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Legal Matters®

Taxes can get complicated when people get divorced

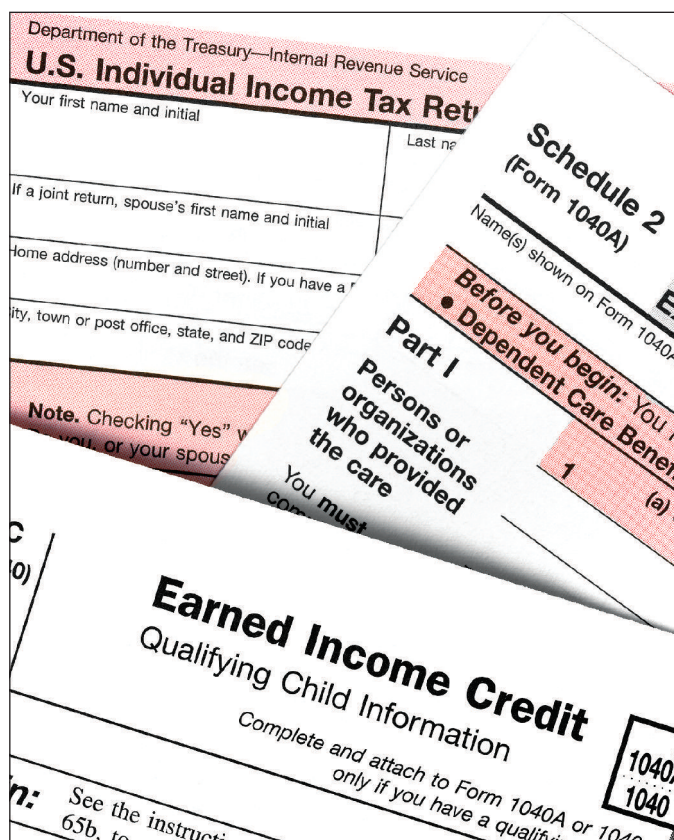
Divorce can involve a number of difficult issues, including child custody, support and alimony. But one thing a lot of people don't realize is that taxes can also become very complicated when people get divorced. That's why it's always a good idea to seek advice from an attorney or other professional if you've recently split up. Even if you've always done your taxes by yourself, there are a lot of tricky issues after a divorce, and it's easy to make a costly mistake.

For instance, a key question is whether to file a joint return or separate returns. If your divorce has become final by December 31 of a given year, the IRS considers you as single for that entire year, and you can't file a joint return. But if your divorce isn't final on December 31, you can still file jointly – even if you officially divorce well before taxes are due on April 15.

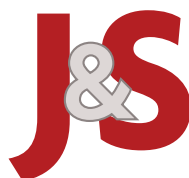
Filing jointly can often save taxes, but if you're expecting a refund, you'll have to work out who will receive it and how it will be split. On the other hand, just because you *can* file jointly doesn't mean you have to. You might want to have your taxes prepared both ways to see which is more advantageous for you.

If your spouse would prepare a joint return, and you have any reason to suspect that he or she might not be completely honest, you

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should definitely speak with your attorney about this. If you sign a joint return, you could in some cases be held legally responsible for any misrepresentations.

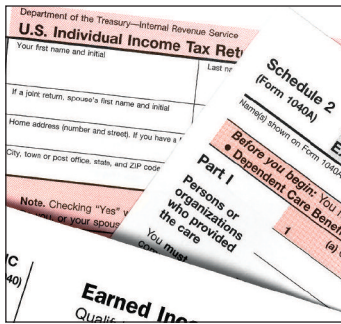
Here are some other difficult tax issues that can arise at divorce:

- If parents have joint custody, it's not always clear which parent is entitled to the various child-related tax benefits, such as the dependent child exemption, the tax credit for a dependent child, the dependent care credit, and the earned income tax credit.
- If a couple divides assets at divorce that have appreciated in value, such as stocks, and the assets are later sold, there can be issues as to who has to pay the capital gains tax and how much is owed. If a home is sold at divorce, there can also be capital gains issues. You should be aware that if you pay attorney fees relating to dividing capital assets in a divorce, in some cases the amount of the fees can

be added to the property's tax basis, thus reducing the tax.

- Speaking of attorney fees, these generally aren't deductible in a divorce, but in some cases they are, such as if you pay attorney fees for tax advice or to enforce an alimony obligation against a spouse who has fallen behind in his or her payments.
- Alimony is deductible, but you need to be careful because it's not always clear whether certain types of payments made after divorce are considered alimony or simply a delayed part of a property settlement.
- If one spouse is not a U.S. citizen, then payments made at divorce may be subject to gift tax.

Of course, taxes can be very complicated even *without* a divorce. But if you're getting divorced, it's wise to talk with a lawyer or other professional to make sure you're doing everything correctly, and to take advantage of any savings to which you might be entitled.



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In arbitration, you might be giving up your right to a jury, a public trial, the ability to obtain and present certain evidence, and the ability make certain claims and obtain certain remedies.

Are nursing home patients signing away their legal rights?

When a patient moves into a nursing home, the patient or a family member must typically sign an admission agreement. In many cases, these agreements say that any legal disputes between the patient and the facility will be resolved through "arbitration."

That means that instead of being able to bring a case in court to decide who's right, a patient or family member must go before a private judge. In arbitration, you might be giving up your right to a jury, a public trial, the ability to obtain and present certain evidence, and the ability make certain claims and obtain certain remedies.

Recently, the West Virginia Supreme Court decid-

ed that if a patient was injured due to the carelessness of nursing home staff, the patient's family could still sue in court even though the admission contract said they had to go to arbitration.

The court examined various state and federal laws, and concluded that while two people who already have a legal dispute are free to choose to have it resolved by arbitration, a nursing home contract can't force someone to sign away their right to a court trial before a dispute even arises.

