

Tax Issues for Divorced or Separated Parents

Divorced or separated parents face certain income tax issues during an already difficult and stressful period. Some of the most common issues are choosing the correct filing status, claiming the correct exemptions, ensuring the children are claimed correctly, and correctly handling child support or alimony. Knowing the current tax law regarding these issues is essential to filing an accurate and complete tax return as well as taking advantage of all credits, deductions, and exemptions available to you. The following information provides an overview of current law.

1. Choosing the correct filing status:

a. Married Filing Joint (MFJ): Available to couples legally married as of December 31 of the tax year. Typically, MFJ provides the best possible outcome on tax returns in terms of getting money back. In addition to allowing the highest amounts of income in each tax bracket, MFJ allows taxpayers to be eligible for multiple valuable credits that are not available to those who choose Married Filing Separately status. Available credits include the Earned Income Credit, education credits, Child and Dependant Care Credit, and the Student Loan Interest adjustment. Both spouses must agree to MFJ and both must sign the return (unless one spouse has a Power of Attorney to sign for the other).

b. Married Filing Separately (MFS): Available to couples legally married as of December 31 of the tax year. Usually, MFS is the least favorable filing status because it disallows many valuable tax credits to be claimed that the taxpayer may otherwise be eligible for, such as the Earned Income Credit. Additionally, the tax brackets for MFS are not as favorable as Married Filing Joint or Head of Household statuses.

c. Head of Household: Available to the **custodial** parent who is unmarried, divorced, or legally separated as of December 31 of the tax year (or considered unmarried under the tax code). The taxpayer must meet several other requirements under the tax code to qualify for Head of Household including providing more than half the support of the dependent child and that the child must have lived with the taxpayer for more than half of the year. This filing status provides more favorable tax treatment than Single or Married Filing Separate status, including giving access to all available tax credits and adjustments.

d. Single: Available to taxpayers who are single, divorced or legally separated as of December 31 of the tax year and who do not qualify for any other filing status.

2. Exemptions: You are allowed to deduct a fixed amount from your taxable income for yourself as well as for each dependent you are claiming on your tax return. This would include your spouse, if you are filing a Married Filing Joint status tax return, and other qualified dependents. The rules for who may qualify as dependents can be complex.

3. **Who gets to claim the children?** When filing Married Filing Joint, claiming a dependent child is simple so long as the child meets the appropriate age, support, and other requirements. There are several tests a parent must meet to claim an exemption for a child when the child may be claimed by multiple separate taxpayers, such as when the parents file as Married Filing Separately.
 - a. If a divorce decree or other court order dictates who can claim the child, it must be honored. Likewise, a written separation agreement validly entered is considered binding upon the parents if it dictates which parent can claim the child or children.
 - b. Generally, absent a court order or other agreement, the custodial parent gets to claim the child so long as the IRS' other tests for qualifying child are met.
 - c. The custodial parent can release the exemption to the noncustodial parent by signing a written declaration (IRS Form 8332 – Release of Claim to Exemption for Child of Divorced or Separated Parents).
 - d. When there is no court order or other agreement as to which parent can claim the child and it is uncertain which parent would be the most appropriate to claim the child, the IRS looks at tie-breaker rules to make the determination. These include the income of the parents, the amount of time the child spent with each parent during the tax year, and which parent provided the majority of the child's support during the tax year.
4. **Alimony vs. Child Support:** If a court has ordered alimony or spousal support payments, those payments are tax deductible by the paying spouse and must be included as income by the paid spouse. Court ordered payments for child support, however, are NOT tax deductible by the paying spouse and are not reported by the receiving spouse.
5. **Important Reminders:** Remember to change your tax withholding from your paycheck using Form W-4 with your employer when you become divorced or separated. If you receive alimony or other payments which are not subject to withholding, you may have to ask for additional withholding from your wages or make estimated tax payments. If you have moved, notify the IRS of your change of address using Form 8822. If you change your name, be sure to notify the Social Security Administration using Form SS-5. If you get re-married or change your name for any other reason, you must file your taxes under the name present on your Social Security Card.

For appointments concerning this and other personal legal matters, please contact the Legal Assistance Branch of the Office of the Staff Judge Advocate located at Building 358, Buffalo Soldier Trail, Defense Language Institute, Presidio of Monterey (831-242-5084 or DSN 768-5084).