



**SAVRAN BENSON LLP**  
CERTIFIED PUBLIC ACCOUNTANTS AND CONSULTANTS

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Section Meeting Presentation  
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**Dividing Employment Based  
Marital Assets**

**Presented by:**

**Mitchell Benson, CPA, MT, CFF**  
Savran Benson LLP  
[mbenson@savranbenson.com](mailto:mbenson@savranbenson.com)

**Scott Finger, Esquire**  
Hofstein Weiner & Meyer, P.C.  
[Scott@4familylaw.com](mailto:Scott@4familylaw.com)

## Dividing Employment Based Marital Assets

1. Partnerships/Capital Accounts
  - a. Partnership Agreement consequences and payment terms for capital accounts (sample language attached)
  - b. Negative capital account and burden incurred by marriage
  - c. Unfunded Retirement Plans in professional partnership (sample language attached)
2. Large/Public Company Deferred Compensation
  - a. When is it paid and how to divide? Tax and creditor issues.
  - b. What earnings was the contribution made on?
3. Timing of Funded Retirement Contributions (match and employee) and Earnings thereon
  - a. When was the contribution made?
    - i. Post DOS
    - ii. Prior to DOS
  - b. What earnings period was the contribution based upon?
    - i. Contribution made past DOS on extended tax return –(K-1 example attached)
    - ii. Marital
    - iii. Nonmarital
  - c. Allocate earnings based on balance in each category marital/nonmarital
  - d. What about a loan or distribution after DOS? (sample analysis attached)
    - i. Reserve for ED if marital
    - ii. Charge against nonmarital amounts if nonmarital
    - iii. Taxes on Distribution
      1. If early should other party be responsible for PA or early penalty?
    - iv. Loan repayments after DOS from separate earnings.
4. Stock
  - a. Restricted (sample analysis attached)
  - b. Nonqualified options
  - c. Incentive Stock Options
  - d. 83(b) elections
    - i. Normally the IRS is going to calculate your tax liability based upon the fair market value of the equity at the actual time it is transferred to recipient you.
    - ii. Section 83(b) election lets the recipient decide at the start of the vesting agreement to be taxed for the entire amount that will eventually vest at the present value. Rather than paying tax each year then, it is paid all up front based on the value of the stock when it was granted. In order to make this election, a letter is sent to the IRS within 30 days of the grant. The IRS provides a sample letter that outlines what needs to be provided (sample attached).
  - e. Grant and Vesting agreements
  - f. Taxes
5. Vacation and sick time accumulated
6. Cases
  - a. *Messerschmidt*
  - b. *Fisher*
  - c. *Portugal*
  - d. *Berry*
  - e. *Yahas*

## 1.0 Accrual Account.

Each Partner shall have an account reflecting the individual Partner's interest in the difference between the income which would have been allocated to the Partner if the Partnership had been on the accrual method of accounting and the amount actually allocated to the Partner during the period he/she was a Partner, under the method of accounting used for federal income tax purposes. The Partnership shall establish and maintain a deferred income account for each Partner and Principal in accordance with the policies and procedures approved by the Partnership Board.

Note – This occurs most frequently due to accounts receivable, WIP and accounts payable. In the case of a portfolio/hedge manager it arises also from timing differences in recurring carry interest.

## 2.0 Accounts.

- (a) *Capital.* If the balance of the Former Partner's capital account is a positive amount, then the balance of the Former Partner's capital account or subordinated loan account shall be repaid in five, equal annual installments beginning in January following the date of Separation.
- (b) *Deferred Income.* If the balance of the Former Partner's deferred income account is a positive amount, then the balance of the Former Partner's deferred income account shall be paid to him/her in five, equal annual installments beginning in January following the date of Separation.

## Example of Unfunded Retirement Plan Language

### Payments to or from Former Partners.

(a) Except as otherwise provided in this Agreement, an Equity Partner whose membership in the Partnership terminates for any reason shall be entitled to receive from the Partnership an amount ("**Capital Payout Amount**") calculated as:

(i) Such Partner's fully vested Partnership Interest multiplied by Partnership Net Assets (as computed under Section 8.5 hereof); minus

(ii) Any indebtedness of such Partner to the Partnership and any amount paid pursuant to Section 8.3. Payment of the Capital Payout Amount to a Former Partner shall be made in the manner, and over the period specified in Section 8.7 hereof.

