

Publication 504

Divorced or Separated Individuals

For use in preparing

2023 Returns

Volume 1 of 2



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Future Developments

For the latest information about developments related to Pub. 504, such as legislation enacted after this publication was published, go to *IRS.gov/Pub504*.

Reminders

Change of withholding. The Form W-4 no longer uses personal allowances to calculate your income tax with-holding. If you have been claiming a personal allowance for your spouse, and you divorce or legally separate, you must give your employer a new Form W-4, Employee's Withholding Certificate, within 10 days after the divorce or separation. For

more information on withholding and when you must furnish a new Form W-4, see Pub. 505.

Relief from joint liability. In some cases, one spouse may be relieved of joint liability for tax, interest, and penalties on a joint tax return. For more information, see *Relief from joint liability* under *Married Filing Jointly*.

Social security numbers for dependents.

You must include on your tax return the taxpayer identification number (generally, the social security number (SSN)) of every dependent you claim. See *Dependents*, later.

Using and getting an Individual Taxpayer Identification Number.

The Individual Taxpayer Identification Number (ITIN) is entered wherever an SSN is requested on a tax return. If you're required to include another person's SSN on your return and that person doesn't have and can't get an SSN, enter that person's ITIN. The IRS will issue an ITIN to a nonresident or resident alien who

doesn't have and isn't eligible to get an SSN. To apply for an ITIN, file Form W-7, Application for IRS Individual Taxpayer Identification Number, with the IRS. Allow 7 weeks for the IRS to notify you of your ITIN application status (9 to 11 weeks if you submit the application during peak processing periods (January 15 through April 30) or if you're filing from overseas). If you haven't received your ITIN at the end of that time, you can call the IRS to check the status of your application. For more information, go to [IRS.gov/FormW7](https://www.irs.gov/FormW7).

Change of address. If you change your mailing address, be sure to notify the IRS. You can use Form 8822, Change of Address.

Change of name. If you change your name, be sure to notify the Social Security Administration using Form SS-5, Application for a Social Security Card.

Photographs of missing children. The IRS is a proud partner with the [National Center for Missing & Exploited Children® \(NCMEC\)](#). Photographs of missing children selected by the Center may appear in this publication on pages that would otherwise be blank. You can help bring these children home by looking at the photographs and calling 800-THE-LOST (800-843-5678) if you recognize a child.

Introduction

This publication explains tax rules that apply if you are divorced or separated from your spouse. It covers general filing information and can help you choose your filing status. It can also help you decide which benefits you are entitled to claim.

The publication also discusses payments and transfers of property that often occur as a result of divorce and how you must treat them on your tax return. Examples include alimony, child support, other court-ordered

payments, property settlements, and transfers of individual retirement arrangements. In addition, this publication also explains deductions allowed for some of the costs of obtaining a divorce and how to handle tax withholding and estimated tax payments.

The last part of the publication explains special rules that may apply to persons who live in community property states.

Comments and suggestions. We welcome your comments about this publication and suggestions for future editions.

You can send us comments through [IRS.gov/FormComments](https://www.irs.gov/FormComments). Or, you can write to the Internal Revenue Service, Tax Forms and Publications, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224.

Although we can't respond individually to each comment received, we do appreciate your feedback and will consider your

comments and suggestions as we revise our tax forms, instructions, and publications.

Don't send tax questions, tax returns, or payments to the above address.

Getting answers to your tax questions. If you have a tax question not answered by this publication or the *How To Get Tax Help* section at the end of this publication, go to the IRS Interactive Tax Assistant page at [IRS.gov/ Help/ITA](https://www.irs.gov/help/ita) where you can find topics by using the search feature or viewing the categories listed.

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as soon as possible. **Don't** resubmit requests you've already sent us. You can get forms and publications faster online.

Useful Items

You may want to see:

Publications

- ☐ **501** Dependents, Standard Deduction, and Filing Information
- ☐ **544** Sales and Other Dispositions of Assets
- ☐ **555** Community Property
- ☐ **590-A** Contributions to Individual Retirement Arrangements (IRAs)
- ☐ **590-B** Distributions from Individual Retirement Arrangements (IRAs)
- ☐ **971** Innocent Spouse Relief
- ☐ **974** Premium Tax Credit (PTC)

Forms (and Instructions)

- ☐ **8332** Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent
- ☐ **8379** Injured Spouse Allocation
- ☐ **8857** Request for Innocent Spouse Relief

See *How To Get Tax Help* near the end of this publication for information about getting publications and forms.

