

An Accountant's Vital Role in Resolving a Divorce

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Every divorce case can benefit from the input of an accountant, from very simple cases to the most complex matters. It is the breakup of a "partnership."

Certainly, divorces cause enormous emotional upheaval; however, a good portion of any case will be focused on the numbers. Most, if not all, divorce agreements prepared by divorce counsel contain language that *the parties have been advised to review the agreement with an accountant and the clients are not relying on the divorce attorney for tax advice.*

Divorce lawyers are often not as well versed in the tax ramifications as accountants. Alimony and "equitable distribution" are not mere math problems. The most successful arguments in court are supported by hard financial evidence, such as tax returns, pay stubs and credit card bills, which will be organized and analyzed by accountants. For higher-net-worth cases, or those with financial complexities, there is a need to hire forensic accountants.

THE ACCOUNTANT'S ROLE

How can the family accountant help parties conserve resources and help the client move forward to a better future?

- ✓ Provide copies of tax returns and any adjustments promptly to either party regardless of whether the CPA primarily dealt with one party. The CPA has a duty to immediately cooperate with both parties.

- ✓ Provide tax projections, if requested, as the parties will be filing separately going forward.
- ✓ Perform state tax calculations on alimony. Although federal law changed, eliminating tax consequences, many states, including New Jersey, still provide for the deductibility and taxation of alimony.
- ✓ Determine who can/should claim dependency exemptions, child tax credit and Earned Income Tax Credit (EITC) for any children.
- ✓ Estimate capital gains on homes or investments, whether recently sold or still owned and to be sold in the future. If one party is considering keeping a home, the exemption can change significantly from joint to individual.
- ✓ Review the divorce agreement for tax issues or creative planning if requested.

Sometimes, spouses refuse to file jointly because of cash/fraud issues or simply refuse to file jointly "to be difficult." The accountant can prepare a return based on filing jointly and a second one based on filing separately to show the impact to the obstructive spouse for possible reimbursement. (See *Bursztyn v. Bursztyn*, 379 N.J. Super. 385 (App. Div. 2005))

In complex divorces, a forensic accountant is often hired to prepare reports and testify at trial. I interviewed a well-known forensic accountant, Ilan Hirschfeld, CPA, of Marcum LLP, for this article to further discuss how the family accountant can help the divorce process by providing clear and transparent financial information. First, Mr. Hirschfeld made it clear that forensic accountants *do not get involved with custody*. His job is to look at the divorce as a business transaction: How are assets valued and how is cash flow determined? The forensic accountant performs due diligence, considers liquidity and looks at past performance to estimate future cash flow to calculate support and business values. Cash flow should not be confused with taxable income. The forensic accountant can also trace assets and help calculate the marital values of restricted stock units (RSUs) and options.

Mr. Hirschfeld explained that the family accountant can play a crucial role in the process, providing data promptly, including, but not limited to, tax returns (both business and personal) and year-end journal entries, along with general ledgers or Quickbooks files used to prepare tax returns. A trained forensic accountant can help establish and negotiate normalized earnings and the value of businesses and not waste the lawyer's time and the parties' money to get documents. The more delays or obstruction, the greater the emotional and financial cost to both sides. ❏

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