FAMILY LAW ECONOMICS

PART I:
RUMINATIONS ON INCOME

The UF College of Law has a course entitled Economics of the Family. Developed as part of the Family Law Certificate Program, the class covers the quantitative aspects of Family Law: alimony, child support, distribution of property, marriage contracts, social security, child care and elder care costs, adoption expenses, education expenses, heart balm actions, the tax consequences of each topic, as well as forensic accounting and forensic economics. Basically, it involves who gets what, who pays what, and why.

As a CPA/tax lawyer, I bring to the course a perspective different than that of the typical family law professor or practitioner. Based on my experience, the quantitative aspects of family law and the practice of tax law have few important differences. Both deal with money, income, property, who gets them, why do they get them, and how does my side keep more of them. Legions are the tax lawyers and accountants who seek to minimize income and assets to save client taxes. Mind you, they do not (or at least should not) strive to minimize client wealth, as that would be counter-productive; instead, using legal, technical definitions of income and assets, tax practitioners minimize what is reportable and thus keep all the non-reportable income and assets for their clients. This huge tax planning industry exists to minimize the government’s approximate 35% tax share of income or 50% of assets (through estate/gift taxes).

But an ex-spouse’s take of income and assets often equals – and may greatly exceed – the government’s tax share. I refer to this as a family tax. Whatever incentives exist to minimize reportable income and assets for tax purposes, also exist to minimize reportable income and assets for alimony, child support, and property division for family law purposes. Thus, techniques used to plan income streams and asset creation for tax purposes apply to the quantitative

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2 We also cover who gets the ring in a breakup.

3 Most Family Law courses focus more on matrimony, custody, dissolution, adoption, violence, procedure, mediation, constitutional law, and similar important, generally non-quantifiable issues.

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part of a family law practice. Similarly, IRS techniques used to detect and to
defeat income or asset planning also apply to family law representation of those
who want to receive more income and assets. Tax practice is often likened to a
game. Analogously, game theory should help explain spousal behaviors,
especially in cases of divorce planning.

Applying the theory to family law necessitates the exploration of several
topics. I begin with “What is income?” In later articles, we must explore what are
assets and liabilities, what are the tax consequences of income or property
division, should the tax consequences be relevant to a court, and what is the role
of an expert witness, be it a forensic accountant or forensic economist? Lastly,
we should at least contemplate the moral and ethical aspects of divorce planning.
It is one thing to minimize reportable income to keep it from the government; but,
is it not more morally suspect to do the same to keep money from one’s family?
Perhaps the moral and ethical implications are best left to those who specialize in
sociology and the law. The accountant and tax lawyer in me has trouble resisting
the temptation simply to play the game.

I title this essay “Ruminations” because I focus more on raising questions
rather than on providing answers. Before the Family Law Bar can provide
answers or solutions, it must first collectively discuss all the issues. My goal is to
help frame those issues.

This essay focuses on the definition of “income” as it relates to both child
support and alimony in Florida. Isolating this one factor is both helpful and risky.
The factor is central to a determination of child support and is a major factor for a
determination of alimony; hence, any court considering such awards should
carefully consider the “income” of the parties. To do so, it must know what
“income” constitutes. Focusing on this one factor, isolated from other, is risky
precisely because others factors are also important. For child support, the
“income” of the parties is overwhelmingly important; however, for alimony it is
less so. Indeed, a Florida judge may consider “any factor to do equity and
justice.” Arguably, then, a quantifiable focus on “income” may risk
overemphasizing a single factor. I believe this is unlikely, because I believe that
“need” and “ability to pay” are by far the most important factors for alimony.

WHAT IS INCOME?

For child support purposes, gross income is defined in F.S. § 61.30(2)(a)
and allowable deductions from income is defined in F.S. § 61.30(3). Despite
the many ambiguities in these provisions, at least a statutory definition exists.
For alimony purposes, F.S. § 61.08(2)(g) provides that “all sources of income
available to either party” are relevant in determining a proper award. The statute,
however, fails to define “income” for purposes of alimony determination. Presumably, the definition used for child support would also apply - after all, the
parties file a single financial affidavit, used for both purposes. Courts have
routinely referred to the same income numbers for both alimony and child support awards. Similarly, they have routinely cited the child support statute defining income as authority for an alimony definition of income.4

On its face, however, the alimony statutory income reference differs significantly from the child support reference. For example, the child support statute includes income from various sources, such as corporations, partnerships, royalties, trusts and estates. It also includes gains derived from recurring deals in property. These associations of income to its source are reminiscent of tax terminology. For federal income tax purposes, gross income includes income from whatever source derived. The derived limitation generally imposes a transaction or event requirement5 while the from requirement has little meaning – it refers both to income received under the cash method or earned under the accrual method. Logically, both the from and derived requirements of the child support income statute have a meaning similar to that used for tax purposes, which they appear to mirror. In contrast, the child support statute also includes alimony received from a prior marriage, as well as various payments and reimbursed expenses. The received from and payment factors clearly refer to items actually received and not merely earned. Traditional rules of statutory construction compel that such different statutory references – particularly within a single paragraph – have different meanings.

In comparison, for alimony purposes a court may consider “All sources of income available to either party.”6 That statutory association requirement is clearly different from the analogous child support statutory requirements and thus it should logically have a different meaning. Logically, the available requirement refers to items that the spouse can actually receive or use, not merely items earned. For example, undistributed distributable income from a simple trust is available but not received.7 Similarly, retained earnings in an S corporation or partnership controlled by the spouse are available but not received. In contrast, for entities over which the spouse lacks control, undistributed income would not seem to be available. This would include retained earnings in an S corporation, undistributed distributable net income in a complex trust, and undistributed allocable share of income in a partnership.

For purposes of equitable distribution, F.S. § 61.075(5)(b)3 bizarrely defines non-marital assets as including “income” from non-marital assets unless relied upon by the parties.8 Not only does it not define income, but also it

4 E.g., Cummings v. Cummings, 719 So. 2d 948 (4th D.C.A. 1998).
5 Cite to Glenshaw Glass. Wealth increases are not subject to tax unless they have been derived, which generally means a transaction has occurred. For example, mere appreciation in value of an asset does not normally result in gross income for tax purposes.
6 F.S. § 61.08(2)(g) (emphasis added).
7 In a simple trust, all income must be distributed at least annually. Thus if the trustee fails to distribute such income, the beneficiary can force a distribution.
8 F.S. § 61.075(5)(b)(3) provides:
violates a fundamental notion of accounting: *income is not an asset*.