Filing Status

Your filing status is used in determining whether you must file a return, your standard deduction, and the correct tax. It may also be used in determining whether you can claim certain other deductions and credits. The filing status you can choose depends partly on your marital status on the last day of your tax year.

Marital status. If you are unmarried, your filing status is single or, if you meet certain requirements, head of household or qualifying surviving spouse. If you are married, your filing status is either married filing a joint return or married filing a separate return. For information about the single and qualifying surviving spouse filing statuses, see Pub. 501.

Unmarried persons. You are unmarried for the whole year if either of the following applies.

- You have obtained a final decree of divorce or separate maintenance by the last day of your tax year. You must follow your state law to determine if you are divorced or legally separated.

Exception. If you and your spouse obtain a divorce in one year for the sole purpose of filing tax returns as unmarried individuals, and at the time of divorce you intend to remarry each other and do so in the next tax

year, you and your spouse must file as married individuals.

- You have obtained a decree of annulment, which holds that no valid marriage ever existed. You must file amended returns (Form 1040-X, Amended U.S. Individual Income Tax Return) for all tax years affected by the annulment that aren't closed by the statute of limitations. The statute of limitations generally doesn't end until 3 years (including extensions) after the date you file your original return or within 2 years after the date you pay the tax. On the amended return, you will change your filing status to single or, if you meet certain requirements, head of household.

Married persons. You are married for the whole year if you are separated but you haven't obtained a final decree of divorce or separate maintenance by the last day of your tax year. An interlocutory decree isn't a final

decree. However, individuals who have entered into a registered domestic partnership, civil union, or other similar relationship that isn't called a marriage under state (or foreign) law aren't married for federal tax purposes. For more information, see Pub. 501.

Exception. If you live apart from your spouse, under certain circumstances, you may be considered unmarried and can file as head of household. See *Head of Household*, later.

Premium Tax Credit. If you purchase health insurance coverage through the Health Insurance Marketplace, you may get advance payments of the premium tax credit in 2023. If you do, you should report changes in circumstances to your Marketplace throughout the year. Changes to report include a change in marital status, a name change, and a change in your income or family size. By reporting changes, you will

help make sure that you get the proper type and amount of financial assistance. This will also help you avoid getting too much or too little credit in advance.

If you divorced or are legally separated during the tax year and are enrolled in the same qualified health plan, you and your former spouse must allocate policy amounts on your separate tax returns to figure your premium tax credit and reconcile any advance payments made on your behalf. The Instructions for Form 8962, Premium Tax Credit (PTC), has more information about the Shared Policy Allocation.

Married Filing Jointly

If you are married, you and your spouse can choose to file a joint return. If you file jointly, you both must include all your income, deductions, and credits on that return. You can file a joint return even if one of you had no income or deductions.



If both you and your spouse have income, you should usually figure your tax on both a joint return and separate returns (using the filing status of married filing separately) to see which gives the two of you the lower combined tax.

Nonresident alien. To file a joint return, at least one of you must be a U.S. citizen or resident alien at the end of the tax year. If either of you was a nonresident alien at any time during the tax year, you can file a joint return only if you agree to treat the nonresident spouse as a resident of the United States. This means that your combined worldwide incomes are subject to U.S. income tax. These rules are explained in Pub. 519.

Signing a joint return. Both you and your spouse must generally sign the return, or it won't be considered a joint return.

Joint and individual liability. Both you and your spouse may be held responsible, jointly and individually, for the tax and any interest or penalty due on your joint return. This means that one spouse may be held liable for all the tax due even if all the income was earned by the other spouse.

Divorced taxpayers. If you are divorced, you are jointly and individually responsible for any tax, interest, and penalties due on a joint return for a tax year ending before your divorce. This responsibility applies even if your divorce decree states that your former spouse will be responsible for any amounts due on previously filed joint returns.

