TaxAct Professional

Divorce and the Various Tax Implications

Divorce and its Various Tax Implications

PRESENTER :

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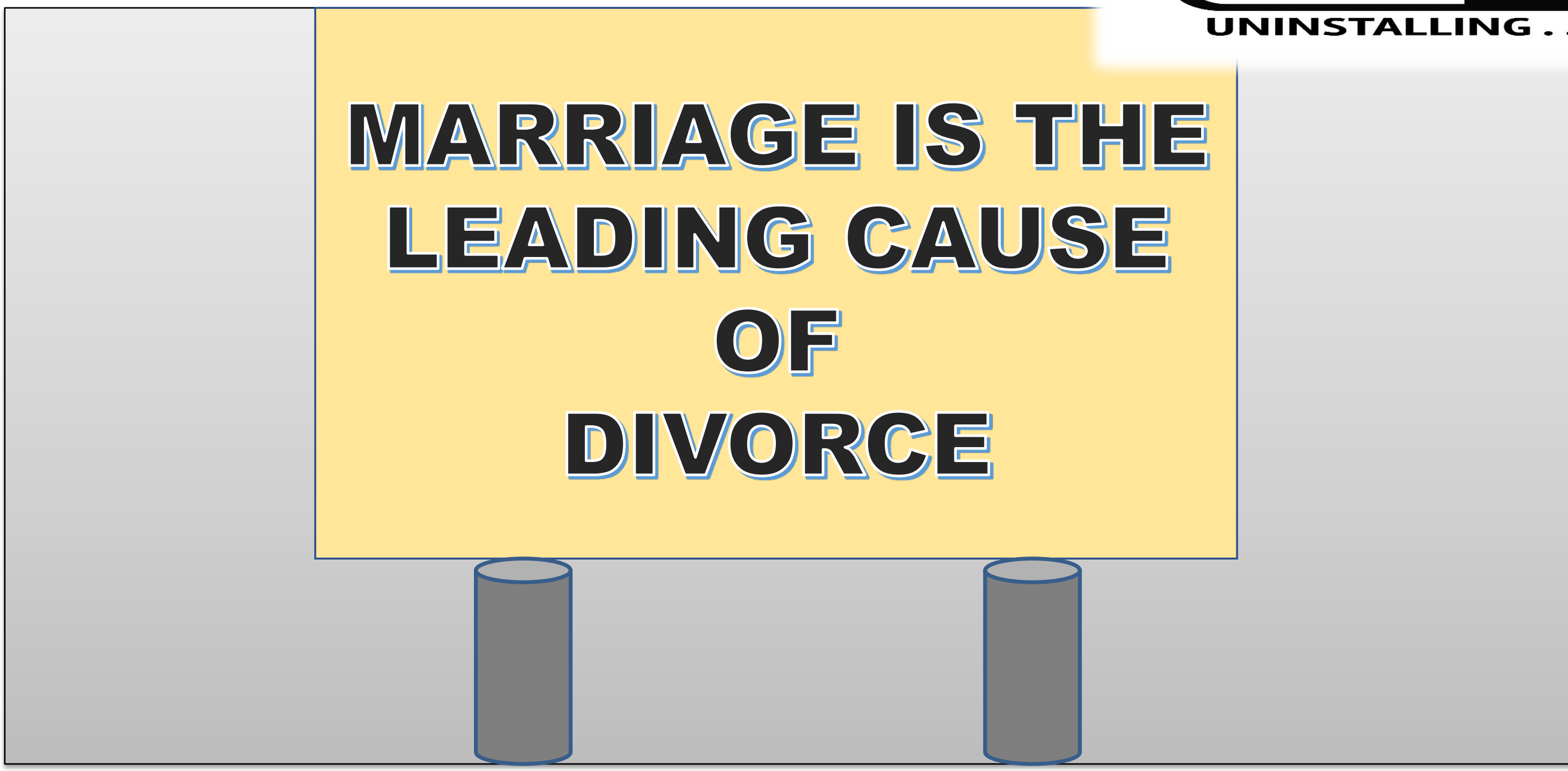
Divorce and the Various Tax Implications

Quote of the Session



Divorce Overview

Divorce Overview

- Circumstances surrounding a divorce can be hostile, friendly, or merely civil.
- Divorces are emotionally draining.
- Couples often fail to carefully consider tax considerations.
- Tax effects of decisions made will survive long after divorce is final

Divorce Overview

- Team of Divorce Professionals
  - ✓Attorney
  - ✓Tax Professional
  - ✓Financial Advisor
  - ✓Trusted Friend

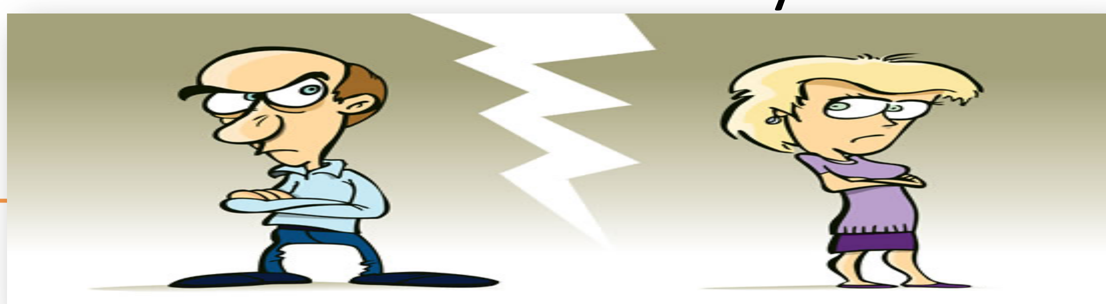
- **The four items to advise your client against**

Divorce Overview

- Enormously stressful process – **be kind!**
- Almost **never** truly amicable
- The end of one contract and the start of another
  - ✓ Marital settlement agreement should NOT be signed in haste
  - ✓ No leverage on key issues once it is signed
  - ✓ If clients cannot agree on key issues.......

