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Legal Fees for a Divorce: What Is Or Is Not Deductible

Generally, the IRS says "no" to tax deductions that might ease the pain of divorce. The agency has no sympathy for the legal fees and other costs incurred by a couple who split--whether it's a divorce, separation or decree of support. In certain circumstances, however, you might be able to salvage a deduction for the portion of expenses specifically allotted to tax advice in connection with a divorce or separation, as well as for legal fees to obtain taxable alimony. Here are some rules that are helpful to know.

The IRS prohibits any deduction for the cost of personal advice, counseling and legal action in a divorce. For example, there's no write-off for what a husband spends to resist his wife's demands for more alimony or to set aside a prenuptial property agreement.

These expenses are nondeductible even though they're partly incurred in arriving at a financial settlement or to combat a claim to income-producing property. This restriction has been upheld by the Supreme Court.

It's not enough, the judges noted, that the outcome of a suit or claim may be loss of the income-producing property; the suit or claim against the property must also arise or originate out of the husband's profit-making activities--not from a purely personal matter. The wife's claims in a divorce action arise from a purely personal marital relationship, not from anyone's income-producing activities.

The portion of legal fees specifically paid (usually by the wife) to collect alimony that is taxable to her can be included--just like the cost of preparing her return--with her other itemized deductibles on Schedule A of Form 1040 on the "other expenses" line.

This break is available for the original proceeding by which she procures taxable alimony, as well as for any subsequent proceeding to increase it or collect arrears.

But these legal fees and most other miscellaneous deductions are allowable only to the extent that their total in any one year exceeds two percent of her AGI, short for adjusted gross income.

For someone with an AGI of \$100,000 and miscellaneous outlays of \$10,000, the two percent floor shrinks the deduction to just \$8,000--what is left after the \$10,000 is offset by \$2,000, which is two percent of \$100,000.

In no event can a spouse deduct the cost of obtaining income that is not taxable to her--say, back child support or temporary alimony while a joint return was still being filed. Nor can a wife who seeks no change in an alimony arrangement write off the cost of a suit to acquire assets awarded her ex-husband in a former divorce action or money he received in exchange for those assets.

Subject to the two percent benchmark for miscellaneous expenses, you get to deduct fees that cover tax research and advice on such items as property transfers and dependency exemptions for the children. But you can do so only if the bill specifies in a reasonable way how much is for tax counseling. Moreover, there's no deduction at all for your payment of your spouse's legal fees, even if they're for tax advice only. The deduction is allowed just for advice on your own tax problems.

Does your attorney's services include counseling on taxes? Remind the attorney to prepare a bill that breaks down deductible and nondeductible charges. That way, assuming you overcome the two percent hurdle, you're able to substantiate your deduction in the event of an audit.

Source: *"Legal Fees for a Divorce: What Is Or Is Not Deductible"*

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