Relief from joint liability. In some cases, a spouse may be relieved of the tax, interest, and penalties on a joint return. You can ask for relief no matter how small the liability.

There are three types of relief available.

- Innocent spouse relief.

- Separation of liability (available only to joint filers whose spouse has died, or who are divorced, who are legally separated, or who haven't lived together for the 12 months ending on the date the election for this relief is filed).
- Equitable relief.

Married persons who live in community property states, but who didn't file joint returns, may also qualify for relief from liability for tax attributable to an item of community income or for equitable relief. See *Relief from liability for tax attributable to an item of community income*, later, under *Community Property*.

Each kind of relief has different requirements. You must file Form 8857 to request relief under any of these categories. Pub. 971 explains these kinds of relief and who may qualify for them. You can also find information on our website at IRS.gov.

Tax refund applied to spouse's debts. The overpayment shown on your joint return may be used to pay the past-due amount of your spouse's debts. This includes your spouse's federal tax, state income tax, child or spousal support payments, or a federal nontax debt, such as a student loan. You can get a refund of your share of the overpayment if you qualify as an injured spouse.

Injured spouse. You are an injured spouse if you file a joint return and all or part of your share of the overpayment was, or is expected to be, applied against your spouse's past-due debts. An injured spouse can get a refund for their share of the overpayment that would otherwise be used to pay the past-due amount.

To be considered an injured spouse, you must:

1. Have made and reported tax payments (such as federal income tax withheld from wages or estimated tax

payments), or claimed a refundable tax credit, such as the earned income credit or additional child tax credit on the joint return; and

2. Not be legally obligated to pay the past-due amount.

If the injured spouse's permanent home is in a community property state, then the injured spouse must only meet (2). For more information, see Pub. 555.

If you are an injured spouse, you must file Form 8379 to have your portion of the overpayment refunded to you. Follow the instructions for the form.

If you haven't filed your joint return and you know that your joint refund will be offset, file Form 8379 with your return. You should receive your refund within 14 weeks from the date the paper return is filed or within 11 weeks from the date the return is filed electronically.

If you filed your joint return and your joint refund was offset, file Form 8379 by itself. When filed after offset, it can take up to 8 weeks to receive your refund. Don't attach the previously filed tax return, but do include copies of all Forms W-2, Wage and Tax Statement, and W-2G, Certain Gambling Winnings, for both spouses and any Forms 1099 that show income tax withheld.



An injured spouse claim is different from an innocent spouse relief request. An injured spouse uses Form 8379 to request an allocation of the tax overpayment attributed to each spouse. An innocent spouse uses Form 8857 to request relief from joint liability for tax, interest, and penalties on a joint return for items of the other spouse (or former spouse) that were incorrectly reported on or omitted from the joint return. For information on innocent spouses, see Relief from joint liability, earlier.

Married Filing Separately

If you and your spouse file separate returns, you should each report only your own income, deductions, and credits on your individual return. You can file a separate return even if only one of you had income.

Community or separate income. If you live in a community property state and file a separate return, your income may be separate income or community income for income tax purposes. For more information, see *Community Income* under *Community Property*, later.

Separate liability. If you and your spouse file separately, you each are responsible only for the tax due on your own return.

Itemized deductions. If you and your spouse file separate returns and one of you itemizes deductions, the other spouse can't use the standard deduction and should also itemize deductions.

Dividing itemized deductions. You may be able to claim itemized deductions on a separate return for certain expenses that you paid separately or jointly with your spouse. See Table 1.

Separate returns may give you a higher tax. Some married couples file separate returns because each wants to be responsible only for their own tax. There is no joint liability. But in almost all instances, if you file separate returns, you will pay more combined federal tax than you would with a joint return. This is because the following special rules apply if you file a separate return.

1. Your tax rate is generally higher than it would be on a joint return.
2. Your exemption amount for figuring the alternative minimum tax is half of that allowed on a joint return.
3. You can't take the credit for child and dependent care expenses in most

cases, and the amount you can exclude from income under an employer's dependent care assistance program is limited to \$2,500 (instead of \$5,000 on a joint return). If you are legally separated or living apart from your spouse, you may be able to file a separate return and still take the credit. See Pub. 503 for more information.