Objectives

- Divorce Issues Checklist & Planning
- Tax Cuts and Jobs Act
- Filing Status
- Name, Address, & W-4 Changes
- Joint & Individual Liability – Innocent Spouse Issues



Objectives

- Exemptions
- Critical Issues Surrounding Form 8332
- Credits Associated with Dependents
- Alimony and Child Support
- Qualified Domestic Relations Order “QDRO”
- Individual Retirement Arrangements

Objectives

- Property Settlements
- Costs of Getting A Divorce
- Allocating Estimated Taxes
- Carry-forwards of Capital Loss, NOLs, Charitable Contributions, Other Deductions and Credits

Divorce Issues Checklist & Planning

Documents for Divorce

- Last Five (5) years of tax returns
- Personal financial statements (include all personal belongings/assets)
- Current pay-stubs
- Current retirement account statements

Documents for Divorce

- Mortgage Loan Documents
- Vehicle Loan Documents
- Credit Card Statements
- Life Insurance Policies
- Student loan documents

Divorce Issues Checklist & Planning

- ❑ Which party to represent.
- ❑ Conflict-of-Interest.
- ❑ Prenuptial Agreements.
- ❑ Joint liability for any taxes owed.
- ❑ Payment of Taxes, allocation of estimated taxes, tax refunds, carryovers.

Divorce Issues Checklist & Planning

- ❑ Circular 230 states tax professional may not represent potential conflicting interest. ✓
- ❑ Prepare just one of couple's tax return
- ❑ Prepare neither

- ❑ If you feel no conflict, then must obtain consent
  - ❖ **Consent Form on next slide**

Divorce Issues Checklist & Planning

Written Consent to Preparation of Tax Returns

I, ________________________, hereby give consent to **Tax Preparer, EA of XYZ Tax Services**, **Inc**. to prepare my jointly filed 20XX Federal and State Tax Returns.

I give this written consent to preparation knowing that **Tax Preparer, EA of XYZ, Inc**. will prepare a joint return with my spouse, ________________________ whom I am currently in divorce proceedings with.

All information presented to **Tax preparer, EA of XYZ, Inc**. for the preparation of tax returns will/are in allowance with the current tax preparation engagement letter that myself and spouse will/have signed.

If I wish to have the tax returns reviewed by another party, than I will sign a "Consent to
To Disclose Tax Return Information " provided by **Tax Preparer, EA of XYZ, Inc**. so the returns can be released for review.

I hereby give consent, confirmed in writing, to representation by **Tax Preparer, EA** knowing that representation of one client could directly adverse to another client or that there could be significant risk that the representation of one or more clients will be materially limited by the practitioner's responsibilities to another client with the practitioner's own interest. Also, knowing that the other client is my spouse, __________________ whom I am currently in divorce proceedings with.

____
Client

____
Date

Divorce Issues Checklist & Planning

- ❑ Retirements Accounts.
- ❑ Property Settlements.
- ❑ Children.
- ❑ Effects of Divorce on insurance coverage, policies, beneficiary designations, mortgages and other debts, financial and estate planning.
- ❑ Change passwords
- ❑ Change contacts for schools and medical care

Divorce Tax Planning is Essential

❖ Imperative first steps is to assemble all available information relating to:

- ❑ **Assets**
- ❑ **Income of every type**
- ❑ **Liabilities**

Divorce Tax Planning is Essential

- Three types of money from a Divorce
  - ✓ **Property Settlement**
    - **50 / 50 is NOT always equal**
  - ✓ **Alimony**
    - **Changes under Tax Cuts and Jobs Act**
  - ✓ **Child Support**

Divorce and the Various Tax Implications

Divorce Tax Planning is Essential

- Property Settlement
  - ✓ Occur within one year after divorce or separation is final
  - ✓ Occur up to six years after divorce or separation is final if required by divorce or separation instrument
  - ✓ Occur more than six years after divorce or separation is final if factors show an earlier transfer was not feasible

Property Transferred Due to Divorce

If taxpayer transfers…	Then taxpayer…	And spouse or former spouse…
Income-producing property (such as an interest in a business, rental property, stocks or bonds)	Until date property transferred, reports any profit or loss, rental income or loss, dividends or interest generated or derived from the property	After transfer of property, reports any income or loss generated or derived from the property
An interest in a passive activity with unused passive activity losses (PALs)	Cannot deduct their accumulated unused PALs allocable to the interest	Increases adjusted basis of transferred interest by amount of unused PALs

Property Transferred Due to Divorce

If the taxpayer transfers…	Then the taxpayer…	And their spouse or former spouse…
Investment credit property with recapture potential	Does not recapture any part of credit	Recaptures part of credit if disposes of property or changes its use before end of recapture period
Non-statutory stock options and nonqualified deferred compensation (NQDC)	Does not include any income, gain or loss upon transfer	Includes an amount in gross income when stock options exercised or on payment or availability of deferred compensation

Divorce and the Various Tax Implications

Truly Equal Split

- Lawyers don’t take tax issues into account in property divisions
- Joe and Jean own:
  - Stock A – 500 shares, FMV $10,000, cost $8,000
  - Stock B – 500 shares, FMV $10,000, cost of $1,000
- Joe takes stock A and Jean takes stock B
- Both sell their stock shares shortly after the divorce:
  - Joe’s taxable capital gain = $2,000 ($10,000 - $8,000)
  - Jean’s taxable capital gain = $9,000 ($10,000 - $1,000)
- Looks fair to the attorney!

Sam & Samantha Split Assets

- Sam and Samantha own:
  - – Stock A – 500 shares, FMV $10,000, cost $1,000, purchased 10 years ago
  - – Stock B – 500 shares, FMV $10,000, cost $1,000, purchased last month
- Sam takes stock A and Samantha takes stock B
- Both sell their stock shares shortly after the divorce:
  - – Sam's taxable capital gain = $9,000 **long term**
  - – Samantha's taxable capital gain = $9,000 **short term**
- Looks fair to the attorney!

Charlie & Charlene Split Assets

- Charlie and Charlene own:
  - A home worth $250,000, stock account worth $200,000 and a retirement account worth $450,000
- Charlene takes the home and the stock account, total value $450,000
- Charlie takes the retirement account, total value $450,000
- Looks fair to the attorney!

Divorce Tax Planning is Essential

- Child Tax Credit
- Qualifying Child
- Filing Status
- Custody
- Joint Physical Care

Divorce Tax Planning is Essential

- Exemptions
  - ✓ **Custodial Parent**
  - ✓ **Noncustodial**
  - ✓ **Tie Breaking Rules**
  - ✓ **Form 8332**
  - ✓ **Divorce Decree should be *clear***

Innocent Spouse Issues

- Beware of issues by filing MFJ
  - ✓ Relief from Joint Liability
    - Innocent Spouse relief
    - Separation of liability
    - Equitable relief

https://www.irs.gov/businesses/small-businesses-self-employed/three-types-of-relief

Divorce Tax Planning is Essential

❑ Innocent Spouse Issues

Form **8857**
(Rev. June 2021)
Department of the Treasury
Internal Revenue Service (99)

Request for Innocent Spouse Relief

► Go to *www.irs.gov/Form8857* for instructions and the latest information.

