

# DIVORCE - TAXES



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

**354 FW/JA**

**Tax Law  
Pamphlet Series**

## **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**

Your filing status is used in determining whether you must file a return, your standard deduction, and the correct tax. It may also be used in determining whether you can claim certain other deductions and credits. The filing status you can choose depends partly on your marital status on the last day of the tax year.

If you are unmarried, your filing status is single, or if you meet certain requirements, head of household or qualifying widow(er). If you are married, your filing status is either married filing a joint return or married filing a separate return.

*Unmarried persons.* You are considered unmarried for tax purposes, if either of the following applies:

- You have obtained a final decree of divorce or separate maintenance by the last day of the tax year.
- You have obtained a decree of annulment, which holds that no valid marriage ever existed.

*Married persons.* You are considered married for tax purposes if you are separated but you haven't obtained a final decree of divorce or

separate maintenance by the last day of the tax year.

If you are married, you and your spouse can choose to file a joint return. Both you and your spouse may be held responsible, jointly and individually, for the tax and any interest or penalty due on your joint return. This means that one spouse may be held liable for all the taxes due even if all the income was earned by the other spouse.

If you are divorced, you are jointly and individually responsible for any tax, interest, and penalties due on a joint return for a tax year ending before your divorce. This responsibility applies even if your divorce decree states that your former spouse will be responsible for any amounts due on previously filed joint returns.

### **CHILD SUPPORT**

Child support payments are not deductible and if you receive child support, it is not taxable.

### **ALIMONY**

You can deduct alimony paid to or for a spouse or former spouse under a divorce decree or separation decree, regardless of whether you itemize deductions. Voluntary payments made outside a divorce or separation decree are not deductible.

If you get alimony from your spouse or former spouse, it is taxable in the year you receive it. Alimony is not subject to tax withholding so you may need to increase the tax you pay during the year to avoid a penalty.

## 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 provides 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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