Forensic Accounting Today

Newsletter of Ron J. Anfuso, CPA/ABV, An Accountancy Corp.

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Do You Need a Financial Expert to Speak to Your Bar Association or Group?

Many of you who are personally acquainted with me know I have two professional passions... tackling challenging Forensic Accounting cases and delivering presentations to law groups. Over the past year, I have had the privilege of speaking to several organizations either as a solo speaker or as a panel member. These included the *LA County Bar Association Family Law Section* (*Annual Symposium*) (panel member), *State Bar of California Family Law Section* (webinar), *Pasadena Bar Association Tax Section*, *Women Lawyers Association* (webinar), and the *Association of Certified Family Law Specialists* (panel member).

If you are considering having a Forensic Accountant address either your bar event or study group, contact me. I will tailor your presentation to cover exactly what your group wishes me to address.

Topics I most frequently speak about include:

- Moore/Marsden and other property apportionment issues
- Marital Standard of Living and Support Needs Analysis
- Financial Specialists and Collaborative Law
- Gross Cash Flow Available for Support
- DissoMaster™
- Divorce Tax Issues, *and*
- Business Valuations

Of course, there are numerous other Forensic Accounting topics I can speak about. To discuss your group's needs, call or send me an e-mail.

Dividing Pension Plans in Divorce and Legal Separation Cases in California

By Ron J. Anfuso, CPA, ABV, CFF, CDFA, FABFA*

In the State of California, retirement benefits are considered a form of employment compensation. Thus, the community estate owns the pension rights that pertain to employment during the marriage. This holds true regardless whether the pension benefits have vested or matured. The division of pension benefits between the separate and community estates must be *"reasonable and fairly representative of their relative contributions"* (Marriage of Poppe, 1979; Marriage of Lehman, 1998).

Vested Pensions and Separation and Divorce

A pension becomes *vested* when the employee completes the required number of years of employment to earn the right to receive pension benefits under the provisions of the plan. The number of years on the job it takes for a plan to become vested varies, but is typically between three and 10 years. Once a pension has vested, benefits accrued during the marriage are considered community property. Thus, if the couple married prior to the *participant spouse's* start date of employment, the *alternate spouse* is entitled to receive 50% of the benefit. Should the marriage occur after the date of beginning employment, the alternate spouse is entitled to 50% of the pension's accrued value from the date of the marriage to the date of separation.

Let us say that the participant spouse's pension became vested after six years of employment and he/she had been employed for eight continuous years (96 months) at the time of separation. The couple married 24 months (two years) after the participant spouse's commencement of employment. In this case, 75% of the pension's benefit would belong to the community estate. Thus, the alternate spouse would be entitled to receive 50% of the pension benefits after two years of marriage. This calculates to 37.5% of the total pension benefit (50% x 75%).

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* For an explanation of these titles, please visit our website or request a copy of Issue 3 of *Forensic Accounting Today*.

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Non-Vested Pensions and Separation and Divorce

When an employee has not completed the required number of years of employment to receive pension benefits under the terms of the plan, the pension is considered *non-vested*. Non-vested pensions are, in fact, a form of deferred compensation for work performed commencing at the start date of employment.

In contrast to the vested scenario, let us say the date of separation occurred after five years of marriage, thus the pension had yet to become vested. The courts will consider that although the plan had not yet vested, the pension has value, as a portion of the benefit must have been accumulated during the initial four years and 364 days of employment. Thus, although a non-vested pension will not be entirely considered community property, a portion of the non-vested benefits would be credited to the employment that occurred during the marriage.

Determination of the value of the marital portion of a non-vested pension can be complex. The problems concerning calculating the exact value, however, can be averted by deferring payment to the alternate spouse until the time the pension becomes vested. Should the spouses choose not to defer payment, you may wish to request assistance from your Forensic Accountant. In making his/her calculations, the Forensic Accountant will take into consideration the length of the marriage, when the pension will become vested and the contributions of the parties to the pension.

Risk Factors Concerning Non-Vested Pensions

There are potential circumstances to consider in determining whether to defer distribution. One such issue is the possibility that the participant spouse's employment could terminate prior to becoming vested. Due at least in part to current economic conditions, it is not uncommon today for an employer to file bankruptcy or even liquidate prior to a portion of their employees' pension plans becoming vested. Although the *Pension Benefit Guaranty Corporation's t*ask is to fund any such losses, it has become increasingly underfunded and, in many cases, is only able to compensate a percentage of earned benefits. A participant spouse who is concerned that the pension may never become vested might be in a preferable position to share the risk.

Concluding Remarks

There are additional factors to consider concerning pensions in a marriage dissolution. Among them include early retirement and the limitations placed on the California Courts concerning Qualified Domestic Relations Orders (QDROs) by the Employee Retirement Income Security Act (29 U.S.C. section 1001, et seq.). We will discuss these issues in a future edition of ***Forensic Accounting Today.***