

## **Potential Tax Benefits of Divorce Fees**

Written by: Tiffany Tso, CPA, CFF, CFE  
Young Professional Advisors - Networking & Educational Conference  
November 3, 2011

Many of the legal, accounting and related fees incurred in divorce are considered non-deductible personal expenses (IRC§262). However, there are potential tax benefits if you plan accordingly. There are two primary methods of achieving tax savings from your legal (and related) fees in divorce actions.

First, certain fees incurred in connection with a divorce can be deducted as "miscellaneous itemized deductions". For example, fees incurred by the recipient of taxable alimony in an effort to obtain an award of alimony, to pursue unpaid alimony, or to modify an alimony award fall into this category (including accounting fees to prepare cash flow and income analyses). Also included are fees related to tax consulting/planning, such as determining the tax basis of assets to be awarded to each party, and structuring the most tax-efficient method of alimony payment and dependency exemptions. Costs related to the determination of child support are not deductible.

Second, some fees can be capitalized (e.g. increase the tax basis of capital assets). In other words, where fees are expended to secure title to separate or community interests in contested stock or investment assets, such costs may be used to increase the tax basis of the asset under the right circumstance. For example, in an often referred to Tax Court case, the taxpayer was allowed to allocate the legal costs of working out a property settlement with his wife to the real estate and stock investments he received therefrom.

The key to the success of these strategies is to plan ahead and inform your professional team that you need them to delineate which fees are related to spousal support (not child support), tax planning and related issues, and efforts to obtain or protect an interest in investments or otherwise taxable income streams, such as royalties and rents.