OMB No. 1545-1596

IMPORTANT THINGS YOU SHOULD KNOW

- Do not file this form with your tax return. See *Where To File* in the instructions.
- See the instructions for this form and Pub. 971, Innocent Spouse Relief, for help in completing this form and for a description of the factors the IRS takes into account in deciding whether to grant innocent spouse relief. The Form 8857 instructions and Pub. 971 are available at *www.irs.gov*.
- Attach the complete copy of any document requested or that you otherwise believe will support your request for relief.
- The IRS is required by law to notify the person listed on line 6 that you have requested this relief. That person will have the opportunity to participate in the process by completing a questionnaire about the tax years you enter on line 3 (the years for which you want innocent spouse relief).
- The IRS will not disclose the following information: your current name, address, phone numbers, or employer(s).
- **Note:** If you petition the Tax Court to review your request for relief, the Tax Court may only be allowed to consider information you or the person on line 6 provided us before we made our final determination, additional information we included in our administrative file about your request for relief, and any information that is newly discovered or previously unavailable. Therefore, it is important that you provide us with all information you want us or the Tax Court to consider.

Note: If you need more room to write your answer for any question, attach more pages. Be sure to write your name and social security number on the top of all pages you attach.

Part I **Should you file this form?**

Generally, both taxpayers who file a joint return are responsible, jointly and individually, for paying any tax, interest, or penalties from your joint return. If you believe the person with whom you filed a joint return should be solely responsible for an erroneous item or an underpayment of tax from your joint tax return, you may be eligible for innocent spouse relief.

Innocent spouse relief may also be available if you were a resident of a community property state (see list of community property states in the instructions) and did not file a joint federal income tax return and you believe you should not be held responsible for the tax attributable to an item of community income.

Divorce Tax Planning is Essential

- Innocent Spouse Issues – Form 8857

Purpose of Form

When you file a joint income tax return, the law makes both you and your spouse responsible for the entire tax liability. This is called joint and several liability. Joint and several liability applies not only to the tax liability you show on the return but also to any additional tax liability the IRS determines to be due, even if the additional tax is due to the income, deductions, or credits of your spouse or former spouse. You remain jointly and severally liable for taxes, and the IRS can still collect them from you, even if you later divorce and the divorce decree states that your former spouse will be solely responsible for the tax.

If you believe, taking into account all the facts and circumstances, only your spouse or former spouse should be held responsible for all or part of the tax, you should request relief from the tax liability, including related penalties and interest. To request relief, you must file Form 8857. The IRS will use the information you provide on the form, and any attachments you submit, to determine if you are eligible for relief. The IRS will contact you if additional information is needed.

Divorce Tax Planning is Essential

❑ Innocent Spouse Issues – Form 8857

When To File

You should file Form 8857 as soon as you become aware of a tax liability for which you believe only your spouse or former spouse should be held responsible. The following are some of the ways you may become aware of such a liability.

- The IRS is examining your tax return and proposing to increase your tax liability.
- The IRS sends you a notice.

However, you must generally file Form 8857 no later than 2 years after the first IRS attempt to collect the tax from you. (But see the **exceptions** below for different filing deadlines that apply.) For this reason, do not delay filing because you do not have all the required documentation.

Collection activities that may start the 2-year period include the following.

- The IRS offset your income tax refund against an amount you owed on a joint return for another year and the IRS informed you about your right to file Form 8857.
- The filing of a claim by the IRS in a court proceeding in which you were a party or the filing of a claim in a proceeding that involves your property. This includes the filing of a proof of claim in a bankruptcy proceeding.
- The filing of a suit by the United States against you to collect the joint liability.
- The issuance of a section 6330 notice, which notifies you of the IRS's intent to levy and your right to a collection due process (CDP) hearing. The IRS usually sends a section 6330 notice by issuing a Letter 11 or Letter 1058.

❑ Injured Spouse Allocation – Form 8379

Form **8379**
(Rev. November 2023)
Department of the Treasury
Internal Revenue Service

Injured Spouse Allocation

Go to *www.irs.gov/Form8379* for instructions and the latest information.

OMB No. 1545-0074
Attachment Sequence No. **104**

Part I **Should You File This Form?** You must complete this part.

1 Enter the tax year for which you are filing this form ______ . Answer the following questions for that year.

2 Did you (or will you) file a joint return?

☐ **Yes.** Go to line 3.

☐ **No.** **Stop here.** Do not file this form. You are not an injured spouse.

3 Did (or will) the IRS use the joint overpayment to pay any of the following legally enforceable past-due debt(s) owed only by your spouse? See instructions.

• Federal tax • State income tax • State unemployment compensation • Child support
• Spousal support • Federal nontax debt (such as a student loan)

☐ **Yes.** Go to line 4.

☐ **No.** **Stop here.** Do not file this form. You are not an injured spouse.

Note: If the past-due amount is for a federal tax liability owed by both you and your spouse, you may qualify for innocent spouse relief for the year to which the joint overpayment was (or will be) applied. See *Innocent Spouse Relief* in the instructions.

4 Are you legally obligated to pay this past-due amount?

☐ **Yes. Stop here.** Do not file this form. You are not an injured spouse.

Note: If the past-due amount is for a federal tax liability owed by both you and your spouse, you may qualify for innocent spouse relief for the year to which the joint overpayment was (or will be) applied. See *Innocent Spouse Relief* in the instructions.

☐ **No.** Go to line 5.

5 Were you a resident of a community property state at any time during the tax year entered on line 1? See instructions.

☐ **Yes.** Enter the name(s) of the community property state(s) ______________ .
Skip lines 6 through 9. **Go to Part II** and complete the rest of this form.

☐ **No.** Go to line 6.

6 Did you make and report payments, such as federal income tax withholding or estimated tax payments?

☐ **Yes.** Skip lines 7 through 9 and **go to Part II** and complete the rest of this form.

☐ **No.** Go to line 7.

7 Did you have earned income, such as wages, salaries, or self-employment income?

☐ **Yes.** Go to line 8.

☐ **No.** Skip line 8 and go to line 9.

8 Did (or will) you claim the earned income credit or additional child tax credit?

☐ **Yes.** Skip line 9 and **go to Part II** and complete the rest of this form.

☐ **No.** Go to line 9.

