Pre-Signing Divorce Tax Checklist

Twelve federal tax issues to check before a settlement is signed. For CDFA® professionals, financial advisors and family law attorneys.

Secure Split®

Case _____ **Prepared by** _____ **Date** _____ **Tax professional** _____

	Issue / asset	What to check before signing	The federal rule	What to model in the file
☐	**Filing status**	Will the decree be final by December 31?	Marital status on the last day of the tax year sets status for the year	Year-of-divorce return options for each spouse
☐	**Head of household**	Who pays more than half the cost of the home, and where does each child live more than half the year?	HOH needs a qualifying person and more than half the upkeep	Which parent qualifies, child by child
☐	**Dependents and Form 8332**	Does the agreement say who claims each child, for which years, and require a signed Form 8332?	The custodial parent has more nights; release via Form 8332 or a similar statement	Child credits by year for each parent
☐	**Alimony**	When was the instrument executed, and has a pre-2019 agreement been modified?	After 2018: not deductible, not income. Before 2019: generally deductible and taxable	Support as pre-tax or after-tax cash flow
☐	**Brokerage, real estate, business interests**	What is the adjusted basis of each asset?	IRC 1041: no gain or loss on transfer; recipient takes transferor's basis	Built-in gain on each asset offered
☐	**401(k) and pensions**	Is there a QDRO, and does the receiving spouse need cash before age 59½?	QDRO payouts to a spouse or former spouse are taxed to them; the 10% exception applies for qualified plans	Cash needed now vs. amount rolled over
☐	**IRAs**	Is the split written into the decree or an instrument incident to it?	Transfer under the decree isn't taxable; the account becomes the recipient's IRA	IRA share as pre-tax dollars
☐	**Marital home**	Who will sell, when, and can each spouse meet the 2-of-5-year tests?	Up to $250,000 exclusion per individual ($500,000 joint)	Gain above the exclusion, per spouse
☐	**Ex living in the home**	Does the decree grant the occupying spouse use of the home?	Owner is treated as using the home while the ex has use under the instrument	Exclusion still available to the owner who moved out
☐	**Prior joint returns**	Are past returns filed and paid? Any audit risk?	Both spouses stay liable on joint returns filed before the divorce	Indemnity language; Form 8857 relief if needed
☐	**Refunds and estimated payments**	How will a pending joint refund and joint estimated payments be split?	Joint estimated payments can be divided any way the spouses agree	Allocation written into the agreement
☐	**Nonresident alien spouse**	Is either spouse a nonresident alien?	IRC 1041(a) does not apply	Flag for tax counsel

General information, not tax or legal advice. Rules shown are federal, based on IRS Publication 504 (2025); state treatment can differ. Get after-tax figures from the client's tax professional. Sources: IRS Publications 504, 523 and 590-A, IRC section 1041, IRS Topic 452, and IRS guidance on QDROs and early distributions.