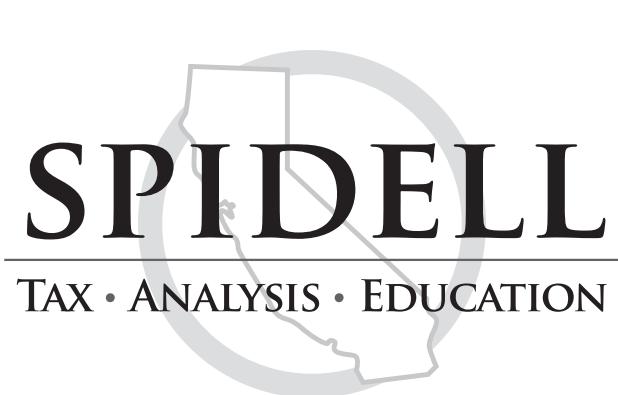


Divorce Tax Planning



www.caltax.com | E-mail: CPE@spidell.com | Phone: 714-776-7850 | Fax: 714-776-9906

YOUR CALIFORNIA SOLUTION SINCE 1975

Table of Contents

Planning for the battle	1
Resources.....	1
Gather information early.....	1
Hiring advisers.....	2
Conflict of interest.....	2
Setting objectives.....	3
Pre- and postnuptial agreements.....	3
Prenuptial agreements.....	3
Postnuptial separate property agreements.....	4
Support	5
TCJA changes effective January 1, 2019	5
Grandfathered payments	5
Pre-2019 agreements with post-2018 judgments.....	5
Error in IRS publication.....	6
Alimony and separate maintenance agreements prior to January 1, 2019.....	6
Payments must cease in year of death.....	7
Payments must be tied to financial need of spouse.....	8
Payments were not made pursuant to a divorce agreement.....	8
Poorly written agreement means no alimony deduction	8
Transfer of property was not alimony.....	8
Voluntary payments not deductible	8
Payments made prior to court order	8
Payments first allocated to child support.....	9
Child support.....	9
Disguised child support	9
Family support	10
Ceasing upon death of payee spouse	10
Other state cases	11
Payments other than direct payments to former spouse.....	11
Payments to a third party.....	11
Life insurance premiums.....	12
Paying the mortgage on the family home.....	12
Rules for second home.....	13
Recapture of alimony.....	13
Transfer of marital property	14
Dividing property	14
Lot sale taxable to selling spouse	15
Third-party transfers on behalf of ex-spouse	16

Imputed interest rules	16
Dividing the family business.....	16
Valuing the business.....	16
Redemption of stock by corporation.....	17
Transfers of stock options and nonqualified deferred compensation.....	17
Reporting.....	18
Dividing pension plans	19
Qualified domestic relations order (QDRO).....	19
Dividing IRAs	20
Pension cases	21
Former spouse was "owner"	21
Disability benefits.....	21
Early retirement subsidy	21
IRA withdrawals to pay tax.....	22
Pension plan not mentioned in divorce agreement.....	22
No survivor benefits if agreement silent.....	22
Legal fees	22
Dividing the family home.....	22
Basic rules.....	22
Less than two out of five years.....	23
Use test for divorced homeowner.....	23
Changing houses and spouses	23
Community property.....	25
Community property states.....	25
Quasi-community property	27
Transmutation	27
Commingled funds	27
When does the community end?	28
Living under the same roof.....	28
What is "separated"?	29
Community property exceptions – IRC §66	29
Other community property pointers.....	30
Interlocutory decree.....	30
Splitting self-employment tax	30
Filing returns	30
Filing status.....	30
Amending returns to change filing status	31
Who claims the child?.....	31
Release of exemption claim.....	31
Split custody.....	32

Hourly test.....	32
Dividing income.....	33
Splitting community property income	34
Community property assets and income.....	34
Earned income	34
Income from community property assets.....	35
Self-employed taxpayers.....	35
Social Security income.....	35
IRAs.....	35
Pensions.....	35
Civil service retirement	35
Military retirement pay	36
How to prepare the tax return.....	36
IRS community property splitting form	36
Carryover tax attributes incident to divorce	36
Estimated tax payments	37
FTB's treatment of estimated tax payments	38
Reserve your refund	38
What if I file late?.....	39
Debt assumed in divorce.....	39
Judge assigned debt	39
Former spouse assumed debt	39
Installment obligations.....	39
Passive loss carryovers.....	40
Basis	41
Holding period	41
Depreciation recapture.....	41
Net operating loss carryovers.....	41
Carrying the loss back to a joint return with a prior spouse	42
Consider the options.....	43
Investment interest carryovers.....	43
Capital loss carryover	44
Credits and recapture	45
Business credits.....	46
Charitable contribution carryovers.....	46
Appendix	48
Do's and don'ts for creating the financially smart divorce	48
General rules – property and income: community or separate?	49