9 Did (or will) you claim a refundable tax credit? See instructions.

☐ **Yes. Go to Part II** and complete the rest of this form.

☐ **No.** **Stop here.** Do not file this form. You are not an injured spouse.

❑ Injured Spouse Allocation – Form 8379

- **Refunds on a joint tax return may be applied to overdue debts such as**
  - ***Past-due child support***
  - ***Debts to federal agencies***
  - ***State income tax obligations***
  - ***State unemployment compensation debts***

Tax Benefits = Big Bucks

- CTC/ACTC
- ODC
- EIC
- Childcare
- Education
- Premium tax credit
- HOH

Custodial vs. Noncustodial Parents

- Two kinds of custody – legal and physical
- Physical custodial parent
  - ✓ Divorce decree specifies
  - ✓ Child lived with most *nights* during the year
- Physical noncustodial parent
  - ✓ The other parent
  - ✓ Child lived with the least *nights* during the year
- Equal nights, greatest AGI wins

Custodial vs. Noncustodial Parents

- Counting nights rules
  - ✓ A “day” of custody is awarded to the parent at whose home the child spends the night
  - ✓ A day of custody is awarded to the parent with whom the child would have spent that night if the child spends the night at a “sleepover”
  - ✓ A day of custody is awarded to the parent with whom the child spent the night when not at the parent’s residence (travel)
  - ✓ The night of Dec. 31 is awarded to the previous tax year
  - ✓ These are the IRS rules, but parents can agree to file returns on a different basis – if they can agree!
  - ✓ If children stay with noncustodial parent for longer than normal due to illness of the custodial parent, the custody does not change due to “temporary absence”

Tax Benefit Allocation – Dependency Not Waived

Tax Benefit	Custodial	Noncustodial
Other dependent credit (ODC)	X	
Child tax credit/Additional child tax credit (CTC/ACTC)	X	
Earned income tax credit (EIC)	X	
Education credits	X	
Student loan interest deduction	X	
Child and dependent care credit/dependent care assistance	X	
Premium tax credit (PTC)	X	
Head of household filing status (HOH)	X	

Noncustodial Parent Rules

- ❑ Parents are:
  - ✓ Divorced or separated under a decree
  - ✓ Separated under written separation agreement
  - ✓ Lived apart during the last six months of tax year
- ❑ Child receives over half the support from both parents
- ❑ Child in custody of one or both parents for more than half the year
- ❑ Written declaration or similar statement attached to return – Form 8332

Tax Benefit Allocation – Dependency Waived

Tax Benefit	Custodial	Noncustodial
Other dependent credit (ODC)		X
Child tax credit/additional child tax credit (CTC/ACTC)		X
Earned income tax credit (EIC)	X	
Education credits		X
Student loan interest deduction		X
Child and dependent care credit/dependent care assistance	X	
Premium tax credit (PTC)		X
Head of household filing status (HOH)	X	

Proving Custody

- The early bird gets the worm... and the early filer gets the dependent
- Sad but true – whoever files first can claim the child. The next filer will get a reject message from the IRS.
- Then what? Paper file with proof of custody!

- **Custodial parent should consider getting an IP PIN for themselves and their children**

Proving Custody

- IR-2024-294, November 21, 2024
- Duplicate dependent returns could be the result of identity theft or disagreement of who is entitled to claim the dependent
- Beginning 2025, IRS will accept e-filed Form 1040 even if dependent already claimed on previously filed tax return
- If primary taxpayer on the “second return” includes valid
  - ✓ **IP PIN**

Divorce and the Various Tax Implications

Case Studies

- Mike and Mary are divorced
- Mary has custody of their young child
- Mary has agreed to release the exemption for the child to Mike this year
- Who gets the child tax credit/additional child tax credit?
- Who can file as head of household?
- Who can take the dependent care credit?

Case Studies

- Bob and Bobbie are divorced
- Bob has custody of their young child
- Bob has agreed to release the exemption for the child to Bobbie this year
- Bobbie is right in the sweet spot for EIC, but Bob makes too much for EIC
- Who can claim EIC?

Case Studies

- Peter and Wendy are divorced; Wendy has custody of their college-age child but has agreed to release the exemption for the child to Peter this year
  - ✓ Peter has paid $10,000 for the child's tuition. Who can claim the AOTC?
  - ✓ Wendy has paid $10,000 for the child's tuition. Who can claim the AOTC?
  - ✓ Wendy has paid $10,000 for the child's tuition under a court order. Who can
    claim the AOTC?

Divorce Tax Planning is Essential

- Credits associated with Dependents
  - Child Tax Credit
    - ✓ Parent Claiming
  - Child & Dependent Care Credit
    - ✓ Custodial Parent

Divorce Tax Planning is Essential

- Credits associated with Dependents
  - Education Credits
    - ✓ **Parent Claiming**
  - Earned Income Credit
    - ✓ **Custodial Parent**

Divorce Tax Planning is Essential

- Personal Residence Issues
  - ✓ **IRC § 121**

Tax Treatment of Marital Home in Divorce

- *Even in cases of buying out one spouse*
  - <u>Basis of property received same as prior to divorce</u>
  - <u>Spouse giving up property may have held it as separate property</u>
  - <u>Carryover basis rules apply even if liabilities exceed basis</u>
  - <u>Loan to buyout spouse may be acquisition debt for mortgage interest purposes</u>

Home Mortgage & Liabilities

- Home mortgage interest deduction after divorce depends on:
  - ✓ Ownership of home
  - ✓ Use of home as personal residence
  - ✓ Liability on mortgage loan
  - ✓ Divorce or separation instrument orders mortgage payments

Home Mortgage – Tax Follows Title!

Jane and child remain in house; Jack is ordered to pay mortgage.

