

Unallocated Family Support Is Alive and Well

Structuring maintenance and child support as an award of “unallocated family support” can produce favorable tax consequences as the entire amount is deductible for tax purposes. For a high bracket tax payer in a tax bracket of, say 35%, the real cost of \$100 of unallocated family support is \$65.00. This allows for creative solutions in connection with support issues.

But, is there statutory or case law authority for unallocated family support. Fortunately, the answer is yes --- there is authority on both levels.

Section 504 of the Illinois Marriage and Dissolution of Marriage Act, dealing with maintenance, lists a number of factors a court may consider in fashioning an award. Specifically, subsection (a) (12) lets the court consider “any other factor that the court expressly finds to be just and equitable”. This catch all provision is broad enough to authorize the court to consider tax consequences and the benefit of combining a maintenance payment with a child support payment. This conclusion is reinforced by subsection (b-5) which refers to “any unallocated maintenance and child support obligation”.

There are also a number of cases which address and expressly approve of an award of deductible unallocated family support. The most often cited case is the 1982 case of In Re Marriage of Belluomini, 104 Ill.App.3d 301, 432 N.E.2d 958 (1st Dist. 1982) where, in upholding the unallocated award, the court stated “the trial court is allowed, even encouraged, to consider tax consequences in making its determination. 104 Ill.App.3d 301, 307, 432 N.E.2d 958, 963.

The Belluomini decision was most recently cited and approved in the 2012 case of In Re Marriage of Romano, 2012 Ill.App.(2d) 091339, 968 N.E.2d 115 (2d Dist. 2012), with the court specifically noting that an unallocated award “may be made under the act”. 968 N.E.2d 115, 152. There are also several cases that even predate Belluomini (see, e.g. In Re Marriage of Schuppe, 69 Ill.App.3d 200, 387 N.E.2d 346 (2nd Dist. 1959); In Re Marriage of Bellow, 94 Ill.App.3d 361, 419 N.E.2d 924 (1st Dist. 1981)). There are also further cases after Belluomini (see, e.g. In Re Marriage of Murphy, 117 Ill.App.3d 649, 453 N.E.2d 113 (3rd Dist. 1983); In Re Marriage of Sheber, 121 Ill.App.3d 328, 459 N.E.2d 1056 (1st Dist. 1984)).

So, the family law practitioner should have no problem in utilizing an unallocated award and its attendant tax benefits in crafting an order for support. There is ample authority to sustain this approach.

Jay A. Frank is a matrimonial practitioner in Chicago, Illinois with over 35 years of experience. He has been recognized as one of the top family law attorneys in Illinois.