“Assets acquired with non-marital income” would be a sensible reference; however, the inclusion of “income” itself as an asset makes no sense, as discussed below. Presumably whatever “income” means for child support (F.S. § 61.30(2)(a)) is what it also means for purposes of separating marital from non-marital assets.

The statute is deceptively detailed. F.S. § 61.30(2)(a) provides:

(a) Gross income shall include, but is not limited to, the following items:

1. Salary or wages.
2. Bonuses, commissions, allowances, overtime, tips, and other similar payments.
3. Business income from sources such as self-employment, partnership, close corporations, and independent contracts. “Business income” means gross receipts minus ordinary and necessary expenses required to produce income.
4. Disability benefits.
5. All workers’ compensation benefits and settlements.
6. Unemployment compensation.
7. Pension, retirement, or annuity payments.
8. Social security benefits.
9. Spousal support received from a previous marriage or court ordered in the marriage before the court.
10. Interest and dividends.
11. Rental income, which is gross receipts minus ordinary and necessary expenses required to produce the income.
12. Income from royalties, trusts, or estates.
13. Reimbursed expenses or in kind payments to the extent that they reduce living expenses.
14. Gains derived from dealings in property, unless the gain is nonrecurring.

**GENERAL OBSERVATIONS**

The statute defines “gross” but uses net figures at least in part: sections 3 and 11 specifically permit some deductions, and section 14 implicitly does so, and section 12 probably does. The other provisions, however, appear to be true gross numbers unreduced by any relevant costs. Additionally, neither the statute nor the related Financial Affidavit provides explicitly for losses – such as those from a business. Presumably, these constitute negative income; however,

(b) “Nonmarital assets and liabilities” include:

3. All income derived from nonmarital assets during the marriage unless the income was treated, used, or relied upon by the parties as a marital asset;

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9 In financial accounting, income belongs on an income statement while assets belong on a balance sheet. Naturally, an increase in income necessitates a corresponding debit to an asset account (or a reduction in a liability). Income thus directly affects assets . . . but it is not an asset. To the extent a spouse consumes the proceeds of income, no asset remains and thus nothing exists to be divided. I explained this in testimony to the Florida Senate Committee that considered the enacted statute. Alas, I did not explain it well enough, as the Legislature chose to enact the nonsensical reference. In contrast, future income is indeed an asset – such as increased earning capacity. The Legislature unfortunately failed to agree.

10 Cite somehow to the affidavit . . . probably through the rules of court.
traditional tax or financial accounting uses of the term “gross income” would not include such losses. They would, instead be a factor in adjusted gross income or net income. Anecdotal evidence suggests that tax definitions of income and other terms are relevant for family law purposes; however, the unusual use of the term “gross” to lead the statutory definition calls such evidence into question. If we do not rely on a tax definition of “gross income,” then why would we use tax concepts at all?

The statute fails to list any accounting principles. Tax and financial accounting both require consistency of accounting methods from year to year. For tax purposes, any taxpayer, or for financial accounting purposes, any audited company, could not change their depreciation (straight-line to accelerated) or inventory methods (FIFO to LIFO)\(^\text{11}\) without violating the consistency principle. Presumably, this would also be the case for family law. A more helpful statute would say so. Without such a rule, a potential payor of child support or alimony could easily manipulate income by changing various accounting methods during one or more relevant periods. But if the consistency principle applies, where does the statute say so or where is the court decision requiring it?

The statute generally fails to require any particular method of accounting. Financial accounting requires the complicated accrual method: income exists when earned, whether paid or not. Tax law sometimes requires the accrual method, but generally permits, for individuals, the cash method: income exists when received, whether earned or not. The above statute appears to use the cash method for some items – such as for retirement and annuity payments in section 7; however, it fails to discuss a method of accounting for major items such as business income (3), rental income (11) or trust income (12). Without a defined method of accounting – or clear rules for favoring one method over another – the statute leaves much room for manipulation and confusion.

1. **Salary or Wages.**

Initial observation suggests these items rely on the cash method of accounting: salary and wages are income during the year received rather than the year earned. Yet for many individuals, deferred compensation . . . or pre-paid compensation . . . is commonplace. Suppose, for example, in 2001 husband/father received $100,000 as an advance payment from a client for work to be performed over several years. Would that be income in 2001 under the cash method or would it be spread over the years earned? Financial accounting would spread it, while tax accounting would include it in the year received. Fairly, it should be spread over the time earned, as that would be the periods to which it properly relates (particularly in relation to asset division). But that necessitates the accrual method of accounting, which would need to be

\(^{11}\) FIFO (first in first out) inventory accounting computes the cost of goods sold by reference to the oldest inventory items. LIFO (last in first out) inventory accounting computes the cost of goods sold by reference to the newest inventory items.
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applied consistently from year to year and from item to item (including deductions) if the measure of income is to be fair. The many difficulties of accrual accounting suggest a better rule would be the cash method – the $100,000 would count as income during the year received.

That solution, however, presents two other problems. First it permits spouses to accelerate income in advance of a planned (but likely undisclosed) divorce, effectively removing it from the relevant base periods. Second, it permits spouses to defer income to years following a divorce. While such deferred income would be relevant to modifications of child support or alimony, the likelihood of such modifications is certainly less than the more certainty of the near-term awards. Hence, the hypothetical husband/father has a strong incentive to accelerate or defer income outside the years surrounding an anticipated dissolution. Attacking such accelerations or deferrals necessitates application of the accrual method, which itself necessitates consistency and thus daunting accounting rules. No good answer for the issue exists; but, ignoring it merely rewards manipulation, which is clearly acceptable for tax purposes, but arguably less defensible for family law purposes.

2. BONUSES, COMMISSIONS, ALLOWANCES, OVERTIME, TIPS, AND OTHER SIMILAR PAYMENTS.

The above analysis relating to Salary and Wages applies to category 2, as well: do these items count as income when received or when earned. Significant here, however, is the phrase “other similar payments.” The word payment connotes the cash method of accounting for tax purposes. Taken at face value, it should mean the same for family law purposes; hence, bonuses and such are income based on the cash method – when received as payments. This use of the term “payment” in relation to categories 2 and 7 suggests some deliberateness by the drafters. Perhaps we should conclude that such items are timed as income when received, but other items (such as categories 1, 3, and 11) constitute income when earned under the accrual method. Such a literal reading is defensible under generally recognized principles of statutory construction. Yet, it seems unwise as a matter of policy. Why should some items be income when received and other items when earned? No supporting rational is clearly evident.

