Start thinking about taxes if divorce is ahead

By Carlos Blanco

Accounting and tax issues are usually the last thing on one's mind during the divorce. However, this is precisely the time to start thinking about tax implications. To touch on this topic, I spoke with Jorge de la Hoz, principal with the accounting firm De La Hoz, Perez & Barbeito.

DM: What are some tax issues not considered during a divorce?

DE LA HOZ: When the equitable distribution schedule is prepared in order to divide the material assets, it is important to consider the potential tax liability. The values used for purposes of equitable distribution reflect fair market value at the time of divorce; however, it does not taken into consideration potential tax liability. For example, if the wife keeps the marital home, she will benefit from a tax exclusion once the property sells. If the husband keeps a rental property, the property may have a low tax basis, resulting in a significant capital gains tax upon the property's sale. This can present inequitable results at the time of divorce since the related tax effect of the various assets kept by each party will differ.

DM: What are typical tax considerations that people going into divorce should consider?

DE LA HOZ: A typical consideration would be what status to file under. The filing status to use depends on the legal marital status as of Dec. 31 of the given year. If you are legally married, your options are married filing joint or married filing separate. It is usually beneficial to file married filing joint. However, it may be best to file married filing separate. Couples filing a joint return are jointly liable for all representations made on the return. It is also very important to consider the income tax implications of maintenance and alimony awards. Generally, alimony is taxable to the recipient and deductible to the payer. This presents important tax implications, which must be considered by each party. Since there is no tax withholding on the alimony payments, the recipient may need to make estimated tax payments during the course of the year. Legal fees should also be considered by the divorcing couples as to the related tax effect. Fees related to the divorce process are not tax-deductible, but if some of the fees are related to tax advice or tax considerations those are deductible.

DM: Once the divorce is finalized, how does one's tax position change?

DE LA HOZ: Once the divorce is final, the status to the file the return changes. If you have children or other dependents, you may qualify to file as head of household. With no dependents, the filing status changes to single. Head of household presents an advantageous tax filing status. If you claim a qualifying dependent and meet certain requirements, taxable income can be significantly reduced by filing head of household. It's also important to consider how the division of assets, such as your home, will impact your post-divorce income tax return. The tax deductibility related to assets, which you may currently not own any longer, can impact the tax results after a divorce.

DM: Can one party to an on-going divorce be forced to change their filing status before the divorce?

DE LA HOZ: If one spouse wants to file a joint return, you don't have to agree. You can file your tax return under filing status "married filing separate." If your former spouse files a joint tax return discovered to be fraudulent, you can apply for innocent spouse relief on the grounds that you did not know about or encourage these actions. You can also apply for innocent spouse relief if your former spouse has created a large tax bill, which you did not contribute to.

Carlos Blanco founded the Big Kaboom www.thebigkaboom.com, which combines people, technology and social elements to support clients through the divorce process. Contact him at305-908-1171 or send an email to cblanco@thebigkaboom.com.