



Tax Tips for the Divorcing Couple

By Carley Mealey, CPA

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When you are caught in the throes of a divorce, the last thing on your mind is how you are going to file your taxes in April. What you do not know can hurt you, so take the time now to identify possible issues you may face.

Can we still file a JOINT return? Unless you have been legally separated before December 31, you may still elect to file a joint return. The real question is, should you? By filing a joint return, you and your spouse are agreeing to be jointly and separately liable for any errors, omissions or deficiencies on the tax return. If you are concerned that your spouse might be under-reporting income or over-reporting deductions, it may be wise to consider an alternative filing status. If you choose to file separate tax returns from your spouse, you have the option of filing an amended joint return if you later learn that your spouse's return was not deficient. You have three years from the original filing date to amend your return and receive any previously forgone tax benefits.

Is filing SEPARATELY my only option? If you provided more than half the cost of keeping up a home for a child, dependent parent, or other qualifying relative for more than half the year, you may be able to file using the **Head of Household** status. Keep in mind, if you choose to file as **Married Filing Separately**, special rules apply effecting your ability to chose between the standard and itemized deductions as well as disallowing dependent care credits, education credits or deductions, earned income credits, the taxability of previously exempt interest income, and even your ability to make Roth IRA contributions or conversions.

How do I qualify for HEAD OF HOUSEHOLD status if we are still married? The IRS says that in order to qualify, you must either be unmarried or considered unmarried on the last day of the year. So how does this work? If you and your spouse lived apart for the last six months of the year, you would be considered unmarried for the purpose of this filing status under the Abandoned Spouse rule. If you meet the other two requirements for this status, you would be eligible to file as **Head of Household**. The other two requirements are 1) paying more than half of the cost of keeping up a home as of the last day of the tax year 2) a dependent child or other relative lived with you for more than half the year or you have a dependent parent (dependent parents are not required to live with you).

So when do I file as SINGLE? You would be required to file as **Single** if you are unmarried as of December 31, or if you are legally separated as of the end of the year and you do not qualify for another filing status.

So, who gets to claim the children? Generally, the right to the dependency exemption for the children goes to the custodial parent. For official or unofficial joint custody arrangements, the exemption goes to the parent in whose home the child spent the most number of nights. If custody is truly equal, the parent with the highest adjusted gross income gets the deduction. Beginning with tax year 2009, it is no longer required that the custodial parent provide more than half of the child's support. Instead, the only requirement is that the child cannot provide more than half of his own support.

What if we agreed I would have tax rights for the children even though they live with my spouse? If you and your spouse have agreed to share or transfer tax rights for the children, a copy of Form 8332 must be signed by the custodial parent and attached to the tax return of the noncustodial parent. This election can be for the current year or for future years. This form can also be used to revoke the assignment of the dependency exemption.

My spouse transferred the house to me. Do I have to pay capital gains tax? No gain or loss is recognized on the transfer of property between spouses either as related to the divorce or if transferred within one year of the termination of the marriage. This pertains to property transferred directly or indirectly through a trust.¹

We made joint estimated tax payments last year. Can I apply those payments to my current tax liability? If you and your spouse made joint estimated tax payments but are not filing as **Married Filing Jointly** you may still be able to claim some or all of those payments on your return. The IRS says that the allocation of estimated tax payments can be made in any way that is agreed upon by you and your spouse. If you are unable to agree, IRS regulation 1.6015(b)-1(b) provides that the estimated tax payments are to be allocated based on your percentage of the combined tax liability of you and your spouse.

This is just the tip of the iceberg. Every divorce is different and so is the impact on your income tax situation. Encourage your attorney and your tax accountant to work together to determine the right tax strategy for you.

¹ IRS Code 1041(a)



For more information contact **Carley Mealey, CPA** (cmealey@brison.com) at Brisbane Consulting Group, LLC, the wholly owned consulting division of Lumsden & McCormick, LLP.

As a senior analyst with Brisbane Consulting Group, Carley has experience in providing business valuation, forensic accounting, and litigation support services. Her valuation experience includes the valuation of closely held companies, covering a wide-range of industries and engagements including marital dissolution, forensic accounting, estate and gift tax, and stockholder litigation actions. Her experience also includes several fraud and embezzlement projects and the quantification of lost income in determining business interruption claims for insurance adjusters. Carley holds a Bachelor of Arts degree in accounting from Cameron University in Lawton, Oklahoma.