

March 21, 2014



Sockel-Stone

**PRACTICE FOCUS:
FAMILY LAW**

It is not surprising that many divorcing spouses do not think about whether they should file a married-filing-jointly return or a married-filing-separately return, writes attorney Bonnie Sockel-Stone. **A8**

PRACTICE FOCUS / FAMILY LAW

Divorcing spouses should consider tax-filing options

Commentary by Bonnie Sockel-Stone

Going through a divorce is a very difficult time for most people. There is a great deal of uncertainty regarding how the person's life will change once the divorce is over.

Most spouses going through a divorce are very concerned whether they will be able to continue living in their home, will they have enough money to save for retirement, will the children adjust to a timeshare schedule and living in two different homes, will they be able to pay for their children's college and the list goes on.

Therefore, it is not surprising that many divorcing spouses do not think about whether they should file a married-filing-jointly return or a married-filing-separately return. This is especially true if one spouse was responsible for handling the financial records and working with an accountant to get the tax return prepared, and the other spouse never had to think about getting a tax return prepared.

The combined tax liability when each spouse files a married-filing-separately return is usually higher than when filing a married-filing-jointly return. If the tax liability resulted from marital income earned prior to a petition of dissolution of marriage filing, then the tax liability is

marital whether the parties filed a joint or separate return.



Divorcing spouses often don't consider whether to file joint or separate tax returns or the financial consequences of the decision.

marital whether the parties filed a joint or separate return.

In equitably distributing the tax liability, the court can take into con-

sideration the reasons for one party's refusal to file a joint return and the tax consequences to either party of filing a separate return.

JOINT OR SEPARATE?

The following should be considered when deciding whether to file a joint or separate return:

1. Is my spouse accurately reporting his or her own income on the income tax return? If the spouse is a W-2 wage earner employed by a third party, then it is very easy to review the tax return and the W-2 to make sure all W-2 income is being reported.

However, when a spouse has his/her own business, it may not be that easy to verify that the spouse is accurately reporting his/her own income. This is especially true when the business owner spouse has failed to produce the business book and records in the divorce litigation or the books and records of the business are incomplete or inadequate. Is the income reported by the business owner/spouse sufficient to pay the family expenses after considering any other family income, gifts and utilization of savings? If the answer is no and a reasonable explanation is not provided or complete and adequate books and records are not produced, then there's probably sufficient reason to assume that the business/owner spouse is under-reporting his/her income.

Consideration should also be given to whether significant personal expenses are being reported as business expenses thereby understating the business/owner spouse's income. One example is the business/owner spouse claiming household employees such as housekeepers and nannies as business employees and deducting the salaries as a business expense even though the household employees do not work in the business.

2. Has my spouse reported foreign bank and financial accounts on the tax return as required by the IRS? South Florida is an international community, and many South Florida residents do business in foreign countries and have bank or other financial accounts in foreign countries. The IRS has rules for when foreign bank and financial accounts must be disclosed. Failure to comply with the reporting requirements may result in penalties.

3. Does my spouse have sufficient supporting documentation for charitable contributions, unreimbursed employee expenses or other itemized deductions?

4. Is my spouse willing to provide me with an indemnity in which he or she agrees to be responsible for all taxes, penalties and interest associated with his/her income, expenses and deductions if I file a married filing jointly return?

A divorcing spouse must give careful consideration to whether they file a joint or separate tax return. When married taxpayers file a joint tax return, both taxpayers are jointly and severally liable for the tax and any additions to tax, interest or penalties that arise as result of the joint return even after they divorce.

The IRS provides for three types of relief from joint and severally liability for spouses who filed joint returns: innocent spouse relief, separation of liability relief and equitable relief. However, it is not easy to obtain relief from the IRS, and the better practice is to carefully consider whether a joint return should be filed after consultation with a certified public accountant, the party's divorce lawyer and in certain circumstances even a tax attorney.

Bonnie Sockel-Stone is a partner at Foster-Morales Sockel-Stone in Miami. She is board-certified in marital and family law and has extensive accounting experience.

BOARD OF CONTRIBUTORS