Divorce Tax Considerations Fact Sheet

Introduction

Divorce is a tough process, and one that does not end after a court date. Knowing your rights and obligations and understanding the tax implications can make the process less difficult. The tax consequences of a divorce include issues related to income and deductions, tax credits, and filing status.

Preparing

To prepare for a divorce, you can assist your lawyer by obtaining a copying of your marital tax returns for at least the three previous years. Tell your lawyer if you do not remember signing any of your returns. The IRS provides Form 1040 tax return transcripts. Transcript requests can be made by going to IRS.gov, using the order a transcript tool, or by calling 1-800-829-1040.

Alimony and Child Support

As of 2019, alimony is no longer tax deductible to the person who pays it, but it is taxable income of the person who receives it. Child support is not tax deductible to the person who pays it and is not included by the person who receives it.

There may be tax advantages in how to structure these payments. You should consult with your attorney about how to structure these settlements.

Filing Status

Your filing status depends on your marital status on the last day of the tax year:

- On December 31 of the tax year, were you unmarried or legally separated?
    - yes: your filing status may be single or head of household
    - no: your filing status may be married filing jointly or married filing separately
- If you decide to file married filing separately, you cannot claim the Earned Income Tax Credit.

Head of Household (HOH)

You may qualify for HOH if you meet all these conditions:

- you are not married at the end of the year or are legally separated
- your child has lived with you for more than half of the year
- you paid more than half the cost of keeping up a home for the year

Where there is only one child, only one parent can claim HOH. If there are two children, both parents can claim HOH, so long as one child lives with one parent more than half the year, and the other child lives with the other parent more than half the year.

Generally, if you qualify for HOH, then you will usually benefit from any related Dependent Care Credit or Earned Income Credit.

A non-custodial parent seeking to claim HOH should have the custodial parent execute Form 8332.

Post-Divorce: Taxes and Children

Dependency Exemption

Only one taxpayer may claim a child for any credit in a tax year. You cannot split this credit between two or more taxpayers. Generally, the child is the qualifying child of the custodial parent.

However, you may treat the child as the qualifying child or qualifying relative of the noncustodial parent if the special rule for a child of divorced or separated parents or parents who live apart applies, which *requires*, in part, that both following conditions are met:

- the custodial parent signs a parent signs a Form 8332, Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent
- the noncustodial parent attaches the Form 8332 or the statement to his or her return

In addition, if the custodial parent releases a claim to the child for a specific year, the custodial parent may not claim the Child Tax Credit for that child.

The Default Rule is to allow the parent who has the child for the most nights in the year to claim the child as qualifying. Note: Monetary contributions are not considered.

Tax Credits and Children
Generally, only the custodial parent can claim the child related tax credits, unless the custodial parent agrees to release their exemption using form 8332. Parents can agree to "trade off" tax years for tax purposes.

Child Tax Credits
A parent taxpayer may be able to claim a child tax credit up to $2,000 for each qualifying child. To qualify, the child must be listed on the tax return, be under 17 by year end, and be the taxpayer's child (or that of their brother or sister and be cared for by them as their own child). The non- custodial parent may be able to claim the credit if the above requirements are met and the custodial parent releases their exemption using form 8332.

Child and Dependent Care Credit
To qualify, a custodial parent must pay for the cost of care for a qualifying dependent.

- a qualifying dependent is age 12 or younger (other dependents may also qualify if they are unable to care for themselves)
- you must keep up a home that the dependent lives in—paying at least half of the cost associated with owning and running the home
- you must have earned income for the year, and the payments for care were required to earn income
- you must identify the care provider on your taxes and they cannot be someone you could claim as a dependent (i.e., not an older child)

Because of the home requirement, only the custodial parent can claim this credit.

Earned Income Tax Credit (EITC)
This is refundable credit that can only be claimed by the custodial parent. The amount of the refund is adjusted depending on the number of qualifying children because the child must live with the taxpayer more than half the year. Since the credit is phased out for higher income, it may be the case that only one spouse could qualify for the credit, usually when there is a low-income spouse.

Education Tax Credits

- American Opportunity Tax Credit
- Lifetime Learning Credit

The child must meet the qualifications for the individual credit(s). Only one of the credits can be taken in a tax year by the custodial parent.

Medical Savings Account (MSA) and Health Savings Account (HSA) Deductions
It is possible for both parents to claim children for the purposes of MSAs and HSAs. If you have one of these employer-provided benefits, check with your tax preparer about claiming your child.

Often it is the case that after divorce, one taxpayer can benefit from the above tax considerations. So, when negotiating a divorce settlement, learn how the various tax credits would benefit each party. Consult with your attorney regarding the different scenarios.

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The information and statements of law in this fact sheet should not be considered legal advice. This fact sheet is provided as a broad guide to help you understand how certain legal matters are handled in general. Courts may interpret the law differently. Before you take action, talk to an attorney and follow his or her advice. Always do what the court tells you to do.

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