1. Jane and Jack are both on the title and the mortgage loan jointly obligated
   - Half considered alimony; Jane and Jack each deduct 50% mortgage interest and 50% real estate taxes
2. Jack holds title; mortgage loan jointly obligated to Jane and Jack
   - Half mortgage interest and *all* real estate taxes considered alimony; each spouse deducts 50% interest and Jack deducts 100% of taxes
3. Jack owns house; mortgage loan solely obligated to Jack
   - *All* payments considered alimony; Jack deducts 100% of interest and taxes

Divorce Tax Planning is Essential

- Qualified Domestic Relations Order {QDRO}
  - ✓401(k) (pensions NOT IRAs)
  - ✓Not subject to 10% penalty
  - ✓QDRO recipient reports as if plan participant

Divorce Tax Planning is Essential

- Individual Retirement Accounts
  - ✓ Trustee to Trustee
    - ❖ Transfer incidental to Divorce
  - ✓ Summers, TC Memo 2017-125

Divorce Tax Planning is Essential

- Itemizing Deductions if Married Filed Separately
  - ✓ If one spouse itemizes, the other cannot take standard deduction
  - ✓ Does not apply to Filing status of Head of Household

Tax Cuts & Jobs Act Overview

- Alimony – No deduction, no income
- **Permanently Repeals** deduction for Alimony
- Agreements executed in 2019 and beyond
- Agreements modified after 2018 if modification states that the TCJA provisions apply
- Child support rules unchanged

Alimony

- Payment received under divorce or separation instrument and is not designated as non-alimony
- Payment is cash, check, money order, etc.
- Payee and payor are not part of the same household
- Payee and payor are not filing a joint return

Alimony

- None of the payments are required after death of the payee
- Does not include payments for support of the payor’s children
- Does not include payments that change based on events contingent to a child
- Does not include payments to keep up payor’s property even if used by ex-spouse

Alimony

- ❑ Cash to recipient
- ❑ Medical and health insurance payments
  - ✓ **Not through employer**
- ❑ To maintain property of spouse (not payor)

Alimony Overview

- Cash or check, not property
- Cannot state that it’s not alimony
- Not members of same household
- Payment ends with death
- Not treated as child support
- Not disguised property settlement
- Must last for at least three years

Not Alimony

- Division of the marital estate
- Buying the other spouse's share of home or business
- Assets that become community property over time

Alimony & Child Support

- If taxpayer is behind on payments for Alimony & Child Support
  - ✓ When paid, payments are first applies to child support

Filing Status

- Marital Status
  - ✓Determined on the last day of the tax year
  - ✓Terminated for tax reasons
- Same-sex marriages – Windsor case

Filing Status

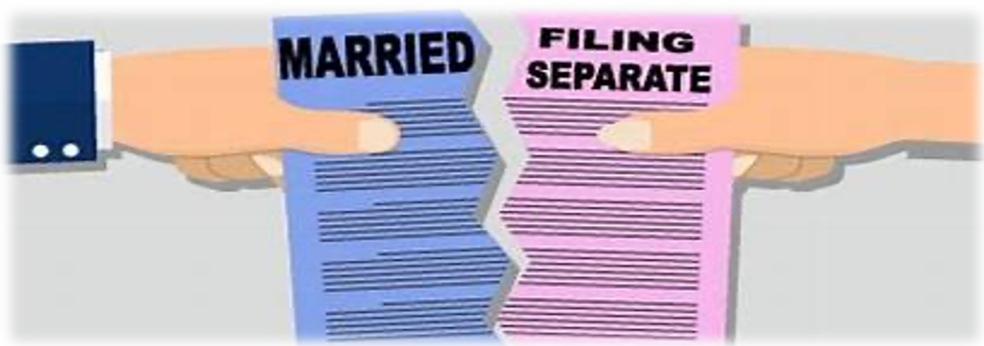
- ❑ **Married Filing Jointly**
- ❑ **Married Filing Separately**
- ❑ **Head of Household**

Filing Status

- **Married Filing Jointly**
  - ✓Joint & Individual Liability
  - ✓Tax laws determine filing status
  - ✓Innocent Spouse Issues
  - ✓Injured Spouse

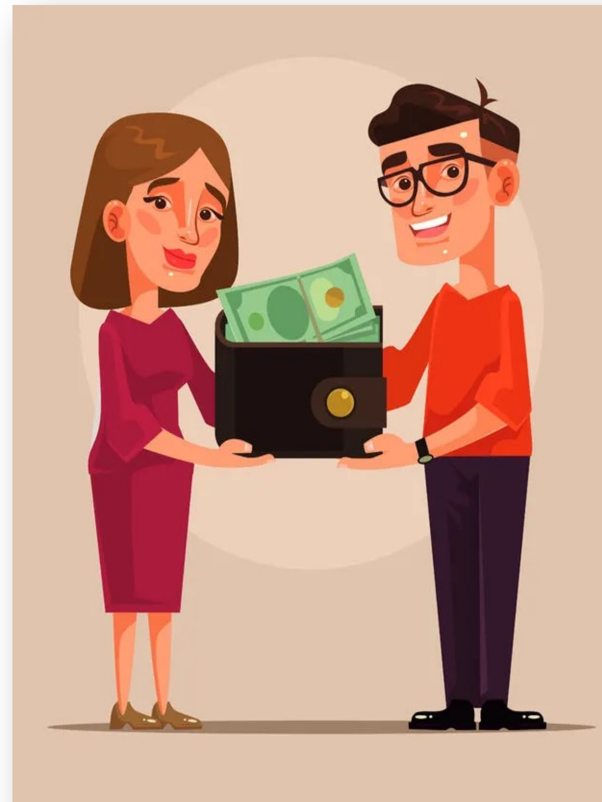
Filing Status

- ❑ **Married Filing Separately**
  - ✓ If one spouse itemizes
  - ✓ Tax rates are generally higher



Filing Status

- **Married Filing Separately**
  - ✓Credits & Deductions are lost
    - Earned Income Credit
    - Child & Dependent Care Credit
    - Education Credits
    - Adoption Credit
    - Student loan interest deduction
    - ROTH IRA



