

Taxes and Divorce

A Match Not Made in Heaven

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TRN
TAX REP NETWORK

Patrick H. Wanzer, CPA, CTRC

- Director – Tax Resolution Services with Edgewater CPA Group
- National Trainer – Tax Rep LLC
- Author of “Break Free From the IRS – How to Resolve IRS Tax Debt and Reclaim Your Freedom”
- Created and Hosts the Annual Midwest Tax Representation Conference in Indianapolis Each October
- Certified Tax Representation Consultant
- Platinum Member Tax Rep LLC

- Join Tax Rep LLC
- CTRC – <https://taxrepllc.com/patrick>
- Midwest Tax Representation Conference – 10/24 – 10/25 Indianapolis, IN
 - ❑ <https://taxrepllc.com/2024-midwest-conference/>
 - ❑ 12 CPE (CPAs), 11 CE (EAs), 10.7 CLE (Attorneys)

Midwest Tax Representation Conference

Agenda – Thursday, October 24, 2024

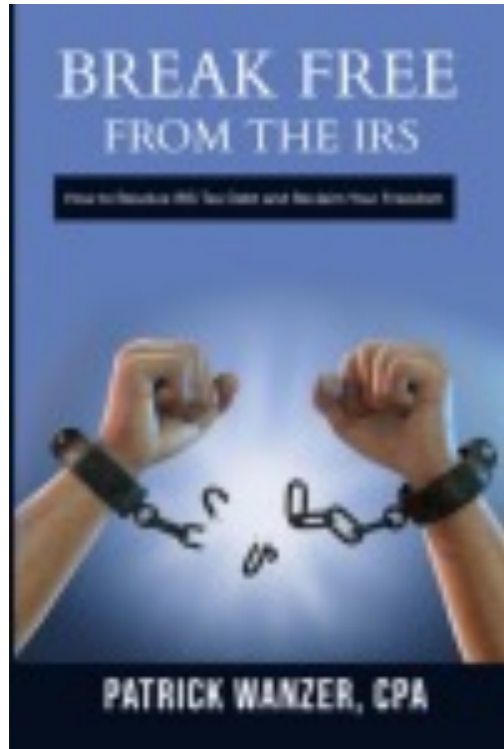
- ❑ Not All 433s are the Same – Eric Green Esq – Green & Sklarz LLC
- ❑ Installment Agreements – Patrick H. Wanzer, CPA, CTRC
- ❑ IRS Case Study / Liscio Demonstration – Felecia Dixson, E.A., CTRC / Chris Farrell CEO Liscio
- ❑ Tax Resolution Horror Stories – Eric Green Esq – Green & Sklarz LLC

Midwest Tax Representation Conference

Agenda – Friday, October 25, 2024

- ❑ Ethics – James Bell Esq. – Hoover Hull Turner LLP
- ❑ State Tax Update
- ❑ Federal Tax Update
- ❑ Recreating Mileage Logs – Bill Nemeth E.A. – Tax Audit Guardian LLC
- ❑ Reasonable Compensation Analysis – RC Reports – Paul Hamann – RC Reports and Eric Green Esq – Green & Sklarz
- ❑ TaxCure Marketing – Charles Corsello – Co-Founder TaxCure LLC

My Book



“Break-Free From the IRS – How to Resolve IRS Tax Debt and Reclaim Your Freedom”

- ▶ Great Marketing Tool
- ▶ Available on Amazon
- ▶ <https://a.co/d/hsY16DG>
- ▶ Coming Soon – Book 2 in the “Break Free” Series:
 - ❑ Break Free From the IRS – Taxes and Divorce, a Match Not Made in Heaven

Before we get started...

- 16 Attendance pop-up attendance checks
 - ❑ 4 CE/CPE credits available
 - ❑ Please do at least 12 of the checks
 - ❑ Look for a Link to claim your Certificate (Eas must provide their PTIN here.)
 - ❑ Issues? Email us at team@taxrepllc.com
- We will have a 10-minute break each hour

Agenda

- Filing Status
- QDRO – Qualified Domestic Relations Order
- Innocent Spouse
- Injured Spouse
- Offers-in-Compromise
- Installment Agreements
- Back Taxes
- Lien Subordination
- Reasonable Compensation
- Marketing to Attorneys



Filing Status

Filing Status

- Filing Status is used to determine:
 - ❑ A Taxpayer's Standard Deduction
 - ❑ The correct amount of tax owed
 - ❑ Certain tax credits available to the taxpayer(s)
- Filing Status used is determined by a taxpayer's marital status on the last day of the year!

Tax Filing Status

Single

Married Filing Jointly

Married Filing Separately

Head of Household

Qualifying Widower

Marital Status

If a person is unmarried than his or her filing status is either:

- a) Single
- b) Head of Household

If a person is married than his or her filing status is either:

- a) Married Filing Jointly
- b) Married Filing Separately

Unmarried Persons

A person is considered unmarried if:

- He or she has obtained a final decree of divorce or separate maintenance agreement by the last day of the tax year.
- The couple has obtained an annulment which holds no valid marriage existed.
 - Note: all taxpayers are required to file an amended return for all years affected by the annulment

Amending Returns Due to Annulment

Taxpayers cannot amend a joint return to a separate return after the original due date (including extensions).

- According to IRM 21.6.5.5 (2) – The IRS is to disallow all claims filed after the due date except:
 - Taxpayers whose marriage was annulled or subject of a court order that no valid marriage existed.

Amending Returns Due to Annulment

How to amend a return due to an annulment:

- Use IRS Form 1040X and amend to filing Single.
- Write at the top of the 1040X “Amending Due To Annulment”.
- Include all support documents for amended return.
- Must include a copy of the annulment and/or court order indicating that no marriage existed.

Married Filing Jointly

- If a married couple decides to file a joint return, both parties are jointly and severally liable for the tax due.
- That means BOTH spouses may be liable for all the tax due even if it was earned by the other spouse.
- If spouses file Married Filing Separately, they are only responsible for their own tax debt.

Married Filing Jointly

- If a couple is divorced but filed a joint return, the IRS will hold both parties jointly and severally liable for any tax, interest, and/or penalties due on a joint return ending before the year of divorce.
- This responsibility applies even if the divorce decree states that a former spouse will be responsible for any amounts of tax due on previously filed joint returns.

Married Filing Jointly

- This is something to discuss with your client's Family Law Attorney.
- If the divorce is final on December 31, then the spouses are divorced and cannot file a joint return.
- This may be important when arriving at a Settlement Agreement.
- If the parties want to file a final joint return, you want to advise your client's family law attorney to make sure the divorce occurs after 12/31/XX.

Married Filing Separately

If a married couple decides to file separate returns, each party will only be responsible for the tax on their return (if any).

Two items of note when filing a separate return:

- A) Both Taxpayers must itemize deductions or take the standard deduction.
- B) Itemized deductions must be split between the parties.

Reasons to File Separately

- Student Loan Income-Based Repayment.
- One spouse fears the other spouse isn't being honest on his or her return.
- To protect assets owned by one spouse from IRS Collections.

In almost all cases, filing separate returns will result in higher tax

Protecting Both Spouses with the Divorce Agreement

If both parties agree to file a joint return, it is important that the settlement agreement addresses how to deal with any tax liability or refund.

If the couple is expecting a refund, be sure to ensure the IRS issues a check paid to both spouses or the settlement agreement addresses how the recipient will pay the other spouse any shared refund and you should include a time frame in which the refund recipient must share the funds.

The parties do not have to share any tax liability equally either. The couple can do whatever is fair and consistent with the overall property division.

A good approach for dealing with taxes owed is to prorate the tax liability using a ratio based on each spouse's income.

Protecting Both Spouses with the Divorce Agreement

The written divorce settlement should also explain each spouse's portion of the liability and the requirements for paying on time.

If the parties wish to file jointly, you may want to consider including a “hold-harmless” clause in the agreement. The hold-harmless clause may protect a party who is not required to pay all or a portion of the tax from the other party if they do not pay.

If the opposing spouse is to pay the tax and doesn't, the IRS will come after your client as well. Your client's remedy is NOT with the IRS. Their remedy is to take their spouse to court. The family court will settle the issue.

Head of Household

One can file Head of Household if:

- He or she is unmarried or “considered” unmarried on the last day of the year.
- He or she paid more than $\frac{1}{2}$ the cost of the upkeep of the home for the year
 - Does not include cost of clothing, education, medical, vacation, etc.
- Qualifying person lives with the person for more than $\frac{1}{2}$ of the year.

Considered Unmarried

A person is considered unmarried (for HOH) if:

- He or she filed a separate return.
- He or she paid for more than ½ of the upkeep of a home.
- Spouse didn't live in the home for the last 6 months of the year regardless if they were married or not.
- Home for a dependent for more than ½ of the year.
- He or she can claim the child however, this test is met if you can't claim the child only because the noncustodial parent claims the child.

Claiming the Child

Child of divorced or separated parents who live apart

In most cases, a child of divorced or separated parents is the qualifying child of the custodial parent unless the rule for children of divorced parents applies:

A child will be treated as the qualifying child of the noncustodial parent if all four statements are true:

- 1) The parents are divorced/separated under a decree of divorce/separation
- 2) The child received over $\frac{1}{2}$ of support from the parents
- 3) The child is in the custody of one or both parents for more than $\frac{1}{2}$ the year
- 4) Custodial parent signs a written declaration (Form 8332) that he/she won't claim the child

Protecting Your Client in a Divorce Settlement Agreement

When it comes to divorce, what Family Law Attorneys consider to be the “custodial” parent is different than what the IRS considers to be the “Custodial” parent.

The IRS considers the custodial parent to be the parent with the greater number of overnights during the year. The other parent is the noncustodial parent.

If the child lived with each parent for an equal number of overnights, then the custodial parent is the one with the higher adjusted gross income.

- Absences: if a child wasn't with the parent for a particular night (perhaps the child was doing a sleep over), the child is treated as living with the parent with whom the child would have normally stayed.

Protecting Your Client in a Divorce Settlement Agreement

When working with Family Law Attorneys, you will want to advise the attorney as to what the IRS considers to be the “Custodial” parent for purposes of filing Head of Household.

When crafting the settlement language, they will want to specifically state who the Custodial Parent is for Head of Household and state the number of overnights that parent has.

Protecting Your Client in a Divorce Settlement Agreement

If there is only one child, then only one parent can claim Head of Household!

