

DIVORCES AND TAXES

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Divorce lawyers should never give tax advice, but you cannot ignore taxes. Anyone who is going through a divorce should talk to their accountant and all divorce lawyers (and clients) should have a basic understanding of the tax implications of what is done in the divorce case.

1

Transfers Between Spouses

Under the general rule, transfers of property between spouses and former spouses is not a taxable event if it is "incident to the divorce". If the transfer is NOT made pursuant to a written separation/divorce agreement or decree OR the transfer takes place more than 6 years after the end of the marriage, there is a rebuttable presumption that it was not related to the cessation of the marriage. The burden then would shift to the taxpayer.

2

Spousal Support (Alimony)

Under 26 U.S.C. Section 71, spousal support is taxable income to the payee, and a deduction to the payor. Certain requirements must be met: It must not be designated as or in reality be "child support"; it must be received by or on behalf of the payee; it must end on the payee's death and it must be payable under an existing agreement or order. The parties cannot file a joint tax return, and they cannot be members of the same household.

3

House Payments

Especially in temporary orders, one party may be required to make payments on the former marital residence while it is occupied by the other party. If the payor spouse is the sole owner of the house and is solely liable on the mortgage that he is paying, then he cannot deduct the payment as spousal support. If both parties own the house and are liable on the mortgage, one-half will be treated as spousal support. If the payee owns the house the mortgage payments are spousal support.

4

Attorney's Fees

Attorney's fees that are incurred to obtain or defend spousal support are deductible. If a party is required to pay the other party's attorney's fees as "spousal support", these fees are deductible. It may be necessary to segregate out which amount of an attorney's bill relates to spousal support for tax purposes.

5

Tax Refunds

Nothing is held hostage so often in divorce cases as the income tax refund check. Generally speaking, just because the parties file a joint return does not mean that they are entitled to share equally in the refund amount. Instead, this is determined by the income earned by each as if they filed separate returns.

6

Dependents

The custodial parent is the one who can claim the child(ren) as a dependent. This can be given to the other party by execution of IRS Form 8332. If both parents claim the child, you WILL be audited.