

DIVORCE FINANCIAL ADVISING UPDATE

May 2017



Thea Glazer,
CFP®, CDFA™
MS Accounting
Trained in
Collaborative Divorce

Offices in San Diego
and Laguna Hills, CA

Bonus Support Based On Equity Compensation

Very often, total child and spousal support are based on a set amount tied to a salary plus bonus support based on an Ostler-Smith calculation of income from cash bonuses and equity compensation. That compensation may include stock options, restricted stock, restricted stock units and stock appreciation rights.

When discussing income from equity compensation, I mean the employee spouse's separate shares. The community shares would be divided as property.

- **Stock Options.** There are two kinds of stock options. **Incentive stock options** do not generate taxable income when exercised. If the underlying stock is sold in less than two years from grant or one year from exercise, the transaction disqualifies it from the special tax treatment and the gain is includable as ordinary income. If the holding period met the requirements, any gain is long term capital gains. **Nonqualified stock options** generate ordinary income when the options are exercised. **Question:** Since the employee has control over when to exercise the options until the expiration date, should bonus income be calculated when the options are exercised or when they are exercisable? As many employees receive options every year, and in order for the supported spouse to have a somewhat more predictable income, I think a case can be made for the bonus support to be based on the gain when the options are exercisable. Basing it when exercisable removes control from the employee. **I have seen MSAs written both ways and would love to hear your opinion.**

- **Restricted Stock and Restricted Stock Units.** There is no decision making since, as soon as they vest and are released, ordinary income is incurred and included in wages. It makes it very easy to see the gross income upon which The bonus support would be based.

- **Stock Appreciation Rights.** Depending on the plan, the employee either gets shares equal to the increase of the stock price over the base price or gets cash equal to the increase in value. Either way, there is no election as to when to receive it.

CAUTION: Very often clients tell me they will just transfer the gross shares to pay the bonus support. That will work for child support. **However, for spousal support to be deductible as alimony, the IRS requires it be paid in CASH.**

Have Questions? Need help? Call or e-mail me!