TAX TRENDS AND DEVELOPMENTS

Court of Appeals Rules on Double-Dipping Issue

Fort v Fort, Mich App No. 351568 (4/22/21) – Unpublished

By Joseph W. Cunningham, JD, CPA

Facts

H and W were divorced in 2019 after 14 years of marriage and three children.

- Per their agreement, W was a stay-at-home mom.
- H owned and worked at a business (Company), which was valued for the divorce settlement.
- The trial court used the appraised value of the Company and ordered H to pay W spousal support.
- H appealed, claiming that the property award and spousal support award, taken together, "constitute an impermissible "double-dip" that results in an inequitable outcome."

Court of Appeals Decision (Unpublished)

- The Court of Appeals (Court) noted that "double-dipping" – or tapping the same dollars twice – refers to situations where a business or professional practice is valued by capitalizing its income, some or all of which is also treated as income for spousal support.
- The Court referred to the published *Loutts* case (*Loutts v Loutts*, 298 Mich App 21 (2012), in which the Court stated "[s]pousal support does not follow a strict formula" and "there is no room for the application of any rigid and arbitrary formulas when determining the appropriate amount of spousal support."
- Thus, the Court in *Loutts* "declined to adopt a bright-line rule" with respect to double-dipping.
- The *Loutts* decision is consistent with preceding Court of Appeals cases on the issue.
- However, the Court in *Loutts* indicated that if an appropriate spousal support award can be made without double-dipping, then such should be done.
- The Court in the *Fort* case stated that it was unclear whether the trial court engaged in an inequitable "double-dip" because it did explain how it calculated spousal support.
- Thus, the Court remanded the case so that the trial court could make factual findings concerning the relevant factors in a determination of spousal support.

Comments on the Case

- The Court once again affirmed that spousal support is the be determined based on the factors set forth in *Sparks v Sparks,* 440 Mich App 141, (1992) and in *Olson v Olson,* 256 Mich App 619 (2003).
- In doing so, income used in valuing a business or professional practice should not **automatically** be excluded from income for spousal support to avoid double-dipping.
- However, if a proper balancing of the parties' needs and income, taking all relevant circumstances into account, can be achieved without double-dipping, then such should be done in determining spousal support.

About the Author

__Joe Cunningham__ has over 25 years of experience specializing in financial and tax aspects of divorce, including business valuation, valuing and dividing retirement benefits, and developing settlement proposals. He has lectured extensively for ICLE, the Family Law Section, and the MACPA. Joe is also the author of numerous journal articles and chapters in family law treatises. His office is in Troy, though his practice is statewide.