To the extent the word payment is taken literally, room for manipulation is great. A spouse could simple arrange to have a bonus or commission deferred to a period following the years expected to be considered in alimony or child support proceedings. To counter this, the standard Financial Affidavit requires inclusion of “contingent assets and liabilities” in section D. Instructions refer to accrued vacation pay, sick leave, or bonuses and income potential, with a further denomination of these as “POSSIBLE” assets. The references are confusing for
several reasons. First, the statutory authority appears in F.S. § 61.075(a)(4),\textsuperscript{12} which deals with marital assets rather than income. Hence the relevance of the item for an alimony or child support award is unclear.\textsuperscript{13} Second, accrued vacation pay and sick leave are more than “possible” assets. They may not be easily valued in all cases, but to the extent they are accrued, they are assets, not contingent ones. Third, the word “accrued” does not appear to apply to the word “bonus,” and thus would not seem to cover a deferred bonus or commission. As a result, the manipulation room is large.

Listing deferred bonuses as assets rather than imputed income is also important because of the way in which “assets” are relevant to child support. Imputed income counts as income and thus affects the presumptive guideline amount. A judge may deviate up to 5% of this amount, considering such things as available assets. Further, a judge may deviate more than 5% with written reasons finding the presumptive award to be unjust or inappropriate. Hence, available assets are far less significant in a child support award than the amount of income, real or imputed. The same is probably true of alimony awards in light of the notion that alimony is generally more an award from income rather than assets.

3. \textbf{Business income from sources such as self-employment, partnership, close corporations, and independent contracts. “Business income” means gross receipts minus ordinary and necessary expenses required to produce income.}

This category is the most confusing. By specifically allowing deductions, it suggests that other categories constitute true gross amounts, unreduced by direct costs. As stated above, it fails to provide for a method of accounting. For the statute to fail to provide for a general accounting method is bad enough, but a method seems particularly important for business income. Indeed, many businesses use the accrual method for tax and financial purposes, while many others use the cash method, and still others use a hybrid method.

The list of income sources is also troubling. First, the list is redundant in listing both self-employment and independent contracts. Second it is confusing in its listing of “close corporations.” Are such entities – and the statute is not clear as to what they constitute – to be distinguished from publicly held corporations? Would that mean that all increases in wealth related to closely

\textsuperscript{12} “4. All vested and nonvested benefits, rights, and funds accrued during the marriage in retirement, pension, profit-sharing, annuity, deferred compensation, and insurance plans and programs”. F.S. § 61.075(a)(4)

\textsuperscript{13} Assets are certainly a factor in an alimony or child support award; however, they are not traditionally the major factor.
held entities constitute income, but only distributed dividends from larger entities comprise income? Surely not. But, if not, then what does the term refer to? What type or form of income from such an entity? Wages? No, because that is included in category 1. Dividends or interest? No, because they are included in Category 10. Gains from stock sales? No, because they are only included if recurring in Category 14. What is left other than retained earnings? But inclusion of retained – undistributed – earnings as income is troubling. The owner may have control over distributions – or he may not. The retained earnings may represent liquidity and thus a possible source of support; or, they may represent investment in fixed assets that are not at all available for support, at least not in the short to mid term.

A better format for the category would be organized around the various formats business enterprises may take. It would also be designed not to discriminate between business formats and thus would seek to avoid creating incentives for manipulation. Such a list would include:

a. Sole Proprietorships  
b. S Corporations  
c. C Corporations  
d. Partnerships, LLCs, and Joint Ventures  
e. Simple Trusts  
f. Complex Trusts  
g. Estates  
h. Foreign entities

a. **Sole Proprietorships**

These provide the easiest analysis. That is not to say they are easy to deal with; rather, the other categories present far more complex issues. Proprietorships are not separate entities and they have no non-family owners. The primary issue involves what constitutes “ordinary and necessary expenses required to produce income,” which are deducted from “gross receipts.”

The phrase is strikingly reminiscent of federal tax terminology. Tax law distinguishes the term “ordinary” from “extraordinary” or unusual. “Day-to-day” and “short-term” also connote “ordinary.” Painting is generally ordinary, while new walls are extraordinary – and thus capital expenditures (non-deductible). Shingle repair on a leaky roof is ordinary; a new roof is extraordinary. The term is generally redundant with the term “expense,” which also connotes expenditures with lives of less than one year. Pencils and paper are such short-term assets – expenses. Desks and tables are longer-term – capital expenditures and non-deductible. Tax law generally defines “necessary” with
reference to a business judgment rule: if the owner believes it is necessary, then it probably is. Some reference to comparable businesses, however, is always relevant. Luxuries are not always “necessary”; however, for tax purposes, they often result in deductions.

Interestingly, according to the statute, ordinary and necessary expenses must be “required” to produce the relevant income. The word “required” is not typically used in tax law in relation to expenses. Upon first reading, it seems redundant with the term “necessary.” Perhaps, however, it is not. Although the construction is awkward, the term arguably conditions the traditional tax notion of business judgment in relation to the term “necessary.” Only truly “required” expenses should be deductible for family law purposes. Thus the redundancy serves the purpose of clarity and emphasis.

Whatever the terms mean for family law purposes, large amounts of expenditures are deductible for income tax purposes – not just “ordinary and necessary” expenses, but also many other items. For example, section 179 permits most business to “expense” up to $100,000 of capital expenditures annually. The policy is grounded in accelerated depreciation and originated during the Kennedy Administration. Not only does it promote simplicity (no need to account for depreciation on the expensed assets), but it also promotes economic development. Rapid expensing of assets reduces the after-tax cost of those assets and thus promotes investment, which, in turn, promotes employment. Section 179, unlike sections 162, 165, 167, and 168, is not grounded on the expenditures being “ordinary and necessary.” Nevertheless, section 179 costs are tax deductible and are thus certain to be part of any initial calculation of business income.

Spouses seeking family support then have the task of showing that “ordinary and necessary” expenses, as defined for tax purposes, are not necessarily “ordinary and necessary” expenses for family law purposes. Of course, many are; however, many are not. Distinguishing them may not be an easy task for non-CPA, non-tax lawyers. Further, such support-seeking spouses must demonstrate that other tax deductions – perfectly legal and defensible – are not properly deductible for family law purposes. This should not be difficult; however, it requires familiarity with tax terminology by both the family law practitioner and the court. Or, it at least requires the use of a forensic accountant – often an expensive item.