4. You can't take the earned income credit unless you have a qualifying child.
5. You can't take the exclusion or credit for adoption expenses in most cases.
6. You can't exclude the interest from qualified savings bonds that you used for higher education expenses.
7. If you lived with your spouse at any time during the tax year:

- a. You can't claim the credit for the elderly or the disabled, and
 - b. You will have to include in income a higher percentage (up to 85%) of any social security or equivalent railroad retirement benefits you received.
- 8. The following credits and deductions are reduced at income levels that are half those for a joint return.
 - a. The child tax credit.
 - b. The retirement savings contributions credit.
- 9. Your capital loss deduction limit is \$1,500 (instead of \$3,000 on a joint return).
- 10. If your spouse itemizes deductions, you can't claim the standard deduction. If you can claim the standard deduction, your basic

standard deduction is half the amount allowed on a joint return.

11. You can't take the credit for higher education expenses (American opportunity and lifetime learning credits) or the deduction for student loan interest.

Joint return after separate returns. If either you or your spouse (or both of you) file a separate return, you can generally change to a joint return within 3 years from the due date (not including extensions) of the separate return or returns. This applies to a return either of you filed claiming married filing separately, single, or head of household filing status. Use Form 1040-X to change your filing status.

Separate returns after joint return. After the due date of your return, you and your spouse can't file separate returns if you previously filed a joint return.

Table 1. Itemized Deductions on Separate Returns

This table shows itemized deductions you can claim on your married filing separate return whether you paid the expenses separately with your own funds or jointly with your spouse.

Caution: *If you live in a community property state, these rules don't apply. See [Community Property](#).*

IF you paid ...	AND you ...	THEN you can deduct on your separate federal return ...
medical expenses	paid with funds deposited in a joint checking account in which you and your spouse have an equal interest	half of the total medical expenses, subject to certain limits, unless you can show that you alone paid the expenses.
state income tax	file a separate state income tax return	the state income tax you alone paid during the year.
	file a joint state income tax return and you and your spouse are jointly and individually liable for the full amount of the state income tax	the state income tax you alone paid during the year.
	file a joint state income tax return and you are liable for only your own share of state income tax	the smaller of: <ul style="list-style-type: none">• the state income tax you alone paid during the year; or• the total state income tax you and your spouse paid during the year multiplied by the following fraction. The numerator is your gross income and the denominator is your combined gross income.
property tax	paid the tax on property held as tenants by the entirety	the property tax you alone paid.
mortgage interest	paid the interest on a qualified home ¹ held as tenants by the entirety	the mortgage interest you alone paid.
casualty loss	have a casualty loss ² resulting from a federally declared disaster on a home you own as tenants by the entirety	half of the loss, subject to the deduction limits. Neither spouse may report the total casualty loss.

¹ For more information on a qualified home and deductible mortgage interest, see Pub. 936.

² For more information on casualty losses, see Pub. 547.

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Exception. A personal representative for a decedent can change from a joint return elected by the surviving spouse to a separate return for the decedent. The personal representative has 1 year from the due date (including extensions) of the joint return to make the change.

Head of Household

Filing as head of household has the following advantages. • You can claim the standard deduction even if your spouse files a separate return and itemizes deductions.

- Your standard deduction is higher than is allowed if you claim a filing status of single or married filing separately.
- Your tax rate will usually be lower than it is if you claim a filing status of single or married filing separately.

- You may be able to claim certain credits (such as the dependent care credit) you can't claim if your filing status is married filing separately.
- Income limits that reduce your child tax credit and your retirement savings contributions credit, for example, are higher than the income limits if you claim a filing status of married filing separately.

Requirements. You may be able to file as head of household if you meet all of the following requirements.

- You are unmarried or "considered unmarried" on the last day of the year.
- You paid more than half the cost of keeping up a home for the year.
- A "qualifying person" lived with you in the home for more than half the year (except for temporary absences, such as school). However, if the "qualifying person" is your dependent parent, they don't have to live

with you. See Special rule for parent, later, under Qualifying person.

