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Illustrating Divorce Tax Law: Lasting Impacts

Abstract

When an individual mentions divorce, it is easy to become swept up in an array of emotions. Divorce, in many ways, is seen as a beast of legal facets that needs to be understood. This highlights the impact that knowledgeable lawyers have on the general public. Understanding the individual facets of divorce law is imperative. Divorce not only affects two people, but it possesses additional consequences for individuals related to divorcees. Divorce further has the potential to shift the dynamic for an entire family. Additionally, divorce is becoming increasingly prevalent. Current survey data found that steadily half of marriages fail (Mathewson, 2018). Unfortunately, this has placed a consequent strain on the legal system. Due to the frequent occurrence of divorce, new advances are always being made within divorce law that have been used throughout case law.

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When an individual mentions divorce, it is easy to become swept up in an array of emotions. Divorce, in many ways, is seen as a beast of legal facets that needs to be understood. This highlights the impact that knowledgeable lawyers have on the general public. Understanding the individual facets of divorce law is imperative. Divorce not only affects two people, but it possesses additional consequences for individuals related to divorcees. Divorce further has the potential to shift the dynamic for an entire family. Additionally, divorce is becoming increasingly prevalent. Current survey data found that steadily half of marriages fail (Mathewson, 2018). Unfortunately, this has placed a consequent strain on the legal system. Due to the frequent occurrence of divorce, new advances are always being made within divorce law that have been used throughout case law. In Illinois, codified divorce law has been updated by case law in important ways by the Illinois Marriage and Dissolution of Marriage Act (IMDMA) of 2015. The revision of the law IMDMA, Section 504 (b) (1) (B) altered the way the legal community progresses divorce in reference to maintenance, tax brackets, child credits, and college savings plans. Recently, on January 1st, 2019 , a bill was put into effect that greatly transitioned the way that divorces occur from a financial standpoint. Child custody and dispersion of assets are the two large debates within a divorce. Moreover, the addition and revision of the IMDMA, Section 504 (b) (1) (B) created a surge within the divorce law community as it transformed the way that divorces functioned when referencing financial capital. This essay will review the changes these two laws have made in Illinois divorce practice" or some such.

Each state has different divorce laws in response to when a couple can be legally divorced. Illinois divorce laws grant a “no- fault” exception. This means that neither party has to prove that there was any wrongdoing. Instead, this can be a mutually decided dissolution of marriage. The process for a divorce can vary depending on the urgency of the arrangements. The civil case will begin by the Plaintiff requesting an official Petition for Dissolution of Marriage to the defendant. From this point, the defendant will have thirty days after being served this response. The divorce process then relies greatly on the amount of assets owned and if children are involved.

Before diving deeper into the revision of the 750 ILCS 5/504 Section 504, it is crucial that one understands what explicit changes were made. While some aspects of this law remained the same, the sections regarding maintenance and tax allocation were affected the most. First, one must understand the purpose of establishing a maintenance amount during the course of a divorce settlement. The purpose of spousal maintenance is to help support the other spouse. This can be seen in marriages where one spouse worked while the other cared for the children. Another example is a spouse furthering their education so that they did not have to work as many hours. While the judge does not have to offer maintenance, this is a common provision within divorce that opposing lawyers will push for. Moreover, this sector of state law within Illinois has seen a vast amount of recent change. The new additions to the 750 ILCS 5/504 Section 504 law reads as follows:

1. The income and property of each party, including marital property apportioned and nonmarital property assigned to the party seeking maintenance as well as all financial obligations imposed on the parties as a result of the dissolution of marriage

2. The time necessary to enable the party seeking maintenance to acquire appropriate education, training, and himself or herself through appropriate employment.

(b-1) If the application of guideline maintenance results in a combined maintenance and child support obligation that exceeds 50% of the payor's net income, the court may determine non-guideline maintenance.

(B) Shall be calculated by multiplying the length of the marriage at the time the action was commenced whichever of the following factors applied.

(B-4.5, 2) Indefinite maintenance. If a court grants maintenance for an indefinite term, the courts shall not designate a termination date. Indefinite maintenance shall continue until modification or termination under section 510.

It is essential that the direct law is used in order to further understand the reasoning and changes within this revision. As referenced above, the way that divorce law is understood and used maintenance within settlements changed dramatically. Additionally, the tax revision provided a change in allocation and children deductions. This not only affected divorce lawyers but also the accountants that were required to uphold and learn the current requirement.

