TaxStache BUSINESS EDITION

Divorcing When You Co-Own the Business

A checklist for spouses who built the business together — and are untangling it now.

Filing status & elections

- [ ] Confirm whether you've been filing as a Qualified Joint Venture (QJV) — it ends automatically once you stop filing jointly.
- [ ] Note the date joint filing status ends; the business defaults to partnership taxation from that point.
- [ ] Determine whether the business needs a new EIN for its first partnership return.
- [ ] Identify who prepares the first Form 1065 and K-1s, and by when.

Valuation & goodwill

- [ ] Engage a business valuation professional — ideally before mediation starts.
- [ ] Confirm which approach applies: income, market, or asset (or a blend).
- [ ] Make sure the valuation explicitly addresses personal vs. enterprise goodwill.
- [ ] Lock in a valuation date — value can shift meaningfully week to week.

If you keep co-owning it

- [ ] Draft or update a partnership/operating agreement in writing — don't rely on the old dinner-table understanding.
- [ ] Set up separate estimated tax payments for each spouse going forward.
- [ ] Spell out decision-making and dispute-resolution provisions.

The ownership transfer

- [ ] Decide the path: spouse buys spouse, the business redeems a spouse's interest, or continued co-ownership.
- [ ] If spouse-to-spouse: confirm it qualifies for tax-free treatment under IRC Section 1041.
- [ ] If the business is doing the buying: get a tax opinion on ordinary-income or dividend exposure before signing.
- [ ] Document each spouse's basis in the business as of the transfer date.

Retirement accounts

- [ ] Inventory every account tied to the business: Solo 401(k), SEP-IRA, SIMPLE IRA.
- [ ] Solo 401(k): confirm a QDRO is drafted and reviewed by the plan custodian.
- [ ] SEP/SIMPLE IRA: confirm "transfer incident to divorce" language is in the decree — no QDRO needed.
- [ ] Trace which portion of each account accrued during the marriage.

Questions for your CPA

- [ ] Does our transfer qualify for Section 1041 treatment, and within what window?
- [ ] What changes on our return the moment our QJV election ends?
- [ ] Which valuation approach fits our business, and who should we hire?
- [ ] What's the cleanest way to fund a buyout without an unplanned tax bill?