

CAN ATTORNEYS' FEES BE TAX DEDUCTIBLE?

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This is a question that every taxpayer asks who is obtaining a divorce. The simple answer is NO, however, that would not be the correct answer. The correct answer, a taxpayer cannot deduct legal fees and court costs for getting a divorce. **But** the taxpayer may be able to deduct legal fees paid for tax advice in connection with a divorce and legal fees to get alimony. In addition, the taxpayer may be able to deduct fees he/she pay to appraisers, actuaries, and accountants for services in determining their correct tax or in helping to get alimony.

Fees the taxpayer pays his/her attorney may include charges that are deductible and charges that are not deductible. Be sure to request a **sample letter** that the attorney can use if his/her client asks for a letter relating to the deductibility of their fees.

The following are a couple of general rules regarding the deductibility of attorney fees relating to a divorce action:

Fees for getting alimony. Because the party receiving the alimony must include the alimony in their gross income, they can deduct those fees on their Schedule A as a miscellaneous deduction. Please note this is “for getting” alimony. Therefore, if your client were the one who is paying alimony these fees would not be deductible.

Fees for tax advise. Your client can deduct fees for advice on federal, state, and local taxes of all types, including income, estate, gift, inheritance, and property taxes. Your client can also deduct the fees if you, the attorney, consult with another who handles only tax matters.

The following are specific cases:

- Attorneys' fees allocable to the taxable income portion of a divorce settlement payment are deductible. (Tighe, M., 33 TC 557, Dec. 23, 896)
- One-third of the attorney fees incurred by the taxpayer in connection with his divorce proceedings were for advice on tax consequences of the proceedings and were thus deductible. (Munn, G. Jr., (CtClis) 72-1 USTC ¶ 9255, 455 F2d 1028).

Attorney fees can be deductible under certain circumstances.