One way to think about these changes is to use the theory of power developed by John Gaventa. Gaventa's Theory regarding the second dimension of power is extremely relevant when analyzing this new law. Furthermore, there is an emphasis on the second dimension of power in relation to the 750 ILCS 5/504 revision. To begin, one must explain the three different dimensions of power in order to compare among the other. Within the first dimension of power, A has power over B, to the extent that A can get B to do something that B would not normally participate in (Gaventa, 1982). In short, means that A influences B, an example of this is face to

face persuasion of force. This is consent oriented, which in turn is who the voters elect. Next, is the second dimension of power, this is where A prevails over B, which blocks B's preferences from succeeding. Consequently, this is known as, "shaping the rules of the game." Concrete examples of this are indirect agenda control, the power to gerrymander, bias in the system, and rules of the game. Rules of the game is an important theory that is apparent within 750 ILCS 504 law as it provides an account of where this power is prevalent within divorce law. Lastly, is the third dimension. Such results in A exercising power over B, which determines B's every wants. Those in power manipulate individuals by declaring what their interest should be. In turn, this creates focus on cultural hegemony, influences through interest shaping, and has an indirect approach. Furthermore, the third dimension is highly problematic as many political conflicts have been constructed by speaking for others and making inferences for a group of individuals. The second dimension of power is helpful as it helps give further explanation behind the rules of the game within the government. Furthermore, the third dimensional power is also apparent here, many women have had their own view of their role shaped by gender stereotypes. This is an example of the power of what shaping identity is. This law helps individuals understand that there are rules of the game and that changing these are an act of power with lasting consequences. 750 ILCS 5/504 law has long reaching effects as it shaped the way Illinois patrons encounter divorces within the legal system.

Maintenance within the court system has been highly debated, but it is important to analyze the reasoning behind such law. For a spouse to be awarded spousal support, there are different thresholds that need to be met. Maintenance laws are not dependent on if the individual identifies as male or female. Instead, it is based on other characteristics. The first bit of

information needed will be their yearly income followed by if they own any property. Yearly income holds a significant amount of weight for the judge when determining if maintenance is necessary. Additionally, their earning potential for both now and the future are evaluation. The reasoning behind this is to project if their income will alter as time progresses. For example, those that have had the opportunity to pursue and achieve a higher education would have more possible opportunity than someone with a high school diploma. With higher education, a higher return for one's yearly income is created. Furthermore, when discussing education and the future, the judge will also consider the amount of education or training that will be needed to pursue a career. This varies depending on the situation and point in their adult career. Next, one must also consider the amount of household duties that each spouse acquired during the length of the marriage. This aids the judge and lawyers by illustrating the amount of work that was spread throughout their married relationship. Additionally, each spouse's age will be considered in order to project if the individual will be able to care for themselves financially in years to come. There are numerous factors that must be proven by lawyers and considered by the judge and or jury when determining if maintenance is required for dissolution. This decision will have nothing to do with how the individuals behaved within their marriage. Instead, the burden of proof is to provide evidence and further explanation for the above categories. The judge will not make their decision on the basis of how well either spouse has behaved during the marriage.

To further evaluate, one must consider the revised numerical equation that was put in place by 750 ILCS 504 law. This equation is significantly based on the length of the marriage. While this is true, the other factors referenced above are necessary to progress the judge to make this judgement. As stated within the contemporary Illinois divorce law.

(b 1) Shall be calculated by multiplying the length of the marriage at the time the action was commenced as to any of the following factors of years.

This was an addition to the last revision of this law in 2019. This created a standardized multiplier dependent on the amount of years a couple was legally married. This can be conceptualized by the table below.

Less than 5 years (.20)	12 years or more but less than 13 years (.52)
5 years or more but less than 6 years (.24)	13 years or more but less than 14 years (.56)
6 years or more but less than 7 years (.28)	14 years or more but less than 15 years (.60)
7 years or more but less than 8 years (.32)	15 years or more but less than 16 years (.64)
8 years or more but less than 9 years (.36)	16 years or more but less than 17 years (.68)
9 years or more but less than 10 years (.40)	17 years or more but less than 18 years (.72)
10 years or more but less than 11 years (.44)	18 years or more but less than 19 years (.76)
11 years or more but less than 12 years (.48)	19 years or more but less than 20 years (.80)

