Seven Shades of Gray: What Family Lawyers Cannot Afford to Miss

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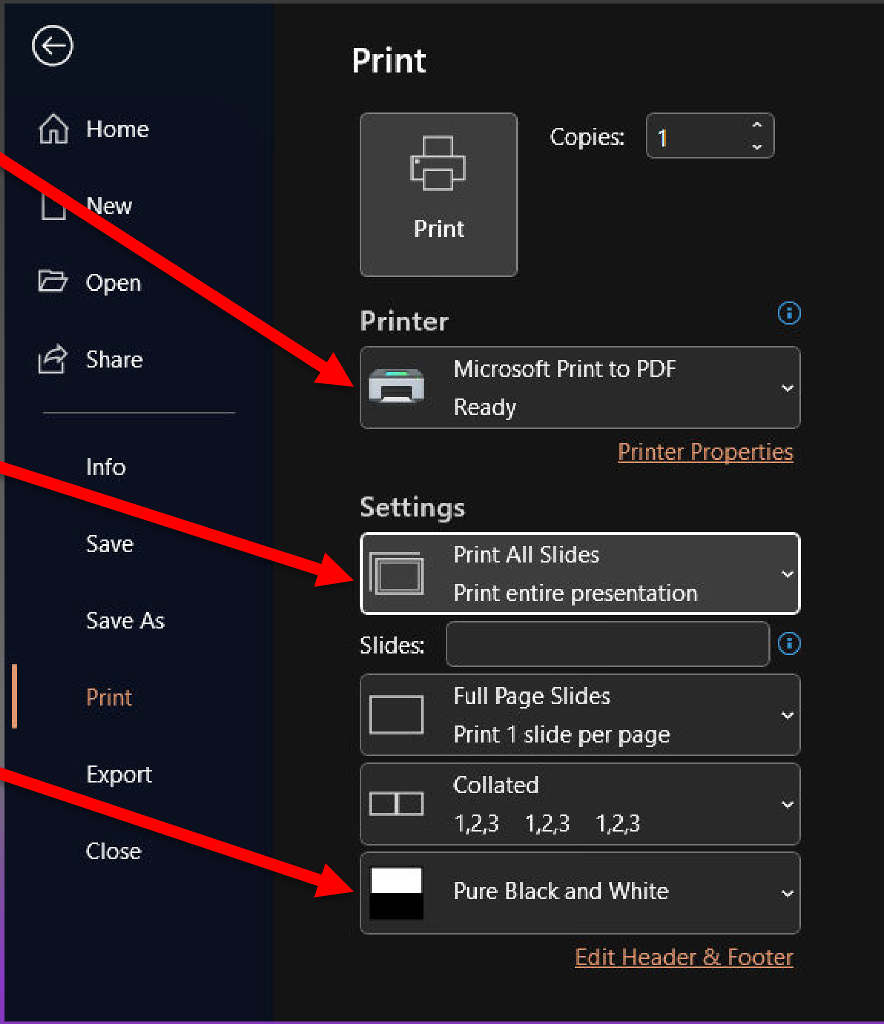

Seven Shades of Gray: What Family Lawyers Cannot Afford to Miss

Presented by Carolyn J. Woodruff, JD, CPA, CVA

With Bonus Shades on Retirement Division and Estate Portability

Woodruff Law Firm, P.A.

Introduction

Taxes are the silent third party in every divorce.

Federal and state tax rules shape outcomes.

Understanding these nuances avoids malpractice exposure.

Shade One: Dependency Exemption & Child Tax Credit

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Personal exemption = $0 but still determines eligibility.

2025 CTC = $2,000 per child.

Phaseouts: $200k single / $400k joint.

Form 8332 required.

Practice Pointer: Must have dependency exemption for CTC.

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NC Law on Exemptions

NC courts may allocate exemption 'as justice and the child's best interests require.'

Transfer must be with IRS Form 8332.

Confirm IRS compliance before drafting.

Ticconi v. Ticconi, 161 N.C. App. 730

Child Tax Credit

2025 - $2000 per qualifying child under age 17

Phase out at $200,000 single and $400,000 joint

Of the $2000, up to $1700 per child may be refundable via the Additional Child Tax Credit (ACTC) – meaning if your tax liability is reduced to zero, you might still get up to $1700 as a refund.

The remaining $300 is non-refundable.

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Example: 2025 Child Tax Credit – divorced parents

One qualifying child, age 10, with divorced parents.

Mother (the custodial parent) releases the dependency claim via Form 8332, so Father can claim the child for 2025.

Father’s earned income $55,000 with Federal tax liability before credits of $3200.

Apply Non-Refundable Portion: $3200 minus $300 = $2900 remaining tax liability.

Example: 2025 Child Tax Credit – divorced parents *cont.*

Up to $1700 is refundable if earned income exceeds $2500. Refundable part is 15% of income over $2500 up to $1700.

$55,000 - $2500 = $52,500 times 15% = $7,875, which exceeds $1700, so Father gets $1700.

Father pays $2900 and gets a $1700 refund, so net tax is $1200 for Father. Form 8332 MUST be attached to Father's return.

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Child Tax Credit – why would mother transfer?

Mother has little or no earned income – CTC phases in only after $2500.

Father is sharing the $2000 or putting it in a college fund – 529.

Even-year/Odd-year rotation. Work – equalizes long term benefits.

Multiple children – each claims one child to maximize without double-claiming.

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Shade Two:
Child and Dependent Care Credit

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Child and Dependent Care Credit

Children under age 13 only.

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Shade Two:
Child and Dependent Care Credit

CANNOT TRANSFER WITH FORM 8332 EVEN IF NON-CUSTODIAL PARENT IS PAYING THE DAY CARE.

