

# DIVORCE - TAXES



**Office of the Staff Judge  
Advocate  
Eielson AFB, Alaska**

**354 FW/JA**

**Tax Law  
Pamphlet Series**

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## **FAMILY LAW AND TAXATION**

Going through a divorce is bad enough without the IRS. Tax laws and regulations can complicate family matters during and long after the divorce. Divorced or remarried service members should think carefully about how to file, the effects of alimony and child support payments, who has the tax exemption for each child, the effect of court orders on retired pay, and property divisions.

### **JOINT OR SEPARATE FILING**

The first choice you must make is whether to file as a single taxpayer, married filing jointly, or married filing separately. If you are single, even if you have long-term or live-in significant other, you must file as single taxpayer. If you are married, you may file as a single taxpayer if you are separated by a court order, or if you have a child and your spouse is not a member of the household during the last six months of the year.

If you are married, you can file either jointly or separately. The primary difficulty with filing jointly is that both you and your spouse will be held jointly liable for all taxes, interest, and penalties owed. If you file a separate return, you report only your own income, exemptions, and credits. The IRS can't hold you liable for mistakes on your spouse's return.

### **CHILD SUPPORT AND ALIMONY**

Alimony and child support payments have different impacts on taxable income. If you pay alimony, or spousal support, you can deduct it from your income. If you receive alimony, you have to include it as income. On the other hand, if you pay child support payments, you cannot

deduct them. If you receive child support, it is not part of your income.

### **TAX CREDITS**

One of the “bargaining chips” in modern divorces is often the tax exemption and credit for the children. Don't confuse this with custody! Although the custodial parent often claims the tax exemption and credit, there are good reasons for giving them to the non-custodial parent, if the non-custodial parent earns more money. This can be done even after the divorce is final.

### **RETIRED PAY**

Undoubtedly the biggest “hot button” issue for family law clients coming into legal assistance is retired pay. Contrary to popular belief, there is no law requiring the state court to give a non-military spouse a portion of a military spouse's retirement. If your retirement pay is divided, you need only declare that part of it you actually receive.

### **PROPERTY DIVISION**

The good news is that property gained and cash payments in lieu of property division incident to a divorce or dissolution are both tax-exempt transactions. The idea is that you owned it before as part of a couple and you now own it separately, so there has been no taxable transaction. The IRS will look carefully as to whether cash payments are taxable alimony or non-taxable property division, so please consult an attorney before making any decisions in this area.

## CONCLUSION

Unfortunately, tax laws can have some unintended effects on divorce decrees. But with good legal advice, the tax laws can be used to save money in a divorce. The legal office can help you with this issue and other legal issues. Call us at 377-4114 for more information.

**This pamphlet is for basic information about divorce and taxation. It is not intended to take the place of legal advice from a Judge Advocate. There may be important exceptions in some states to the information presented here. Please contact the 354th Fighter Wing Legal Office for questions and further information.**



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