(b) In addition to the amounts set forth in Sections 8.3 and 8.4(a) above, an Equity Partner whose interest in the Partnership terminates shall be paid the amount which equals the product of (i) the average of the Tier-1 Draw and Tier-2 Payments paid to the Former Partner in the three (3) Fiscal Years immediately preceding the Termination Date (or the actual number of Fiscal Years as an Equity Partner if less than three (3)) multiplied by (ii) a factor of three (3) (collectively, the amounts due pursuant to Sections 8.4(a) and 8.4(b) is referred to as the "**Retirement Payout Amount**"). This Retirement Payout Amount shall be paid in equal installments over ten (10) years following the Termination Date. The Retirement Payout Amount shall be paid monthly without interest and be treated as a guaranteed payment by the Partnership, and shall continue to be paid to the personal representative or heirs of an Equity Partner who dies prior to the full payment of his or her Retirement Payout Amount.

(c) By way of illustration only, if the sum of the Partnership's Net Assets as calculated under Section 8.4 is Four Hundred Thousand Dollars (\$400,000.00) and the Equity Partner Partnership Interest is 30%, the Equity Partners' share of Partnership Net Assets is One Hundred Twenty Thousand Dollars (\$120,000.00). In addition, if under Section 8.4(b) the Tier-1 Draw and Tier-2 Payments to the Former Partner equals Three Hundred Thousand Dollars (\$300,000.00) for each of the three (3) fiscal years preceding the Termination Date, this amount multiplied by a factor of three (3) equals Nine Hundred Thousand Dollars (\$900,000.00). Therefore, the total Retirement Payout Amount is One Hundred Twenty Thousand Dollars (\$120,000.00) plus Nine Hundred Thousand Dollars (\$900,000.00), or One Million Twenty Thousand Dollars (\$1,020,000.00) payable equally over ten (10) years, which is One Hundred Two Thousand Dollars (\$102,000.00) annually.

Schedule K-1 (Form 1065)

2013

Final K-1 Amended K-1 OMB No. 1545-0099

Department of the Treasury Internal Revenue Service

For calendar year 2013, or tax year beginning ending

Partner's Share of Income, Deductions, Credits, etc.

See separate instructions.

Part III Partner's Share of Current Year Income, Deductions, Credits, and Other Items

Table with 15 rows and 2 columns. Rows include: 1 Ordinary business income (loss) 750,000; 2 Net rental real estate income (loss); 3 Other net rental income (loss); 4 Guaranteed payments 12,000; 5 Interest income 500; 6a Ordinary dividends; 6b Qualified dividends; 7 Royalties; 8 Net short-term capital gain (loss) -1,000; 9a Net long-term capital gain (loss); 9b Collectibles (28%) gain (loss); 9c Unrecaptured sec 1250 gain; 10 Net section 1231 gain (loss) -250; 11 Other income (loss); 12 Section 179 deduction; 13 Other deductions 5,000; 14 Self-employment earnings (loss) 762,000; 15 Credits; 16 Foreign transactions; 17 Alternative min tax (AMT) items A -1,658, B\* -58; 18 Tax-exempt income and nondeductible expenses C 25,000; 19 Distributions A 800,000; 20 Other information A 500.

\*See attached statement for additional information.

For IRS Use Only

Part I Information About the Partnership

A Partnership's employer identification number 36-6099995; B Partnership's name, address, city, state, and ZIP code ADIRONDACKS ACCOUNTING ADVISORS 100 HIKING TRAILS LAKE GEORGE, NY 60185; C IRS Center where partnership filed return CINCINNATI, OH; D Check if this is a publicly traded partnership (PTP)

Part II Information About the Partner

E Partner's identifying number 178-60-4456; F Partner's name, address, city, state, and ZIP code ANITA DIVORCE 100 ANYWHERE RD ELKINS PARK, PA 19002

G General partner or LLC member-manager Limited partner or other LLC member; H Domestic partner Foreign partner; I1 What type of entity is this partner? INDIVIDUAL; I2 If this partner is a retirement plan (IRA/SEP/Keogh/etc.), check here

J Partner's share of profit, loss, and capital: Table with columns Beginning and Ending, and rows Profit, Loss, Capital.

K Partner's share of liabilities at year end: Nonrecourse \$ 361,262; Qualified nonrecourse financing \$; Recourse \$ 0.

L Partner's capital account analysis: Table with columns Beginning and Ending, and rows Beginning capital account, Capital contributed during the year, Current year increase (decrease), Withdrawals & distributions, Ending capital account.

M Did the partner contribute property with a built-in gain or loss? Yes No; If "Yes", attach statement (see instructions)

SCHEDULE K-1 PENSIONS AND IRAS, BOX 13, CODE R

DESCRIPTION	PARTNER FILING INSTRUCTIONS	AMOUNT
PARTNER SAVINGS PLAN CONTRIBUTION		33,500.
401(K) CONTRIBUTION		17,500.
CASH BALANCE PLAN CONTRIBUTION		50,000.
TOTAL TO SCHEDULE K-1, BOX 13, CODE R		101,000.

