**Navigating Hidden Dangers of Child Support, Alimony and Deductibility**

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There are three primary types of support payments you may be ordered to pay in a divorce or parentage action in the Circuit Court of Cook County. The first and most common type is child support, which is a payment amount based on the net income of the non-custodial parent and subject to statutory guidelines. The second type of support is maintenance (formerly alimony) which is payable from one spouse to the other. There is no hard and fast rule or formula to determine a maintenance award. The third type of support obligation is unallocated support, a combination of child support and maintenance. Maintenance and unallocated support are only available in divorce proceedings. These matters are all determined under Section 504 and 505 of the Illinois Marriage and Dissolution of Marriage Act.

Unallocated support sets a periodic amount to be paid, but it does not specify what portion is child support and what portion is maintenance. Unallocated support, unlike straight child support, is tax deductible to the payor and is taxable income to the recipient. The Internal Revenue Service requires that no part of the monthly payment be labeled as "child support" in order to receive the tax benefits. This can be advantageous from a tax perspective; however there can be pitfalls in this arrangement. When child support and maintenance are combined it is prudent to remember that child support is always modifiable under Section 510 of the Illinois Marriage and Dissolution of Marriage Act.

The Illinois courts addressed this issue in the case of *In re Marriage of Semonchik,* wherein the husband was ordered to pay $3,500 per month in unallocated support to the wife. When the husband sought to modify his support obligation, a considerable amount of litigation erupted between the parties. However in the final analysis the Court determined that "where a marital settlement agreement contains an unallocated combination of child support and taxable maintenance payment, that payment is subject to the statutory right to modification contained in the Marriage Act." As a result of this

ruling, in Illinois an entire unallocated payment may be modified despite language in a Marital Settlement Agreement (MSA) that maintenance is non-modifiable. *Semonchik* was decided in 2000.

In 2011 another Illinois court addressed the issue of unallocated support *In re Marriage of Doermer.* The MSA in *Doermer* had specific terms as to the length and circumstances of unallocated support. The MSA did contain a non-modification clause (Court's interpretation); however the wife relied on the *Semonchik* ruling that unallocated support was modifiable regardless of the MSA terms. *Semonchik* differed from *Doermer* in that the wife in *Doermer* sought to modify and extend unallocated support at a time when the parties' child was emancipated and child support was no longer an issue. It became a maintenance only case and the terms of the MSA limited the term of maintenance. The Court interpreted the *Doermer* MSA as any other contract which parties enter into with the intent that they to be bound by its terms. The Court honored the terms of the agreement as expressed in the MSA.

The idea of unallocated support as a tax advantage is tempting, but a great deal of care must be taken in the drafting of such an agreement. The maintenance portion should be specific and state a termination event so as not to be modifiable under a *Semonchik* scenario. Also, depending on the specific financial situation of both parties the tax benefits may not be sufficient to open your MSA up to interpretation.