- Perhaps they trade off each year who gets to claim HOH. Advise the attorney to state in the settlement agreement the number of overnights each year for each parent.
- If there is more than one child, each parent can claim HOH if each parent has the greater number of overnights with a dependent.
- Remember, you are helping your client's Family Law Attorney craft tax language that is in the best interests of your client.

Protecting Your Client in a Divorce Settlement Agreement

If there is only one child, then only one parent can claim Head of Household!

- Also, if a parent voluntarily gives up overnights to the other parent, that could affect their ability to file HOH. The IRS doesn't care what the divorce settlement agreement says. The IRS considers the custodial parent the one with the greater number of overnights.
- That is why it is important to discuss with your client's Family Law Attorney what the IRS considers "Custodial" so they can address the issue in the settlement agreement.

Protecting Your Client in a Divorce Settlement Agreement

The question I always get:

How will the IRS know who has the greater number of overnights?

In all reality, the IRS won't know. The taxpayers do not have to prove the number of overnights when they file their return.

But what if both spouses file HOH and/or one spouse challenges the other spouse regarding the number of overnights?

Work with your client's Family Law attorney to address how this will be handled if the IRS questions it.

Protecting Your Client in a Divorce Settlement Agreement

The custodial parent may release his or her claim to the dependent child by signing IRS Form 8332 – a written declaration for the years not claiming the child.

This is important because it will allow the noncustodial parent to claim the child tax credit for the year in question.

This does NOT entitle the noncustodial parent to:

- A) Head of Household Status
- B) The Earned Income Tax Credit
- C) The Child and Dependent Care Credit

All these are still claimed by the custodial parent

Protecting Your Client in a Divorce Settlement Agreement

Explain to the Family Law Attorney the benefits of being the Custodial Parent

- Head of Household Filing
- Child and Dependent Care Expense Credit
- Earned Income Tax Credit

- The Child Tax Credit can only be claimed by the parent who is claiming the child for that year so if the Custodial Parent signs an 8332, the Noncustodial parent gets the child tax credit, but the Custodial parent still gets the other benefits.

Divorce Mid Tax Year

- Most divorces happen in the middle of the year.
- If a taxpayers get divorced mid-year, his or her filing status is determined on the last day of the year.
- So how should taxpayers file their taxes if they get divorced mid-year?
- This is a very important topic in divorce and family law attorneys are always looking for guidance regarding how to file taxes.

Divorce Mid Tax Year

- Filing Status
- If you're legally divorced by December 31st, you cannot file a joint tax return with your ex-spouse.
- You will need to choose between two filing statuses: "Single" or "Head of Household."
- Remember, to qualify for the "Head of Household" status, you must meet the following requirements:
 - (a) Be unmarried or considered unmarried on the last day of the year;
 - (b) Have paid more than half the cost of maintaining your home for the year;
 - (c) Have a qualifying person (such as a dependent child) who lived with you in your home for more than half the year, except for temporary absences.

Divorce Mid Tax Year

- How to separate deductions when filing separately
 - If you and your ex-spouse received joint income during the part of the year when you were married, you should divide the income and deductions between both of you according to each person's share.
 - The Spouse who paid an expense that results in a tax deduction should claim the full deduction.
 - If the expense is paid from the Spouses' joint account, the deduction needs to be divided according to the interest in the account.
 - If one spouse is eligible to deduct an expense, then only that spouse may deduct the expense even if it was paid from a joint account.

Divorce Mid Tax Year

- How to separate deductions when filing separately
 - This is a topic to discuss with your client's Family Law attorney.
 - In a contentious divorce, it may be necessary to outline who gets to deduct what.
 - Your client's family law attorney may want you to calculate what the itemized deductions should be for each spouse.

➤ Claiming Dependents

- If you have children, you and your ex-spouse will need to determine who claims the children as dependents on your tax returns.
- Remember, the custodial parent usually claims the child, however the IRS defines custodial parent differently than a family law attorney.
- The noncustodial parent can claim the child if both parents agree and the noncustodial parent attaches Form 8332, “Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent,” signed by the custodial parent, to their tax return.
 - Remember, this only allows the Non-custodial parent to claim the child for purposes of the child tax credit, not for HOH filing status.

Divorce Mid Tax Year

- Division of Assets and Tax Implications
 - If taxpayers divided assets during the divorce, they might have tax implications related to capital gains or losses.
 - Are they selling a house?
 - Do they need to sell the house before the divorce is final to take advantage of the higher capital gains exclusion on the sale of a primary residence?
 - Are stocks, bonds, other securities being sold?

Divorce Mid Tax Year

- Division of Assets and Tax Implications
 - Your client's Family Law Attorney will want to know this information.
 - If the house is being sold (which is common), how will the proceeds be divided but also, how will any capital gains tax be divided.
 - Should the spouses sell the house in the current year while still married to take advantage of the \$500,000.00 capital gain exemption?
 - If the husband gets the house in the divorce and decides to sell it the subsequent year (when he is single), he is entitled only to a \$250,000.00 capital gain exclusion. Advise your client's Family Law Attorney about this so this can be addressed if needed (tax-effect capital gains tax).
 - When a house is sold, the IRS will issue a 1099-S – Proceeds from Real Estate Transactions – To whom will it be issued?

Divorce Mid Tax Year

- Division of Assets and Tax Implications
 - What if the spouses want to file Married Filing Separately?
 - If the gain is less than \$250,000.00 then it won't matter.
 - If the gain is greater than \$250,000.00 then it would be proper to report ½ of the sale on each MFS Return.
 - The spouse receiving the 1099-S would report the full amount, then back out ½ of the amount being reported by the other spouse, and each would show ½ the gain and utilize their separate gain amounts.

Divorce Mid Tax Year

- Division of Assets and Tax Implications
 - Discuss this possibility with your client's Family Law Attorney.
 - Your client's Family Law Attorney will want to address this in the settlement agreement.
 - They will look to you for the potential capital gain tax calculation.
 - (Side Note: the attorney will craft the actual legal settlement agreement. They will look to you for the supporting information used to craft the language).

Divorce Mid Tax Year

- Who will prepare the tax return(s)?
 - If the parties agree to file a joint tax return, the divorce settlement agreement will usually state that the return will be prepared by a mutually agreed upon CPA.
 - This is NOT a conflict of interest because it is a joint return, however if you're one spouse's CPA, the other spouse may want to have the return prepared by a neutral 3rd party.
 - If separate returns are being filed, I would only prepare the return for your client. I would not want to risk a potential Conflict-of-Interest by preparing the other return.

Divorce Mid Tax Year

- Who will prepare the tax return(s)?
 - Conflict of interest may arise if the tax returns contain a provision that benefits one spouse but hurts the other.
 - If neither of the parties are your current client and you are being brought in to prepare a joint return, you will want to refrain from taking on either spouse as a subsequent client.

QDRO – Qualified Domestic Relations Order

What is a QDRO

➤ What is a QDRO

- A QDRO is a domestic relations order that creates or recognizes the existence of an “alternate payee’s” right to receive or assigns to an alternate payee the right to receive, all or a portion of the benefits payable with respect to a participant under a retirement plan.

What is a QDRO

- What is a QDRO
 - A crucial legal tool in divorce proceedings involving the division of retirement assets.
 - Specifically designed to ensure that retirement accounts are divided correctly and fairly.
 - Dividing retirement assets isn't as simple as deciding who gets what.
 - Without a QDRO, the retirement plan administrator WILL NOT legally recognize any division of assets, regardless of what the divorce settlement agreement says.

What is a QDRO

- A QDRO is necessary for several reasons
 - Legal Recognition
 - Retirement plans require a QDRO to legally recognize the division of benefits.
 - Without it, the plan administrator will refuse to distribute benefits to the non-participate spouse.
 - Retirement benefits are not automatically divided through the divorce decree.
 - Financial Security
 - Ensuring non-member spouse receives their share of retirement benefits provides long-term financial stability.

What is a QDRO

- A QDRO is necessary for several reasons
 - Direct Payment
 - Benefits are paid directly to the non-member spouse, eliminating the need for ongoing interaction between former spouses regarding these funds.
 - Type of Payment
 - The type of retirement plan (i.e. pension, 401(k)) and the form of payment (lump sum or periodic payments) can affect how taxes are applied.
 - Avoiding Penalties and Taxes
 - QDRO will avoid the penalties and taxes that might otherwise apply if retirement funds are distributed without a proper legal order.

What is a QDRO

➤ A QDRO Effect on Taxes

➤ Taxes

- Benefits are paid directly to the non-member spouse, are taxed at that spouse's tax rate (plan administrator will withhold 20% of the funds payable for estimated taxes).
- Assets distributed from a Qualified Plan under a QDRO are exempt from the 10% Early withdrawal penalty.
- Assets distributed through a QDRO to a child are taxed to the plan participant.

➤ Tax Effect of Withdrawal

- This is a great opportunity to advise the family law attorney.
- If the withdrawal is taxable, your client's attorney may want to "tax effect" the withdrawal.
- They may seek your advice to calculate the tax effect of the distribution through a QDRO.

What is a QDRO

- A QDRO is necessary for several reasons
 - Roll-Over
 - The spouse receiving the distribution from a QDRO may wish to roll it over to another qualified plan.
 - If the distribution is a direct plan to plan roll-over, the distribution is not taxable.
 - Generally, family law attorneys do not tax effect a direct transfer from one plan to another via a QDRO, however, that could be part of the negotiations.

What is a QDRO

➤ Tax Effect Example

QDRO Payout of \$50,000.00

\$ 1,100.00	Tax @ the 10% tax bracket
\$ 4,047.00	Tax @ the 12% tax bracket
+ \$ 1,161.00	Tax @ the 22% tax bracket
<hr/>	
\$6,308.00	Total tax paid

- What if the taxpayer needs to \$50,000.00 to pay off an agreed debt
- She'll only have \$43,692.00
- Tax Effect the payout

What is a QDRO

➤ Tax Effect Example

QDRO Payout of \$58,150.00

\$ 1,100.00	Tax @ the 10% tax bracket
\$ 4,047.00	Tax @ the 12% tax bracket
+ \$ 2,953.00	Tax @ the 22% tax bracket
<hr/>	
\$8,100.00	Total tax paid

- Paying spouse pays other spouse \$58,100.00 through a QDRO
- She'll have \$50,050.00
- She can pay the tax on the payout and still have enough to pay the agreed to debt

What is a QDRO

Another Tax Effect Example For Child Support

Father is a football player in the NFL

His annual salary is \$368,000.00/year

FATHER'S TAX EFFECT CALCULATION FOR 35%

\$ 368,000.00
- \$ 182,100.00

\$ 185,900.00

Gross Annual Income (anticipated) pursuant to Contract
Threshold Amount per IRS Tax Brackets (for HOH) – up to 24% tax bracket

Remainder paid at 32% and 35%

What is a QDRO

➤ Tax Effect Example

FATHER'S TAX EFFECT CALCULATION FOR 32% and 35%

Tax paid at 21.88% (assumed by Indiana Child Support Guidelines)

- Under the Indiana Child Support Guidelines, where taxes vary significantly from the assumed rate of 21.88%, a trial court may choose to deviate from the guideline amount where the variance is substantiated by evidence at the support hearing.