SCHEDULE K-1 ALTERNATIVE MINIMUM TAX, ADJUSTED GAIN OR LOSS, BOX 17, CODE B

DESCRIPTION	PARTNER FILING INSTRUCTIONS	AMOUNT
ORDINARY GAIN OR LOSS	SEE FORM 6251 INSTRUCTIONS	-58.
TOTAL TO SCHEDULE K-1, BOX 17, CODE B		-58.

SCHEDULE K-1 CURRENT YEAR INCREASES (DECREASES)

DESCRIPTION	AMOUNT	TOTALS
ORDINARY INCOME (LOSS)	750,000.	
INTEREST INCOME	500.	
SHORT-TERM CAPITAL GAIN (LOSS)	-1,000.	
SECTION 1231 GAIN (LOSS)	-250.	
SCHEDULE K-1 INCOME SUBTOTAL		749,250.
CHARITABLE CONTRIBUTIONS	-5,000.	
OTHER DEDUCTIONS	-101,000.	
SCHEDULE K-1 DEDUCTIONS SUBTOTAL		-106,000.
NET INCOME (LOSS) PER SCHEDULE K-1		643,250.
NONDEDUCTIBLE EXPENSES	-25,000.	
OTHER INCREASES OR DECREASES SUBTOTAL		-25,000.
TOTAL TO SCHEDULE K-1, ITEM L		618,250.

