Tax Tips for Separating Couples: Putting More Money in Their Pockets
Prepared for: Legal Education Society of Alberta
Family Law During Recessionary Times

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For presentation in:
Calgary, Alberta – October 4, 2017
Edmonton, Alberta – October 11, 2017
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INTRODUCTION

Creative and co-operative approaches to the parties' tax returns and related tax issues can increase the amount of funds retained by the parties. This issue is even more important during difficult economic times especially for couples who have been struggling financially. The rules and administrative policies governing the taxation of separated and divorced taxpayers has become more complicated and Canada Revenue Agency has become more diligent in assessing these individuals. Spouses should work together to ensure their intentions are achieved; agreements should reflect the resolutions they have made and the claims they want to make on future tax returns. Strict compliance can make all the difference. Numerous court decisions have held that even where the parties agree and their intent is clear, failure to get the correct paperwork together and in order may mean that the parties' intent is thwarted along with the associated tax savings. Review by a tax professional is essential; spending time and money to ensure that all foreseeable tax issues are thoroughly discussed and that all the formalities are complied with will minimize future conflicts with the parties as well as with CRA.

There are several opportunities where lawyers and their clients can work together to reach agreement on issues that may net the spouses additional funds. We are going to explore some of the more common items.

1. Retroactive spousal support can offer spouses/partners the opportunity to net some additional dollars. Working together to ensure this issue is addressed in the agreement according to the Tax Act’s required timeline may net the parties additional dollars due to differing tax brackets of the payer and recipient.

2. Another opportunity to collaborate when the parties need funds is to withdraw RRSPs. The withdrawal of RRSPs should always be a last resort to access funds. Sometimes, when couples have a great deal of debt though, it is their only means to pay it off.

3. A third option is to use available capital losses accumulated in prior years to eliminate some or all of the associated income tax liability from selling investments to access cash. If the spouses would like to sell marital assets that at the time of settlement would have a taxable capital gain, they may be able to use available capital losses to offset those gains. This decision should never be made without consulting a tax professional and financial advisor.