

# Family, Home, and Job: Minimize the Tax Bite of Divorce

## **Filing Guide**

Report alimony paid or received directly on [Form 1040](#). Use [Form 8332](#) to release the personal exemption for a child.  
IRS Publication 504:  
[Divorced or Separated Individuals](#)

## **Tax Savers**

Transfers of nonqualified stock options and nonqualified deferred compensation due to divorce are tax-free. The receiving spouse who receives the options owes no tax until they actually exercise them.

## **Tax Savers**

Generally, the custodial parent claims the personal exemption for a child following divorce. However, you can agree to trade the exemption back and forth or to release it completely. This makes sense when the custodial parent's income is high enough to phase out the benefit of the exemption. To release your personal exemption for a child following divorce, complete [Form 8332](#) and attach it to your return. This is required even if the divorce decree specifies the non-custodial parent gets the exemption.

## **Tax Savers**

Divorces often involve unpaid tax bills. If you're afraid that you might be liable for your ex-spouse's tax liabilities, look into options for "innocent spouse" relief and "equitable relief."

Divorce is rarely easy and rarely cheap. Tax rules governing alimony and property transfers used to let you minimize the tax impact of separation and divorce. However, the 2017 Tax Cuts and Jobs Act complicates this process by eliminating special tax treatment for alimony payments under agreements entered into after December 31, 2018.

- The 2017 tax act eliminates the "marriage penalty" except for couples earning above \$383,900 (2024). If your combined income puts you in the 37% bracket, consider timing your divorce to avoid one last marriage penalty.
- If you and your ex- will be in different brackets after divorce, you can shift the tax burden on alimony paid to the ex-spouse in the lower bracket. To qualify, payments must be:
  - Made in cash to a separated or divorced spouse
  - Ordered by a decree of divorce, legal separation; agreement, decree of support, or decree of annulment; and
  - Scheduled to end at the death of the recipient.
- Child support is not deductible to the payer and not taxable to the payee.
- Legal fees for divorce are generally a nondeductible personal expense, except fees for obtaining alimony and tax advice regarding property settlements, establishing an alimony trust, and the right to claim children as dependents.
- Property transfers between divorcing spouses are nontaxable gifts. The recipient takes the property with the same basis as giver. And there's no gift tax impact so long as the transfer occurs within the three-year period beginning one year before the divorce. Consider assigning appreciated property to the spouse with the lower income to cut future tax on capital gains.
- Divorce lets you pro-rate the excludible \$500,000 gain on the sale of your primary residence without meeting the usual two-year residence requirement.
- You'll need a qualified domestic relations order ("QDRO") to transfer qualified plan assets without penalizing the payor spouse. The payee spouse can then roll it into their own IRA and treat it like any rollover, without tax or penalty. Or, the payee can take it in cash, and pay regular tax on it. (There's no 10% penalty for distributions before age 59½).
- You don't need a QDRO to transfer assets from an IRA, SIMPLE, or SEP so long as your settlement requires the transfer. The payee spouse can then roll it into their own IRA and treat it like any rollover, without tax or penalty. Or, the payee can take it in cash and pay tax on it (including a 10% penalty for distributions before age 59½).