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17 A plush office and first-class travel might be viewed as a luxury and not necessary to most people. Typically, however, such expenses would be deductible for tax purposes if related to income production. Arguably, they should not be deductible for a determination of income for child support or alimony purposes. If not, then we need much clearer guidance as to how family law terminology differs from tax terminology.
For divorce planning, a hypothetical husband/father (FH) with a sole proprietorship has many opportunities. They largely overlap with well-known tax planning techniques. If FH knows of the planned dissolution two or three years in advance, he can accomplish much . . . particularly if wife/mother (WM) is unaware of the plans. Accelerated depreciation, section 179 deductions, expensible renovations, accelerations of receipts to early years, and deferral of receipts to years following the planned dissolution can eliminate much taxable income. This can be coupled with investment in under-performing assets and deferred annuities. That will save much in tax in the short run. If the planning years also become the base period for it should also save substantial family support obligations. A good-faith disclosure of Income will be substantially lower, as will be a good faith listing of assets. To the extent the expensed or under performing assets are leveraged, liabilities can be greater. All this can present a poor picture. A forensic accountant, particularly one with significant tax law knowledge, should be able to attack most such manipulations. But will WM be able to afford the expert? Will her attorney know to hire one? Will her attorney understand the issues sufficiently to explain them to the court? Will the court understand and agree with her arguments?

Surely this occurs and surely many WMs successfully overcome the manipulations. I suspect, however, most do not. The upside for HF is large: lower taxes – 35% at the margin – and lower family support obligations – perhaps 50% at the margin, and lower property distribution obligations – again 50% at the margin. And the downside of the manipulations is small. In the worst case scenario, he will likely succeed at the tax savings and likely succeed in at least some family savings. This produces an important ethical issue for business and tax attorneys. Most of them are probably not sophisticated family law practitioners. Yet for many clients, divorce planning may produce a greater return than does tax or bankruptcy planning. Hence, failure to at least inquire into the status of a marriage would seem malpractice for attorneys conducting a business plan. While many of the planning techniques may overlap with those used for tax planning, not all will; thus, they must be tailored to the client.

b. S CORPORATIONS

Many small businesses will be incorporated. Many of these – particularly those the statute refers to as “close corporations” – will be S corporations for tax purposes. An S corporation is a “pass-through” entity for tax purposes: the entity pays no federal taxes but the owners pay tax on their pro rata share of income. Significantly, the income need not be distributed for it to be reportable as income for tax purposes.

The statutory reference to “business income” from “close corporations” probably refers to the pro rata share of S corporate income. But, is that fair to either spouse? Arguably not. It can be unfair to the owner spouse because it includes as income, items not received and often not receivable. The entity may
have paper income, but no cash from the transactions. Or it may have plenty of cash, but need the funds for business purposes. Or the majority shareholders may simply vote not to distribute excess liquidity. In any event, having a federal income tax on undistributed income is acceptable because it is elective. Owners could, instead, choose C corporate format, which would result in an entity tax but no owner tax absent distribution. But, should a decision made for tax purposes obligate an owner spouse to pay more for family purposes? If so, then an incentive results for the owner spouse to seek C corporate status.

An election of C corporation status will result in additional government tax – probably an additional 15%, deferred to distribution – but it may save any additional obligation for child support or alimony.

c. C CORPORATIONS

Unlike S Corporations, C’s are taxpayers. They pay taxes on taxable income at up to 34%; in addition, taxable shareholders may pay a 15% tax on dividends. This double taxation has resulted in most eligible corporations electing S status rather than C status. Nevertheless, many C corporations exist, and they prompt special issues for family law purposes.

Because owners are not taxed on corporate income until distribution, such undistributed income – retained earnings – should not constitute income for family law purposes. It would not be income for tax purposes. For financial accounting purposes, it could be income if consolidated financial statements were appropriate. Because the Florida statute specifically includes “dividends,” any inclusion of retained earnings would be unreasonable.

Until recently, the double taxation of C corporate earnings constituted a sufficient reason for most businesses to avoid the status. The 2003 reduction in the dividend tax rate to 15% changes the analysis. The total tax on C corporate earnings will now be approximately 49% (exclusive of state taxes). The top tax rate on S corporate earnings is 36%. But undistributed S corporate earnings are subject to current, rather than deferred tax, while the excess C corporate tax is deferred until distribution. Additionally, as explained above, S corporate retained earnings are probably income for family law purposes, particularly if the owner/spouse has control over the distribution timing. C corporate retained earnings, however, are not income for family law purposes until distribution. In addition, to the extent C corporate retained earnings result in share appreciation, they might never count as family law income, subject to Category 14 analysis.\footnote{Category 14 deals with recurring gains from property.}

Proper comparison between the two corporate formats thus involves the total of government and family taxes. For S corporations, that total could realistically approach two-thirds – 36% federal plus a comparable amount for
child support and alimony. For C corporations, that total is more likely limited to the 49% government tax. Hence what has, until recently, been a high taxed entity, may more properly be viewed as a moderately taxed entity.

d. PARTNERSHIPS, LLCs, AND JOINT VENTURES

For federal tax purposes, partnerships are not legal entities; hence, they pay no tax. Instead, the partners pay tax on their distributable share of partnership income. Limited liability companies follow federal tax laws but state corporate laws. Hence, they are partnerships for tax purposes and corporations for limited liability purposes. Similarly, joint ventures are partnerships for federal tax purposes. Fundamentally, S corporations and partnerships are both “pass through” entities: the income is not taxed to the entity, but rather to the owners. It thus “passes through” to them without the formality of an actual distribution.

Just as with S corporations, legitimate questions arise regarding the fairness of including undistributed income for a family law definition of income. The funds are not actually available for support, and they may not be effectively available. Choices and elections affecting the determination and the timing of income occur at the entity level rather than the owner level; hence, questioning and un-doing such “manipulations” is arguably unfair considering that the owner/spouse may not be responsible for them. Nevertheless, most authorities would likely agree that such income is indeed income.

