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The ''officially released'' date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the ''officially released'' date appearing in the opinion. In no event will any such motions be accepted before the ''officially released'' date.

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SCHALLER, J., dissenting. I respectfully disagree with the resolution of this case because I do not agree with the majority's conclusion that capital gains may properly be considered as income under some circumstances for the purposes of modification. At the outset, the majority states that the resolution of this issue requires an examination of General Statutes §§ 46b-82 and 46b-81 because capital gain is income derived from the sale of property. I do not believe that §§ 46b-81 and 46b-82 are the only sources of authority that we may rely on to answer this question. Those provisions concern the assignment of property and alimony at the time of dissolution. The majority concludes that they do not answer the question that is presently before us. The majority next looks to the ordinary meaning of the word ''income'' and determines that capital gain is income based on various dictionary and code definitions of ''income,'' ''capital gain,'' and ''gross income.'' I am not persuaded.

Although the issue of whether capital gain constitutes income for purposes of modification apparently has not been decided by this court or our Supreme Court, I conclude that capital gain, however generated, is not properly considered as income. With regard to capital gain generated by an asset distributed in the dissolution, I conclude that such gain is not income. I reach this conclusion on the basis of an analogous line of cases that hold that the profit recovered by conversion of a noncash asset into cash is not income. See *Schorsch* v. *Schorsch*, 53 Conn. App. 378, 386, 731 A.2d 330 (1999) (principal payments on purchase money mortgage merely an exchange of assets and may not be included in calculation of income); *Denley* v. *Denley*, 38 Conn. App. 349, 353, 661 A.2d 628 (1995) (exchange of stock options for cash does not transform property into income); *Simms* v. *Simms*, 25 Conn. App. 231, 235, 593 A.2d 161, cert. denied, 220 Conn. 911, 597 A.2d 335 (1991) (exchange of bonds for cash was merely an exchange of assets, not income).

Although these cases did not decide the precise issue before us, they stand for the proposition that the conversion of an asset from one form into another does not constitute income. I conclude, as is consistent with the rationale of these cases, that capital gain from the sale of assets acquired at dissolution is nothing more than a conversion of noncash assets to cash and should not be included in income for purposes of modification.

I also conclude that capital gain generated from an asset acquired subsequent to the dissolution is not income. While it is true that in this latter situation the asset was acquired after the dissolution, I reach this conclusion by further analogy to the principles cited

previously. As our case law makes clear, a conversion of an asset from one form to another does not constitute the creation of income. Implicit in this conclusion is the underlying concept that the growth in value of the asset distributed at dissolution is not income when it is converted to another form. Rather, the growth, and resulting cash value when converted, simply represents the accrual in value of that asset itself. In other words, the category the item falls into, namely, either ''capital asset'' or ''income,'' does not change because the asset has appreciated in value and then is converted as a matter of form.

I do not believe that this principle becomes any less applicable when considering assets acquired after a dissolution. I do not believe, therefore, that the exchange of a capital asset, whenever acquired, for cash transforms that asset into income. Guided by the case law, I conclude that the appreciation of a capital asset acquired after dissolution, and its conversion in form, merely adds to the asset and represents the accrual of value in the asset itself. The category of the item does not change from capital asset to income because there has been an appreciation and conversion.

On the basis of this conclusion, I note that while I do not agree that the capital gain is income, I do agree with the majority that the appreciation of assets acquired after dissolution may properly be considered as assets of a party's estate in the court's determination of whether a modification is appropriate, whether or not the asset has been converted into a different form. See *Clark* v. *Clark*, 66 Conn. App. 657, 665, 785 A.2d 1162, cert. denied, 259 Conn. 901, 789 A.2d 990 (2001) (same § 46b-82 criteria are relevant in deciding whether decree may be modified as are relevant in making initial award of alimony). I also note that in my opinion the majority's conclusion creates the potential for radically under or over inflated modifications because of the frequent fluctuations in the value of capital assets.

In the present case, the defendant asserted a change in circumstances based on a change in the plaintiff's relative income status and assets. In ruling on the defendant's motion, the trial court improperly considered the plaintiff's capital gains as income. While both income status and assets, or capital gains from the assets, properly may have been taken into consideration by the court, each must be assessed individually. For the foregoing reasons, I respectfully disagree with the majority. I would reverse the judgment and remand the case for a new trial with direction to the court to consider the assets acquired after dissolution separately from its consideration of income.