What is a QDRO

➤ Tax Effect Example

FATHER'S TAX EFFECT CALCULATION FOR 32% and 35%

Tax paid at 21.88% (assumed by Indiana Child Support Guidelines)

\$ 35,498.00

+ \$ 40,675.00

\$ 76,173.00

Tax paid on Threshold Amount (\$182,100.00) per IRS Tax Brackets

Tax paid on Remainder (\$185,900.00) at 21.88%

Total tax paid

What is a QDRO

➤ Tax Effect Example

FATHER'S TAX EFFECT CALCULATION FOR 32% and 35%

Tax paid at 35% marginal rate

\$ 35,498.00	Tax paid on Threshold Amount (\$182,100.00) per IRS Tax Brackets
+ \$ 15,728.00	Tax paid at 32% (on \$49,150.00 in income)
+ \$ 47,863.00	Tax paid at 35% (on \$136,750.00 in income)
<hr/>	
\$ 99,089.00	Total tax paid

- Difference in Tax Paid between the assumed rate and the marginal rate: \$22,916.00.
- Father advocates removing this amount from his annual gross income before calculating child support to account for the difference in tax effect when the guidelines assume 21.88% marginal rate.
- Father's new gross annual income would be \$345,084.00 (\$6,636.23 per week).

What is a QDRO

- Attorneys will write/draft the QDRO.
- Your job would be to work with the Family Law Attorney to calculate any tax impact from the QDRO.
- This is a great area to market yourself.
- Family Law Attorneys are always looking for CPAs and EAs who can help with these type of situations.

Innocent Spouse

Innocent Spouse Relief

- Internal Revenue Code §6015 Creates 3 Types of Innocent Spouse Relief
 - §6015 (B) – Innocent Spouse Relief
 - §6015 (C) – Separation of Liability
 - §6015 (F) – Equitable Relief

Innocent Spouse Relief

- Internal Revenue Code §6015 (B) Relief – Innocent Spouse
 - Understatement is due to an erroneous item.
 - Innocent Spouse did not know or have reason to know of the understatement.
 - Inequitable to hold them responsible for the tax.
 - Requested relief within 2 years of when collection activity began.
 - Allocation of liability.
 - Refund is available if granted within 3 years of the return filing.

Innocent Spouse Relief

- Internal Revenue Code §6015 (C) Relief – Separation of Liability
 - Must be divorced or legally separated for at least 12 months.
 - No actual knowledge of the understatement of the item giving rise to the liability.
 - Must be requested within 2 years of collection activity beginning.
 - Will be treated as if they filed separately.
 - No refund is available, but liability is separated.

Innocent Spouse Relief

- So what is an erroneous item?
 - Improper Deductions
 - Omitted Income (stealing money from a business, not reporting known income, etc.)

Innocent Spouse Relief

- Internal Revenue Code §6015 (F) Relief – Equitable Relief
 - Rev-Proc 2013-34 lays out the IRS approach to evaluating claims for equitable relief.
 - Takes into account all facts and circumstances.
 - For underpayments you must use equitable relief.
 - Liability is apportioned.
 - Refunds are available.

Innocent Spouse Relief

- Lantz V. Commissioner, 132 T.C. No. 8 (2009)
 - IRC §6015(B) and (C) require an innocent spouse to request relief within 2 years.
 - IRS created regulations requiring two years for all three types of relief, (B), (C), and (F).
 - In Lantz v. Commissioner, the court concluded that for equitable relief under §6015(F), there was no such two-year requirement, and the IRS' creation of one in their regulations was an abuse of their discretion.
 - No two-year rule in equitable relief cases under IRS §6015(F).

Innocent Spouse Relief

- Factors IRS Considers in Granting Relief
 1. Marital Status
 2. Non-Requesting Spouse's Legal Obligation
 3. Economic Hardship
 4. Knowledge or Reason to Know
 5. Significant Benefit
 6. Compliance with Income Tax Laws
 7. Abuse
 8. Physical/Mental Health
 9. To Whom the Tax, Interest, and Penalties are Attributed

Innocent Spouse Relief

➤ My First Innocent Spouse Case (My First Resolution Case)

Rachel came to me and said I was highly recommended by her divorce attorney.

Rachel had gotten divorced quite a few years earlier.

She was being pursued for \$18,000.00 in tax debt for tax years 2005 and 2006.

She swore she didn't know about the tax balance and didn't know what to do let alone have any money to pay it.

Innocent Spouse Relief

- A Little Background
 - Rachel and her husband Robert were getting a divorce.
 - Rachel was Pro Se and Robert had retained counsel.
 - During the settlement negotiations, Robert wanted Rachel to agree to file a joint return for 2005 and 2006.
 - Robert swore that he would pay any tax owed, but the tax would be lower if they filed the joint return.
 - Negotiations dragged on until Robert agreed to have the settlement agreement state that he would pay the taxes.
 - Robert then told Rachel he would not sign the settlement agreement and would take her to court if she didn't agree to file a joint return.

Innocent Spouse Relief

- Fast Forward to 2015
 - I get a call from a friend of mine who is a family law attorney.
 - She has a client to refer to me (Rachel) who was divorced in 2008 and owes about \$18,000.00 to the IRS.
 - I called Rachel and schedule our initial consultation. I also told her to bring all the notices she received from the IRS plus anything pertaining to the tax years in question.
 - Now, this is my first case so I am trying to learn on the fly (I think I violated every rule Eric taught about retaining a client – but I digress).

Innocent Spouse Relief

➤ Consultation

➤ Rachel arrives and explains her case

➤ (remember, I had never done a resolution case before)

➤ This is how Rachel described Robert

➤ A very controlling man

➤ Rachel was not allowed to work

➤ She was not allowed access to the bank account (given a small allowance each week for spending)

➤ Robert made all financial decisions

➤ She could not meet friends and contact with her family was restricted

➤ When I asked to see copies of her 2005 and 2006 joint tax returns, she couldn't provide them because she was never allowed to see them (Robert would tell her that the returns were finished and only allow her to see the efile signature page)

Innocent Spouse Relief

➤ Investigation

- I collected the documents from Rachel and reviewed them and methodically went through the elements to see if they helped or hurt our case.
 - Marital Status – Rachel was not married – neither helped or hurt us.
 - Non-Requesting Spouse’s Legal Obligation – Not only did Robert say he would pay the tax, but the divorce settlement agreement also stated that he would – Strongly helped our case.
 - Economic Hardship – Rachel was a family therapist starting a new practice – Helped our case.
 - Knowledge or Reason to Know – Rachel had no knowledge of the tax owed because she was never allowed to see the returns – Helped our case.

Innocent Spouse Relief

➤ Investigation

- Significant Benefit – This was a hard one as there really wasn't a way to prove a benefit one way or another.
- Abuse – Robert was not physically abusive, but he was financially and emotionally abusive – may have helped our case however it is difficult to prove this type of abuse.
- Physical/Mental Health – Rachel was under pressure to sign the return in order to get Robert to sign the divorce settlement agreement – Helped our case.
- Compliance with the Tax Laws – Rachel was not allowed to see the returns so she didn't know – Neither helped or hurt our case (could help as she would not know if they were in tax compliance).
- To Whom the Tax, Interest, and Penalties are Attributed – Rachel was not allowed to work so she earned no money in 2005 and 2006, therefore none of the tax was attributable to her – Strongly helped our case.

Innocent Spouse Relief

➤ Making the Request

- Innocent Spouse Election is made by filing IRS Form 8857 – “Request for Innocent Spouse Relief”.
- Must be filed within two years after the IRS begins collection activity for the tax return in question for §6015(b) or §6015(c).
- It can be filed at any time that the liability is open if pursuing relief under §6015(f).
- Support Case with Documents.
- Prepare to Appeal to the Centralized Units Decision.

As a side note, I always look to file under §6015(f) – Equitable Relief

Innocent Spouse Relief

➤ Making the Request

- I prepared the 8857 Form and gathered all the documentation.
- I prepared the RCP to show economic hardship.
 - Economic hardship here exists if satisfaction of the tax liability in whole or in part will cause the requesting spouse to be unable to pay reasonable basic living expenses.
- As a side note – I was able to prove that she had no income for 2005 and 2006 by getting a copy of her Social Security Benefits statement which indicated that she earned no income for those years.
- I explained to Rachel that almost all cases to go appeals but I was going to see this all the way through.
 - (it was my first case, so I included the appeal with the fee to file the Innocent Spouse – Doh!!).
- We filed and we waited, and waited, and waited.

Innocent Spouse Relief

➤ Resolution

- Ten months later, I got a call from Rachel – she sounded manic.
- She said she received a notice from the IRS and said “I think we won”.
- She read the notice and the IRS granted full relief from the tax debt owed.
- We won the case and didn’t have to go to IRS appeals (thank god because I wouldn’t be able to charge for the appeal).
- We scheduled a “Final” meeting.

Innocent Spouse Relief

- Working with Rachels' Family Law Attorney
 - Rachel's attorney explained to me that the divorce settlement agreement had a "Hold-Harmless" clause that gave Rachel the right to sue Robert for my fees.
 - Rachel's Attorney filed a lawsuit and it went to trial (Robert refused to settle).
 - During the trial, we learned that Robert had filed bankruptcy and had the tax debt discharged.
 - The tax was only discharged against Robert, not Rachel.
 - This is why the IRS was coming after Rachel.
 - The trial went very well for Rachel (with me as the lead witness) and the judge ruled in Rachel's favor.
 - Not only did Rachel not have to pay the \$18,000.00 in tax, she was also reimbursed the \$4,000.00 fee she paid me to pursue Innocent Spouse Relief.

