

Divorce Mediation & the 2018 Tax Overhaul

by Anju D. Jessani, MBA, APM



The goal of this article is to demystify how to address some tax-related child and alimony issues in light of the new tax bill (from a mediator perspective).

Please also take advantage of training opportunities on the new tax law. Jeffrey Urbach, MBA, CFE, CVA, CPA/ABV/CFP, provided a comprehensive overview of the 2018 tax changes in his NJAPM webinar, and will be conducting a workshop on the new tax law at the upcoming NJAPM Annual Civil and Divorce Seminar on Saturday April 14.

Filing Status & Shared Parenting

The new tax approximately doubles the standard deduction, but eliminates tax exemptions. In 2018, the standard deduction amounts will increase to \$12,000 for individuals, \$18,000 for heads of household, and \$24,000 for married couples filing jointly. If a parent were in a 25% tax bracket, being able to file as head of household rather than single would result in a \$1,500 savings.

Head of household is a filing status for single or unmarried taxpayers who keep up a home for a Qualifying Person. A "Qualifying Person" lives with you for more than half the year, except for temporary absences, must be under 19 years of age, or a full-time student under 24 years of age, or permanently disabled.

With 50/50 shared parenting plans and two or more qualifying persons, both divorced parents should be able to file as head of household if each parent claims one child. Clients with 50/50 with one child, should be able to alternate the filing status.

Mediators need to be aware that filing status will be an issue in parenting arrangements, and that more parents will want head of household status. There can be a win-win in

these conversations. The non-custodial parent would have more time with the children, the other parent would have a some more free time. This would result in less overall taxes for the parties, with more money, therefore, available for support or college savings.

Tax Credits and Dependents

If you claim a child under 17 (as of the last day of the tax year) as your dependant, starting in 2018, the Child Tax Credit has been increased to \$2,000 per qualifying child, and the income thresholds for eligibility have been increased to \$200,000 for single and head of household filers, and \$400,000 for married filers. Even if a taxpayer has no tax liability, they can get up to \$1,400 for each qualifying child. Additionally, for 2018-2023, a filer claiming dependant children over the age of 17 (and other non-children dependants), qualifies for a \$500 non-child tax credit for each qualifying dependant.

In 2017, the personal exemption for each qualifying child was \$4,050; at a 25% tax rate, taking the child would result in a savings of \$1,012.50 (plus the child tax credit if you met the income eligibility requirements). The greater attractiveness of the new child tax credit will lead to great bargaining by clients to claim the younger children as dependants.

Post-Tax Alimony Starting in 2019

For payments made under separation and divorce settlements executed after 12/31/18, the new law eliminates the deductibility of taxes on alimony payments. There is no change in tax treatment for payments made in pre-2019 agreements as well as modifications to pre-2019 agreements, as long as their tax treatment is addressed.

Though less common in the past, non-taxable alimony, has been permitted by the tax code. Couples chose this for reasons including the hassle of estimating taxes on alimony, because the non-taxable amount created less sticker shock, or because there might not have been a huge difference in tax rates between the parties to benefit from shifting income to the person with the lower tax rate.

States that have formula driven alimony will have to revise their formula. Because New Jersey has statutory factors, the most significant being need and ability to pay, and because budgets are prepared on an after tax basis, mediators can continue to assist clients in establishing alimony based on budget with ease.

If you rely on a formula to reality check alimony, take the pre-tax alimony estimate and adjust that numbers by a midway point between the payer and payee tax rates to obtain a ballpark 2019 non-taxable alimony estimate. As an example, \$30,000 a year in pre-tax annual alimony, with a 25% tax rate, translates to \$22,500 after taxes.

For clients who might benefit from taxable alimony, completing the divorce mediation early enough in 2018 so that the divorce settlement can be executed prior to 12/31/18 is imperative. Mediators should make clients aware of the divorce timelines.

Anju D. Jessani, MBA, APM, served as NJAPM president from 2005-2007. Her practice, Divorce with Dignity Mediation Services, established in 1997, has offices in Clinton and Hoboken. Anju also serves on the R 1:40 Economic Roster of Mediators and is the is a lead instructor for NJAPM's divorce mediation training programs. She can be reached at www.dwdmediation.org.