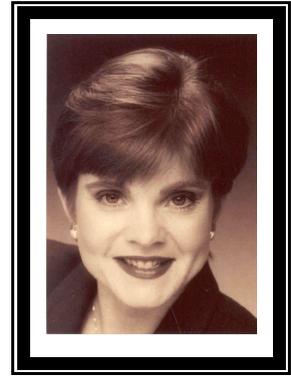


The Carol A. Wilson Newsletter

Board Certified Family Law, Texas Board of Legal Specialization

Of Counsel to Siebman, Reynolds, Burg & Phillips, L.L.P.,
Sherman & Plano, Texas
3131 Turtle Creek, Blvd., Suite 918, Dallas, Texas 75219
Phone: 214-303-0142; Fax: 214-599-2149
carol@cawilsonlaw.com



Taxes & Family Law

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Dear Colleagues:

Two statutes affecting property division and the filing of federal income taxes have proved beneficial for our clients in divorce decrees.

Texas Family Code §7.008, passed by the 2005 legislature, specifically provides that the judge in a divorce can consider the tax implications of a property division. Previously, state court judges would not do so, largely because their ruling could not impact the parties' federal taxes. The transfer of the asset during the divorce would not cause an increase in either parties' taxes. However, certain assets do have tax obligations, such as retirement assets. If a spouse liquidates a retirement asset at the time of divorce, taxes and penalties can be incurred if the spouse does not meet the age requirements. Thus, parties can now argue that awarding retirement assets is not the same as awarding assets such as stocks, mutual funds, or bank accounts.

Texas Family Code §7.002 passed by the 2003 legislature, provides a way to partition the community income for the period of time after the original divorce petition is filed until the date the divorce is granted. As you know, Texas is a community property state, and in Texas you are married until the judge pronounces you divorced. Prior to 2003, many divorcing couples did not qualify to use Section 66 of the IRS code, Treatment of Community Income, which allows separated couples to file separately and report only their own income and deductions because they had not been separated the entire calendar year. Now, because of Texas Family Code Sec. 7.002(c), the parties can partition their income and file separate tax returns. Income and deductions earned after the date the original petition for divorce was filed will be reported by the spouse who earned it. In most cases, this simplifies tax preparation for both parties. A consultation with the party's tax advisor is recommended before automatically applying this provision.

We moved! Please notice our new address, fax number and e-mail listed above.