Innocent Spouse Relief

- Protecting Your Client in a Divorce Settlement Agreement
 - Timing of filing an Innocent Spouse claim.
 - You will want to have a discussion with the Family Law Attorney about the timing of the filing.
 - You don't want to file too early and mess up the divorce negotiations.
 - What if we file Innocent Spouse and get relief BEFORE a settlement agreement is reached?

Innocent Spouse Relief

- Protecting Your Client in a Divorce Settlement Agreement
 - Opposing counsel will want to negotiate to put the taxes on their side of the ledger requiring more property to balance out the debt.
 - If other spouse ends up having to pay the whole thing because of the relief the Innocent Spouse got, that could trigger a “Duty to Indemnify”.
 - This is what happened in Rachel’s Case
 - Your client’s attorney will want to have a discussion with you regarding how to approach the tax issue.

Innocent Spouse Relief

- Protecting Your Client in a Divorce Settlement Agreement
 - Would it be beneficial for your client to take the tax and additional property to balance it out?
 - Discuss with your client's Family Law Attorney what Innocent Spouse is – that could help drive negotiations.
 - Would your client want the opposing side to acknowledge in the Divorce Settlement Agreement that your client is an Innocent Spouse.

Innocent Spouse Relief

- Protecting Your Client in a Divorce Settlement Agreement
 - If opposing side takes the taxes, would you want to include in the Divorce Settlement Agreement that your client will file for Innocent Spouse.
 - This could be an incentive for the opposing side to keep up-to-date on paying the tax.
- Your client's Family Law Attorney will want you to prepare the filing so they have an idea whether or not your client will qualify.
- If not, then your client's Family Law Attorney may want to go in a different direction.

Innocent Spouse Relief

➤ Litigation Support

- What if your client has to pursue a filing due to his or her ex defaulting on the Divorce Settlement Agreement?
 - Is there a “Hold Harmless” Clause.
 - If your client goes to court, you very well could be a witness.
- You could be called as an expert witness in a case to provide expert testimony regarding any IRS filing.
- Litigation Support can be very lucrative.

Innocent Spouse Relief

- Litigation Support Cont.
 - Testifying Expert Witness:
 - An expert who may be called to testify as an expert witness either in deposition or at trial.
 - A testifying expert reviews materials necessary to prepare an informed expert report and to testify.
 - A testifying expert generally does not assist with litigation strategy, conduct tests, or analyze “bad case facts” or other negative materials an attorney does not want disclosed to the opposing party.
 - Statements an expert makes or documents he or she reviews are subject to disclosure.

Innocent Spouse Relief

➤ Litigation Support Cont.

➤ Consulting Expert:

- An expert who has been consulted, retained, or specially employed by a party in anticipation of litigation on in preparation for trial but is not expected to be called as a witness for deposition or trial.
- Assists attorneys to understand the nuances or technicalities in a case and to develop an informed litigation strategy.
- A consulting expert does not form an opinion, prepare a report, or testify. Because a consulting expert does not form an opinion, materials reviewed by a consulting expert are not subject to disclosure.
- Benefit: neither facts known or opinions held by a consulting expert are discoverable.

Injured Spouse Relief

Injured Spouse

- The question I get all the time: What is Injured Spouse and how is it different than Innocent Spouse?

“A taxpayer may be an injured spouse if their share of a joint tax refund was (or is expected to be) applied against a separate past-due debt that belongs just to the taxpayer’s spouse, with whom they filed a joint return”

Injured Spouse

- Injured spouse relief can help a taxpayer get back his or her share of a federal tax refund that was reduced to pay their spouse's federal debts.
- Overdue debts to which a federal tax refund may be applied:
 - Past-due child support
 - Debts to Federal Agencies
 - State Income Tax Obligations
 - State Unemployment Compensation Debts

Injured Spouse

- Who is eligible to file for Injured Spouse?
 - The taxpayer filed a joint return with his or her spouse
 - The taxpayer's refund was applied to his or her spouse's overdue debts
 - The taxpayer was NOT responsible for the debt

Injured Spouse

- How to request for Injured Spouse Relief
 - To request Injured Spouse Relief a taxpayer has to file IRS Form 8379 – Injured Spouse Allocation.
 - It can be filed with the tax return or it can be filed separately (usually after the taxpayer have received a notice that his or her tax refund was applied to outstanding debt).
 - IRS Form 8379 will have you split income, deductions, tax payments, etc. between the spouses. It will then calculate what the requesting spouse's refund is and that refund should be sent to the taxpayer.

Injured Spouse

- When to request for Injured Spouse Relief
 - File Form 8379 within three years from the date the return was filed or two years from the date the tax was paid.
 - It is usually best to file it with the tax return when the tax return is originally filed.

Injured Spouse

➤ Allocation Example

Allocated Items	Amount Shown on Joint Returns	Amount Allocated to Injured Spouse	Amount Allocated to Other Spouse
Income			
a. Income reported on Form(s) W-2	-	-	-
b. Income from all other sources	157,784.00	118,551.00	39,233.00
Adjustments to Income	29,519.00	18,260.00	11,259.00
Standard Deduction or Itemized Deductions	27,800.00	13,900.00	13,900.00
Non-Refundable Credits	12,872.00	12,872.00	-
Refundable Credits (do not include EITC)	-	-	-
Other Taxes	-	-	-
Federal Income Tax Withheld	5,725.00	5,711.00	14.00
Payments	-	-	-

Injured Spouse

➤ Allocation Example

- Total Income: \$157,784.00.
- Adjustments to Income: \$29,519.00 (\$7,000.00 IRA Deduction and \$22,519.00 QBI).
 - \$7,000.00 to Injured Spouse / \$22,519.00 split evenly between the spouses.
- Standard Deduction: \$27,800.00 – split evenly between the spouses.
- Nonrefundable Credits: \$12,872.00 General Business Credit – Injured Spouse.
- Total Tax Owed: \$0.00 (\$12,872.00 in tax minus the nonrefundable credit).
- Federal Income Tax Withheld: \$5,725.00 (\$5,711.00 by Injured Spouse and \$14.00 by other spouse).

Injured Spouse

- Protecting Your Client in a Divorce Settlement Agreement
 - If you believe that your client has an injured spouse claim, the best advice would be to have your client file a separate tax return.
 - Discuss with your client's Family Law Attorney what Injured Spouse is – It will be helpful in negotiations regarding filing a separate return.
 - If the other side insists on filing a joint return (to keep total tax owed lower), then your client's Family Law Attorney may want to negotiate additional assets to compensate for your client's loss of the tax refund.

Injured Spouse

- Protecting Your Client in a Divorce Settlement Agreement
 - What if your client has an Injured Spouse Claim from a prior year?
 - Normally we would file an 8379 to get the money back.
 - Discuss with your client's Family Law Attorney what is involved with an Injured Spouse filing.
 - It would require the other side to sign the 8379.
 - Who would get the refund with it arrives?
 - Would it be easier for the Family Law Attorney to negotiate a payment from the other side to compensate for the refund instead of filing an 8379?

Injured Spouse

- Protecting Your Client in a Divorce Settlement Agreement
 - There are many options and directions a Family Law Attorney could go in settlement agreements.
 - They aren't looking for you to make the legal argument for them.
 - They are looking for the best advice for their client (your client) so they can zealously advocate for them.

Offers-in-Compromise

Offer-in-Compromise

- IRC §7122 authorizes the IRS to accept a compromise on an amount owed
- IRC §7122(c) provides the service shall set forth guidelines for determining when an OIC should be accepted

Offer-in-Compromise

- Is the client in compliance?
 - IRM 1.2.14.1.18 says that to be tax compliant, a taxpayer has to file his or her current year taxes and five (5) prior years.
 - However, if the IRS has filed an SFR for a year beyond 6 years, you may want to consider filing a return for that year.
- How much time remains on the CSED – Collection Statute Expiration Date
 - Should you let the collection statute run out?
- Is the client a candidate for an Offer-in-Compromise

Offer-in-Compromise

- There are three types of Offers-in-Compromise
 - DATC – Offer-in-Compromise – Doubt as to Collectability
 - DATL – Offer-in-Compromise – Doubt as to Liability
 - ETA – Effective Tax Administration

Offer-in-Compromise

- Offer-in-Compromise – Doubt as to Collectability
 - This is the most common Offer
 - Based on the inability to full pay the tax liability within the remaining time on the collection statute
 - You are requesting the government to accept less than full amount owed because of the taxpayer's financial situation

Offer-in-Compromise

- Offer-in-Compromise – Doubt as to Collectability
 - Lump Sum Offer-in-Compromise
 - Taxpayer pays 20% of the Offer amount when the Offer is submitted
 - Taxpayer does not have to make any more payments until Offer is accepted
 - Taxpayer has five months to pay remainder of the Offer amount once the Offer is Accepted
 - Future income calculation for RCP is monthly disposable income times 12 months

Offer-in-Compromise

- Offer-in-Compromise – Doubt as to Collectability
 - Periodic Payment Offer-in-Compromise
 - Taxpayer pays first monthly payment when Offer is submitted
 - Taxpayer continues to make monthly payments while the Offer is being considered
 - Taxpayer has 6 to 24 months to pay the Offer amount
 - Future income calculation for RCP is monthly disposable income times 24 months

Offer-in-Compromise

- Offer-in-Compromise – Doubt as to Liability
 - Taxpayer is challenging the underlying tax liability
 - Not about ability to pay but if the Taxpayer can prove they do not owe the money, they can file an Offer-in-Compromise Doubt-as-to-Liability
 - With a DATL, you must offer something. The taxpayer cannot offer \$0.00.
 - Must explore all other settlement options before you can file a DATL

Offer-in-Compromise

➤ Meet Monica

- We filed a 2022 Individual Income Tax Return Form 1040 for her in April of 2023
- The return was rejected because a fraudulent return had already been filed on her behalf
- The fraudulent return showed a \$34,000.00 refund
- The IRS issued the \$34,000.00 refund to the person who filed the fraudulent return

Offer-in-Compromise

➤ Meet Monica

- We prepared Monica's 2022 return and had her sign IRS Form 14039 – Identity Theft Affidavit
- We included all backup documentation with the return and composed a cover letter to explain that Monica was the victim of Identity Theft
- We paper filed the return

