



## Robert W. Wood

THE TAX LAWYER

May. 20 2012 — 9:43 am

### How Mark Zuckerberg's Taxes Change Now That He's Married

What a week! First an unprecedented IPO, then marriage. Yes, [Facebook's Zuckerberg Marries His Longtime Girlfriend](#) Priscilla Chan. And California marriages are, well different, as California divorce lawyers—aka “family lawyers”—will tell you.



The water cooler debates about taxing Mark Zuckerberg have been vitriolic for weeks now—not to mention the endless likes and dislikes over the expatriation of one-time co-founder [Eduardo Saverin](#). It's only natural that we'll all worry over this one too. After all, what does this latest one-two development mean for the Zuckerberg family tax return?

**Joint v. Separate?** Mr. Zuckerberg and his new wife could file married filing separate or married filing joint for this year, even though they married part-way through the year. While 95% of married couples file joint tax returns, you might be surprised to find that the tax savings by filing jointly are often small. If Mr. Zuckerberg hopes to keep assets separate—more about that below—he's better off filing separately.

**Separate v. Community?** One of the big issues in California and the handful of other community property states is separate v. community.

What each person acquires prior to marriage is separate property. That means all the billions Mr. Zuckerberg had before tying the knot remain his separate property.

But you might be surprised how that can get confused over time. If there's a prenup—and I presume there is—it might say that no matter what, it stays separate. But separate property can be transmuted into community property not only by agreement but by actions too. Seemingly innocuous acts—like one person making a mortgage payment on their spouse's separate residence—can have an impact.

**Business and Investment Management?** One of the biggest risks is where a couple works together or even undertakes joint management of assets or business interests. What is considered a contribution to the community can become murkier still. Even if Mr. Zuckerberg's Facebook stock and cash are all separate up until he marries, earnings from his work at the company during marriage are generally considered community. That is likely to include more options in the future.

**Gifts During Marriage?** One thing that's not a tax problem during marriage is the gift tax. Married taxpayers can give as much property as they want to their spouse during marriage free of gift tax. So if Mr. Zuckerberg wants to give his bride a billion dollar wedding gift of Facebook stock, there's no gift tax.

There's no income tax either, unless she sells it. Then, because her tax basis in the shares would be the same as the stock's basis was in her husband's hands before the gift, she would pay tax on the gain on sale.

**Divorce Rules.** Sorry to be a killjoy, and I truly wish the newlyweds well. But the biggest and most important tax rules about marriage apply to its unwinding. Since these tax rules only work on unwinding a legal marriage and not on any form of cohabitation, they remain a gross tax inequity the gay marriage debate has never thoroughly addressed.

Like gifts during marriage, property transfers incident to divorce don't trigger gift or income taxes. Alimony or spousal maintenance if structured properly is income to the recipient spouse and deductible by the payor spouse. Child support is neither deductible to the payor nor income to the child or the recipient spouse with custody.

All these rules may sound simple and they are simple to state. But the tax cases in which they are misapplied and audited are legion.

For more, see:

[Biggest Injustice of Denying Same-Sex Marriage? Tax-Free Divorce](#)

[Follow Three Simple Tax Rules](#)

[Facebook's Eduardo Saverin To Host "America's Next Top Tax Lawyer"](#)

[Expats Face Steep Exit Tax Courtesy of Facebook](#)

[Who Pays Tax On Joint Bank Accounts?](#)

[5 Simple Rules to Follow When Amending Your Tax Return](#)

[When An Innocent Spouse Seeks Tax Relief](#)

[IRS on Time's Breastfeeding Issue?](#)

*Robert W. Wood practices law with [Wood LLP](#), in San Francisco. The author of more than 30 books, including *Taxation of Damage Awards & Settlement Payments* (4th Ed. 2009 with 2012 Supplement, [Tax Institute](#)), he can be reached at [Wood@WoodLLP.com](mailto:Wood@WoodLLP.com). This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.*