

Marital Prenuptial Agreements - Tax Consequences

In today's society whereas people are marrying and divorcing more than once, twice . . . people find themselves entering into complex relationships that carry baggage, debts, assets, and family responsibilities from prior marriages. The reasonable and prudent person needs to protect themselves against the other party's failure of disclosure. In other words, some parties may conceal issues of substantial matter, and later feign immateriality. Don't be a victim.

As a tax professional I am always recommending to my clients who are contemplating marriage to consider a prenuptial agreement.

I have witnessed several cases of people marrying another, only to later find out there is a substantial tax debt, or other tax issues.

In community property States you may become liable for it all. (Community property States are: AZ, CA, IS, LA, NV, NM, TX, WA, WI.)

In some States you may become liable for a part.

In some States you may have some or all your assets, and/or income, jeopardized.

It is best to be well informed before you make that leap.

A marital prenuptial agreement should be a common sense matter.

Other considerations:

- Are there any past taxes owed that may impact your rightful share of a refund if you file joint? While 'Injured Spouse' claim may be helpful, it's not entirely an equitable solution.
- Any past compliance issues or unfiled returns?
- Are you aware of the consequences if you elect to file Married Filing Separate.

Consult with a knowledgeable tax professional to determine your risk.

Consult with an attorney who is versed in family law and prenuptial agreements. It is also recommend for each person to have their own attorney to avoid any possible conflict of interest, rather than sharing one. Sometimes that may be impractical due to financial resources of the parties. Still, one should Google or Bing one's State's key factors of such.

Resources:

IRS Publication 555 Community Property
<http://www.irs.gov/pub/irs-pdf/p555.pdf>

Internal Revenue Manual (IRM) Part 25, Chapter 18, Section 4
Collection of Taxes in Community Property States
http://www.irs.gov/irm/part25/irm_25-018-004.html

IRS Publication 501 <http://www.irs.gov/pub/irs-pdf/p501.pdf>
See page 7 and thereafter in regards to the consequences of filing 'Married Filing Separate.'

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