Offer-in-Compromise

➤ Meet Monica

- IRS processed Monica's return and sent her a notice indicating that she owed the IRS \$34,000.00 because of the refund that was issued "to her"
- We responded to the IRS and proved that the refund was not issued to her
- The IRS responded that they didn't see any ID Theft on Monica's account
- We also filed a Form 911 with the Taxpayer Advocate

Offer-in-Compromise

➤ Meet Monica

- So what will we do if we can't get this resolved through the TPA and the route we are going?
- We will file an Offer-in-Compromise Doubt-as-to-Liability
- She doesn't owe the \$34,000.00
- We provided the IRS her bank statements showing that no deposit of that amount was ever made
- We will offer \$25.00

Offer-in-Compromise

- Offer-in-Compromise – Effective Tax Administration
 - Effective Tax Administration
 - Taxpayer can full-pay the liability but where for public policy reasons, the IRS should agree to accept less than the full amount
 - Example: a person does not qualify for an Offer because he has enough equity in his house. However, the taxpayer is paralyzed, and his house has been remodeled for his medical condition
 - He could sell the house to pay the tax debt however, because of his condition, where would he go? This would create a bigger hardship. IRS should accept Offer even though he can Full-Pay

Offer-in-Compromise

- RCP – Reasonable Collection Potential
 - Reasonable Collection Potential (RCP) is how the IRS calculates what it can reasonably expect to collect within the remaining months on the collection statute
 - Formula is: Net Equity in Assets + Future Income
 - For assets, IRS seeks equity in all assets
 - Future income is all income minus “allowable” IRS expenses
 - If net equity in assets + future income > tax – taxpayer qualifies for an Offer
 - If net equity in assets + future income < tax – taxpayer does not qualify for an Offer

Offer-in-Compromise

- Karen came to me in 2017
- She owed approximately \$43,000.00 in joint tax debt
- She and her husband had just recently divorced, and her only income was from a part-time job and money her daughter would give her
- Clearly, she was a candidate for an Offer-in-Compromise
- I met with Karen and her daughter and began talking about the back taxes.

Offer-in-Compromise

- She said that her divorce settlement agreement mentioned an Offer-in-Compromise and wanted to know what that was
- I explained what an OIC was and asked to see her divorce settlement agreement
- That's when I knew we had a problem

Offer-in-Compromise

➤ The Divorce Settlement Agreement Stated:

- Once the Final Divorce Decree is signed, the parties will file a Joint Offer-in-Compromise
- They will file it with the IRS, and it will be accepted within 6 months of the date of divorce

Two Problems with the Settlement Agreement:

- Once two people are divorced, they cannot file a joint Offer-in-Compromise
- There is no way the IRS will adjudicate the Offer-in-Compromise within 6 months

Offer-in-Compromise

- What did we do?
 - First, I prepared a financial analysis – she qualified for an Offer because her RCP was less than \$0.00 so we offered \$50.00
 - Second, I met with her Family Law Attorney to explain what we were doing
 - My client and opposing party had to do an agreed entry to modify the settlement agreement so both parties could satisfy the agreement

Offer-in-Compromise

➤ What Could Have Been Done

- Karen and her husband could have filed a Joint Offer-in-Compromise BEFORE the divorce was final.
 - They would have to agree on a CTRC to prepare a joint offer
 - The settlement agreement would have to state who would pay the 20% down and pay the remaining offer amount (if the offer is accepted), or who would make the periodic offer pmts.
 - The settlement agreement should have a “Hold Harmless” clause in case one side doesn’t follow through
 - Have the settlement agreement state how your fees are paid and by whom
 - You will want to have both parties sign a Conflict-of-Interest waiver

Offer-in-Compromise

➤ What Could Have Been Done

- The settlement agreement could have stated that both parties are going to file separate Offers-in-Compromise.
 - Explain to your client's attorney what happens if your client's Offer is not accepted but the other party's Offer is accepted.
 - Should there be language to protect your client from such an outcome
 - The family law attorney may want a financial analysis and a preliminary Offer prepared to know how much your client will have to pay (this may adjust the marital pot).
 - You may want a "Hold Harmless" clause to protect your client from non-performance of her ex.
- My client and opposing party had to do an agreed entry to modify the settlement agreement so both parties could satisfy the agreement

Offer-in-Compromise

➤ What Could Have Been Done

➤ What if the Offers aren't accepted?

- Discuss with your client's family law attorney other resolution options if the Offer isn't accepted?
- Would an Installment Agreement make better sense (especially if the tax owed is less than \$50,000.00)?
- Discuss with your client's family law attorney how an Installment Agreement works and the requirements needed for one.

Offer-in-Compromise

➤ Things to Discuss With Family Law Attorney

➤ Equity in Assets for an Offer

- Is it better to file a Lump-Sum Offer or a Periodic Payment Offer
- How should assets be divided
 - Which spouse gets the vehicle with a payment.
 - Which spouse gets the vehicle with more than 100,000 miles to get the extra \$200.00 in vehicle operating expenses
- Is there a way to divide the assets so one or both parties can qualify for an Offer
- Perhaps the monied spouse takes the tax liability, have the settlement agreement acknowledge that the non-monied spouse will file an Offer to get out from under the tax liability
 - This will protect your client from opposing client defaulting on paying the tax

Offer-in-Compromise

➤ Things to Discuss With Family Law Attorney

➤ Tax Compliance

- An Offer-in-Compromise requires taxpayers to maintain tax compliance for five years
- File all returns, pay estimated taxes, adjust withholding accordingly
- If a joint offer is filed, discuss with the Family Law Attorney
 - What happens if a joint offer is filed, and one party doesn't maintain compliance
- If back taxes need to be filed, how will they be filed
 - Will the parties file joint returns or file MFS (is a potential refund reduced because your client filed MFS).
 - If they file joint returns with refunds, how will the refunds be divided

Offer-in-Compromise

- Things to Discuss With Family Law Attorney
 - Are the parties a candidate for an Offer
 - Is your client a candidate? Is opposing client a candidate?
 - If you're not a candidate but opposing client is, the family law attorney can use that as leverage to get more assets on your client's side of the ledger.
 - If a joint offer is filed prior to divorce, who will take the periodic pmts or the pmts from a lump sum offer?
 - Are the parties Offer candidates separately but not together?
 - Are they still living together? If so, how will the expenses be divided?
 - These are things a family law attorney may not know to consider.

Offer-in-Compromise

➤ Things to Discuss With Family Law Attorney

➤ Are the parties a candidate for an Offer

- What about child support? If your client receives child support that is income that must be disclosed on the 433.
- With whom will the child(ren) live? This will affect Food and Clothing standards, Housing and Utilities standards, etc.
- What if the children live with your client but your client had to PAY child support?
- What if your client wants to modify their monthly child support? Could a reduction in child support make it harder for them to qualify for an Offer?

Offer-in-Compromise

➤ Things to Discuss With Family Law Attorney

➤ How much time is left on the CSED?

- Will the CSED run out on one or more years and the tax drop off?
- If the CSED runs out and tax drops off before an Offer is submitted, will that no longer make your client a candidate for an Offer?
- The CSED may force a decision regarding a Joint Offer or separate Offers.
- Is there separate tax debt for one spouse that makes them an Offer candidate, but the joint tax debt isn't enough to make the opposing party a candidate.
- Remember, YOU are not discussing this with opposing counsel. These are discussions you have to advise your client's Family Law Attorney how to approach the tax debt.

Offer-in-Compromise

➤ Things to Discuss With Family Law Attorney

➤ Dissipated Assets

- Basically, a dissipated asset is anything of value that a taxpayer had and subsequently sold, which could have been used to satisfy his or her tax liability.
- Did one party get rid of an asset that the IRS would consider a dissipated asset?
 - If so, the IRS will claw that asset back into the RCP calculation
- Is that something the family law attorney should consider in a divorce settlement agreement?
- Is this a reason to file separate Offers?
- I would encourage the family law attorney to have “Hold-Harmless” language if your client is hit with the dissipated asset.

Offer-in-Compromise

➤ Things to Discuss With Family Law Attorney

➤ Dissipated Assets

- What if one spouse files a separate Offer after the divorce but the other spouse took one of the two vehicles in the divorce?
- Is that a dissipated asset?
- The vehicle given to the other spouse in a divorce settlement agreement is not a dissipated asset?
- You will need to provide the IRS a copy of the divorce settlement agreement in your filing to show that the court awarded one of the vehicles to the other spouse?
- Remember, you will want your client's Family Law Attorney to advocate for the asset that best positions them for an Offer-in-Compromise.

Offer-in-Compromise

- Things to Discuss With Family Law Attorney
 - Here is a point of strategy with your client's Family Law Attorney
 - If the spouses will split the vehicles in the divorce, discuss with the Family Law Attorney which vehicle may be more advantageous for your client.
 - Does one of the vehicles have over 100,000 miles?
 - Does one of the vehicles have a payment.
 - These strategies can potentially help in the divorce and with the Offer-in-Compromise.

Offer-in-Compromise

➤ Things to Discuss With Family Law Attorney

➤ Equity in Assets for an Offer

- Perhaps the monied spouse takes the tax liability, have the settlement agreement acknowledge that the non-monied spouse will file an Offer to get out from under the tax liability.
 - This will protect your client from opposing client defaulting on paying the tax.
- Have vehicles retitled – if there are two vehicles and each party takes one, that will be stated in the settlement agreement and each party will have to retitle the vehicle.
- The IRS can't claw back an asset if it is property divided in a divorce settlement agreement.
- If the house needs to be refinanced but a tax lien has been filed, how is that going to be handled.
- The title of the house can pass to the other party through a Quit-Claim Deed.

Offer-in-Compromise

- Things to Discuss With Family Law Attorney
 - Income for an Offer-in-Compromise
 - The Income/Expense table the IRS uses shows income and allowable expenses.
 - Child Support is included in the calculation of income and expense (income to the recipient and an allowable expense to the payor).
 - Maintenance Support (income to the recipient and an allowable expense to the payor).
 - What if they both are S-Corp owners in a business
 - Does the S-Corp get split?
 - Does one spouse buy out the other spouse?
 - How will that affect the Offer-in-Compromise?

Installment Agreements

Installment Agreements

- An Installment Agreement is an agreement between the IRS and a taxpayer to allow the taxpayer to pay back tax debt in monthly payments
- Important item to understand regarding Installment Agreements with the IRS:
 - The IRS knows that I/As historically default within 48 months, therefore, the IRS is told to collect as much as it can as fast as it can.
 - This can be a problem when trying to negotiate smaller payments for longer periods of time.
 - This can also be a problem when negotiating an I/A in a divorce settlement agreement.

