

First Supplement to Memorandum 84-38

Subject: Study F-671 - Quasi-Community Property (Tax Implications)

Memorandum 84-38 concludes that it is best to leave the potential quasi-community property tax problem alone, pending further developments. This supplementary memorandum reports a significant further development-- the Domestic Relations Tax Reform Act of 1983.

This federal act would eliminate the Davis tax liability problem by adding to the Internal Revenue Code the following provision:

SEC. 1041. Transfers of Property Between Spouses or Incident to Divorce

(a) General Rule.--No gain or loss shall be recognized on a transfer of property from an individual to (or in trust for the benefit of)--

(1) a spouse, or

(2) a former spouse, but only if the transfer is incident to the divorce.

(b) Transfer Treated as Gift; Transferee Has Transferor's Basis.--In the case of any transfer of property described in subsection (a)--

(1) for purposes of this subtitle, the property shall be treated as acquired by the transferee by gift, and

(2) the basis of the transferee in the property shall be the adjusted basis of the transferor.

(c) Incident to Divorce.--For purposes of subsection (a)(2), a transfer of property is incident to the divorce if such transfer--

(1) occurs within 1 year of the date on which the marriage ceases, or

(2) is related to the cessation of the marriage.

We understand it is likely this act will become law. We will continue to monitor it.

Respectfully submitted,

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