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Divorce, Double Dipping and The Family Business

In marital dissolutions, “double dipping” refers to the supposed unfairness that results when property is awarded to a spouse in equitable distribution but is also treated as a source of income for purposes of calculating maintenance or alimony.

When a family business is involved, double dipping describes duplicate payment to the nonmonied spouse: once in the form of alimony and again in the division of marital assets based on the monied spouse’s interest in a closely held business.

KEY CONSIDERATIONS

Keep the following points in mind in evaluating whether double dipping is an issue:

- For double dipping to be an issue, the marital estate must include an interest in a privately held business and the nonmonied spouse must be awarded alimony.
- If alimony isn’t paid, the spouse may be entitled to a portion of the company’s goodwill as an alternate form of compensation for the monied spouse’s ability to earn income.
- The double dipping argument becomes moot if the company has no intangible value (or in some states, no personal goodwill). For instance, some manufacturing or retail businesses may have little intangible value.
- Professional practices usually possess substantial goodwill, especially personal goodwill.
- The monied spouse’s salary — on which alimony payments are presumably based — must be adequate compensation for contributing to the company’s operations. When the monied spouse is underpaid or overpaid, alimony may be too low or too high, muddying the issue of double dipping. A financial expert can help assess whether compensation is reasonable. ♦

Double dipping is a complex issue that may require the services of a financial advisor. Please feel free to contact our office for further guidance.



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