Installment Agreements

➤ Example

- A taxpayer who owes \$160,000.00 to the IRS shows the ability to pay \$1,000.00/month based on actual expenses but can pay \$2,000.00/month based on income less IRS allowable expenses.
- The taxpayer has an IRA with \$50,000.00 and is under 59 ½.
- The IRS will want the IRA liquidated and paid (\$35,000.00 paid after taxes and early withdrawal penalty) and the balance paid at \$2,000.00/month.
- The taxpayer will ask us “can’t the IRS allow me to keep the IRA and allow me to pay the debt over another 2 years”?
- The IRS could allow more time but it will not. The IRS believes the agreement will default in 4 years so the collection division is told to collect as much as possible.

Installment Agreements

- There are three types of Installment Agreements:
 - Streamlined I/A – taxpayer(s) owe less than \$50,000.00
 - Regular (Financially-Verified I/A) – taxpayer(s) owe more than \$50,000.00
 - Partial Pay Installment Agreements

Installment Agreements

➤ Streamlined Installment Agreements

➤ Available when the taxpayer owes less than \$50,000.00 AND

➤ The taxpayer has not had a back-tax debt or I/A in the last 5 years.

➤ The taxpayer agrees to pay the full amount within 72 months at level payments.

➤ No need to provide a Collection Information Statement or provide any financial information to the IRS.

Installment Agreements

- Regular (Financially-Verified Installment Agreement)
 - Required when a taxpayer can't meet the requirements of a streamlined installment agreement.
 - The taxpayer will be required to complete a Collection Information Statement – Form 433-A or Form 433-D.
 - The IRS will set-up an I/A for the monthly available cash remaining after the allowable IRS expenses are deducted.

Installment Agreements

➤ Partial-Pay Installment Agreement

- Just like a regular I/A, however the taxpayer doesn't show the ability to pay the balance due in full over the time remaining on the collection statute.
- Example: It would take \$1,500.00/month to pay off the balance in the time remaining on the collection statute however, the taxpayer can only pay \$1,000.00/month after IRS allowable expenses are deducted from income. The IRS will set-up an I/A at \$1,000.00/month for the remaining months on the collection statute.

Installment Agreements

- Protecting Both Spouses with the Divorce Settlement Agreement
 - Is the tax owed greater than \$50,000.00? If so, can the parties pay the tax below \$50,000.00 and enter into a Streamlined Installment Agreement?
 - If one spouse pays the tax below \$50,000.00, how will they compensate the other spouse.
 - If the tax is high and one spouse has assets, is there a way to structure the I/A and settlement agreement to protect one party's assets?
 - If one spouse takes the I/A, what will the opposing party do to compensate?

Installment Agreements

- How to Deal with Delinquencies by One Spouse
 - With an Installment Agreement, the taxpayer must maintain tax compliance
 - What happens with a divorced couple?
 - What if one party takes the I/A, stays compliant, and makes payments and their ex doesn't maintain tax compliance, can the IRS default the I/A?
 - Yes, if it is noted on both accounts as in I/A status, and one falls out of compliance, the system should flag it as a default and could default the I/A.
 - Explain this to the Family Law Attorney so they can craft language to deal with this (Hold Harmless Clause, more assets, etc.).

Installment Agreements

- How to Protect Your Client in a Divorce Settlement Agreement
 - Streamlined Installment Agreement
 - Who will take the I/A? It would be easiest for one spouse to take the Installment Agreement so only one payment is made to the IRS.
 - The Spouse who takes the I/A will want cash or other assets (or have the other spouse take more debt).
 - How is the Settlement Agreement going to handle default?
 - By Opposing Client
 - By Your Client
 - The IRS is not bound by the Divorce Settlement Agreement. If the spouse who takes the I/A in the divorce stops making payments or defaults, the IRS will go after both spouses.
 - Would it be beneficial for the divorcing couple to liquidate an asset to pay the tax?

Installment Agreements

- How to Protect Your Client in a Divorce Settlement Agreement
 - Remedies for default
 - The Family Law Attorney will write a “Hold Harmless” clause in the settlement agreement.
 - To deal with opposing client resolving tax debt via another option (usually only matters if that party is responsible for the I/A).
 - Opposing client files bankruptcy
 - Opposing client files an Offer-in-Compromise
 - Perhaps one party can file an Offer but they don’t qualify for a joint offer. Discuss with your client’s Family Law Attorney about your client taking the I/A, have opposing side provide more assets or take more debt, and acknowledge that the opposing side may file a resolution case on their own behalf.

Installment Agreements

- How to Protect Your Client in a Divorce Settlement Agreement
 - Regular Financially Verified Installment Agreement
 - First, is the I/A already set-up or does it need to be set-up?
 - If it is already set-up, who will take the I/A?
 - Follow the same strategy as with the Streamlined I/A.
 - Installment Agreement doesn't currently exist
 - This is where your advice is very important and helpful.
 - Who is best to take the tax and the I/A?
 - Can the couple pay the tax below \$50K and get into a Streamlined I/A?
 - If not, should the couple file a Financially Verified Regular I/A before they finalize their divorce?

Installment Agreements

- How to Protect Your Client in a Divorce Settlement Agreement
 - The problem with Installment Agreements is statistically, I/As default in four years.
 - The IRS knows this and wants to collect as much as possible up front.
 - This is an area where you can provide great advice to the Family Law Attorney.
 - Can assets be structured in the settlement agreement to deal with this?
 - What kind of indemnification clause should be included in case of default.

Installment Agreements

- How to Protect Your Client in a Divorce Settlement Agreement
 - Remember, the Family Law Attorney’s job is to be a “zealous advocate for their client” however, that does not mean they shouldn’t strive for the best settlement possible.
 - Your job is to advise the Family Law Attorney regarding the tax resolution options and what is involved.
 - The Family Law Attorney will deal with the legal angle, you provide the tax and resolution advice.

Installment Agreements

- How to Protect Your Client in a Divorce Settlement Agreement
 - For an expense to be included on the Income/Expense Table (I/E Table), the expense has to be for 12 months or more.
 - This can be important in a divorce settlement agreement.
 - I have a client whose settlement agreement says he will pay his wife \$26,000.00 as follows:
 - \$8,000.00 by February 20, 2024
 - \$2,000.00 per month for the next 9 months

Installment Agreements

- How to Protect Your Client in a Divorce Settlement Agreement
 - I am not including the \$2,000.00/month in the Financial Analysis because it is only for 9 months.
 - If I had been able to work with the Family Law Attorney, I would have suggested that the payments be \$1,000.00/month for 18 months or some other variation.
 - My client qualified for an Offer either way, however our offer was \$69,124.06 without the spousal maintenance vs. \$58,153.88 with the spousal maintenance (a difference of \$10,970.64).

Installment Agreements

- How to Protect Your Client in a Divorce Settlement Agreement
 - If the parties decide to divorce and not file a joint Installment Agreement, you will want to have a discussion with your client about it.
 - The IRS accepting an Offer-in-Compromise for your client will not prevent the IRS from pursuing the remaining tax debt from your client's ex-spouse
 - The IRS is not bound by a state court divorce settlement agreement
 - The divorce settlement agreement most likely contains a “Hold Harmless Indemnification” clause indicating that your client will hold the ex-spouse harmless on any and all indebtedness and expenses relating to the tax debt

Back Taxes

Back Taxes

- Why should your clients file back tax returns:
 - Avoid Interest and Penalties
 - If your client owes money on back tax returns, your client will be subject to a “Failure-to-File” and a “Failure-to-Pay” penalty. Filing the back tax returns helps reduce the penalties and interest.
 - Claim a Refund
 - If your client is to get a refund, he or she must file a return to claim that refund.
 - They must file within 3 years of the return due date (including extensions).
 - Refunds will be held if one or more returns are past due.
 - Protect Social Security Benefits
 - Avoid Issues Obtaining Loans

- Why should your clients file back tax returns:
 - Protect Social Security Benefits
 - If your client is self-employed and does not file a tax return, any self-employment income he or she earned will not be reported to the Social Security Administration and he or she will not receive credits toward social security retirement or disability benefits.
 - Avoid Issues Obtaining Loans
 - Loan approvals may be delayed if a tax return isn't filed (i.e. mortgage application).

➤ Substitute for Returns (SFRs)

- Contrary to popular belief, if one fails to file a return, the IRS can file a substitute return.
- This return will be filed as Single or Married Filing Separately.
- You will not get credit for deductions and exemptions to which you may be entitled.
- An SFR is a valid tax return and the IRS can start collections on an SFR.

➤ Substitute for Returns (SFRs)

- A taxpayer can prepare and file an original return that will replace a Substitute for Return.
- However, a taxpayer does not HAVE to file an original return to replace the SFR if it is beneficial for the taxpayer.
- i.e. if you're working to get your client into an Offer and the tax amount from the SFR is higher than what an original return would show, it may be better to keep the SFR.
 - Be very careful with this analysis. If the Offer is denied, then the SFR is still going to be collected. You can file an original return to replace the SFR at that point.

- Filing Back Tax Returns to Maintain Compliance
 - According to Internal Revenue Manual 1.2.14.1.18, a taxpayer only needs to file the current year return and five prior year returns to become tax compliant.
 - If your client hasn't filed for 8 years, they only have to file the last 6 years to become compliant.
 - This is not statutory. The IRS can come back and require more years to be filed.
 - If an SFR has been filed and it is more than 6 years back, you will want to do an analysis to see if an original return needs to be filed.

➤ Back Taxes in Divorce

- Most Family Law attorneys will not know how many returns need to be filed to become tax compliant.
- If your client is getting a divorce and has back taxes, you will want to work with his or her Family Law Attorney and education them on IRM 1.2.14.1.18.
- You don't want IRS tax settlement language to require your client to file 9 years of back tax returns if they only have to file 6 years.
- This could be a negotiation tactic for your client's Family Law Attorney.

➤ Back Taxes in Divorce

- In divorce settlement agreements, many times one spouse will be required to file the taxes.
 - Work with your client's Family Law Attorney to prepare preliminary tax returns.
 - You may want to prepare a preliminary MFJ return and a preliminary MFS return.
 - Is there tax owed? If so, who will pay the tax? Will it be divided equally?
 - Have SFRs been filed that need to be replaced?