Shade Two: Child and Dependent Care Credit

- Only custodial parent may claim the credit.
- Credit = 20–35% of up to $3k/$6k.
- Even if non-custodial parent pays, cannot claim.
- Practice Pointer: Custody trumps payment.

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CDCC in NC Guidelines

NC Guidelines allow deviation for actual credits.

50/50 custody rarely exactly half.

See IRS Form 2441 & Pub. 503.

Shade Two:
Child and Dependent Care Credit

NC court can consider the CDCC as reason for deviation under the Guidelines of 2023.

Child Care Costs…."The Court may also consider actual child care tax credits received by a parent as a basis for deviation."

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Shade Three:
Head of Household (HOH) and Earned Income Credit(EIC)

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EIC range

$649 (no children) to $8,046 for three or more

Form 8332 – A custodial parent can still give Form 8332 to the other parent and claim EIC if eligible, but the other parent receiving the Form 8332 cannot claim EIC.

Shade Three: Head of Household (HOH) and Earned Income Credit(EIC)

One parent can claim HOH for one child.

Favorable rates.

Must be unmarried on last day of the tax year.

- *May apply to those who have been separated for the last six months of the year.*

Have a qualifying child.

Pay more than half your household expenses.

A custodial parent can still claim HOH if gives other parent Form 8332, but may trigger IRS Audit.

Shade Three:
Head of Household (HOH) and Earned Income Credit(EIC)

Custodial parent = child sleeps > half year.

Can claim HOH & EIC.

2025 EIC: $649–$8,046.

Practice Pointer: Form 8332 does NOT transfer HOH/EIC.

Form 8332 Recap

Custodial parent may still claim:

- HOH
- EIC
- CDCC if paying care.

Only gives noncustodial parent CTC.

Tip: Educate clients.

Shade Three:
Summary of What Form 8332 Can Do

Form 8332 can transfer the Child Tax Credit.

IF YOU DO NOT HAVE THE DEPENDENCY EXEMPTIONS, YOU RISK AUDIT ON ALL CHILD TAX ISSUES

Seek tax advice if unsure

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Shade Three:
Summary of What Form 8332 Cannot Do

Form 8332 cannot transfer Child and Dependent Care Credit.

Form 8332 cannot transfer HOH status.

Form 8332 cannot transfer EIC

IF YOU DO NOT HAVE THE DEPENDENCY EXEMPTIONS , YOU RISK AUDIT ON ALL CHILD TAX ISSUES

Seek tax advice if unsure

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Shade Four:
529 Plans & Education Credits

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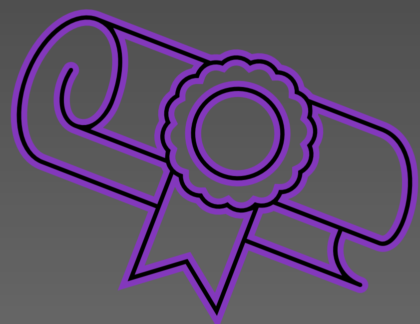
Shade Four:
529 Plans & Education Credits

529s grow tax-free.

Ownership = control.

OBBBA (7/4/25): Adds pre-college tuition, tutoring, etc.

Practice Pointer: Clarify owner/beneficiary in ED.



Shade Five:
Spousal Support Tax Trap

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Spousal Support Tax Trap

- Post-2018 alimony not deductible/taxable.
- Pre-2019 orders grandfathered.
- Use gross-up clauses/property offsets.
- Practice Pointer: Avoid neutral language.

Shade Six:
Death, Taxes & Divorce Decree

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Death, Taxes & Divorce Decree

- Alimony ends at death unless stated (NCGS 50-16.9(b)).
- Use life insurance/QDRO for security.
- Divorce revokes wills, not beneficiaries.
- Practice Pointer: Update all accounts.

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Shade Seven:
The $500k Real Estate Trap

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The $500k Real Estate Trap

- IRC §121: Exclude $250k/$500k home gain.
- After divorce: separate qualification.
- Add occupancy clause for use credit.
- Practice Pointer: Include §121(d)(3)(B).

Bonus Shade One: SECURE Act 2.0

RMD age: 73→75

QLAC limit: $200k

Plans must share DRO procedures

Practice Pointer: Update QDRO templates

Practice Pointer: Use IRC §72t

Bonus Shade Two:
Estate Portability & Prenups

- 2025 exclusion: $13.99M/person.
- Portability via Form 706.
- Prenups can mandate filing.
- Practice Pointer: Executor must file Form 706.

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Bonus Shade Two:
Estate Portability & Prenups

Future Outlook – OBBBA 2026

- Exemption → $15M single / $30M joint.
- Inflation indexed.
- GST separate.
- Tip: Trusts still matter for HNW clients.

Summary – Tax Issues Everywhere

Tax affects all stages: support→death.

Align IRS, NC law, timing.

Anticipate tax effects.

Checklist for Family Lawyers

- ✓ Confirm dependency & credits.
- ✓ Require Form 8332.
- ✓ Match custody & credits.
- ✓ Distinguish alimony/property.
- ✓ Secure with life insurance.
- ✓ Update QDROs & wills.

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Practical Takeaways

Taxes can distort fairness.

Coordination is critical.

Draft proactively.

Quote: 'In every divorce, there are three parties: husband, wife, and the IRS.'

Resources & References

- IRS Forms 8332, 2441, 706.
- IRS Pubs 503, 504.
- NC Child Support Guidelines.
- SECURE 2.0 Act (2022).
- OBBBA (2025).

Thank You

Woodruff Law Firm, PA

Seven Shades of Gray

2025