

DEDUCTIBILITY OF ATTORNEY'S FEES IN MATRIMONIAL CASES

By: Christopher Rade Musulin, Esquire

Generally speaking, fees attributable to marital dissolution are not deductible as they are considered personal expenses pursuant to I.R.C. Section 262. While attorney's fees related to certain tax advice are deductible pursuant to Section 212, most matrimonial practitioners will not fall into the three exceptional categories permitting deductibility. However, some important exceptions exist.

Attorney's fees attributable to securing alimony, including arrears, even if unsuccessful, are clearly deductible pursuant to Section 212(1), but only for the payee. The deduction is included in Form 1040 under miscellaneous itemized deductions. Certain limitations exist with some phase-out provisions.

Another opportunity for deductibility exists when a business entity is joined as a party to an action. Fees attributable to protecting the interests of the business entity should be deductible. Dolese v. U.S., 605 F.2d 1146,1152 (10th Cir.1979).

In the event of an audit, accurate record-keeping is critical. The attorney must sequester allowable from non-allowable services on time slip entries. It is most prudent to reference the appropriate section on the time slip, such as "*conference with client for purposes of securing alimony pursuant to Section 212*".

As always, an attorney should not give tax advice unless requisite knowledge exists. It is always useful to work closely with a certified public accountant when handling any legal matter as tax consequences appear at every turn.