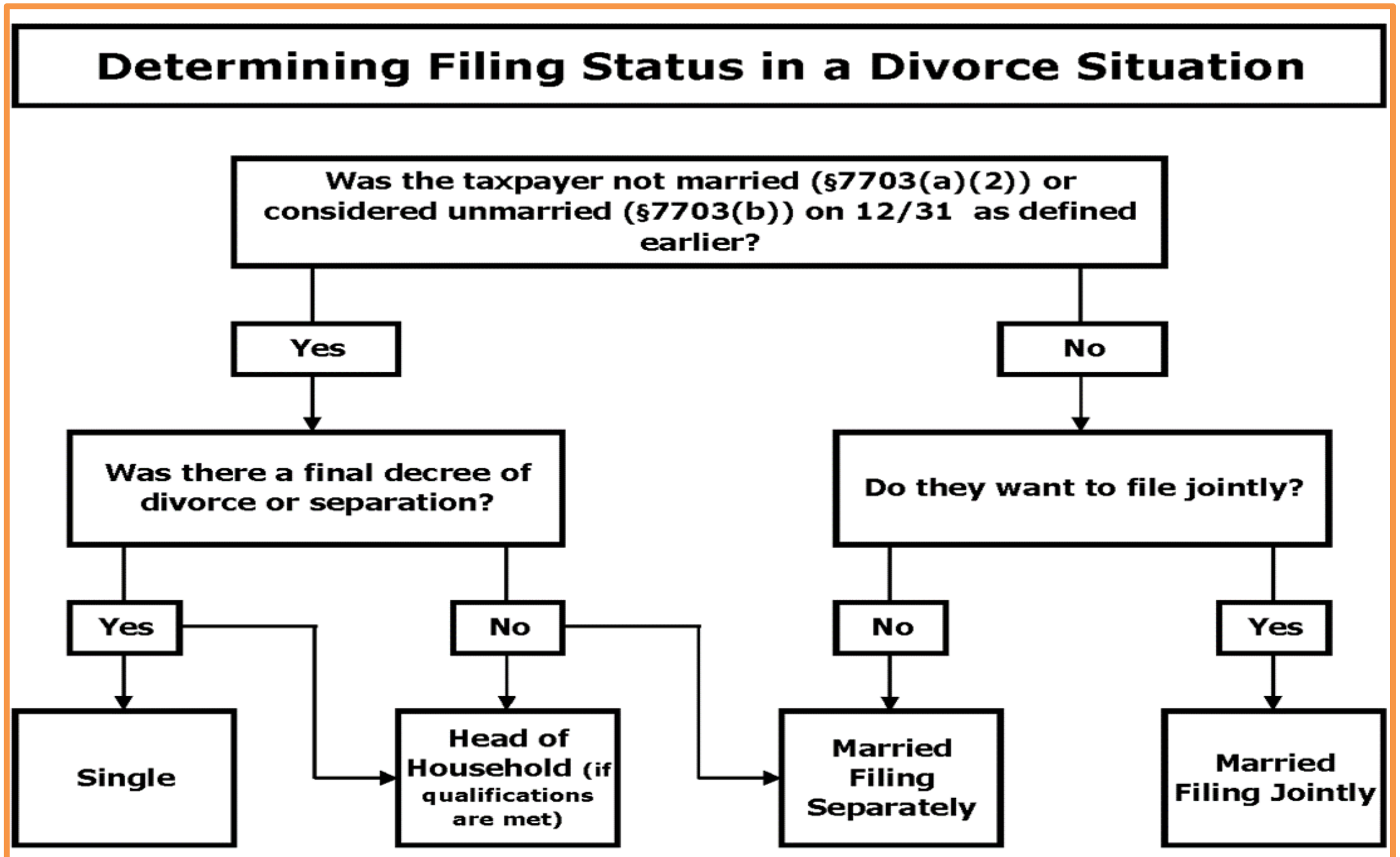
Filing Status

❑ Head of Household

- Must meet all requirements
  - “Considered unmarried” on the last day of the year;
    - ✓ ***Five Tests Must be Meet***
  - Paid more than half the cost of keeping up a home for the year
  - A “qualifying person” lived with you in the home for more than half the year

❑ ARP Section 9623

Determining Filing Status in Divorce Situations



Determining Filing Status in Divorce Situations

❑ What are the filing status options in each case?

- ✓ Barbie is separated from Ken effective Sept. 1; their dependent child lives with her
- ✓ Diana is separated from Charles effective June 1; their dependent child lives with her
- ✓ Jack is separated from Jill effective June 1. They have no children, but Jack supports his mother and claims her as a dependent.
- ✓ John is separated from Jane effective June 1. John's girlfriend, Jackie, moves in with John and is supported by him. Jackie has no income.

Name, Address, W-4 Changes, Other

- ❑ **Change of Name**
  - ✓Notify SSA – Form SS-5
  - ✓E File Issues

- ❑ **Change of Address**
  - ✓Form 8822

Name, Address, W-4 Changes, Other

Change of Withholding

- ✓Complete New W-4

Other Issues

- ✓Beneficiary changes and update will
- ✓Bank & Brokerage accounts
- ✓Title on house and related issues
- ✓Health Insurance
- ✓Budget

Exemptions

- Qualifying Child under IRC §152(c)
  - ✓Tests to be a Qualifying Child
  - ✓Tie Breaking Rules
  - ✓Divorced Parents
    - ***Custodial Parent***
    - ***Noncustodial Parent***

Exemptions

Form **8867**

(Rev. November 2023)

Department of the Treasury
Internal Revenue Service

Paid Preparer's Due Diligence Checklist

Earned Income Credit (EIC), American Opportunity Tax Credit (AOTC), Child Tax Credit (CTC) (including the Additional Child Tax Credit (ACTC) and Credit for Other Dependents (ODC)), and Head of Household (HOH) Filing Status

To be completed by preparer and filed with Form 1040, 1040-SR, 1040-NR, 1040-PR, or 1040-SS.
Go to *www.irs.gov/Form8867* for instructions and the latest information.

OMB No. 1545-0074

For tax year 20

Attachment Sequence No. **70**

Taxpayer name(s) shown on return	Taxpayer identification number
Preparer's name	Preparer tax identification number

Part I **Due Diligence Requirements**

Please check the appropriate box for the credit(s) and/or HOH filing status claimed on the return and complete the related Parts I–V for the benefit(s) claimed (check all that apply). ☐ EIC ☐ CTC/ACTC/ODC ☐ AOTC ☐ HOH

Exemptions

Part III **Due Diligence Questions for Returns Claiming CTC/ACTC/ODC** (If the return does not claim CTC, ACTC, or ODC, go to Part IV.)

		Yes	No	N/A
10	Have you determined that each qualifying person for the CTC/ACTC/ODC is the taxpayer's dependent who is a citizen, national, or resident of the United States?	☐	☐	
11	Did you explain to the taxpayer that he/she may not claim the CTC/ACTC if the child has not lived with the taxpayer for over half of the year, even if the taxpayer has supported the child, unless the child's custodial parent has released a claim to exemption for the child?	☐	☐	☐
12	Did you explain to the taxpayer the rules about claiming the CTC/ACTC/ODC for a child of divorced or separated parents (or parents who live apart), including any requirement to attach a Form 8332 or similar statement to the return?	☐	☐	☐

Exemptions

Part III	Due Diligence Questions for Returns Claiming CTC/ACTC/ODC (If the return does not claim CTC, ACTC, or ODC, go to Part IV.)	Yes	No	N/A
10	Have you determined that each qualifying person for the CTC/ACTC/ODC is the taxpayer's dependent who is a citizen, national, or resident of the United States?	☐	☐	
11	Did you explain to the taxpayer that he/she may not claim the CTC/ACTC if the child has not lived with the taxpayer for over half of the year, even if the taxpayer has supported the child, unless the child's custodial parent has released a claim to exemption for the child?	☐	☐	☐
12	Did you explain to the taxpayer the rules about claiming the CTC/ACTC/ODC for a child of divorced or separated parents (or parents who live apart), including any requirement to attach a Form 8332 or similar statement to the return?	☐	☐	☐

Part V	Due Diligence Questions for Claiming HOH (If the return does not claim HOH filing status, go to Part VI.)	Yes	No
14	Have you determined that the taxpayer was unmarried or considered unmarried on the last day of the tax year and provided more than half of the cost of keeping up a home for the year for a qualifying person?	☐	☐

Exemptions

and provided more than half of the cost of keeping up a home for the year for a qualifying person? . . . .

