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Recent IRS Ruling Confirms Tax Treatment of Restricted Stock in a Divorce

Melville, NY...

Financial advisor and wealth manager Charles Massimo, president of CJM Fiscal Management (www.cjmfiscal.com, Melville, NY), recently alerted clients and others regarding the IRS Private Letter Ruling 201016031 in which the agency confirmed the tax treatment of restricted stock pursuant to a divorce decree.

The ruling, which stemmed from a request by a non-employee spouse who had received unvested restricted stock as part of a divorce settlement agreement, confirms that the division of restricted stock after vesting in accordance with the domestic relations order *would not be a taxable event*. In addition, PLR 201016031 noted that *the income attributable to the stock allocated to the spouse would be includible in the non-employee spouse's gross income regardless of whether the company reported such income to her on Form 1099-MISC*. It is important to note that under IRC 1041, there is no gain or loss recognized in the transfer of property to a former spouse, only if the transfer is incident to a divorce (i.e., a transfer of property within one year after the date in which the marriage ceases or a transfer of property that is related to the cessation of the marriage).

According to Massimo, "This ruling is important in confirming what tax treatment – the tax consequences and reporting requirements - can be expected upon the division of restricted stock in conjunction with a divorce. In the particular case which led to the ruling, the company's terms for its long-term incentive plan, under which the restricted stock was granted, did not allow the transfer of this stock until vesting even in the case of a divorce."

Massimo noted that in order to receive the tax treatment as outlined in PLR 201016301, the proper language must be included in the divorce decree. Additionally, the court order must be consistent with the terms of the long-term incentive plan under which the compensation (i.e., restricted stock) is granted. He recommended that companies guided by their accountants and attorneys, review their current policies associated with dividing equity awards in a divorce situation to avoid any unintended consequences.

Not covered in the ruling was who bears the FICA tax cost associated with the restricted stock, although IRS Notice 2002-31 indicates that FICA is due upon the exercise of the options by the non-employee spouse to the same extent that the options had been exercised by the spouse.

For more information on this topic, call CJM Fiscal Management at: 631-777-1030 and visit: www.cjmfiscal.com