

# **PRENUPTIAL AGREEMENTS; TAX AND NON-TAX CONSIDERATIONS**

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## Pre-Nuptial Agreement

- An agreement entered into by prospective spouses prior to marriage but in contemplation and in consideration of marriage pursuant to which the property rights of one or both of the prospective spouses are determined.

# Need for Disclosure of Financial Information in Pre-Nuptial Agreement

## PERSONAL FINANCIAL STATEMENT 10/1/15

Cash	\$ 750,000
Brokerage Accounts	4,250,000
Bloomfield Hills home	1,000,000
Florida home	750,000
Warehouse LLC	?
Machinery Resale, Inc.	<u>?</u>
Total:	<u>                    </u>
Liabilities:	<u>-0-</u>
Net Worth	\$ <u>                    </u>

## Formula if Wife Elects Against the Will

$\frac{1}{2}$  (\$148,000 +  $\frac{1}{2}$  of the balance of the probate estate)

Less  $\frac{1}{2}$  of all amounts received by the wife outside of the estate including from:

- A. Retirement plan assets
- B. Jointly held property
- C. Life insurance

Assets held in a revocable living trust are not probate assets

## Events Contemplated in the Pre-Nuptial Agreement and Tax Issues

- A. Divorce.

Tax Issues – incident to divorce

IRC Section 71 – Alimony and  
separate maintenance payments

IRC Section 1041 – Transfers  
of property between spouses  
or incident to divorce



## Events Contemplated in the Pre-Nuptial Agreement and Tax Issues

- B. Death.
  - While married... included in decedent's estate – qualifies for unlimited marital deduction
  - After dissolution – amount due qualifies as a claim