Partnerships, however, provide many additional complications when compared with S corporations. S corporations allocate income proportionately among shareholders – each share is entitled to the same portion of income or loss. Partnerships, however, may specially allocate items of income or loss among various partners inconsistent with their proportionate share of “ownership.” As a result, the opportunities for manipulation increase exponentially. This brief essay is not a good format for explaining partnership taxation – without a doubt the most complicated area of federal tax law. While even competent tax attorneys may have difficulty overcoming the obscenely complicated federal partnerships rules limiting special allocations of income, they would likely find the job much easier to specially allocate income for family law purposes. Hence, with competent planning a partner/spouse may have little family law “income from partnerships,” although he may have a large increase in wealth from partnerships. Attacking the manipulations is a realistic task for the IRS, albeit a formidable task. Attacking the permissible manipulations for family law purposes is probably beyond the capabilities of most family law practitioners or even many “experts.”

e. SIMPLE TRUSTS

Trusts are trusts for state law purposes, but for tax purposes, they come in two main varieties: simple and complex. Simple trusts are “pass through”
entities, generally analogous to S Corporations and partnerships. Complex trusts are taxpayers, generally analogous to C Corporations. Hence the statutory family law reference to “income from trusts” in Category 12 provides very little guidance.

The simple trust raises much the same issues as those raised by the S corporation. All the income is technically required to be distributed annually to the beneficiaries. As a result, such required distributions would seem to be income for family law purposes, just as they are income for tax purposes. For child support purposes, undistributed income would constitute income from a trust; and, for alimony purposes, such undistributed income would be available.

Still, the trust may have insufficient liquidity for distributions. The legal requirement of distributions has the effect of the beneficiaries being taxed; it does not have the effect of actually forcing the distributions to be made. Arguably, such items might not be available, as required by F.S. § 61.08.

f. COMPLEX TRUSTS

Complex trusts are akin to C corporations: they are not “pass through” entities. Instead, they are themselves taxpayers. Hence, much of the analysis applicable to C corporations is also applicable to complex trusts.

For tax purposes, accumulated income in a complex trust is not taxed to the beneficiary and would not appear on his tax return. Whether it would constitute income from a trust for child support purposes is problematic. For accrual accounting, the trust would have an obligation to the beneficiary (at least to the extent future distributions were non-discretionary) and the beneficiary would have a receivable. Accumulations, in that sense, constitute income even though they provide no liquidity – they do provide an accession to wealth. This is different from the treatment of retained earnings in a C Corporation, which do not legally belong to specific shareholders and may never be distributed to them.

Money is fungible, which means even non-liquid wealth increases effectively free up other liquid assets because they provide some assurance such other assets will eventually be replaced. As stated earlier, the child support from requirement likely refers both to the cash and accrual methods of accounting. Hence, it logically includes accumulated income in a complex trust, which not only provides a wealth increase but also free up liquid assets. But is this fair? Arguably not since the specific items of income are not received by or available to the beneficiary spouse. To the extent the freed-up assets derive from current income, they would already be counted as income and should not be counted again. To the extent they derive from prior income, they probably should not count again, as income is traditionally an annual concept.
For alimony purposes, the analysis is a bit different. Accumulated income would not seem to be available to the beneficiary spouse and thus should not constitute income. Potentially, that means child support income and alimony income are different figures – a non-traditional, troubling, and complex situation.

g. **Estates**

For tax purposes, estates are a form of complex trust. Hence the above analysis applies. They permit some post-death divorce planning opportunities. To the extent child support and alimony income is a function of the cash method – income received or available – items earned by an estate in administration would not seem to be income to the beneficiary spouse. Such a spouse may have significant influence, however, over distributions from an estate even if her were not the executor. For example, families which have a member suffering marital difficulties may prefer to have the estate for another deceased member administered rather than settled quickly.

h. **Foreign Entities**

Foreign entities provide issues beyond the scope of this essay. Undoubtedly, to the extent a spouse have ownership interests in foreign corporations, partnerships, and such, the accounting difficulties can be complex. Not only do foreign tax rules differ substantially from those of the United States, but accounting principles and rules differ as well. What constitutes income – particularly available income – in this country is confusing enough; it surely varies from jurisdiction to jurisdiction and thus the room for confusion (and resulting manipulation) increases with the number of foreign investment opportunities.

4. **Disability Benefits.**

This category is clear.

5. **All Workers’ Compensation Benefits and Settlements.**

This category is clear except to the extent a settlement might be deferred.

6. **Unemployment Compensation.**

This category is clear.

7. **Pension, Retirement, or Annuity Payments.**

This category is generally clear, but also astonishingly unfair: it actually disadvantages both sides. The term “payments” surely refers to the cash method of accounting . . . what is actually received. This encourages a recipient
spouse to defer receipt. For example, many plans provide for the commencement of retirement annuities as early as age 59-1/2 or as late as 70-1/2. They likewise provide for other elections, such as fixed-term annuities, single life annuities, or joint annuities. Naturally, the various elections result in differing payments. No apparent authority exists for a court to impute amounts not actually elected and received.

The reference to “annuity payments” provides even greater opportunity for manipulation. Consider a father/husband with $150,000 available cash. Invested at 5% effective annual interest, this would produce $7,500 annual interest income, included in category 10 below. Invested, instead, in a deferred annuity, it would produce no income during the deferral period. It would increase in value during the period, but would produce neither taxable income nor payments considered income under the cash method of accounting.

As explained above, a court’s power to consider such deferred assets is far less significant than the power to consider the relevant income from the assets. But, the only statutory authority for imputed income applies to voluntary unemployment or under-employment. It does not apply to under performing assets. Hence, a spouse with substantial assets can invest excess funds in a deferred annuity while depleting the remaining assets. The resulting lack of liquidity and cash-flow should substantially reduce alimony and child support obligations.

Category 7 also is unfair to the payor spouse. Annuity, pension, and retirement payments typically have both interest and principal components. For example, the hypothetical annuity which cost $150,000 would currently produce $1,590.88 monthly for 10 years. During the first month, $625 of the payment would be interest and the remaining $965.88 would be principal. Counting the entire cash-flow as income – which the statute clearly does – is patently unfair. The $965.88 is no more than a withdrawal of assets from an investment account, analogous to a withdrawal from a checking account. Surely no one would consider a checking account withdrawal to be income; yet, that is exactly the impact of counting annuity payments as income. At most, the principal portion of the payments should count as available assets rather than income.

