

Deductible legal fees in divorce

The following outlines how legal fees in connection with a divorce or separation are treated for tax purposes. General legal fees relating to a divorce or separation are nondeductible personal expenses. However, with careful planning and careful documentation on the attorney's part, a portion of the fees may be deductible under one or more of the following approaches:

1. Tax advice. The payment of legal fees *for tax advice* is clearly deductible. In many divorces and separations, the tax aspects of the split-up play a key role in the arrangements made. Furthermore, tax consequences must frequently be analyzed and explained to the parties. To the extent the lawyer's fee represents work done relating to these tax aspects, it is deductible.

2. Collection of taxable alimony. Legal fees incurred for the collection of taxable income are deductible. Under this tax principle, taxpayers can deduct that portion of legal fees in divorce relating to getting alimony. This covers the legal work involved in setting up the alimony payments (via the separation agreement or divorce decree). It also covers the legal fees incurred to enforce collection, if payments are missed.

Conversely, however, the legal fees incurred by the paying party to resist alimony claims are nondeductible personal expenses.

3. Capitalization of legal fees. To the extent legal work is involved in acquiring marital assets in a divorce or separation, the allocable part of the fee can be added to the basis of the assets acquired. While this is not as favorable as a deduction, it should save taxes when the assets are eventually disposed of.

One of the most difficult elements in obtaining tax benefits from legal fees in connection with divorce is establishing what part of the fee to allocate to the deductible (or capitalizable) work. The burden is on the taxpayer to come up with an allocation. If all you have is an unitemized legal bill ("For legal services rendered, \$6,000"), you may not be allowed any deduction.

The best approach is to advise your attorney at the outset to separate out, document, and itemize the time spent on each of the above three categories and to itemize the bill.