Back Taxes

- Back Taxes in Divorce
 - Your client's Family Law Attorney will want to include a "Duty to Indemnify" if the party assigned to file the taxes doesn't comply.
 - If taxes are owed from the back taxes, should one party take the tax burden or should it be split?
 - Here is where you can advise the Family Law Attorney that the Divorce Settlement Agreement is not binding to the IRS. If it is a joint refund, the IRS can come after both parties.

Back Taxes

- Back Taxes in Divorce
 - What if the back tax returns show a refund?
 - Who should get the refund?
 - Should it be split or paid to one party?
 - You may want to advise the Family Law Attorney that it may be easier for one party to get the refund and the other party compensates that amount in the marital pot.
 - What if returns from more than three years back show a refund
 - You will want to advise the family law attorney that the refund will not be paid by the IRS.
 - How can that affect settlement negotiations.

Back Taxes

➤ Back Taxes in Divorce

➤ Filing MFS vs MFJ

- It may be in your client's best interest to file their back tax returns as Married Filing Separately.
- You will want to work with the Family Law Attorney to discuss why it may be better to file separately.
- Your client doesn't trust their spouse or their spouse will have a huge tax bill and your client doesn't want the IRS to come after them for it.

➤ Negotiate difference between MFS and MFJ

- If your client has to file Married Filing Separately, then you may want to prepare a preliminary joint return as well to see what the difference is in tax owed or refund to be received.
- Your client's Family Law attorney may want to include in the settlement agreement that the other spouse pays your client for the difference.

Back Taxes

- Back Taxes in Divorce
 - What if an SFR has been filed?
 - Against whom is it filed?
 - If it is filed against opposing spouse, do you want to agree to filing a joint return for that year?
 - If the SFR is filed on your client, discuss with his or her Family Law Attorney whether or not a joint return should be filed to replace the SFR.
 - SFR vs MFS
 - If an SFR has been filed against opposing client, would it be better for your client to file MFS for that year?
 - Would replacing the SFR help with another resolution option?

Back Taxes

- Meet Phoebe
 - Phoebe was referred to me by a local Family Law Attorney.
 - Phoebe is in her mid 60s and draws social security and monthly distributions from her retirement accounts.
 - She has been married to her husband for over 20 years.
 - They both are university professors.

Back Taxes

- Meet Phoebe
 - Phoebe came to me for advice on whether to file MFJ or MFS.
 - I asked her what was causing the issue.
 - She said her husband was late filing their 2022 tax return and they owed a small amount.
 - But for 2023, she had some major concerns.

Back Taxes

- Meet Phoebe
 - You see, Phoebe's husband is an economics professor (so you would think he knows a bit about money and taxes).
 - In 2023, Phoebe said that her husband was “conned” by a Crypto scammer.
 - He withdrew 1 million dollars from his retirement account and invested in Crypto.
(and had an affair with the scammer)
 - He did this without telling his wife about it.

Back Taxes

➤ Meet Phoebe

- Unfortunately for Phoebe's husband, the Crypto scam tanked and he lost his million dollars.
- He spilled the beans with his wife and came clean on the scam and the affair.
- The other problem is that Phoebe's husband was not 59 ½ and the money was withdrawn from a taxable retirement account.
- His \$1,000,000.00 withdraw is fully taxable and he doesn't have the money or assets to pay the tax.

Back Taxes

- Meet Phoebe
 - But Phoebe does.
 - She has \$600,000.00 in her own IRA and about \$450,000.00 in a retirement account through the university.
 - Phoebe wanted to know if she should file as Married Filing Separately or go ahead and file a joint return.

Back Taxes

- Meet Phoebe
 - My advice was for Phoebe to file as Married Filing Separately.
 - She was concerned that she would pay more in tax if she filed separately.
 - However, when I explained to her that if she filed a joint return with her husband, she would be liable for the tax on his withdraw.
 - Her IRA and her retirement plan through the University could all be seized by the IRS to pay the tax (they wouldn't be an Offer candidate and most likely wouldn't even qualify for an I/A).

Back Taxes

- Meet Phoebe
 - While it may cost more in tax to file separately, it was the only way we could protect her retirement accounts from the IRS.
 - I also advised her Family Law Attorney regarding how she was to file and how much more in taxes should would have to pay by filing separately.
 - Her Family Law Attorney used that information to work into the divorce settlement agreement, her spouse paying her the difference in tax.

Lien Subordination

- What is Lien Subordination?
 - Lien subordination is the process of prioritizing claims on collateral, usually between senior secured lenders. It can involve ranking home loans by importance, or allowing a junior lien holder to take a higher position than a senior lien holder

Lien Subordination

- Will the IRS Subordinate a Lien?
 - If you want to refinance and can demonstrate to the IRS that you intend to use the savings on your mortgage or cash from your home equity to pay your taxes, the IRS will usually agree to subordinate the lien. In other words, the IRS will subordinate your lien when it is in the best interest of the government.

Lien Subordination

- So, what happens when a house needs to be refinanced because of a divorce settlement agreement?
 - When someone owes back taxes, the IRS can file a Notice of Federal Tax Lien against the taxpayer's assets.
 - The Lien is recorded with the taxpayer's County Recorder.
 - When the taxpayer sells an asset such as their house, the proceeds are used to pay the creditors who have filed liens against the taxpayer – this includes the IRS.
 - A lien will not prevent a house from being sold or refinanced, the creditors will just get paid before the seller receives any money.

Lien Subordination

➤ My Client Daniel

- Daniel and Julie are divorced.
- Divorce was finalized on March 27, 2020.
- The couple own a house together (both are on the title of the house).
- Settlement Agreement states “Husband shall retain all right, title, and interest in the marital residence as his sole and separate property, free and clear from any claim of Wife”.
- It also states “Husband shall make good faith efforts to refinance the mortgage associated with the marital residence into husband’s own name within 24 months of the date court issues “Decree of Dissolution of Marriage”.

Lien Subordination

➤ My Client Daniel

➤ Here's the problem – Daniel owes the following tax debt:

➤ Trust Fund Recovery Penalties – Owed by Daniel only

➤ Q2 2015 - \$1,549.04

➤ Q1 2016 - \$9,397.21

➤ Q2 2016 - \$45,532.02

➤ Q3 2016 - \$45,163.53

➤ Q4 2016 - \$48,440.26

➤ 2022 Federal Income Tax - \$15,383.06

➤ 2023 Federal Income Tax - \$21,522.81

Lien Subordination

- My Client Daniel

- Here's the problem – Daniel and Julie owe the following tax debt:

- Joint Tax Debt owed by both Daniel and Julie

- 2017 - \$37,147.29

- 2018 - \$44,226.44

Lien Subordination

➤ My Client Daniel

- Here's the problem – A Notice of Federal Tax Lien has been filed against Daniel's Trust Fund Recovery Penalties and the joint 2017 debt.
 - Daniel cannot refinance the house with the tax liens unless the IRS agrees to subordinate its position behind the bank.
 - But Daniel is required to refinance the house per his Divorce Settlement Agreement.
 - Daniel cannot pay the tax himself.
 - Daniel does not want to sell the house because it is the house where his children live.
- Another instance where a CTRC could provide help to a Family Law Attorney

Lien Subordination

- IRS Form 14134 - Application for Certificate of Subordination of Federal Tax Lien
 - If someone wants to refinance his or her house and can demonstrate to the IRS that he or she intends to use the proceeds from the refinance to pay the taxes, the IRS will usually agree to subordinate the lien.
 - The IRS will subordinate the lien when it is in the best interests of the government.
 - File IRS Form 14134 – Application for Certificate of Subordination of Federal Tax Lien.
 - If the IRS grants the lien subordination, the bank will usually refinance the house.

Lien Subordination

- What does the IRS require to subordinate the Lien
 - IRS Form 14134 – Application for Certificate of Subordination of Federal Tax Lien:
 - Appraisal Report (your client will want to pay for an appraisal)
 - Mortgage Payoff
 - Copy of proposed loan agreement
 - Title Report
 - Proposed Closing Statement
 - Listing of how much money will be paid to the US Government
 - If you do not have enough equity in the house to pay off the tax, the government will not let you keep any equity in the house for the refinance.

Lien Subordination

➤ Example

- A bank will usually refinance up to 80% loan to value.
 - The IRS will accept this because it is the Quick Sale % the IRS uses and no bank will refinance 100% of the loan in a circumstance like this.
- When calculating how much money will be available in a refinance, we use 80% loan to value and a 3% closing cost to financing ratio

➤ Fair Market Value	\$200,000.00
➤ Refinance	\$160,000.00
➤ Closing Costs	\$ 4,800.00
➤ Payoff of 1 st Mortgage	\$145,000.00
➤ United States Interest	\$ 10,200.00

Lien Subordination

➤ Example

- In this example, the IRS would be paid \$10,200.00 and leave no equity in the house. The IRS will usually agree to subordinate the loan because it would be in the best interest of the government.

Lien Subordination

➤ Example

- What happens if your client withdraws all the equity in the house?
- When calculating how much money will be available in a refinance, we use 80% loan to value and a 3% closing cost to financing ratio

➤ Fair Market Value	\$500,000.00
➤ Refinance	\$400,000.00
➤ Closing Costs	\$ 12,000.00
➤ Payoff of First Mortgage	\$320,000.00
➤ United States Interest	\$ 68,000.00

Lien Subordination

➤ Example

- What if your client owes \$120,000.00 in tax but only wants to refinance the house for \$350,000.00?
- Closing Costs would be \$10,500.00 leaving \$339,500.00 to payoff the original mortgage which would leave only \$19,500.00 to go to the Government.
- The IRS will not subordinate the lien because there is still equity in the house that can be used to pay down the tax debt. The government won't let any equity stay in the house unless the entire tax is paid.

Lien Subordination

➤ Example

- What happens if your client doesn't want to withdraw all the equity in the house?
- When calculating how much money will be available in a refinance, we use 80% loan to value and a 3% closing cost to financing ratio.

