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Untying the Knot - How to Get It Right When Handling an IRA in a Divorce

The song "Breaking Up Is Hard to Do" hit number one on the Billboard Hot 100 on August 11, 1962. More the fifty years later, the lyrics still ring true. When a couple divorces, not only will they need to sort through many emotions but also potentially many years' worth of accumulated property. These days, that property, which needs to be divided when two spouses go their separate ways, is likely to include an IRA. Handling an IRA in a divorce can be tricky and often things go very wrong. A recent Tax Court case, *John R. Kirkpatrick v. Commissioner, TC Memo 2018-20, (February 22, 2018)*, gives some good lessons about what *not* to do.

Here is what you need to know to get it right for your divorcing clients and avoid bad tax outcomes for their IRAs.

Divorce Decree is a Must

There is an important requirement that must be met before any IRA funds can be moved, *tax free*, in a divorce situation. For an IRA to be divided due to a divorce, there must be a divorce decree issued pursuant to state domestic relations law that addresses marital property rights. The divorce decree will usually come from a court and may incorporate orders from state agencies. Without these legal documents, there is no authority

for the IRA to be divided in a tax-free transfer.

For an IRA to be divided due to a divorce, there must be a divorce decree issued pursuant to state domestic relations law that addresses marital property rights.

Sometimes clients make the mistake of thinking that a casual agreement by a divorcing couple settling the division of their property without the involvement of a court would be enough to divide an IRA. *This is not the case.* The mere fact that a property settlement is agreed upon and signed by the parties will not, in and of itself, cause the agreement to be part of a divorce decree. It is possible, however, for divorcing parties to agree to terms as to how property, including IRAs, should be divided and then submit the agreement to the court for approval. With the court's approval an informal agreement can become a court order that would allow the moving of the IRA funds.

No QDRO Needed

Whenever the subject of IRAs and divorce comes up, a question that

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