

The Rise of Domestic Break-Ups: A Lawyer's View of the Accountant's Role

The American family is changing, and domestic break-ups are on the rise. Statistics show that some 50% of new marriages end in divorce. Ever increasing households are maintained by an unmarried person who requires court support orders, or by “domestic partners” who later break up. All of these situations involving tens of millions of Americans raise property division, spousal maintenance, and child support issues. To paraphrase Ben Franklin: nothing is certain in domestic break-ups, except pain – and taxes.

By law, court decrees addressing the above circumstances must equitably divide the parties' property and enter maintenance and support orders that are just and in the minor children's best interests. We attorneys more and more are realizing how vital it

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is to know the tax implications of family splits to fulfill the above legal mandates. However, we usually are not qualified to give tax advice. Many of us went to law school because we were lousy in math. Our eyes glaze over when confronted with numbers.

The panacea to our problems is being able to reach out to the parties' accountants to answer basic tax questions. But we often find a reluctant accountant who wants nothing to do with the problem for fear of alienating the clients and creating a conflict of interest. When that happens, we turn elsewhere for tax advice, and the parties may very well leave their accountants for others who seem to have all the answers.

I will go out on a limb here and state that if you wish to remain relevant as a CPA who represents individuals, you should know the answers to basic tax questions, like the following, related to domestic break-ups, or at least be able to quickly get them. Your clients' livelihoods and your practice may depend on it.

- When should the marital community be terminated for the purpose of filing returns?
- Should divorcing parties file joint or separate returns and should either be concerned about the other's reporting history?
- What is a fair allocation of the dependency deduction for the minor children?
- Would one party benefit more from claiming the dependency deduction than the other?

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- What are the tax implications of dividing any retirement accounts, and of cashing out any such funds?
- What are the tax implications if the parties sell property awarded to them in a divorce or partition action?
- Who gets to claim the home mortgage interest deduction and how much is it worth?
- What is each party's income tax rate and what is their net income?
- What is the tax rate for the spousal maintenance payee, and how much is the deduction worth to the payor?
- What other tax deductions can each party take that would affect their income?

There are no one-size-fits-all answers to the above questions. Each case varies, and we lawyers want to know the answers estimated in real dollars, so the parties can make fair and informed decisions. Usually, the parties' accountant is best placed to give the most accurate, cost-effective answers. And the accountant can do it without becoming mired in litigation.

Just as our societal norms are changing, so is the legal system in addressing and resolving the above issues. People involved in the process are realizing that putting their heads together in a non-adversarial environment is a better, less expensive way to achieve equity in a volatile economy.

Your engagement letters might address the possibility of you providing a service in the event of a family break-up. If not, we attorneys can help in obtaining the necessary conflict waivers in any settlement

discussions. To limit your exposure, you may be able to condition your participation on the parties' agreement to use you only for settlement purposes, and not for litigation.

Staying relevant is the common goal of any professional. Given our ever-changing legal and societal norms, your willingness to participate in the tax implications of a domestic break-up will put you in the forefront and will help your clients reach a fair solution to their problems.



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