in Electrical Engineering (BEE and MS) and MBA
- Still married – he's too scared to divorce me now ;-)

# Chelmsford

---



# Learning Objectives

---

- Understand when you need a signed conflict of interest statement
- Make yourself a resource of information
- Learn how to assist lawyers during the divorce to provide the best situation for the taxpayers
- Determine when tax items need to be addressed
- Translate between the lawyer and the tax code

# Circular 230

---

## ***§ 10.29 Conflicting interests***

*(a) Except as provided by paragraph (b) of this section, a practitioner shall not represent a client before the Internal Revenue Service if the representation involves a conflict of interest.*

\* section b allows representation if clients agree and some other conditions

# Conflict of Interest

---

- Examples of conflicts
  - Preparing a joint tax return for a divorcing couple
  - Preparing tax returns for both recently divorced ex-spouses
  - Helping a divorcing couple on financial aspects
- If appropriate
  - Can represent if both spouses agree
  - Able to be effective for both
  - And not prohibited by law

# Pros and Cons

---

- Pro
  - Easy to make sure they align on itemizing, alimony paid, children claimed, carry overs, joint assets, etc.
- Con
  - Allocations likely to benefit one spouse more
  - Easy to be caught in the disputes and/or blamed for everything
- Others?

# How Can You Help?

---

- You are a resource of great information
  - Tax knowledge
  - Knowledge of financial assets and other property
  - Issues that need to be resolved in the divorce decree
  - Using POA or form 8821 to monitor account at IRS
  
- Others?



# Assisting Divorce Attorneys

---

- Reviewing tax returns for attorney
  - You are likely to spot more than they do
- Asset allocation for best post-tax wealth
- Form 8332 – high income earner might not benefit
  - Calculate value of passing CTC to lower income earner

# Before-tax Division of Assets

---

		<b>Before Tax Value</b>	
	<b>value</b>	<b>Kelly</b>	<b>Drew</b>
<b>house</b>	\$320,000		\$320,000
<b>cash</b>	\$20,000	\$10,000	\$10,000
<b>investments</b>	\$180,000	\$160,000	\$20,000
<b>401K</b>	\$260,000	\$240,000	\$20,000
<b>Roth IRA</b>	\$40,000		\$40,000
	<b>\$820,000</b>	<b>\$410,000</b>	<b>\$410,000</b>

# Issues – Value of Assets

---

	<b>Kelly</b>	<b>Drew</b>			
<b>Income</b>	\$165,000	\$15,000			
<b>Maximum tax rate</b>	24%	10%	After standard deduction		
<b>Capital gains rate</b>	15%	0%			
<b>Effective tax rate</b>	14%	2%			

# After-tax Value of \$1,000 Assets

---

Asset Type	Kelly	Drew
cash	\$1,000	\$1,000
house	\$1,000	\$1,000
Roth IRA	\$1,000	\$1,000
ST investments	\$1,000-(gains *.24)	\$1,000-(gains *.1)
LT investments	\$1,000-(gains *.15)	\$1,000
401K - now	\$660	\$900
401K - retirement	\$760	\$900

\* Less if selling due to expenses

\* 10% penalty to Kelly, QDRO for Drew

# Post-Tax Value if Split “Evenly”

		Before Tax Value		After tax value	
	value	Kelly	Drew	Kelly	Drew
<b>house</b>	\$320,000		\$320,000		\$300,800
<b>cash</b>	\$20,000	\$10,000	\$10,000	\$10,000	\$10,000
<b>investments</b>	\$180,000	\$160,000	\$20,000	\$157,000	\$20,000
<b>401K</b>	\$260,000	\$240,000	\$20,000	\$182,400	\$18,000
<b>Roth IRA</b>	\$40,000		\$40,000		\$40,000
	\$820,000	\$410,000	\$410,000	\$349,400	\$388,800

\$62,200 goes to taxes and \$19,200 to home selling expenses

# Post-Tax Value if Split Differently

		Before Tax Value	
	value	Kelly	Drew
house	\$320,000	\$320,000	\$0
cash	\$20,000	\$20,000	\$0
investments	\$180,000	\$26,000	\$154,000
401K	\$260,000	\$0	\$260,000
Roth IRA	\$40,000	\$40,000	\$0
	\$820,000	\$406,000	\$414,000

\$26,488 goes to taxes and \$19,200 to home selling expenses

# Alimony After TCJA

---

- Pre-TCJA
  - Income to recipient
  - Deduction to payer
- Post-TCJA
  - No tax affect
  - But what about the states
- States depend
  - Some conform to TCJA
  - Some do not
  - Can use Section 71 to conform

# IRC Section 71(b)(1)(B)

---

This section was struck for TCJA but applies to states following IRC before January 1, 2018:

- (a) Gross income includes amounts received as alimony or separate maintenance payments.
- (b) For purposes of this section -
  - (1) In General — The term “alimony or separate maintenance payment” means any payment in cash if -
    - (B) - the divorce or separation instrument does not designate such payment as a payment which is not includible in gross income under this section and not allowable as a deduction under section 215,



# Determining Tax Items to Address in Divorce

---

- Clients have come to me after a divorce with items never addressed in the divorce including:
  - Carry over capital losses for investments split between spouses
  - State tax refunds from previous year (if itemized)
  - Deduction for state taxes paid

# Health Insurance

---

- Health insurance coverage
  - Joint policy through employment versus covering costs
- Affordable Care Act Premium Tax Credit
- Health insurance payments from joint policy of a sole proprietor must now be prorated for business owner and dependents only

# ACA Rules

---

- MFS – allocation must be 50% each
- If divorce is finalized, allocation is **ONLY FOR MONTHS THEY WERE MARRIED**
  - Allocation is per their agreement
  - If not agreement, allocation is 50% each
  - May want to allocate more to lower income but watch for poverty level
- Family size is based on dependents listed on return
  - Child on return through form 8332 (non-custodial) counts as member of family

# Sole Proprietor Health Insurance

---

- Kelly and Drew with 2 children
- Drew has Sch. C income and has a family policy
- Before divorce
  - Schedule 1, Line 16
  - \$18,000
- After Divorce
  - Schedule 1 Line 16
  - \$13,500
- Drew is paying the \$18,000 but only getting the deduction of \$13,500

# Translating the divorce decree to tax law

---

- Clients often do not understand the divorce decree and applications to tax law

# Sample Agreement #1

---

The parties shall file their state and federal income taxes jointly for calendar year 2020 and shall divide evenly any refunds received or taxes due. Commencing with the calendar year 2021 tax year, the parties shall file individually.

# 1040 Declaration

---

*Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete.*

*Declaration of preparer (other than the taxpayer) is based on all information of which preparer has any knowledge.*

# Sample Agreement #2

---

The Husband shall have the right to claim the child as a dependent on his income tax return in year 1 and every year thereafter until such time as the Wife earns \$XX,000.00 in a calendar year. At that time, the parties will alternate claiming the child on their individual tax returns beginning with Wife.

2 issues

- Sharing tax returns
- Form 8867



# Head of Household Rules

---

- The IRC (section 2b) defined HOH as an individual who is not married and has a qualifying child or dependent living with them over half the year.
  - The individual can be married but living separately from the spouse for the last 6 months of the year or longer.
- A qualifying child is:
  - a son, daughter, grandchild, minor sibling, niece, or nephew;
  - living in the same home as the taxpayer for more than half the year;
  - is under 19 years old or under 24 years old and a full-time student or is permanently and totally disabled (section 22(e)(3));
  - does not provide over half of their own support; and
  - is not filing a joint return.

# Form 8332

Form **8332**  
(Rev. October 2018)  
Department of the Treasury  
Internal Revenue Service

## Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent

▶ Attach a separate form for each child.  
▶ Go to [www.irs.gov/Form8332](http://www.irs.gov/Form8332) for the latest information.

OMB No. 1545-0074

Attachment  
Sequence No. **115**

Name of noncustodial parent

Noncustodial parent's  
social security number (SSN) ▶

**Note:** This form also applies to some tax benefits, including the child tax credit, additional child tax credit, and credit for other dependents. It doesn't apply to other tax benefits, such as the earned income credit, dependent care credit, or head of household filing status. See the instructions and Pub. 501.

### Part I Release of Claim to Exemption for Current Year

I agree not to claim an exemption for

Name of child

for the tax year 20\_\_.

Signature of custodial parent releasing claim to exemption

Custodial parent's SSN

Date

**Note:** If you choose not to claim an exemption for this child for future tax years, also complete Part II.

### Part II Release of Claim to Exemption for Future Years (If completed, see **Noncustodial Parent** on page 2.)

I agree not to claim an exemption for

Name of child

for the tax year(s) \_\_\_\_\_.

(Specify. See instructions.)

Signature of custodial parent releasing claim to exemption

Custodial parent's SSN

Date

### Part III Revocation of Release of Claim to Exemption for Future Year(s)

I revoke the release of claim to an exemption for

Name of child

for the tax year(s) \_\_\_\_\_.

(Specify. See instructions.)