For a marriage of 20 or more years, the court, in its discretion, would have the ability to order maintenance for a period equal to the length of the marriage or for indefinite terms. The above formula created a standardized equation for individuals within a divorce. Before this law was placed into action, judges would have the discretion to calculate maintenance while using a statutory formula. This concept would be similar to how child support awards are received within the legal system. (Hurst,2019). Consequently, some may view this as a positive component of this law's revision as it instilled a constant formula for the legal community. This created a formula for calculating maintenance based on gross income of parties while also considering the length of one's marriage. In practice, the previously mentioned equation is used

to determine the amount of money from the other spouse's gross paycheck that will be paid as spousal support. Furthermore, this maintenance check is most commonly paid monthly, but the time frame can be altered in concurrence with the judge's ruling. There is still a small aspect of disparity among the court system, as judges do not have to use this calculation for maintenance based on the length of marriage. This is factual, the judge would have to prove to the higher courts that there would be reasoning against the formula stated under 750 ILCS 5/504. This created a higher threshold and accountability among the courts. Once the need for maintenance has been proven, followed by the amount of years legally married, it is now appropriate to consult the multiplier equation. The aforementioned equation was also revised on January 1st of 2019 can be found as follows.

33% of the Payor's Net Income $.33 \times \$ = \text{total}$

25% of the Payee's Net Income $.25 \times \$ = \text{total}$

Subtract the figure in (b) from the figure in (a) $\$ - \$ = \text{total}$

40% of the combined net income: $.40 \times \$ = \text{total}$ (This forms the maintenance cap)

Furthermore, this is a numerical illustration of the amount of financial resources that will be owed to the other spouse. 750 ILCS 5/504 law does create a financial limit on the amount of maintenance that the payee can receive. The limit can be explained by adding the amount of maintenance from the above formula to the payee's gross yearly income. This number should then be added to both the spouse's income together, and then multiplied by .40. Moreover, if part A is higher than part B, then one would subtract the payee's gross yearly income which would then result in the highest peak amount of money that would be paid to the payee. Consequently,

this formula and marriage length bracket aided the divorce legal community to hold each other to a similar and consistent status quo when determining spousal support. The above maintenance bracket and multiplier formula provide clarity for the amount of financial resources owed to the payee, but it does not state if it will be permanent or reviewable. The topic of permanent or reviewable often becomes a conflict when the couple with advice from their attorneys cannot agree on when payments should terminate. Under these conditions, a judge is necessary in order to determine the amount of time needed for payment of spousal support also referred to as maintenance.

Often for marriages that have endured for over ten years, judges will award reviewable maintenance. When a judge awards reviewable maintenance, it means that the opposed couple is agreeing to a certain end date. This can also include different stipulations, for example, once the husband has earned his Bachelor's degree or four years have passed then maintenance will terminate. For long term marriages, such as those legal partnerships that have lasted more than twenty years, often there is permanent maintenance that is required. When the court awards permanent maintenance, the payor spouse would be urged to seek modification. In this circumstance, one would have to prove a change of circumstance which would consequently raise the burden of proof to terminate maintenance. (Locus,2018).

When looking at this revision, it can be helpful to seek out contemporary case law for a real life example. The civil case in the Fourth Division Court of Illinois on April 25,2019 determined the MARRIAGE OF MAURISSA GREER (Petitioner-Appellee) v ANTHONY WALKER, within the (Respondent-Appellant). The reason that this legal proceeding was not based on the need for a divorce, instead Maurissa Geer (Petitioner) was petitioning for the

maintenance amount to be reconsidered. The background of this case begins on November 13, 2014 when the petitioner filed a suit for dissolution of marriage. The petition alleged that the parties were married on February 14, 2003 which resulted in separation in July of 2013. It further claimed that the petitioner was employed as a “processor,” in comparison to the respondent who was unemployed. On February 24, 2015, the respondent filed a petition for temporary maintenance. The respondent alleged that petitioner possessed sufficient assets and earned an annual income in excess of \$70,000 and that she had failed to provide support and maintenance of the respondent since the commencement of the dissolution. Accordingly, the respondent requested temporary maintenance during the pendency of the action and permanent maintenance thereafter. On October 20, 2015, the trial court entered an order granting the respondent's petition for temporary maintenance and awarding temporary maintenance of \$1500 per month. On December 3, 2015, the respondent filed a petition for rule to show cause, claiming that petitioner had not paid any maintenance to respondent after the trial court’s October 20, 2015, order awarding temporary maintenance. 10 On December 17, 2015, the trial court granted the petitioner's petition for a downward modification of the maintenance award and set temporary maintenance at \$600 per month. Under the version of section 504 in effect at the time of judgment, the trial court was required to consider a number of relevant factors in determining whether to award maintenance. If the court determines that a maintenance award is appropriate, section 504 provides guidelines to be applied in setting the amount and duration of the award; if the award is not in accordance with the guidelines, such an award “shall be made after the court’s consideration of all relevant factors set forth in subsection (a).” 750 ILCS 5/504(b-1). The trial court’s award of maintenance is affirmed where the record on appeal is insufficient to support

respondent's claims of error. It is stated, "The respondent appeals and, for the reasons that follow, we affirm." (In Re Marriage of Greer". The appeal is a present example of the enduring consequences that have ensued from this revision of the law. 750 ILCS 5/504(b-1) law regarding maintenance and tax deductions not only affects the future, but in some ways, the past via submitting a motion to reconsider.