Similar analysis applies to retirement payments. Many employees contribute to retirement plans in addition to employer contributions. In determining current income, F.S. § 61.30 permits a deduction for mandatory retirement contributions, but not for voluntary contributions. As a result, the amount of the employee contributions counts as income in the year contributed. To again count it as income in the year withdrawn is unfair on its face; but, that is exactly what the statute does.20

20 Cite here to Mass. Statute that only includes the interest portion.
8. **SOCIAL SECURITY BENEFITS.**

This category is subject to manipulation through deferral. The reference to “benefits” suggests the cash method of accounting. A spouse may be eligible for reduced benefits at age 62, greater benefits at age 66, and maximum benefits at age 70. Clearly, such a spouse who elects to receive the reduced benefits at age 62 has income in the amount received. But what is the income of a 63 year old spouse who elects to defer benefits until age 66 or 70? The term “benefits,” by implying the cash method suggest the income amount would be zero until actual receipt in the deferred years. But, such an interpretation encourages manipulation. Why would a spouse with otherwise adequate funds elect to receive early benefits if such an election would result in significantly increased child support or alimony obligations?

While a court has authority to consider “available assets” in determining an award, the use of potential social security benefits seems unfair. Early retirement results in significantly reduced benefits in addition to increased income tax liabilities. Sound rational reasons – other than divorce planning manipulation – exist to support deferral. Imputation of unelected benefits not only lacks clear statutory authority, but it also appears punitive to the retiring spouse.

9. **SPOUSAL SUPPORT RECEIVED FROM A PREVIOUS MARRIAGE OR COURT ORDERED IN THE MARRIAGE BEFORE THE COURT.**

This category is clear. On its face, it presumes the cash method of accounting. Only alimony actually received counts and no authority appears for a court to impute alimony deferred by agreement.

10. **INTEREST AND DIVIDENDS.**

Initially, these items appear clear, but they are not. Does the term “interest” include deferred interest? Such interest would be taxable as income and would constitute accrued income for financial accounting. But, it would result in no cash-flow until received. Counting it as income can be unfair to the earner in that it would require payment of alimony or child support based on unavailable resources. Not counting it, however, encourages manipulation: an investing spouse would simply purchase long-term instruments, deferring receipt of interest until later, possibly irrelevant periods.

The analysis is even more profound in relation to dividends. Historically, most stocks paid regular cash dividends. More recently, most stocks paid small, if any, dividends, favoring capital appreciation. Recent tax law changes reducing the tax on dividend income will probably prompt greater current dividend payments. Nevertheless, an investor spouse will always have choices between investments that pay substantial dividends and those that do not. Ignoring taxes
and family law considerations, the choices are probably equal in a macro sense: the market should result in equal internal rates of returns for comparable risks. Tax considerations and family law considerations, however, will affect the choices made.

An investor must currently pay 15% of any dividends to the government, but need not pay a comparable capital gains tax for capital appreciation (which occurs when a corporation retains earnings rather than pays dividends) until a sale. The difference will undoubtedly affect some investment decisions. Similarly, an investor may need to share a portion of dividends received with an ex-spouse through alimony and child support, but would not typically share as great a portion of capital appreciation. Because the effective family tax will typically exceed the 15% government tax, the affect on investment decisions should be substantial.

No statutory authority for imputation of dividends exists, just as no general authority exists for imputation of income on under performing assets. Such authority is not unprecedented, as it exists for Florida trust law purposes. The lack of such authority is particularly significant in light of the explicit listing of “interest and dividends” as well as the explicit listing (category 14) of only recurring gains on property. Non-recurring gains would not be considered income on the face of the statute. Hence gains resulting from retained corporate earnings do not count as income. Economically, however, no important difference exists between retained and distributed earnings – both are available for future investment. Substantial tax and family law differences exist; but, those are arbitrary and thus prompt manipulation.

Similarly, an investor spouse might invest in non-performing assets, such as vacant land. Such assets may produce substantial gains over time, but often produce little current cash-flow. Because the statute so clearly refers to interest and dividends, and excludes non-recurring gains, an investment decision to choose non-performing or under-performing asset seems a safe method of reducing potential alimony and child support, just as it is a safe vehicle for income tax. Such investments, considering their lack of liquidity, come with significant risk. That risk, however, when weighed against substantial government and family taxes may be comparatively small. Would a spouse make such investment decisions for the purpose of reducing family support obligations? I predict many would and do. Should a court have the power to undo such decisions? Perhaps, but how would such power be exercised? As an imputation of income (analogous to the trust code) or as a guideline deviation through the consideration of assets? Should a court exercise such authority only when evidence of manipulation exists? What if the spouse has a family history of investing in vacant land or growth stocks? Requiring partial liquidation for payment of child support seems reasonable; but, requiring it for payment of alimony seems less fair unless the assets were somehow relied upon to produce
a higher standard of living during the marriage. In any event, the current statute appears to eliminate such authority.

Another problem with the use of the term “dividends” involves stock dividends and stock splits. Generally, a stock split involves a pro rata increase of more than 25% of the shares outstanding. It involves no accounting entry and has no tax consequences. While it provides greater liquidity to shareholders, it typically will cause a per share price reduction balancing the increase in the number of share. It thus commonly produces no increase in wealth. It thus should not be considered income. A smaller stock dividend, however, typically involves a financial accounting entry involving the capitalization of retained earnings. While it results in no current tax consequences, it typically results in a wealth increase: the per share price drop will not fully balance the increased value resulting from a greater number of shares. Economically, it differs very little from a cash dividend. As such, it probably should be considered income for alimony and child support purposes. Clarity on this issue in the statute or from courts would be helpful.

11. RENTAL INCOME, WHICH IS GROSS RECEIPTS MINUS ORDINARY AND NECESSARY EXPENSES REQUIRED TO PRODUCE THE INCOME.

The analysis of this item is mostly the same as that of Category 3, dealing with business income. An important difference involves the impact of the various categories on the definition of marital assets. For purposes of child support and alimony, classifying “income” as being from one source – such as business – or another – such as rent – does not matter. The major issue for those purposes is whether the item constitutes income at all.

But, for purposes of equitable division of assets, the source of the asset is paramount. Although income is not an asset, it certainly produces assets and assets certainly come from wealth increases, i.e., income. But which income? Income from personal services produces marital assets. More passive income from non-marital assets produces non-marital assets. For tax purposes, rents from real property generally fall within a passive, non-business category. Rent from personal property tend to fall within the rubric “business income.” The tax differences are sometimes significant. For family law purposes, the legislature clearly distinguished between business income and rent income by placing them in separate categories. This may have been inadvertent; or, it may indicate a substantive difference between the two. Businesses generally connote active involvement, while rents, interest, dividends generally connote more passive involvement. Active involvement generally suggests the creation of marital assets, while passive involvement generally suggests non-marital assets if the underlying property is itself non-marital.