Part VI **Eligibility Certification**

You will have complied with all due diligence requirements for claiming the applicable credit(s) and/or HOH filing status on the return of the taxpayer identified above if you:

A. Interview the taxpayer, ask adequate questions, contemporaneously document the taxpayer's responses on the return or in your notes, review adequate information to determine if the taxpayer is eligible to claim the credit(s) and/or HOH filing status and to figure the amount(s) of the credit(s);

B. Complete this Form 8867 truthfully and accurately and complete the actions described in this checklist for any applicable credit(s) claimed and HOH filing status, if claimed;

C. Submit Form 8867 in the manner required; **and**

D. Keep all five of the following records for 3 years from the latest of the dates specified in the Form 8867 instructions under *Document Retention*.

1. A copy of this Form 8867.
2. The applicable worksheet(s) or your own worksheet(s) for any credit(s) claimed.
3. Copies of any documents provided by the taxpayer on which you relied to determine the taxpayer's eligibility for the credit(s) and/or HOH filing status and to figure the amount(s) of the credit(s).
4. A record of how, when, and from whom the information used to prepare this form and the applicable worksheet(s) was obtained.
5. A record of any additional information you relied upon, including questions you asked and the taxpayer's responses, to determine the taxpayer's eligibility for the credit(s) and/or HOH filing status and to figure the amount(s) of the credit(s).

If you have not complied with all due diligence requirements, you may have to pay a penalty for each failure to comply related to a claim of an applicable credit or HOH filing status (see instructions for more information).

		Yes	No
15	Do you certify that all of the answers on this Form 8867 are, to the best of your knowledge, true, correct, and complete?	☐	☐

Exemptions

- Form 886-H-DEP is an IRS chart showing the type of proof the IRS can request to prove the right to claim the child:

Exemptions

Form **886-H-DEP**
(October 2022)

Department of the Treasury – Internal Revenue Service

Supporting Documents for Dependents

Taxpayer name	Taxpayer Identification Number	Tax Year

If You Are:	**And:**	**Then please send photocopies of the following documents:**
Divorced, legally separated, or living apart from the other parent of the child claimed on your return.	Both parents *(together)* provided more than half of the child's **total support** for the tax year. **and** One or both parents have custody.	Entire divorce decree, separation agreement, decree of separate maintenance. If you are living apart from the child's other parent, but you are not divorced or legally separated, send proof that you did not live with the child's other parent for the last six months of the year. Current custody order, completed *Form 8332, Release of Claim to Exemption for Child of Divorced or Separated Parents* or a similar statement as applicable for 2022. You may need to send more than one document.
If the Person Is:	**And:**	**Then please send photocopies of the following documents:**
Your qualifying child	The child is your: son, daughter, adopted child, a child lawfully placed with you for legal adoption, stepson, stepdaughter, brother, sister, stepbrother, stepsister, foster child placed with you by an authorized placement agency or by court order, or a descendant of any such person *(for example, a grandchild, a niece, or a nephew)*, **and** The child lived with you for more than half of 2022; *(temporary absences away from home, such as the child going away to school, count as time lived at home)*, **and** The child did not provide half of his or her own support for 2022, **and** At the end of 2022, the child is under age 19, or a full-time student under the age of 24, or permanently and totally disabled regardless of age. **Note: The above-mentioned age requirement is for Earned Income Tax Credit eligibility only. For the Child Tax Credit, by the end of the year, the child must be under age 17.**	Birth certificates or other official documents of birth, marriage certificates, letter from an authorized adoption agency, letter from the authorized placement agency, or applicable court document that verify your relationship to the child *(send these documents only for a qualifying child who is not your natural or adopted child)*. To show both you and your child lived together at the same address or addresses for more than half of 2022, send either: • School, medical, daycare, or social service records. • A letter on the official letterhead from a school, medical provider, social service agency, or place of worship that shows names, common address, and dates. *(We cannot accept documents signed by **someone related to you**.)* ***You may need to send more than one document*** *to show that the child lived with you for more than half of the year.*

Exemptions

Form **886-H-DEP** (October 2022)

Department of the Treasury – Internal Revenue Service

Supporting Documents for Dependents

If the Person Is:	And:	Then please send photocopies of the following documents:
Your qualifying relative	Your relative is any of the relatives listed in the box above or any of the following: father or mother and their ancestors, stepfather or stepmother, aunt or uncle, brother- in-law or sister in-law, **and** You provided over half of his or her support in 2022, *(except for children of divorced or separated parents),* **and** Cannot be claimed as a qualifying child by any other person in 2022.	Birth and marriage certificates that verify your relationship to the qualifying relative. If you claim a non-blood related person as a qualifying relative, send proof the person has lived in your home for the entire 12 months of the year. To show both of you lived together at the same address or addresses for all of 2022, send either: • School, medical, daycare, or social service records. • A letter on the official letterhead from a school, medical provider, social service agency, or place of worship that shows names, common address, and dates. *(We cannot accept documents signed by **someone related to you**.)*

Catalog Number 35111U   www.irs.gov   Form **886-H-DEP** (Rev. 10-2022)

Exemptions

Form **886-H-DEP**
(October 2022)

Department of the Treasury – Internal Revenue Service

Supporting Documents for Dependents

***** Note - Send Us Copies of the Following Documents as Proof You Provided More Than Half of Your Dependent's Total Support: *****

- A statement of account from a child support agency.
- A statement from any government agency verifying the amount and type of benefits you and/or your dependent received for the year.
- Rental agreements or a statement showing the fair rental value of your residence *(proof of lodging cost)*.
- Utility and repair bills *(proof of household expenses)* with canceled checks or receipts.
- Daycare, school, medical records, or bills *(proof of child's support)* with canceled checks or receipts.
- Clothing bills *(proof of child's support)* with canceled checks or receipts.