➤ Fair Market Value	\$500,000.00
➤ Refinance	\$350,000.00
➤ Closing Costs	\$ 10,500.00
➤ Payoff of First Mortgage	\$320,000.00
➤ United States Interest	\$ 19,500.00
➤ (but there is still \$50,000.00 in tappable equity in the house)	

Lien Subordination

- Here's Daniel's problem
 - Daniel has to pay off the joint tax debt, so he had to either refinance the house or sell the house (which was also required in the settlement agreement).
 - Here's the second problem. He doesn't want to withdraw all the equity in the house.
 - Unfortunately for Daniel, his options are either:
 - Pull all the equity out of the house
 - Sell the house

Lien Subordination

- Our Plan – File IRS Form 14134
 - Proceeds used from Lien Subordination
 - Payoff current mortgage
 - Pay our fees
 - Pay attorney fees
 - Pay 2017 and 2018 joint tax debt
 - Pay 2022 and 2023 Federal Income Tax
 - Pay 2023 State Tax
 - Pay 2024 Estimated tax

Lien Subordination

➤ Our Plan

- This would leave the Trust Fund Recovery Tax left to pay.
- We would then file an Offer-in-Compromise for the remaining tax owed by Daniel.
- By refinancing:
 - He has no equity in the house which makes it much more likely for his RCP to qualify for an Offer.
 - He is able to pay off the joint tax debt to release his wife from tax debt.
 - He can pay his estimated tax for 2024.

Lien Subordination

- How can this be addressed in a divorce settlement agreement
 - Discuss with the family law attorney this plan.
 - Have the settlement agreement state:
 - A lien subordination will be filed.
 - How the proceeds from the refinance will be paid out.
 - The need for both parties to participate in providing documents to refinance.
 - Set a reasonable timeline to file the 14134 and get the refinancing completed.
 - Remember, we are not attorneys so we are not writing the actual settlement agreement language. We are just advising as to what should be included. Let the attorneys do their magic.

Lien Subordination

- How can this be addressed in a divorce settlement agreement
 - Discuss with the Family Law Attorney other options available if the lien subordination falls through.
 - Will your client qualify for an I/A (Streamlined or Regular).
 - Is an Offer-in-Compromise an option.
 - Advise the Family Law Attorney on options available and what the rules are so the settlement agreement can follow them.

Lien Subordination

➤ What if This is Post Settlement

- Still discuss with the Family Law Attorney other options available if the lien subordination falls through.
- You may be asked to attend mediation to explain.
- Your client's Family Law Attorney may need to negotiate an "Agreed Entry" to modify the divorce settlement agreement.
- Discuss with your client options if a settlement may not happen.

Reasonable Compensation

Reasonable Compensation

➤ What is Reasonable Compensation

- In the landmark Supreme Court case *Jacobellis v. Ohio*, when describing the threshold test for obscenity, Justice Potter Stewart indicated that he couldn't define what obscenity was but "I know it when I see it".
- This is how the IRS views reasonable compensation. It is hard for the service to define it but it "knows it when it sees it".

Reasonable Compensation

➤ What is Reasonable Compensation

- IRS Reg 1.162-7(b)(3) – Reasonable compensation refers to the value that would ordinarily be paid for like services by like enterprises under like circumstances.
- Compensation that an individual would receive for same or similar services in a comparable business setting.
 - Compensation must be both reasonable and for services rendered.

Reasonable Compensation

➤ What is Reasonable Compensation

- In layman's terms, Reasonable Compensation is the compensation needed to hire someone to do the same or similar job you are doing.
- It drills the compensation analysis down to a local (county) level.
- It is usually used to calculate what an S-Corp Shareholder/Employee needs to pay him or herself before they take distributions.
- However, it can be a very effective tool in divorce if used properly.
- Family Law Attorneys most likely do not know about Reasonable Compensation Analyses.

Reasonable Compensation

➤ IRS Tools for Compliance

➤ The IRS has two primary tools to ensure compliance regarding reasonable compensation for S-Corp.

➤ Audit or Examination.

➤ Education and Information Dissemination.

➤ IRS began to inform S-Corp owners that when a shareholder-employee provides services to the S-Corp, reasonable Compensation must be paid.

➤ IRS has authority outlined in Revenue Ruling 74-44 to recharacterize distributions as wages if they were paid instead of reasonable comp.

Reasonable Compensation

➤ IRS Tools for Compliance

- IRS has authority outlined in Revenue Ruling 74-44 to recharacterize distributions as wages if they were paid instead of reasonable comp.
- The IRS cannot force money out of the business.
- Reasonable Compensation only matters if the S-Corp Shareholder employee takes distributions.
 - According to the IRS, the amount of reasonable compensation will never exceed the amount received by the shareholder.
- When it comes to divorce, reasonable comp can be a big issue.

Reasonable Compensation

- How Reasonable Compensation can help in divorce settlement agreements.
 - When calculating marital assets, and child support, a person's income is particularly relevant.
 - A Reasonable Compensation Analysis can come in quite handy especially when one or both parties in a divorce are self-employed and their income is not regular.
 - A Reasonable Compensation Analysis can be handy if either side questions the validity of either side's income claims.

Reasonable Compensation

- How Reasonable Compensation can help in divorce settlement agreements.
 - A Reasonable Compensation Report can also be useful if one side doesn't trust the income stated by the other side.
 - If the husband is self employed, does your client trust the income he states to have.
 - You can recommend to your client's Family Law Attorney to have a Reasonable Compensation Analysis done to see what would be considered reasonable.
 - It can be an internal analysis as well and not intended to be provided to the other side.
 - (Be sure to let the Family Law Attorney make this call)

Reasonable Compensation

- How Reasonable Compensation can help in divorce settlement agreements.
 - RC Reports can calculate what your client's reasonable compensation should be.
 - It can be used to support the income calculations for your client in divorce settlement negotiations.
 - It can be used to rebuff the income calculations for opposing client in divorce settlement negotiations.
 - A state Family Court is not bound by this report however, it can be persuasive. The argument (that the attorney makes to the court) is that if the IRS considers it reasonable, then the court should as well.

Reasonable Compensation

- Most Family Law Attorneys Won't Know About RC Reports
 - This is a great way to cultivate a relationship with your client's Family Law Attorney.
 - It adds another tool to their arsenal during settlement negotiations, mediation, and even litigation.
 - Family Law Attorneys will come back to you for more help because you were able to help them in this area.

Marketing to Attorneys

How to Market to Attorneys

- Write a Book
 - By no means a requirement.
 - Can help show your expertise in a particular area.
 - Pass out to Family Law Attorneys at events.
 - A book can indicate a higher level of expertise in a subject area.

How to Market to Attorneys

➤ Local Bar Associations

- Speak at a local Bar Associations.
- Get involved with the Family Law section of the local or state bar.
- Offer to present CLE workshops on taxes and divorce.

How to Market to Attorneys

➤ Speaking at Conferences

- Get involved with the state bar association.
- Offer to develop webinars or classes on tax resolution that the bar association can offer for CLE (Continuing Legal Education).
- Get involved with the Family Law Section of your local or state bar.
- I speak at the Indiana State Bar Association's Solo and Small Firm Conference at the end of May.
 - We have a booth and we pass out copies of my book and answer questions from attorneys.

How to Market to Attorneys

➤ Sponsor Events

- Sponsor local or state trainings/conferences.
- We are a Platinum Sponsor of the Indiana State Bar Association's Solo and Small Firm Conference.
- We didn't start there but this upcoming year will be our fourth year as a sponsor.
- The attorneys know who we are and look forward to our sessions.

How to Market to Attorneys

- Offer to be on a permanent retainer with attorneys
 - They can call or email with specific tax related questions.
 - You bill them by the hour for any work.
 - If their clients need more in-depth tax resolution work, you can retain them separately.

How to Market to Attorneys

- Litigation Support
 - Sometimes Family Law Attorneys need expert witness testimony regarding taxes.
 - Advertise that you can provide litigation support regarding taxes.
 - You can testify in court on behalf of a family law attorney to provide expert witness testimony on a specific tax area.
 - The family law attorney will make the decisions regarding having you testify.
 - Sometimes they may retain you as a non-testifying expert to provide guidance during a negotiation.

How to Market to Attorneys

➤ Mediation Support

- Sometimes Family Law Attorneys need help during a divorce mediation.
- Advertise that you are available by phone (or in person if needed) for mediation.
- They may call you for tax advice or other financial advice during mediation.
 - I have an open engagement agreement with a family law firm in Indianapolis.
 - An attorney was in mediation and needed me to “tax effect” a monetary distribution of assets.
 - I was called during mediation and we prepared the calculation that was used in the mediation.

Collaborative Divorce

- Get Trained as a Financial Neutral for Collaborative Divorce
- What is Collaborative Divorce
 - An alternative dispute resolution method based on collaborative law.
 - A process in which both spouses and their respective attorneys agree to settle all marital issues and negotiate mutually acceptable agreements **out of court**.
 - Spouses sign a “participation agreement” which establishes the foundation for respectful negotiations.
 - It also prohibits attorneys from continuing to work the case if the collaborative process fails.

Collaborative Divorce

➤ Financial Neutral

- One interesting aspect of Collaborative Divorce is the process assembles a Collaborative Team which includes mental health professionals and financial advisors.
- The mental health professionals and financial advisors are neutral to the process and help work toward a collaborative settlement.
- As a Financial Neutral, you may be asked to step in to help resolve a specific issue.
- I will only enter the collaborative divorce process for tax resolution cases.

Collaborative Divorce

➤ Increase Referral Sources

- Getting trained in Collaborative Law can help build your professional network and referral sources.
- It is easy to get paid as the Collaborative Attorneys (referred to as counterpart counsel) make sure the fees are paid before you enter the process.

Collaborative Divorce

- Interested in Getting Trained?
 - www.mycollaborativeteam.com – Introductory Interdisciplinary Collaborative Training
 - Offers 100% virtual Introductory Interdisciplinary Collaborative Training
 - www.divorcetrainers.com – Institute for Family Conflict Resolution
 - Offers a variety of In-Person and Online Introductory Collaborative Law Training
 - www.collaborativepractice.com – IACP – International Association of Collaborative Professionals
 - Offers Online Introductory Collaborative Law Training
 - <https://www.collaborativepractice.com/introductory-collaborative-practice-training>

Don't Forget

- Join Tax Rep LLC
- CTRC – <https://taxrepllc.com/patrick>
- Midwest Tax Representation Conference – 10/24 – 10/25 Indianapolis, IN
 - ❑ <https://taxrepllc.com/2024-midwest-conference/>
 - ❑ 12 CPE (CPAs), 11 CE (EAs), 10.7 CLE (Attorneys)

Questions

