Lifestyle Analysis

A Stepping Stone to the Future

Part One of a Two-Part Article

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Attorneys frequently ask financial experts to prepare a lifestyle analysis, and often request that it be adjusted for unsubstantiated perquisites or personal expenses paid for by a closely held business owned by one of the parties.

The process of preparing a lifestyle analysis provides a great deal of useful information to clients and their counsel, the court or other users, and also serves well as a stepping stone to the development of a realistic personal living expense budget for post-divorce years.

This article addresses: 1) planning; 2) data gathering; 3) processing; 4) analysis; 5) adjustment; and 6) reporting phases of a lifestyle analysis job.

PLANNING

During the planning phase of a lifestyle analysis engagement, attorneys, guided by their client's repre-sentations and assertions, must decide the period or periods of time they believe should be analyzed to allow them to explain the facts and circumstances existing during each period selected. They must then use what they conclude through this analysis to make an effective evidentiary presentation to the court or other user of the report, including opposing counsel. Even the client requesting the analysis is often not fully aware of the historical cash flow and spending patterns, and may learn much from the process.

Sometimes, the lifestyle analysis is ordered simply to help establish and document reasonable living expense needs so that an appropriate spousal maintenance award can be negotiated or otherwise determined. But when counsel asks a Certified Public Accountant (CPA) or other financial expert to perform the analysis, the attorney's objective often may also include exposing an unnecessarily wasteful increase in spending that has occurred. This information will help the attorney to ensure that inappropriate periods and patterns of spending behavior are not used to benchmark a maintenance award. It will also help the lawyer by supplementing the analysis of personal financial records with an analysis of business records to expose unsubstantiated perquisites or personal expenses paid for by a closely held business.

Counsel may also seek the assistance of a CPA when they feel that an inappropriate temporary maintenance award has been made and they intend to argue that temporary maintenance (or the final award) should be significantly different and that the marital lifestyle and/or other factors should be given much more weight when making the equitable distribution and post-divorce spousal maintenance decisions required to settle or decide the matter in the future.

Primary factors to consider when choosing the period or periods of analysis include, but are not limited to:

1. Establishing a base period; typically a year or two of normal spending behavior prior to an event or events (such as the onset of a high conflict period) after which the spending pattern changed significantly;
2. Identifying period(s) of time when spending patterns were unusual or abnormal, e.g., a period of time when a litigant may have been instructed to ramp up spending in anticipation of arguing for a large maintenance award or simply learned from their own research or communications that such behavior may possibly benefit them;
3. Identifying the cost of preparing the analysis, which can be quite substantial but varies significantly depending upon the length of the time periods selected for analysis, the number of accounts that need to be analyzed, how well organized the necessary documentation is, and the level of activity (number of individual transactions) in each account;
4. Identifying the length of time considered necessary to prove the points counsel desires to make (assuming counsel's hypothesis holds up under the scrutiny the analysis pro-vides); and/or
5. Identifying periods of time relevant for other case-specific circumstances counsel desires to explore.

Limiting the periods of time analyzed to those considered absolutely necessary lowers cost and — all else being equal — shortens the period of time required to perform the analysis.

The base period should include what counsel, after questioning the client, determines to be the most relevant period demonstrating reasonable or normal living expense requirements, i.e., the unadulterated lifestyle. This is typically the most recent pre-commencement time period before the onset of a period of ramped up or wasteful spending or other deviation.

Last, since the terms "lifestyle analysis," "standard of living," "cash flow analysis," "cash flow available for support," etc., may have different meanings to different individuals and may be used differently in different states or jurisdictions, it is very important to clearly establish the scope of work requested with the CPA or other financial expert who will be performing the analysis. Clearly defining the scope of the engagement will ensure that the desired analysis is performed. It will provide efficiencies in document gathering and analysis as well as in the summarizing of historic financial transactions for report presentation purposes, but can never assure that the results of the analysis will support the original hypothesis or assertion.

Next Month

In the second part of this article, we will focus on the analysis and summarization of bank statements, credit card statements and other personal financial records for purposes of quantifying normal and reasonable living expense needs incurred during the term of marriage, which is usually expressed on an annual basis, to capture and smooth out monthly variations associated with the seasons of the year.