TAX TRENDS AND DEVELOPMENTS

2017 Federal Income Tax Rates & Brackets, Etc., Selected IRS Publications, and Attorney "Tax Deduction" Letters

By Joseph W. Cunningham, JD, CPA

In Rev. Proc. 2016-55 (IRB 2016-45), the IRS released the 2017 tax rates applicable to *taxable income* of taxpayers filing tax returns as single, married filing jointly, or head of household.

Tax Rates	Single	Married Filing Jointly	Head of Household
10%	$0 to $9,325	$0 to $18,650	$0 to $13,350
15%	$9,326 to $37,950	$18,651 to $75,900	$13,351 to $50,800
25%	$37,951 to $91,900	$75,901 to $153,100	$50,801 to $131,200
28%	$91,901 to $191,650	$153,101 to $233,350	$131,201 to $212,500
33%	$191,651 to $416,700	$233,351 to $416,700	$212,501 to $416,700
35%	$416,700 to $418,400	$416,701 to $470,700	$416,701 to $444,550
39.6%	$418,401 and Over	$470,701 and Over	$444,511 and Over

Standard Deduction

- Single............................$6,350; $7,900 if 65 Years Old
- Married Filing Jointly ...$12,700; $13,950 if One Spouse is 65, $15,200 if Both Are 65
- Head of Household ......$9,350; $10,900 if 65

Personal Exemption

The personal exemption for 2017 is $4,050. However, 2% of the personal exemption is "phased out" – or reduced – for each $2,500, or part of $2,500, if a taxpayer's adjusted gross income (AGI) exceeds the statutory threshold for subject filing status, as follows:

Filing Status	Phase-Out Begins at AGI of:	Phase-Out Complete at AGI of:
Single	$261,500	$384,000
Married Filing Jointly	$313,800	$436,300
Head of Household	$287,650	$410,150

Long-Term Capital Gain Rates

- 0% for taxpayers in the 10% or 15% brackets.
- 15% for:
    - Single filers with taxable income between $37,950 and $416,700
    - Married Filing Jointly with taxable income between $75,900 and $470,700
    - Head of Household with taxable income between $50,800 and $444,550
- 20% for taxpayers with taxable incomes exceeding the high end of the above ranges

Selected IRS Publications

Many IRS publications are available for download at no cost at *www.irs.gov*. Most notable for family law practitioners is Publication 504 – "Divorced or Separated Individuals," an excellent 26 page summary of divorce taxation updated in November 2016.

Also of note are the following:

- Publication 17 – Your Federal Income Tax for Individuals (very comprehensive - over 200 pages)
- Publication 501 – Exemptions, Standard Deduction, and Filing Information
- Publication 503 – Child and Dependent Care Expenses
- Publication 554 – Tax Guide for Seniors
- Publication 575 – Pension and Annuity Income
- Publication 590 – IRAs
- Publication 596 – Earned Income Credit
- Publication 971 – Innocent Spouse Relief

In addition, all 2016 federal income tax forms are accessible at *www.irs.gov*.

Note on Michigan Income Tax

For 2016, the flat tax rate is 4.25%. The personal exemption amount had not been released as this article went to press. It was $4,000 for 2015.

Attorney "Tax Deduction" Letters

In general, divorce related legal fees are not deductible because they relate to a personal matter – divorce.

But, the *IRS recognizes two exceptions*:

1. Fees for tax advice in a divorce, including time spent with a tax professional engaged to assist on tax aspects of the divorce, are deductible.
2. Fees attributable to efforts to obtain taxable alimony for a client, whether successful or not, are also deductible.

Fees qualifying as deductible are claimed as miscellaneous itemized deductions on 1040, Schedule A, subject to the 2% of adjusted gross income limitation.

And, the IRS acknowledges that legal fees related to a property settlement may be added to the tax basis of assets the client received. If specifically attributable to a particular asset, the fee is added to that asset's tax basis. Other property settlement related fees are allocable to other property interests received, proportional to their respective values.

However, it *seems the IRS two exceptions are unduly restrictive.*

The underpinning of the IRS allowance of deducting fees related to attempts to procure taxable alimony is IRC Section 212 (1):

> "In the case of an individual, there shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year –
>
> (1) For the production or collection of income,"

Query: Since there is no reference to "alimony" in Section 212, why shouldn't the exception also apply to attempts, successful or not, to obtain a share of a pension, 401(k) account, bonus, deferred compensation, rental income, and other types of taxable income?

It seems that it should, but be on notice the IRS would likely disagree if the Service happened to question the deduction. But, because there is a reasonable basis for doing so, under the "nothing ventured, nothing gained" theory, it does not appear unreasonable to deduct fees related to procuring taxable income other than alimony - as long as the tax filer realizes the deduction may be disallowed if the tax return is examined by the IRS.

Tax Deduction Letter – Attorneys should send clients letters re the allocation of fees paid. The allocation is among the following components:

1. Attributable to tax advice;
2. Attributable to efforts to obtain taxable alimony;
3. Attributable to efforts to obtain other taxable property interests, such as retirement benefits;
4. Attributable particular property interests obtained in the divorce settlement;
5. Additional fees attributable to the property settlement in general.

The allocated items should be less than the total fee since fees for procedural aspects of the divorce, custody, child support, parenting time, etc. are neither deductible nor tax basis additions. They are nondeductible personal expenses.

The letter should state that it should not be considered tax advice and, further, that the client should give the letter to his/her tax preparer or tax advisor.

It is highly preferred to send the letter directly following the divorce as a standard "wind-up" checklist item. If not then sent, it should be sent in January so the client can use it on his/her tax return.

About the Author

***Joe Cunningham** has over 25 years of experience specializing in financial and tax aspects of divorce, including business valuation, valuing and dividing retirement benefits, and developing settlement proposals. He has lectured extensively for ICLE, the Family Law Section, and the MACPA. Joe is also the author of numerous journal articles and chapters in family law treatises. His office is in Troy, though his practice is statewide.*