The law on arbitration is complex and varies from state to state, but if you have any questions about your right to sue in court, we'd be happy to help you.

More white-collar families are filing for bankruptcy

There's been a significant increase lately in the number of people with college degrees and substantial incomes who are filing for bankruptcy.

Some 13.6 percent of people participating in pre-bankruptcy financial counseling in 2010 had college degrees, according to a survey by the Institute for Financial Literacy. And about half of those college graduates also had an advanced, post-college degree.

That's a significant increase from 2006.

In addition, the survey found that almost 16 percent of people seeking bankruptcy counseling had incomes of more than \$50,000. Back in 2006, the figure was only about 10 percent.

The reason for the change? Falling home prices along with a recession that's wiped out a lot of white-collar jobs, according to the Institute.

How to get a better appraisal of your property

Home appraisers are the unofficial umpires of residential real estate sales, deciding whether offering prices are fair or foul. But much more often than in the past, they're striking out deals and sending buyers and sellers back to the dugout.

After the real estate bubble burst, new rules were enacted to keep appraisers more objective and to prevent real estate agents and mortgage brokers from pressuring them for higher valuations. As a result, appraisals are now coming back a lot lower than they used to.

Lower appraisals hurt both buyers and sellers. When an appraisal comes back lower than expected, buyers usually can't qualify for as large a mortgage. If this happens, the sale might fall through, or the seller might have to lower the price in order to salvage the deal.

With home appraisals now presenting a much higher hurdle than in the past, here are some suggestions for home sellers on getting a good result:

> Just as you fixed your home up to look nice for an open house, you'll want it to look nice for the appraiser, too. Mowing the lawn, trimming the hedges, removing marks from walls and cleaning soiled carpets will all factor into the appraiser's "condition" rating for your home.

> Make a list of all the improvements you have made to the property, and give it to the appraiser. Include the date and your best estimate of the cost. Be sure to include items that might not be obvious on a brief inspection, such as new insulation or a new roof.

> Also tell the appraiser about any recent major

improvements to the neighborhood, such as a new school building or park.

> Fix any peeling paint. This is especially important if the house was built before 1978 (when lead paint was banned) and the buyer is using an FHA mortgage, because the agency will require the paint to be removed before approving the loan.

> If you can, give the appraiser your own list of recent comparable sales. If you know of any homes in the area that were "for sale by owner" (with no real estate agent involved) and fetched a good price, tell the appraiser because these sales probably won't show up as quickly in the appraiser's database. Also, if any comparable properties in the area were recently sold as short sales or foreclosure sales, let the appraiser know. These types of sales generally result in lower prices, and if the appraiser knows the circumstances, he or she might be able to adjust the valuation upward.

> Be considerate of the appraiser. Most appraisers like to go through a house uninterrupted, so don't follow around too closely and save your questions for the end. You might also want to keep small children and pets out of the way.



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Older worker can sue for 'hostile environment' at work

A 65-year-old salesman at a Chevrolet dealership who claimed he quit his job because he was verbally abused and intimidated at work can sue for age discrimination, according to a federal appeals court in New Orleans.

Even though the employee wasn't fired or demoted, and didn't suffer any other sort of specific adverse job action, he can still sue if his employer allowed a "hostile environment" at work such that keeping his job was intolerable, the court said.

The man claimed he was repeatedly called "pops" and "old man," was the subject of profanities, and was treated with extreme disrespect because of his age.

The idea of a "hostile environment" lawsuit originated with sex harassment cases. Even after sex discrimination was outlawed in the 1960s, many people still believed that it was okay to engage in sexually inappropriate touching and comments at work, as long as the victim wasn't actually fired or demoted. It wasn't until the 1980s that the U.S. Supreme Court made clear that allowing a sexually hostile environment at work was a form of sex discrimination.

As to whether a "hostile environment" for older workers is a form of age discrimination, not every court thinks so, but a growing number of them are allowing this type of lawsuit.

Landlord might be liable for Madonna's loud music



AP Photo/Joel Ryan

Karen George had a lovely apartment on New York's Upper West Side, except for one thing – her downstairs neighbor, the pop star Madonna.

According to George, Madonna had people over to her apartment for an hour and a half to three hours every day to conduct dance training and exercise routines involving loud music. According to George, the music was “deafening” and caused her walls and floors to shake. She says she often had to leave the apartment because of the noise, and was unable to entertain guests.

George repeatedly complained to Madonna and to the landlord, but she says the loud music continued for two years. She finally sued the landlord, and a judge allowed the case to go to trial.

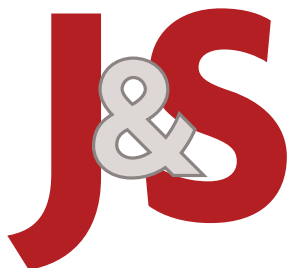
In New York, whenever an apartment is rented, the landlord must keep it fit for its use as a residence – including the ability “to think, interact and relax in peace.” Madonna's music may have violated this duty.

The landlord argued that it made a good faith effort to stop the music, and even persuaded Madonna to try installing noise-blocking equipment. But the judge said that wasn't good enough if the music continued to be too loud.

The landlord also argued that Madonna's decibel level was never so high as to violate the city's Noise Code. But the judge said that didn't matter as long as the noise was actually disruptive.

According to the judge, “certain noises possess characteristics which make them more intrusive than others,” and Madonna's music could qualify in that category.

The moral of the story is that landlords have a responsibility to make sure that certain tenants' behavior doesn't unreasonably interfere with other tenants' enjoyment of their apartments. Landlords might be reluctant to confront tenants about a problem – especially if the tenant is a world-famous pop star – but the law still requires them to fix the situation.



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