Considered unmarried. You are considered unmarried on the last day of the tax year if you meet all of the following tests.

- You file a separate return. A separate return includes a return claiming married filing separately, single, or head of household filing status.
- You paid more than half the cost of keeping up your home for the tax year.
- Your spouse didn't live in your home during the last 6 months of the tax year. Your spouse is considered to live in your home even if your spouse is temporarily absent due to special circumstances. See Temporary absences, later.
- Your home was the main home of your child, stepchild, or foster child for more than half the year. (See Qualifying person, later, for rules applying to a child's birth,

death, or temporary absence during the year.)

- You must be able to claim the child as a dependent. However, you meet this test if you can't claim the child as a dependent only because the noncustodial parent can claim the child. The general rules for claiming a dependent are shown in Table 3.



If you were considered married for part of the year and lived in a community property state (one of the states listed later under Community Property), special rules may apply in determining your income and expenses. See Pub. 555 for more information.

Nonresident alien spouse. If your spouse was a nonresident alien at any time during the tax year, and you haven't chosen to treat your spouse as a resident alien, you are considered unmarried for head of household purposes. However, your spouse isn't a

qualifying person for head of household purposes. You must have another qualifying person and meet the other requirements to file as head of household.

Keeping up a home. You are keeping up a home only if you pay more than half the cost of its upkeep for the year. This includes rent, mortgage interest, real estate taxes, insurance on the home, repairs, utilities, and food eaten in the home. This doesn't include the cost of clothing, education, medical treatment, vacations, life insurance, or transportation for any member of the household.

Qualifying person. Table 2 shows who can be a qualifying person. Any person not described in Table 2 isn't a qualifying person.

Generally, the qualifying person must live with you for more than half of the year.

Special rule for parent. If your qualifying person is your parent, you may be eligible to file as head of household even if your parent doesn't live with you. However, you must be able to claim your parent as a dependent. Also, you must pay more than half the cost of keeping up a home that was the main home for the entire year for your parent.

You are keeping up a main home for your parent if you pay more than half the cost of keeping your parent in a rest home or home for the elderly.

Death or birth. If the person for whom you kept up a home was born or died in 2023, you may still be able to file as head of household. If the person is your qualifying child, the child must have lived with you for more than half the part of the year the child was alive. If the person is anyone else, see Pub. 501.

Temporary absences. You and your qualifying person are considered to live together even if one or both of you are temporarily absent from your home due to special circumstances such as illness, education, business, vacation, military service, or detention in a juvenile facility. It must be reasonable to assume that the absent person will return to the home after the temporary absence. You must continue to keep up the home during the absence.

Kidnapped child. You may be eligible to file as head of household even if the child who is your qualifying person has been kidnapped. You can claim head of household filing status if all of the following statements are true. • The child is presumed by law enforcement authorities to have been kidnapped by someone who isn't a member of your family or the child's family.

- In the year of the kidnapping, the child lived with you for more than half the part of the year before the kidnapping.
- In the year of the child's return, the child lived with you for more than half the part of the year following the date of the child's return.
- You would have qualified for head of household filing status if the child hadn't been kidnapped.

This treatment applies for all years until the earliest of:

1. The year the child is returned,
2. The year there is a determination that the child is dead, or
3. The year the child would have reached age 18.

For more information on filing as head of household, see Pub. 501.

Table 2. **Who Is a Qualifying Person Qualifying You To File as Head of Household?**¹

Caution. See the text of this publication for the other requirements you must meet to claim head of household filing status.

IF the person is your ...	AND ...	THEN that person is ...
qualifying child (such as a son, daughter, or grandchild who lived with you more than half the year and meets certain other tests) ²	the child is single	a qualifying person, whether or not the child meets the <i>Citizen or Resident Test</i> , described in Pub. 501.
	the child is married <u>and</u> you can claim the child as a dependent	a qualifying person.
	the child is married <u>and</u> you can't claim the child as a dependent	not a qualifying person. ³
qualifying relative ⁴ who is your father or mother	you can claim your parent as a dependent ⁵	a qualifying person. ⁶
	you can't claim your parent as a dependent	not a qualifying person.
qualifying relative ⁴ other than your father or mother (such as a grandparent, brother, or sister who meets certain tests)	your relative lived with you more than half the year, <u>and</u> your relative is related to you in one of the ways listed under <i>Relatives who don't have to live with you</i> in Pub. 501 <u>and</u> you can claim your relative as a dependent ⁵	a qualifying person.
	your relative didn't live with you more than half the year	not a qualifying person.
	your relative isn't related to you in one of the ways listed under <i>Relatives who don't have to live with you</i> in Pub. 501 <u>and</u> is your qualifying relative only because your relative lived with you all year as a member of your household	not a qualifying person.
	you can't claim your relative as a dependent	not a qualifying person.