Under the revision, there was an increased emphasis on understanding and applying tax law when individuals seek out divorce. Tax law has a blanket effect within America as most individuals pay taxes to the state and federal government. This revised law greatly impacted the amount of deductions and the amount that would be paid into the government when a couple is divorced. Especially those couples that have a high income. TCJA eliminated deductions for alimony payments required by post-2018 divorce agreements.(Hurst,2019). On January 1, 2019 the TCJA revision of tax law was put into effect that eliminated alimony deductions among other line items.

The payment of alimony is no longer a deduction to the payor or taxable to the payee. The alimony payment is an example of the second dimension of power, as this is an alteration in the "rules of the game" Income taxes is the greatest way that the state and federal government fund the fiscal budget. Taxes are a furtherment of the government intervening within different sectors of law in order to increase the bottom line. One might ask, how does this transfer to divorce law? Many times, negotiation of alimony is a way to progress the settlement between parties. Consequently, this is no longer a way to advance either party towards settlement. As time progresses in a divorce, a stalemate is created within the courts which includes judges, lawyers, and spouses that are part of a divorce case. This has created an increase for the

government through taxes, as this is no longer a deduction which creates a higher gross income for tax brackets. In short, the elimination of alimony within a divorce settlement has created an interruption within the timely effectiveness of the legal system within Illinois.

Furthermore, net incomes are changing under this relatively new tax law. Standard deductions have been significantly increased while the other at one time standard deductions have been eliminated. In addition, there are now more financial caps on the allocations allowed on common deductions such as mortgage interest. Along with local and state taxes that are often paid yearly. Consequently, tax brackets and tax rates have drastically changed for single and divorced parents within recent laws. This is generating less of a strain on the more financially stable parent as it creates a significant change in the after- tax or “net income,” (William,2019). The tax law produced a significant impact on the calculations for child support and the amount of financial resources that will be provided to the payee. Undoubtedly, this is an additional example of the second dimension within government and how it pertains to common deductions when calculating taxes owed to the government or in some cases the payee.

An additional factor within this amended local law is the expansion and more frequent usage of 529 college savings plans. To elaborate, this is a new case law within Illinois divorce law which helps expand the use of the funds for additional college expenses (Locus,2018). Before the revision, there had been little discussion regarding higher education when divorces were being finalized while children were present. At one time, couples would finalize their divorce and then consult each parties’ lawyers once the children have reached the age of eighteen. At any time, the case could be reopened to a degree in order to determine the amount of financial resources needed from each payment to help provide for the child. The terms of a 529

college savings negotiation plan are not set in stone and vary dramatically based on each case. Furthermore, the addition to the 529 plan made it more accessible and discussed throughout the divorce dissolution to look towards higher education. The 529 savings plan benefits the divorce community as a whole. Additionally, the savings plan benefits the children involved as there is an emphasis on higher education in hopes to provide the financial resources needed.

Lastly, child tax credit has been expanded under this modified local law. The tax deduction for children in divorce creates an unresolved issue between the two parents. This deduction has been eliminated from the sole parent to collect. Moreover, the tax credit can now be divided based on the amount of care that the child receives from each parent. For example, if 60% of time was spent with the mother, she would receive 60% of the tax deduction credit (Fishman,2019). The tax deduction has helped level the economic playing fields in order to create a more stable foundation for now single divorced parents. Divorce has the potential to affect families for decades of time. This shows the impact that these additions to laws can make and how it is important to create sound and just laws.

When thinking about divorce laws and the topic of spousal maintenance, it is often beneficial to compare the laws to other states within America. To begin, a majority of states consider custodial maintenance within a course of a divorce. Eight states do not acknowledge the need for spousal maintenance (Marital Laws). Therefore, it is more significant to compare Illinois to the remaining forty-one states. Consequently, even though maintenance can be granted once the burden of proof is determined, there are still three main categories that need to be filled. Illinois does not consider who was at fault within the marriage as a reason not to award spousal support. This is a combined total of twenty-two states including Illinois that do not consider who

was at fault when proving the need for support (Marital Laws). Additionally, Custodial Status is often considered during this discussion. In many states, alimony calculations are based on if the spouse is receiving child support. Therefore, custodial spouses would often result in a higher alimony payment. Illinois considers the category of custodial status during the determination of maintenance. The minority of eight states of the fifty do not consider this class relevant when considering maintenance. Lastly, standard of living is one element of maintenance that is at times considered. At this time, only three states can use this research and information within their argument. Illinois is not one of those three states. Subsequently, Illinois compares to the majority of states within America. This is important to consider as this revision was recently made on January, 1st 2019.