Anita Divorce										
Retirement Account Analysis										
10/1/10-9/30/13										
Facts					Items for Schedule of Assets					
Retirement plan started during marriage					Loan balance due to Marital Estate by Wife					
Was paying back loans taken out prior to DOS					Retirement Account balance at current (9/30/13) that is Marital Asset					
Obtained additional loan (\$37,150) against account on 6/30/11 (Post DOS)					Withdrawal of Funds by Wife due to Marital Estate					
Withdrew funds (\$80,000) on 9/30/12 (Post DOS)					Lost Earnings on Withdrawn funds (Withdrawal and Loan) that is due the Marital Estate					
DOM - 9/1/96					PreDOS loan amount still due - If any - Is Marital Liability					
DOS - 10/2010					Credit to Wife for using Post DOS funds to Pay of marital loan					
			Loan of	W/D of				Loan of		
			Marital	Marital				NonMarital	Total	Non
			Funds	Funds				Funds	Marital %	Marital %
Period	Description	Marital		Total	NonMarital		Total			
10/1/2010	Beginning Balance	75,000.00		75,000.00	-		75,000.00		100%	0%
12/31/2010	Contributions	-		-	1,862.66		1,862.66	1,862.66		
12/31/2010	Loan Payments	1,355.82		1,355.82	-		1,355.82			
12/31/2010	Investment Earnings	4,649.00		4,649.00	-		4,649.00			
12/31/2010	Withdrawals/Loans/Fees	(6.25)		(6.25)	-		(6.25)			
12/31/2010	Ending Balance	80,998.57		80,998.57	1,862.66	-	82,861.23		98%	2%
3/31/2011	Contributions	-		-	1,790.64		1,790.64	1,790.64		
3/31/2011	Loan Payments	1,355.82		1,355.82	-		1,355.82			
3/31/2011	Investment Earnings	3,191.98		3,191.98	73.40		3,265.38			
3/31/2011	Withdrawals/Loans/Fees	(6.11)		(6.11)	(0.14)		(6.25)			
3/31/2011	Ending Balance	85,540.26		85,540.26	3,726.56		89,266.82		96%	4%
6/30/2011	Contributions	-		-	2,089.08		2,089.08	2,089.08		
6/30/2011	Loan Payments	1,355.82	3,661.76	5,017.58	-		5,017.58			
6/30/2011	Investment Earnings	427.77		427.77	18.64		446.41			
6/30/2011	Withdrawals/Loans/Fees	(5.99)	(31,303.97)	(31,309.96)	(0.26)	(5,834.02)	(37,156.25)			
6/30/2011	Ending Balance	87,317.86	(27,642.21)	59,675.65	5,834.02	(5,834.02)	59,675.65		100%	0%
9/30/2011	Contributions	-		-	1,790.64		1,790.64	1,790.64		
9/30/2011	Loan Payments	1,355.82	1,083.66	2,439.48	-		2,439.48			
9/30/2011	Investment Earnings	(6,723.38)		(6,723.38)	0.00		(6,723.38)			
9/30/2011	Withdrawals/Loans/Fees	(6.25)		(6.25)	0.00		(6.25)			
9/30/2011	Ending Balance	81,944.05	(26,558.55)	55,385.50	7,624.66	(5,834.02)	57,176.14		97%	3%
12/31/2011	Contributions	-		-	2,089.49		2,089.49	2,089.49		
12/31/2011	Loan Payments	1,355.82	1,490.24	2,846.06	-		2,846.06			
12/31/2011	Investment Earnings	2,745.82		2,745.82	88.77		2,834.59			
12/31/2011	Withdrawals/Loans/Fees	(6.05)		(6.05)	(0.20)		(6.25)			
12/31/2011	Ending Balance	86,039.63	(25,068.31)	60,971.32	9,802.73	(5,834.02)	64,940.03		0.97	6%
3/31/2012	Contributions	-		-	2,089.08		2,089.08	2,089.08		
3/31/2012	Loan Payments	638.89	2,207.17	2,846.06	-		2,846.06			
3/31/2012	Investment Earnings	5,525.82		5,525.82	178.65		5,704.47			
3/31/2012	Withdrawals/Loans/Fees	(6.05)		(6.05)	(0.20)		(6.25)			
3/31/2012	Ending Balance	92,198.29	(22,861.14)	69,337.15	12,070.26	(5,834.02)	75,573.39		92%	8%
6/30/2012	Contributions	-		-	2,089.08		2,089.08	2,089.08		
6/30/2012	Loan Payments	638.89	2,207.17	2,846.06	-		2,846.06			
6/30/2012	Investment Earnings	(1,934.14)		(1,934.14)	(173.96)		(2,108.10)			
6/30/2012	Withdrawals/Loans/Fees	(104.96)		(104.96)	(9.44)		(114.40)			
6/30/2012	Ending Balance	90,798.08	(20,653.97)	70,144.11	13,975.94	(5,834.02)	78,286.03		90%	10%
9/30/2012	Contributions	-		-	298.44		298.44	298.44		
9/30/2012	Loan Payments	547.62	1,891.86	2,439.48	-		2,439.48			
9/30/2012	Investment Earnings	1,001.03		1,001.03	116.19		1,117.22			
9/30/2012	Withdrawals/Loans/Fees	17,802.62	(80,000.00)	(62,197.38)	2,066.43		(60,130.95)			
9/30/2012	Ending Balance	110,149.35	(18,762.11)	91,387.24	16,457.00	(5,834.02)	103,010.22		52%	48%
12/31/2012	Contributions	-		-	-		-			
12/31/2012	Loan Payments	638.89	2,207.17	2,846.06	-		2,846.06			
12/31/2012	Investment Earnings	107.14		107.14	99.95		207.09			
12/31/2012	Withdrawals/Loans/Fees	(14.66)		(14.66)	(13.67)		(28.33)			
12/31/2012	Ending Balance	110,880.72	(16,554.94)	94,325.78	16,543.28	(5,834.02)	105,035.04		57%	43%
3/31/2013	Contributions	-		-	-		-			
3/31/2013	Loan Payments	547.62	1,891.86	2,439.48	-		2,439.48			
3/31/2013	Investment Earnings	594.64		594.64	444.53		1,039.17			
3/31/2013	Withdrawals/Loans/Fees	(27.87)		(27.87)	(20.84)		(48.71)			
3/31/2013	Ending Balance	111,995.11	(14,663.08)	97,332.03	16,966.97	(5,834.02)	108,464.98		61%	39%
6/30/2013	Contributions	-		-	-		-			
6/30/2013	Loan Payments	638.89	2,207.17	2,846.06	-		2,846.06			
6/30/2013	Investment Earnings	42.96		42.96	27.60		70.56			
6/30/2013	Withdrawals/Loans/Fees	(23.76)		(23.76)	(15.26)		(39.02)			
6/30/2013	Ending Balance	112,653.20	(12,455.91)	100,197.29	16,979.31	(5,834.02)	111,342.58		64%	36%
9/30/2013	Contributions	-		-	-		-			
9/30/2013	Loan Payments	456.35	1,891.86	2,348.21	-		2,348.21			
9/30/2013	Investment Earnings	927.99		927.99	512.09		1,440.08			
9/30/2013	Withdrawals/Loans/Fees	(28.58)		(28.58)	(15.77)		(44.35)			
9/30/2013	Ending Balance	114,008.97	(10,564.05)	103,444.92	17,475.62	(5,834.02)	115,086.52		67%	33%

Summary of Granted Stock by year that are either still held, were sold, or not vested or delivered