Form 8332

Form **8332**
(Rev. October 2018)
Department of the Treasury
Internal Revenue Service

Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent

► Attach a separate form for each child.
► Go to *www.irs.gov/Form8332* for the latest information.

OMB No. 1545-0074
Attachment Sequence No. **115**

Name of noncustodial parent

Noncustodial parent's social security number (SSN) ►

Note: This form also applies to some tax benefits, including the child tax credit, additional child tax credit, and credit for other dependents. It doesn't apply to other tax benefits, such as the earned income credit, dependent care credit, or head of household filing status. See the instructions and Pub. 501.

Part I **Release of Claim to Exemption for Current Year**

I agree not to claim an exemption for ______________________
Name of child

for the tax year 20 ____.

Signature of custodial parent releasing claim to exemption | Custodial parent's SSN | Date

Note: If you choose not to claim an exemption for this child for future tax years, also complete Part II.

Part II **Release of Claim to Exemption for Future Years** (If completed, see **Noncustodial Parent** on page 2.)

I agree not to claim an exemption for ______________________
Name of child

for the tax year(s) ______________________.
(Specify. See instructions.)

Signature of custodial parent releasing claim to exemption | Custodial parent's SSN | Date

Part III **Revocation of Release of Claim to Exemption for Future Year(s)**

I revoke the release of claim to an exemption for ______________________
Name of child

for the tax year(s) ______________________.
(Specify. See instructions.)

Signature of custodial parent revoking the release of claim to exemption | Custodial parent's SSN | Date

ications

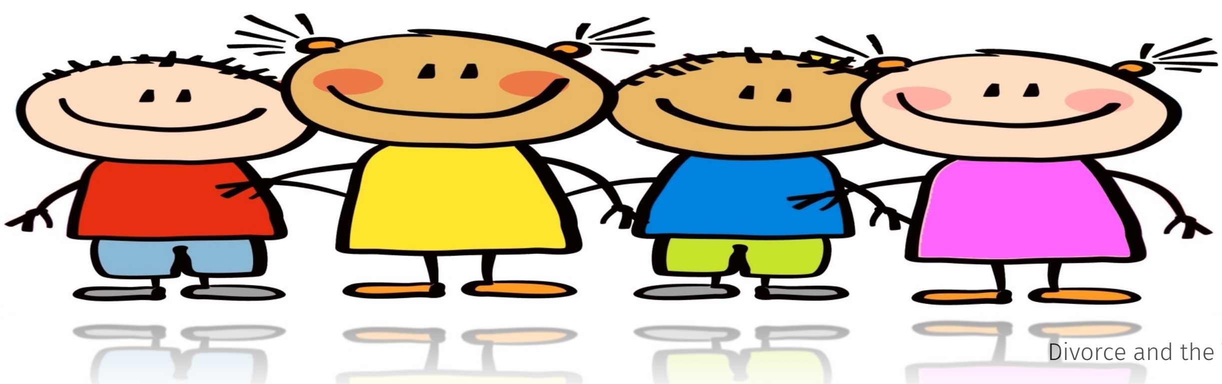
Form 8332

- ❑ Written Declaration
  - ✓Custodial Parent must use Form 8332 or a similar statement
    - ❖ Authors Note
    - ❖ Using the Actual Form 8332 will be Best

- ❑Burke, TC Summary Opinion 2003-147
  - ✓Denied exemptions to noncustodial due to issues with similar statement

Form 8332

- Written Declaration
  - ✓Divorce Decree executed before 1985
    - ✓Children are too old to be Minors today
  - ✓Divorce decree effective after 1984 & before 2009
  - ✓Post 2008 Divorce Decree or separation agreement



Form 8332

- Noncustodial Parent May Only Claim Child as Dependent with Written Determination:
  - ✓ **DeMar v. Commissioner, T.C. Memo 2019-91.**
  - ✓ Skitzki v. Commissioner, T.C. Memo 2019-106.

Form 8332

- Tax Courts Cases have remarked that a noncustodial parent can suffer an undue burden of paying child support but by not receiving an executed Form 8332 from the custodial spouse, noncustodial spouse does not receive the allowable dependent exemption provided by the state divorce court.

Allocating Estimates

- ❑ Joint Estimated tax payments for the current tax year can be claimed by either party
  - ✓Attach explanation statement if not MFJ
- ❑ If you cannot agree on how to divide
  - ✓Revenue Ruling 76-140
- ❑ Regs § 1.6654-2(e)(5)(i)
- ❑ Form 2210 Penalty
  - ✓Tax as if calculated separately

Extensions

- Even if taxpayers will file jointly, file **two separate** extensions, Form 4868

Carry-forward & Other

Carry-forward & Other

- Capital Losses.
- Net Operating Losses.
- Charitable Contributions.
- Investment Interest Expense.
- Suspended Passive Activity Losses
- Minimum Tax Credit.
- General Business Credits.
- Estimates Paid

Social Security

- ✓ **Married for 10 Years**

Social Security

- ❑ Social Security (SS) benefits not divided
- ❑ Belongs to one who earned them
- ❑ Jane can receive benefits based on Jack's SS earnings
  - ✓If Jane is at least 62 and not remarried
  - ✓Was married to Jack for at least 10 years
  - ✓Jack is collecting SS or is at least 62 and eligible to collect SS
  - ✓If Jack is not yet collecting SS, Jane must wait for two years after the divorce
    before collecting

Back Taxes Due

- IRS holds both spouses responsible
- Marital settlement agreement may:
  - ✓ Split the taxes due and each spouse is responsible for their share
  - ✓ One spouse may pay it all
  - ✓ If one fails to pay, the paying spouse takes other to civil court; not an IRS issue

Divorce Client Checklist

- ❑ Establish when clients begin to live apart
- ❑ Agree on who is claiming the child(ren) and under what circumstances
- ❑ Prepare Form 8332 as appropriate
- ❑ Plan for proper transfer of title for vehicles, real estate, bank accounts,
  credit cards, business assets, stocks, insurances, etc.
- ❑ Send certified mail to cards/lenders removing ex-spouse (better yet, cancel old cards)
- ❑ Change beneficiaries and passwords
- ❑ Update contacts for schools and medical care
- ❑ Change withholdings

Thank you

Disclaimers:

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Divorce and the Various Tax Implications