Signature of custodial parent revoking the release of claim to exemption

Custodial parent's SSN

Date

# Other Credits and Deductions

---

- HOH
- CTC
- Dependent Care Credits
  - Only to HOH
  - But what if we split the cost each year?
- Tuition Credits and Deductions
  - Only to HOH
- Affordable Care Act Premium Credits
  - Includes all children even if CTC only (and their income)

# Stimulus Payments

---

- Pre-paid based on 2018 or 2019 returns
- Kelly was custodial parent and claimed child in 2019 and 2021
  - Received all 3 stimulus payments
- Drew was custodial parent and claimed child in 2020
  - Received 1<sup>st</sup> (\$500) and 2<sup>nd</sup> (\$600) stimulus payments via recovery rebate credit
  - Will not get 3<sup>rd</sup> because based on 2021
- What if Drew filed 2020 early?
  - Likely got 3<sup>rd</sup> for child.
- Double dipping -- unfortunately

# New CTC

---

- Includes 17 year olds
  - But many divorce decrees already settled with expectation of ODC instead of CTC
- Credits
  - CTC was \$2,000 for children 16 or younger, income limit of \$200k (\$400k MFJ)
  - New CTC is \$3,600 (under 6 yr old) and \$3,000 (6-17), income limit is \$75,000 (\$150,000 MFJ)
    - Phases out
    - Can get old CTC is don't qualify for new CTC

# Advanced CTC

---

- Payments of 1/12 July – December
- Remaining on tax return
- Based on 2020 return
- What about shared custody
  - Opt-out!!!!

# Sample Agreement #3

---

2. Should there be issued a deficiency assessment in connection with any joint tax returns (heretofore or hereafter filed), the Party notified thereof shall promptly notify the other in writing. The Party whose error or omission shall have caused said deficiency shall pay the amount ultimately determined to be due thereon, together with interest and penalties, if any, and any and all other expenses that may be incurred in connection therewith should said Party elect to contest said deficiency assessment.

# Sample Agreement #4

---

- Background: Wife “owns” sole proprietorship allowing it to be considered a woman-owned business. Husband does the majority of the work.
- Divorce Decree: Husband assumes ownership of business and residential home. Wife receives some compensation and both vacation condos.
- Filing of last return as a couple was left undecided.



# Other Issues

---

- Couple decides to get an annulment
- Amended returns
  - Costly to prepare
  - Likely to owe
- HOH rules
  - Children go to the parent who earns the most unless you can prove other parent paid most of household expenses

# Other Issues

---

- Child support is set at \$1000/month. If provider's adjusted gross income rises above \$180,000, then child support increases by . . .
  
- What about remarrying and the new spouse's income, SS# and children showing up on the tax return?

# Questions?

---

BETH LOGAN

TAXES@KOZLOG.COM

978-710-5361

# Example 5: Self-employed

---

Self-employed with \$35,000 in profit

HoH with one child

\$2000 put in retirement

\$4800 in premiums of which half is APTC

# Worksheet calculations

Worksheet W		
income (line 22, 8b, and non-taxed SS)	\$35,000	
foregin income	\$0	
<u>less some deductions</u>	<u>\$2,000</u>	
income less deductions	\$33,000	
Specified Premiums	\$4,800	\$400/mn
APTC	\$2,400	\$200/mn
excess premiums paid by SE (line 5-6)	\$2,400	
household income	\$30,600	
	\$600	(\$300 if single)
	\$30,000	
poverty level	\$15,510	
	193.42%	If >200%, then . . .
excess premiums +\$600	\$3,000	
smaller of line above or line 5	\$3,000	

# Worksheet calculations - continued

---

Worksheet X	
from Worksheet W	\$3,000
profit	\$35,000
profits from all businesses	\$35,000
	1
1/2 FICA	\$2,678
SE retirement	\$2,000
modified business profit	\$30,322

# Form 8962

Form 1095-A	Premiums	SLCSP	APTC
Annual amounts	\$4800	\$5200	\$2400

Annual Calculation	A. Premium Ant (Form(s) 1095-A, line 33A)	B. Annual Prem Ant of SLCSP (Form(s) 1095-A, line 33B)	C. Annual Contribution Ant (Line 8a)	D. Annual Max Prem Assistance (Sub C from B)	E. Annual Prem Tax Credit Allowed (Smaller A or D)	F. Annual Adv Payment of PTC (Form(s) 1095-A line 33C)
<b>11 Annual Totals</b>	4800	5200	1853	3347	3347	2400

Premium purchased price = \$4,800

2<sup>nd</sup> lowest cost silver plan = \$5,200

Amount taxpayer is expected to spend = \$1,853

$\$5,200 - \$1,853 = \$3,347$  Credit taxpayer is supposed to get based on income

\$2,400 = credit taxpayer received based on expected income

\$3,744 credit taxpayer will receive between APTC and credit from 1040

# Issue

---

Premium purchased price = \$4,800

\$3,744 credit taxpayer will receive between APTC and credit from 1040

\$2,400 claimed as deduction

Credit plus deduction > premiums

Start over using Worksheet X income until changes are <\$1



# Suggestion

---

Take income less total premiums

- If >400% of poverty level, STOP as no credit can be taken
- Deduct all of the premiums

If all non-specific premiums are > company profits, STOP and take the non-specified premiums as deductions then calculate credit using the standard method

Otherwise . . .

- Have fun!