



Family Law Update

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Michael B. Efron is an associate attorney in Kring & Chung, LLP's Irvine office. As a former Superior Court of California, County of Orange attorney, he acted as a Settlement Officer on behalf of the Court in mediating complete marital settlement agreements for countless litigants. As a former Deputy Department Counsel, he prosecuted over 1500 child support and parentage hearings on behalf of the Department of Child Support Services of Orange County, formally of the Orange County District Attorney's Family Support Division.

Important Federal and State Tax Aspects of Child Custody and Support.

I am often asked about the interrelationship between paying monthly state mandated guideline child support and dependency exemptions and credits. Most often these concerns come from my high-income earning clients, but one need not be a high-income earner to gain the benefits of a properly negotiated dependency exemption and credit release.

Generally, the parent with physical custody of a child for the greater portion of a tax year is entitled to claim the child as a dependent for purposes of the federal tax exemption. (IRS Sec.152(e)(1)).

California law generally conforms with federal law in this area, with one exception. California has a joint custody head of household credit for parents who have joint physical custody arrangements and do not qualify for the standard head of household status. (Rev & Tax Code Sec. 17054.5) Internal Revenue Service Form 8332 may be used for California tax purposes.

While IRS Form 8332 is not mandatory, I make it my practice to include it whenever I'm drafting a Marital Settlement Agreement ("MSA"), because it clearly complies with IRS rules and regulations and keeps my clients out of court should a dispute concerning this issue later arise between the parties.

Why is paying more child support is a win/win situation for many high-income earners? At the end of the year, the custodial parent receives a far greater amount of monthly child support, which helps to support the child(ren) and at the same time the obligor has the ability to reduce his or her tax liability by securing the rights to claiming dependency exemptions and credits on their federal and state tax returns each year.

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- Executive Dissolutions
- Business Evaluation Analysis
- Marital Settlement Agreements
- Community property Divisions
- Quasi-Community Property Distributions
- Support Establishment
- Support Enforcement
- Pre-Marital Agreements

Depending on the circumstances of your custody arrangement, parents without joint physical custody provisions may also gain from negotiating dependency exemptions and credits. Oftentimes, a carefully negotiated child custody and support MSA can achieve this beneficial result.

However, it's important to remember that dependency exemptions are phased out for high-income taxpayers (IRC 151(d)(3)), with the result that in some cases it may not make sense to allocate the exemptions to higher income non-custodial parents.

Therefore, it is so crucial to sit down with a trained family law attorney that understands the interrelationships between custody, state mandated guideline child support and the tax implications associated with your specific circumstances. A truly beneficial MSA is one that takes into consideration your specific emotional and financial situation in a holistic manner. The goal is to achieve a win/win for all parties while maintaining the best interest standard for your child(ren) and securing the maximum tax advantages for all parties.

That is why a high-income earner should consult with a family law attorney that can analyze whether the non-custodial parent would benefit more than the custodial parent from claiming the exemption and credit and, if so, whether any release from the custodial parent should be accompanied by an increase amount of child support in order to fairly distribute the resulting financial benefits between the parents.

It should also be noted that the court may within its powers allocate dependency exemptions and credits to the non-custodial parents, even without an agreement, and order the custodial parent to execute a release. Monteray County v. Cornejo (1991) 53 C3d 1271.

Too often, parties fail to properly describe the federal and state exemptions and credit allocations between the parents. The result is that many parties find themselves back in court expending more of their time, money, and the frustration associated with litigating this issue. All because this very important issue was not properly addressed in their initial MSA or brought before the court at the time of their custody and support hearings.

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