¹ A person can't qualify more than one taxpayer to use the head of household filing status for the year.

² See [Table 3](#) for the tests that must be met to be a qualifying child. **Note.** If you are a noncustodial parent, the term "qualifying child" for head of household filing status doesn't include a child who is your qualifying child only because of the rules described under [Children of Divorced or Separated Parents \(or Parents Who Live Apart\)](#) under *Qualifying Child*, later. If you are the custodial parent and those rules apply, the child is generally your qualifying child for head of household filing status even though you can't claim the child as a dependent.

³ This person is a qualifying person if the only reason you can't claim them as a dependent is because you can be claimed as a dependent on someone else's return.

⁴ See [Table 3](#) for the tests that must be met to be a qualifying relative.

⁵ If you can claim a person as a dependent only because of a multiple support agreement, that person isn't a qualifying person. See *Multiple Support Agreement* in Pub. 501.

⁶ See [Special rule for parent](#).

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Dependents

Qualifying Child or Qualifying Relative

The term “dependent” means:

- A qualifying child, or
- A qualifying relative.

Table 3 shows the tests that must be met to be either a qualifying child or qualifying relative, plus the additional requirements for claiming a dependent. For detailed information, see Pub. 501.



You may be entitled to a child tax credit for each qualifying child who was under age 17 at the end of the year if you claimed that child as a dependent. If you can't claim the child tax credit for a child who is an eligible dependent, you may be able to claim the credit for other dependents instead. See the Instructions for Form 1040 for details.

Children of Divorced or Separated Parents (or Parents Who Live Apart)

In most cases, because of the residency test (see item 3 under *Tests To Be a Qualifying Child* in Table 3), a child of divorced or separated parents is the qualifying child of the custodial parent. However, the child will be treated as the qualifying child of the noncustodial parent if the rule for children of divorced or separated parents (or parents who live apart) applies.

Children of divorced or separated parents (or parents who live apart). A child will be treated as the qualifying child of the noncustodial parent if all four of the following statements are true.

Table 3. **Overview of the Rules for Claiming a Dependent**

Caution. This table is only an overview of the rules. For details, see Pub. 501.

<ul style="list-style-type: none">You can't claim any dependents if you, or your spouse if filing jointly, could be claimed as a dependent by another taxpayer.You can't claim a married person who files a joint return as a dependent unless that joint return is filed only to claim a refund of withheld income tax or estimated tax paid.You can't claim a person as a dependent unless that person is a U.S. citizen, U.S. resident alien, U.S. national, or a resident of Canada or Mexico.¹You can't claim a person as a dependent unless that person is your qualifying child or qualifying relative.	
Tests To Be a Qualifying Child	Tests To Be a Qualifying Relative
<ol style="list-style-type: none">The child must be your son, daughter, stepchild, foster child, brother, sister, half brother, half sister, stepbrother, stepsister, or a descendant of any of them.The child must be (a) under age 19 at the end of the year and younger than you (or your spouse if filing jointly), (b) under age 24 at the end of the year, a student, and younger than you (or your spouse if filing jointly), or (c) any age if permanently and totally disabled.The child must have lived with you for more than half of the year.²The child must not have provided more than half of the child's own support for the year.The child must not be filing a joint return for the year (unless that joint return is filed only to claim a refund of withheld income tax or estimated tax paid). <p>A child isn't a qualifying child unless the child meets items (1) through (5).</p> <p>If the child meets the rules to be a qualifying child of more than one person, only one person can actually treat the child as a qualifying child. See Qualifying Child of More Than One Person, later, to find out which person is the person entitled to claim the child as a qualifying child.</p>	<ol style="list-style-type: none">The person can't be your qualifying child or the qualifying child of anyone else.The person either (a) must be related to you in one of the ways listed under <i>Relatives who don't have to live with you</i> in Pub. 501, or (b) must live with you all year as a member of your household ² (and your relationship must not violate local law).The person's gross income for the year must be less than \$4,700.³You must provide more than half of the person's total support for the year.⁴ <p>A person isn't a qualifying relative unless the person meets items (1) through (4).</p>

¹ An exception exists for certain adopted children.

