

Blog

Tax Season and We're Separated: Things Both Parties Should Consider

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Tax season tends to cause enough consternation for intact families, let alone those at the beginning of the divorce process. While the IRS may not care about your personal situation so long as it gets paid, there are variables that, while entirely legal, may have tremendous impact on your overall tax liability and support calculations when determining both child and spousal support or temporary alimony.

First, consider your living situation. While the IRS has no objection to persons filing under the status of "Married Filing Jointly" (MFJ) even if a divorce complaint has been filed, it may not be the best plan of attack.

If, for example, you separated from your spouse in 2016 by filing a complaint in divorce but you, your spouse and your two minor children still reside in the same residence, the filing options available to you are likely MFJ, "Married Filing Separately" (MFS) or "Head of Household" (HoH). If you are the primary income earner in the home, it is likely that you'll want to file as MFJ for its favorable tax treatment. If, however, you are a homemaker who has no reportable income, filing status will have little effect on you, as MFS, which has poor tax treatment (especially in higher income brackets), won't be of any consequence.

The question then becomes, as the income-dependent spouse, what are you receiving in return for agreeing to file as MFJ? For example, are you demanding half of whatever the tax savings are in return for filing MFJ? What is your responsibility toward any tax liability that may exist? In what fashion will any refund be apportioned? Also, while it is possible to file amended tax returns for any prior three tax years, it is not possible to amend and change the status from MFJ to a different status, so these are questions that need to be answered before signing the return or e-file verification.

Second, consider whether there is a support obligation before making a determination. While neither you nor your spouse, but for extraordinary circumstances, would be eligible to receive spousal support/temporary alimony and in no case would be eligible to receive child support in the scenario above (as everyone resides in the same household), if we presume you and your spouse physically separated (whether or not a divorce complaint was filed) in 2016, how does the analysis differ?

In terms of tax treatment, not at all; however, if you are the income-dependent spouse and have physical custody of the children at least half of all overnights, you are eligible for child support and possibly spousal support/temporary alimony. Tax filing status is then subject to a vastly different analysis.

If support was requested by way of a filing, what was the effective date of the receipt of such support? The relevance is that, while child support is not income deductible nor income inclusive, spousal support/temporary alimony is deductible dollar-for-dollar from the payor's income and is inclusive as taxable income to the recipient. Therefore, an analysis of the benefit of deductibility vs. the poor tax treatment of MFS must be done in conjunction with a tax preparer.

It is also permissible for you to file as HoH by claiming a dependent child, although if the recipient of spousal support/temporary alimony is the primary custodian, he/she is under no obligation to surrender either minor child's dependency exemption to the other party. It must also be considered that when performing calculations to determine support obligations, the law bases the same upon persons' net incomes; consequently, applying the proper tax effect can directly impact support since the less money that is paid in tax, the more netted money is available to be considered in support.

The most important thing when navigating tax issues and their impact on divorce is to ensure a qualified attorney, in concert with a tax preparer, is analyzing all of the factors to ensure proper and legal mitigation of your overall tax burden is performed such that more money is in your pocket and out of the government's coffers.



