New York Divorce and Family Law Blog

Five Tax Tips to Maximize Your Divorce Settlement

Posted by Daniel Clement on April 27, 2011

Bottom line- money disputes fuel divorces. While the parties fight for every penny in dividing the marital assets, the parties often fail to tax impact their settlements. The failure to consider taxes could "steal defeat from victory."

Here are five tax tips that should be considered before entering into a divorce settlement

1.While two assets may have the same "value" they may not be equal.

Two assets, though equal in value, may be treated differently for tax purposes. Capital gains taxes for instance are calculated based on the profit reaped from the sale of the asset. The profit is the difference between the sale price and the asset's cost basis. Though the assets may, at thee time of divorce, be equally valued, the asset which cost less may have a bigger capital gain, resulting in a higher tax bill

In a common scenario, a couple possesses a stock portfolio and a home equally valued- which one should you choose? A homeowner, under certain conditions, is permitted to exempt $250,000 ($500,000 for a couple) from capital gains from the sale of the marital residence. The stock portfolio will be taxed on each stock's capital gain or loss.

2. **You may spend time with your children, but they may not your dependants.**

The right to the dependency exemption for the children goes to the custodial parent. In the case of joint custody arrangements, the exemption goes to the parent 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

The parents can agree to alternate or transfer the dependency exemption by filing the IRS form 8332. Where there are multiple children, the parties can even agree to split the children so that each parent can benefit from the dependency exemption.

3**. Maintenance/alimony is deductible.**

Periodic support payments to your spouse made pursuant to a written agreement or judgment that are not child support may be income to the recipient and deductible by the payor.

4. You may be able to time the entry of the divorce to your tax advantage.

Your income tax filling status is determined by your marital status on the last day for your filing period, for most people, December 31. If, for instance, you would benefit from filing a joint return- for example, if there was a capital gain of $500,000 from the sale of the marital home which could be exempted by filing a joint return, it may be prudent to delay finalizing the divorce if the sale and the divorce were to occur at the end of the tax year.

5. Child support is tax neutral.

Unlike maintenance, child support is tax neutral

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