Tax law is an additional aspect that was considered within the modification of recent legislative decisions. The terms under Tax Cuts and Job Acts (TCJA) were passed by the federal government in hopes of creating positive effects within tax law. In turn, this means that Illinois compares to the other forty-nine states as federal law takes precedence over state law. Divorces that are written after December 31st, 2018 can no longer claim alimony as a tax deduction. Furthermore, those individuals that receive alimony payments will no longer need to include them on the taxable income. This is the most critical change within divorce law especially in response to Illinois maintenance guidelines. An additional topic for conversation is the 529 savings plan. Illinois is one of fourteen states that can be court ordered to have the non-custodial parent contribute to college expenses. This can be seen as immensely beneficial for the state of Illinois and its residents as higher education and its funding is being discussed earlier rather than

later. The goal of these saving plans is to promote a fair distribution of college funding between two parents.

The lasting impressions regarding this revision of the law impacts both on the micro and macro level. To readdress, the payment of maintenance is no longer a deduction to the payor or payee. This is a further example of the second dimension of power, as this revision of the law is shaping the “rules of the game.” Often this tax benefit of alimony is a way to progress the settlement of two parties. Consequently, this is no longer a way to advance either party towards settlement which creates traffic within the divorce legal system. An additional aspect was that net incomes changed because standard deductions were altered. Standard deductions have been significantly increased while the other at one time standard deductions have been eliminated. There are now more caps on the allocations allowed on common deductions such as mortgage interest, along with local and state taxes that are paid. Unfortunately, this has created less of a strain on individuals due to the alteration of the tax bracket.

On the other hand, one positive was the expansion and more prevalent usage of 529 college savings plans. This is a new case law within the law which expands the use of the funds for additional college expenses. Prior to this revision, there had been little to no discussion regarding higher education when divorces were being finalized. This addition to the 529 plan made it more accessible and discussed throughout the divorce dissolution. Lastly, child tax credit has been expanded. The tax deduction for children in divorce creates an unresolved issue between the two parents. While the deduction has been eliminated for a sole parent to collect. Furthermore, the tax credit can now be divided based on the amount of care that the child

receives from each parent. Consequently, this has helped level the economic playing fields in order to create a more stable foundation.

Furthermore, the maintenance formula bracket also greatly altered the way that divorce alimony is paid. The positive aspect of this law is the ability to determine the amount of the award due to the duration of the marriage. The formula created a total cap of the amount that was paid, before there was an unlimited amount of money that could be requested. Additionally, the component of taking the length of marriage into account creates a more fair and equal playing ground for both individuals. While the topic of spousal maintenance is up for debate and question, it is positive that the reform has been made. This recent change should improve the consistency and fairness regarding the amount of financial resources that are paid to the individual.

In conclusion, the addition and revision of the IMDMA, Section 504 (b) (1) (B) created a surge within the divorce law community as it transformed the way that divorces ensued when referencing financial capital. Furthermore, Divorce, in many ways, is seen as a beast of legal facets that needs to be understood. Consequently, this emphasizes the impact that knowledgeable lawyers have on the general public. Understanding the individual facets of divorce law is imperative. The revision of the law IMDMA, Section 504 (b) (1) (B) altered the way the legal community progresses divorce in reference to maintenance, tax brackets, children credits, and college savings plans and its implications and effects are visible as a whole. During the course of the semester the ability to relate information to clients was imperative to the success of the case. This transpires to creating a working relationship with the clients ensuring that the process is as smooth as possible. As this law changed rapidly at the beginning of 2019, it was a learning

process for both the lawyers and paralegals but in turn the clients. This law will have lasting impressions on the family unit. The fact that maintenance is no longer a tax deduction has changed divorce. Moreover, there were positive aspects that were addressed such as the discussion of 529 college savings plans. Additionally, the redistribution of the formula regarding maintenance. Divorce not only affects two people, but instead it shifts the entire family dynamic. Moreover, this is why it is crucial to have effective laws put in place to encourage the regrowth and persistence of the family unit within the category of divorce law.

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