



The Consideration of Separate Property in Divorce

By Roy H. Kvalo Director of Litigation & Valuation Services

Individuals contemplating divorce should understand that not all assets owned in a marriage may be subject to equitable distribution. This may be good news if you are the asset-owning spouse and perhaps bad news if you are not. While the marital estate would generally include all property that the parties obtained individually or together during the marriage, premarital assets, gifts and inheritance made to only one spouse before or even during the marriage, can oftentimes be excluded or considered immune from equitable distribution. These assets are sometimes referred to as separate property.

However, assets that may ordinarily be considered separate are sometimes transformed to marital asset status by the process of transmutation. Transmutation occurs when separate assets are used in such a manner as to lose their separate status and are made available jointly, to the couple. This could be as simple as the asset-owning spouse making transfers between inherited cash accounts to a joint checking account. Immunity for certain assets can also be lost through title changes and even verbal promises that may have been made throughout the marriage.

Generally, the spouse asserting immunity for certain assets that would ordinarily be subject to equitable distribution has the burden to demonstrate that the asset is in fact separate. In a complex matrimonial case, experts – oftentimes CPAs with specific training – are engaged to unravel the sometimes hopelessly tangled financial records of the couple, in order to assist in proving or disproving claims related to separate assets. The tracing procedures and approaches

that the experts may utilize include “direct tracing” of specific assets as well as the specific identification of exempt or immune assets. Under the concept of “direct tracing” and “identical sum inference” one considers the subsequent purchases of assets from separate, exempt and immune funds such as real estate and other investments as continuing to be separate, exempt and immune property.

If a direct tracing and specific identification are impossible or impracticable, the expert may consider the application of the “Family Expense Doctrine” including the “marital property out first method,” “the minimum balance method” and “identical sum inference.” Under these methodologies, the funds remaining in a separate account would be considered separate property, immune or exempt funds to the extent that the initial funds were separate, immune or exempt and the remaining balance does not exceed the initial amount except for reasonable growth or earnings.

Experts look for guidance on the issue of analyzing separate property from New Jersey case law, specifically *Painter v. Painter*, 65 N.J. 196 (1974) and other significant cases. Immunity can have far-reaching consequences as once immunity is established for a specific asset, any passive increase in value of that asset would also be considered immune. The exception to this would be in the event that it could be demonstrated that the increase in value was attributable in whole or in part to the efforts of the non-titled spouse. With regard to matters involving separate assets, the individual facts and circumstances will dictate the expert’s approach.

NEW FILING REQUIREMENT FOR SMALL NON-PROFIT ORGANIZATIONS

Non-Profit Organizations that have gross receipts of less than \$25,000 are now required by the IRS to electronically file informational Form 990-N (“e-postcard”). This is effective for years beginning after December 31, 2006. It will require basic information such as the organization’s name, address, employer identification number, website and a statement indicating its gross receipts are less than \$25,000. Previously, organizations with gross receipts of less than \$25,000 were not required to file any 990 forms with the IRS. Failure to file any non-profit tax returns for three consecutive years will result in revocation of the organization’s exempt status. For additional information, please contact Lynn A. Conover, CPA or Kimberly C. Melski, CPA.

“KIDDIE TAX” CHANGES

A major revenue raiser in the 2007 Small Business Tax Act impacts the “kiddie tax” calculation. Beginning with 2008 tax return filings, the age limit for the tax calculation has increased by now including: (1) all children under age 19 (previously under age 18), and (2) students under age 24.

The computation for the kiddie tax remains the same. The net unearned income (interest, dividends and capital gains) of the child (for 2007, amounts over \$1,700) is taxed at the parents’ marginal tax rates, if the rates are higher than the child’s tax rates.

Here are some planning issues to consider. To begin, since the change doesn’t take effect until 2008, investment changes should be made in 2007. For example, consideration should be given to selling

assets of students age 19 and over before 2008, especially if assets are to be used for college education. The cash generated from sales could be transferred to a college savings plan (529 plan) for the short term.

Next, assets that normally would have been sold during the college years could be held until the student reaches age 24. Student loans would possibly be needed to carry out this plan. However, the maximum tax on capital gains imposed on any stock sales might rise from 15 to 20 percent after 2010.

More bad news – in 2008 capital gains for those in the 15 percent or lower brackets drops to zero. The zero rate is scheduled to continue through 2010. The law prevents those subject to the kiddie tax from using the zero rate.

DEADLINES EXTENDED FOR BOTH 2006 HOMESTEAD REBATE AND SENIOR FREEZE APPLICATIONS

New Jersey homeowners and tenants still have a chance to apply for the 2006 Homestead Rebate, as do those eligible for the 2006 Senior Freeze (Property Tax Reimbursement). Governor Jon S. Corzine and State Treasurer Bradley Abelow announced that the deadline for filing both the 2006 Homestead Rebate and the 2006 Senior Freeze applications has been extended from August 15 to October 31, 2007.

Rebate checks for eligible homeowners who file their applications by the original August 15, 2007, deadline are scheduled to be mailed in the fall; those filed between August 16 and the extended deadline of October 31, 2007, will be issued as quickly as possible, but may not be included in the initial fall distribution.



The Curchin Group to Host Second Annual Indoor Miniature Golf Tournament for Charity

Curchin will host its second annual “Curchin Open,” a nine hole miniature golf tournament for charity. The event will take place indoors at Curchin’s Red Bank office on October 22, 2007 from 4:00 to 7:00 p.m. Player fees are \$20.00 per person, which includes one round of golf, food and beverages. There will be a practice putting green and a fantasy golf scratch-off competition. All proceeds from the event will benefit two locally-based charities – Parker Family Health Center and Monmouth County Arts Council.