Full analysis of this is best dealt with in a later article focusing on property division. For now, note that listing income in one category or another may have
no significance for child support or alimony; however, that classification could have significance for a determination of which assets are marital and which are non-marital. Hence, counsel focusing on support issues in filing the income portion of the financial affidavit should consider the collateral equitable distribution consequences.

12. **INCOME FROM ROYALTIES, TRUSTS, OR ESTATES.**

To the extent this category involves trusts and estates, it should be combined with Category 3, dealing with business. No reason exists to interpret the meaning of income from trusts differently from that of corporations or partnerships. Unfortunately, however, Categories 3 and 11 add the specific qualifier that “ordinary and necessary expenses” are deductible from the income. Category 12 has no such provision. Fairly, it should be interpreted as allowing such deductions (whatever the terms mean). However, a literal reading would not permit them: the Legislature clearly knew how to provide for ordinary and necessary expenses and did so explicitly in Categories 3 and 11. Failure to provide for them in Category 12 suggests they not be allowed.

The reference to royalties raises several questions. Royalties can refer to earnings from patents, copyrights, other intangible or minerals. A comparison of such assets to other income producing assets is instructive. Land produces rents, which constitute income. Typically, land does not deteriorate, does not have a useful life and is not subject to depreciation or amortization. Money produces interest, which constitutes income. It arguably does not deteriorate, at least not in a tax sense, and thus is also not subject to depreciation or amortization. Inflation, however, does cause deterioration in the value of money deposits. Arguably, therefore, to the extent interest earned includes compensation for past inflation, it should be considered income. This argument has been unsuccessful for tax purposes, but it seems fair for family law purposes. Patents and similar intangibles have limited lives. They produce royalties, which constitute income. To the extent an owner has a cost in them, that cost is recoverable for tax purposes and should likewise be recoverable for family law purposes. To the extent they are self-created, however, they would have no cost and nothing to recover. They nevertheless involve asset deterioration because they have a limited life.

That presents some difficulties: a spouse who sold a patent or copyright would have taxable gain but no “royalties.” The gain would be taxed differently than would be ordinary royalty income. Similarly, for family law purposes such a

21 A term or years in land would be subject to such cost recovery, however. Arguably, a fee simple should be, as well. After all, the purchase price equals the present value of the future utility. Thus the current use of land comprises a significant portion of the purchase price. If the lessor merely owned a short-term interest, he would be able to recover (deduct) the cost of the term interest against any resulting rents. A fee simple owner cannot do so and thus will over-report income from rents. This does not seem fair.
sale would seem to be covered by Category 14, dealing with recurring gains. Royalties are comparable to recurring gains, but lump sales of a patent or copyright would be more comparable to non-recurring gain, which would have no impact on family law income. The reduced tax consequences already provide inventory and authors some incentive to market their products differently than through royalties. Because the potential family tax consequences are even greater, the incentive for different marketing should be greater as well. This, too, might be considered manipulation.

Mineral royalties provide an additional problem: depletion. No apparent allowance for depletion exists in family law, which seems unfair. They involve a selling off of assets — much like the recurring gains in Category 14. Hence, an investment decision — to develop minerals — punishes a spouse in comparison to a similarly situated spouse who invests in non-depleting assets. A countervailing argument exists with regard to spouses who decline to develop minerals. No statutory authority exists for the imputation of income from such under performing assets.

13. REIMBURSED EXPENSES OR IN KIND PAYMENTS TO THE EXTENT THAT THEY REDUCE LIVING EXPENSES.

This category is generally clear but probably too narrow. To the extent it refers to “payments” it relies on the cash method of accounting; thus, it prompts manipulation through elective deferrals. It modest lack of clarity stems from the condition that such amounts “reduce living expenses.” The condition seems unnecessary and unduly restrictive. To the extent in kind payments result in greater savings — perhaps they involve equipment or other property with a life greater than one year — they would not seem to reduce living expenses except to the extent currently consumed. Yet the entire value would normally constitute taxable income and would certainly involve an accession to wealth. Unless non-transferable, they could be sold to produce cash-flows comparable to cash payments of income items. Hence, the living expenses restriction is overly restrictive.

Arguably, the living expenses restriction could be applied to eliminate in kind payments associated with luxury items. This, however, would seem an inappropriate definition of income. After all, the guidelines provide for very high income levels. No rational reason exists to distinguish between income paid in high levels of cash versus high valued consumption.

Another possible consequence of the restriction involves in kind payments that fulfill business rather than personal needs. A lawyer spouse may receive a computer or free use of electronic research. These items would not reduce living expenses, at least not directly. To the extent they were current consumed, they would indirectly increase business income and thus effectively count; however, to the extent they were not consumed or did not reduce business expenses, they
could increase wealth but not increase “income” as defined for family law purposes.

The narrowness criticism involves the limitation to “payments” and reimbursed expenses.” It says nothing about many other types of “fringe benefits” such as discounts. To the extent a spouse is able to travel for a reduced price, purchase clothing or appliances or automobiles at a reduced cost, or eat for a modest price, wealth accession results. However, classifying such price reductions as “payments” is at least problematic. They should be so classified, but it requires a clear stretch of the statute.

14. GAINS DERIVED FROM DEALINGS IN PROPERTY, UNLESS THE GAIN IS NONRECURRING.

This category has great importance not only for family support determinations, but also for property division. The importance is particularly large because of the implied “cliff effect.” Gains produce income, but only if the gains are recurring. Nonrecurring gains do not count. At the margin, the difference between recurring and nonrecurring is slight – at some point, one additional similar dealing “breaks the camel’s back,” causing a series of deals to become recurring. Viewed individually, that marginal deal is insignificant. In context, however, it is profoundly important.

Posit a husband/father (HF) who owns, as non-marital property, 100 acres of land. Sold in a single block of 100 acres, any resulting gain were not be recurring. If HF divided the property into two 50-acre tracts and sold them separately, the resulting gains would similarly not be recurring. Whatever recurring means, two is probably not it. But if HF divided the property into 90 single acre tracts, added roads and common ground, and then sold the lots in a single-family home subdivision, the resulting gains would almost certainly be recurring. While anyone can distinguish two sales from 90 sales and classify them correctly, the distinction at some point becomes very difficult. Which sale tips the scale? The 15\textsuperscript{th}? The 30\textsuperscript{th}? The issue is often litigated for tax purposes, although the resulting answer is not always clear and predictable. For purposes of this article, I am not so concerned with the classification analysis; instead, I am much more concerned with the consequences of the classification.