Date	Service Year	Grant Date	Vesting Date	Gross Shares	Net Shares Delivered	Total Shares By Delivery Date	M/NM	Transactions	Remaining Shares	Account	Cost Basis Per Share	Cost Basis	Estimated Sale Price	Estimated Proceeds	Estimated Gain/Loss	Estimated Cap Gains Taxes	Estimated Taxes Due on Shs	Net Value
1/25/2010	2006	11/24/2006		578	369		marital	# sold 1/27/10:	638	431 Merrill Lynch	-	-	175	75,425	75,425	13,629	already paid	61,796
	2008	12/17/2008	12/31/2009	861	585		marital											
	2008 additional	12/17/2008	12/31/2009	170	115	1,069	marital											
1/25/2011	2007	11/30/2007		771	489		marital	# sold 8/6/12 & 8/13/12:	873	752 Merrill Lynch	-	-	175	131,600	131,600	23,780	already paid	107,820
	2008	12/17/2008	12/31/2010	861	585		marital											
	2008 additional	12/17/2008	12/31/2010	170	115	1,625	marital											
1/25/2012	2009	1/22/2010	12/31/2010	642	436	1,625	marital	# sold 8/13/12:	439	975 Merrill Lynch	-	-	175	170,625	170,625	30,832	already paid	139,793
	2008	12/17/2008	12/31/2011	861	574		marital											
	2008 additional	12/17/2008	12/31/2011	171	114	1,414	marital											
1/24/2013	2009	1/22/2010	12/31/2013	643	428		marital	N/A	2,035	Merrill Lynch	145.03	295,136	175	356,125	60,989	15,900	already paid	340,225
	2010	1/20/2011	12/31/2012	448	298		marital											
	2011	1/19/2012	12/31/2012	1,964	1,309	2,035	marital											
1/25/2014	2010	1/20/2011	12/31/2013	449	N/A		marital	N/A	3,613	not received	N/A	N/A	175	632,275	N/A	N/A	268,768	363,507
	2011	1/19/2012	12/31/2012	1,964	N/A	3,613	1/2 M and 1/2 NM											
	2012	1/17/2013	12/31/2013	1,200	N/A	3,613	1/2 M and 1/2 NM											
1/25/2015	2011	1/19/2012	12/31/2013	1,965	N/A		marital	N/A	3,165	not received	N/A	N/A	175	553,875	N/A	N/A	234,792	319,083
	2012	1/17/2013	12/31/2014	1,200	N/A	3,165	1/2 M and 1/2 NM											
1/25/2016	2012	1/17/2013	12/31/2015	1,200	N/A	1,200	1/2 M and 1/2 NM	N/A	1,200	not received	N/A	N/A	175	210,000	N/A	N/A	85,434	124,566
Total Estimated Value of RSUs																		1,456,789
Less Nonmarital Portion																		(183,139)
Total Estimated Value of Marital RSUs																		<u>1,273,650</u>

Since Value was calculated at current, then no capital gains tax is due on unexercised shares. Capital gains taxes are 3.07% PA and 15% federal through 2012 (2013 federal is 23.8%).



### **Section 83(b) Election**

*The undersigned taxpayer hereby elects, pursuant to § 83(b) of the Internal Revenue Code of 1986, as amended, to include in gross income as compensation for services the excess (if any) of the fair market value of the shares described below over the amount paid for those shares.*

1. *The name, taxpayer identification number, address of the undersigned, and the taxable year for which this election is being made are:*

*TAXPAYER'S NAME:*

*TAXPAYER'S SOCIAL SECURITY NUMBER:*

*ADDRESS:*

*TAXABLE YEAR: Calendar Year 20\_\_\_\_\_*

2. *The property which is the subject of this election is shares of common stock of .*
3. *The property was transferred to the undersigned on [DATE].*
4. *The property is subject to the following restrictions: [Describe applicable restrictions here.]*

*The fair market value of the property at the time of transfer (determined without regard to any restriction other than a nonlapse restriction as defined in § 1.83-3(h) of the Income Tax Regulations) is: \$per share xshares = \$.*

6. *For the property transferred, the undersigned paid \$per share xshares = \$.*

7. *The amount to include in gross income is \$. [The result of the amount reported in Item 5 minus the amount reported in Item 6.]*

*The undersigned taxpayer will file this election with the Internal Revenue Service office with which taxpayer files his or her annual income tax return not later than 30 days after the date of transfer of the property. A copy of the election also will be furnished to the person for whom the services were performed. Additionally, the undersigned will include a copy of the election with his or her income tax return for the taxable year in which the property is transferred. The undersigned is the person performing the services in connection with which the property was transferred.*

*Dated:*

*Taxpayer's Signature*