Curchin is offering sponsorship opportunities to local businesses that would like to help the selected charities as well as raise their profile in the community. For further information about sponsoring the 2nd Annual Curchin Open, please contact Peter Pfister at ppfister@curchin.com or at 732.747.0500 or visit the Curchin Web site at www.curchin.com.

Curchin Director Admitted to the New Jersey Roster of Mediators for Family Law

Roy H. Kvalo, the firm’s Director of Litigation & Valuation Services, has been admitted to the roster of Mediators for Economic Aspects of Family Law Cases by the Administrative Office of the Courts for the State of New Jersey. With this admission, Kvalo, who is a Certified Public Accountant and Certified Valuation Analyst, will help New Jersey families that are seeking separation or divorce to resolve their financial differences. Mediation is mandatory for all family law cases in the State of New Jersey.



ROY KVALO
DIRECTOR OF LITIGATION &
VALUATION SERVICES

MARK YOUR CALENDARS

WE HAVE THREE MAJOR EVENTS PLANNED FOR THE FALL. PLEASE MARK YOUR CALENDARS NOW!



Second Annual Curchin Open



New Jersey Economic Review and Outlook

Dr. Joseph J. Seneca, Professor at the Edward J. Bloustein School of Planning and Public Policy at Rutgers University, will be our featured guest speaker to discuss his views and answer your questions on the state of New Jersey's economy. Light refreshments and beverages will be served.

Date: October 3, 2007
Time: 6:30 – 8:00 p.m.
Place: Shadowbrook, Route 35, Shrewsbury, New Jersey

For further information, contact Carolyn Kvalo at ckvalo@curchin.com or at 732.747.0500.

The Second Annual Curchin Open

Back by popular demand – *The Second Annual Curchin Open miniature golf tournament for charity.* Come putt around with us at our Red Bank office to help raise money for Monmouth County Arts Council and Parker Family Health Center. We will have a nine hole miniature golf course, refreshments, prizes, and a scratch-off Fantasy Golf competition.

Date: October 22, 2007
Time: 4:00 – 7:00 p.m.
Place: The Curchin Group, 125 Half Mile Rd. Red Bank, NJ 07701

If you are interested in sponsoring and/or attending the event, please contact Peter Pfister at ppfister@curchin.com or at 732.747.0500.

Annual Curchin Tax Round-Up

Don't wait until Winter 2008 to learn about how recent legislation will change your 2007 tax position. Join our presenters, Curchin Partners Lynn Conover and Peter Pfister, and the rest of the Curchin team at our Annual Tax Round-Up for a brief presentation, question and answer session, and light refreshments.

Date: November 14, 2007
Time: 6:30 – 8:00 p.m.
Place: The Lincroft Inn, 700 Newman Springs Road, Lincroft, New Jersey

For further information, contact Lynn Conover at lconover@curchin.com or at 732.747.0500.

CURCHIN NEWS

Two Curchin Senior Professionals Present at the Medical Society of New Jersey

Partner, Lynn A. Conover, and Director, Roy H. Kvalo, spoke to the Practice Managers Section of the Medical Society of New Jersey at the Society's conference center in Lawrenceville, New Jersey on June 19, 2007. Conover's topic, entitled "Financial Statements – Every Picture Tells a Story," enlightened the 75 attendees on the various types of financials and supplemental statements and tools to measure efficiency; why physicians need financial statements; and what they should do when they receive them. Kvalo, who is Curchin's Director of Litigation & Valuation Services, spoke on "Valuing a Medical Practice," which explained the reasons to value a practice; what buy/sell agreements are; and why medical practices are different from other businesses.

We are pleased to announce that Senior Accountant Michael T. Adago passed the Uniform Certified Public Accountant ("CPA") Examination.

★ FEATURED EMPLOYEE



From left to right: Lisa Noll, Charles Noll, Jr., Carole Purdon and Cheryl Agostinacchio

"I love my job! We are a family," exclaimed Carole Purdon when asked about her position at The Curchin Group. Purdon, an almost 17 year veteran of the firm, is the administrative assistant to Lynn Conover, Doug Stives and Kim Melski. She is also a primary point of contact for Curchin 1031 Exchange, LLC, which is a division of The Curchin Group that serves as a qualified intermediary for 1031 Like-Kind Exchanges.

"Carole is one of Curchin's biggest fans. Our entire team appreciates her knowledge of our business and passion for the company," commented Bob Fouratt, Curchin's Managing Partner. When not with her office family, Carole enjoys spending time with her husband, Woody, three children (pictured above with Carole) and seven grandchildren.



CURCHIN

Celebrating over 50 years in Monmouth County, New Jersey, The Curchin Group helps small to mid-sized businesses and individuals reach their financial goals through providing a broad range of Assurance; Tax; Financial Planning; and Business Advisory Services. The firm is dedicated to giving solid financial advice, sustaining long-term relationships with its clients and employees and giving back to the surrounding community. For more information about Curchin, please contact Bob Fouratt at 732.747.0500 or bfouratt@curchin.com

From left to right: Bob Fouratt; Doug Stives; Dave Ferullo; Lynn Conover; Carolyn Kvalo; Peter Pfister

The Curchin Group LLC

Assurance Services :: Tax :: Financial Planning :: Business Advisory

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