For tax purposes, such a marginal deal - be it the 15\textsuperscript{th} or the 30\textsuperscript{th} - causes the series of transactions to become ones involving “property held primarily for sale to customers in the ordinary course of a trade or business.” One less deal results in capital gains, taxed at approximately 15%. The additional deal results in ordinary income taxed at up to 35%. While such greater deals (and development) may result in greater total profits, they also result in a substantially higher tax rate. For example, the 100 acre tract may produce a price of $100,000. The 90 single acre lots, however, may result in total sales of $1,000,000. Even after considering development costs, the excess profits may
be very large. Hence the large property development industry. But the
owner/developer must be cognizant of the changing tax consequences. At some
point – and that point may be very unclear – an additional sale results in an extra
tax of approximately 20% on the whole series of transactions. That marginal
transaction thus is very costly unless the additional profits exceed the additional
taxes.

The same is true for family law. Without the marginal deal – tipping the
series in to the recurring category – the profits from property development are not
income and do not count for child support purposes and count less for alimony
purposes. With the marginal deal, the entire series of similar deals become
recurring and the resulting income counts. The combined child support and
alimony share could easily be 20 to 30% or more. Hence the family tax
consequences may significantly exceed the government tax consequences.

But that is not all. If the underlying property is non-marital, the difference
is even greater. Non-recurring gains suggest relative passive involvement of the
owner-spouse and thus the production of additional non-marital assets. Such
assets remain the separate property of the owner spouse. Recurring gains,
however, suggest more active involvement of the owner spouse and thus the
production and acquisition of new marital assets with the proceeds. Half of the
value of such assets presumably becomes the property of the non-owner
spouse. Effectively, that results in a marginal “tax” of 50% of the recurring gains.
Combined with the additional government tax of 20% and the additional family
tax of up to 30% or more, the total “tax” on recurring gain can quickly approach
100%, or even exceed 100%.

Additional analysis should focus on the individual words used in this
category. The term “gains” suggests gross receipts reduced by various costs. At
least, it would involve reduction for direct costs of the property sold or
exchanged. In addition, it should include direct costs related to the sales and
probably should include indirect costs – such as overhead – as well.
Unfortunately, the statute fails to refer to costs, unlike the analogous references
in Categories 3 and 11. At some point, recurring gains become a “business” and
the analysis shifts more to category 3, which clearly allows deductions,
presumably including indirect costs.

Another interesting aspect of the term “gain” involves what to do with
losses. If a spouse must share recurring gains with an ex-spouse, fairness
suggest these at least be reduced by recurring losses – and at least for family
support purposes. Surely the existence of losses predicts less ability to pay
support. But what about losses in excess of gains? The answer is not

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22 For child support purposes, if the profits are not income, they are relevant only to the extent
assets are relevant – for purposes of deviation from the guidelines. For alimony purposes, if the
profits are not income, they still matter as “financial resources.” Substantial authority suggests,
however, that income, rather than assets is most important for a determination of alimony.
necessarily the same as that for losses that merely reduce, but do not exceed, gains. Excess losses, if they count, could potentially eliminate other income from such sources as wages and salary. Even if recurring, do they necessarily predict an inability to pay support? Not necessarily, as they may indicate the existence of substantial assets – such as a stock portfolio – that has recently declined in value. Naturally, if that were the case, the existence of remaining asset value would affect family support. However, if the losses count, the issue becomes one of guideline deviation for child support purposes, so the question can have real significance.

The term “nonrecurring” is also confusing. For tax purposes, the classification is not merely a function of the number or frequency of the deals; instead, it involves many other factors. How must time did the owner spend on the deals? How much extra development was involved? Did the owner use a broker or did he conduct the transactions himself? Such extra involvement and development suggest business dealing rather than passive gains, and thus results in higher government taxes. Is the analysis the same for family purposes? The statute suggests perhaps no. It lists only the frequency of deals as a factor in the classification, at least for purposes of family support. For purposes of resulting asset classification, other authority suggests the personal involvement of a spouse becomes important.23

CONCLUSIONS

Calculations of child support can be complicated. Once we have the presumptive guideline amounts, modification is needed for factors such as extra medical expenses, child care, significant or substantial visitation. Similarly, calculations of alimony can be complicated even once spousal income levels are clear. And, what constitutes “equitable” division of assets and liabilities is not easy.

But, none of the admittedly complicated issues can be accurately settled without a fair, accurate determination of income and assets in the first place. More effort probably goes into the secondary – and complicated – calculations dividing income and assets, and less effort probably goes into the initial determination of what constitutes income and assets. If so, the fairness of the resulting divisions is illusory.

I ask many questions herein and provide few answers or solutions. That is troubling, but not easily resolved. Our system moved to one grounded in spousal “income” almost twenty years ago with the creation of child support guidelines and the expanded requirement of financial information disclosure. But the touchstone of “income” is itself inherently flawed. A common joke (and probable reality) among accountants involves a client question of “What is my

23 Cite something here from equitable distribution.
income?” “What do you want it to be” is at least the unstated, if not explicitly stated typical answer. The word income has no meaning without clearly defined principles and methods of accounting and rules for recording and reporting transactions. Those principles, methods, and rules are very complicated. No wonder accounting is often a five-year degree program at many universities. No wonder the CPA exam first time pass rate is typically below 20% and in some jurisdictions below 5%.

Accounting is not easy. Yet our family law support system – as well as the division of property – is inherently a function of accounting. Requiring family law practitioners and judges to be CPAs (and tax experts)\(^\text{24}\) is a solution, but hardly a viable one. For now, however, I have no other solution. I mostly have only questions. In most cases, the lack of answers probably does not matter. Often the parents have so few resources, the lack of clarity regarding “income” is immaterial. In many other cases, the parents are employed at a fixed salary or earn predictable amounts of wages; as a result, manipulation is unlikely. Still, many other parents have small business – corporations, partnerships, and sole proprietorships. In those cases, the lack of answers and solutions to “what is income” becomes hugely important. Child support is largely a mechanical computation. Asset division is similarly mechanical. The mechanics, however, rely on very slippery numbers. The artificial, mechanically induced perception of “fairness” involving family support and property division is thus likely often an illusion.

\(^{24}\) Contrary to popular belief, a CPA certificate is not indicative of significant knowledge of tax law. Granted, many CPAs know much about taxes; however, many are far less than experts on the subject. A full understanding of “income” issues for family law requires experience in both areas.