² Exceptions exist for temporary absences, children who were born or died during the year, children of divorced or separated parents (or parents who live apart), and kidnapped children.

³ An exception exists for persons who are disabled and have income from a sheltered workshop.

⁴ Exceptions exist for multiple support agreements, children of divorced or separated parents (or parents who live apart), and kidnapped children. See Pub. 501.

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1. The parents:
 - a. Are divorced or legally separated under a decree of divorce or separate maintenance,
 - b. Are separated under a written separation agreement, or
 - c. Lived apart at all times during the last 6 months of the year, whether or not they are or were married.
2. The child received over half of the support for the year from the parents.
3. The child is in the custody of one or both parents for more than half of the year.
4. Either of the following applies.
 - a. The custodial parent signs a written declaration, discussed later, that they won't claim the child as a dependent for the year,

and the noncustodial parent attaches this written declaration to their return. (If the decree or agreement went into effect after 1984, see *Divorce decree or separation agreement that went into effect after 1984 and before 2009*, or *Post-2008 divorce decree or separation agreement*, later).

- b. A pre-1985 decree of divorce or separate maintenance or written separation agreement that applies to 2023 states that the noncustodial parent can claim the child as a dependent, the decree or agreement wasn't changed after 1984 to say the noncustodial parent can't claim the child as a dependent, and the noncustodial parent provides

at least \$600 for the child's support during the year.

See Child support under pre-1985 agreement, later.

Custodial parent and noncustodial parent. The custodial parent is the parent with whom the child lived for the greater number of nights during the year. The other parent is the noncustodial parent.

If the parents divorced or separated during the year and the child lived with both parents before the separation, the custodial parent is the one with whom the child lived for the greater number of nights during the rest of the year.

A child is treated as living with a parent for a night if the child sleeps:

- At that parent's home, whether or not the parent is present; or

- In the company of the parent, when the child doesn't sleep at a parent's home (for example, the parent and child are on vacation together).

Equal number of nights. If the child lived with each parent for an equal number of nights during the year, the custodial parent is the parent with the higher adjusted gross income.

December 31. The night of December 31 is treated as part of the year in which it begins. For example, the night of December 31, 2023, is treated as part of 2023.

Emancipated child. If a child is emancipated under state law, the child is treated as not living with either parent. See *Examples 5* and *6*.

Absences. If a child wasn't with either parent on a particular night (because, for example, the child was staying at a friend's house), the child is treated as living with the parent with

whom the child normally would have lived for that night, except for the absence. But if it can't be determined with which parent the child normally would have lived or if the child wouldn't have lived with either parent that night, the child is treated as not living with either parent that night.

Parent works at night. If, due to a parent's nighttime work schedule, a child lives for a greater number of days but not nights with the parent who works at night, that parent is treated as the custodial parent. On a school day, the child is treated as living at the primary residence registered with the school.

Example 1—child lived with one parent for a greater number of nights. You and your child's other parent are divorced. In 2023, your child lived with you 210 nights and with the other parent 155 nights. You are the custodial parent.

Example 2—child is away at camp. In 2023, your child lives with each parent for alternate weeks. In the summer, the child spends 6 weeks at summer camp. During the time the child is at camp, the child is treated as living with you for 3 weeks and with the other parent, your ex-spouse, for 3 weeks because this is how long the child would have lived with each parent if the child hadn't attended summer camp.

Example 3—child lived same number of days with each parent. Your child lived with you 180 nights during the year and lived the same number of nights with the other parent, your ex-spouse. Your adjusted gross income is \$40,000. Your ex-spouse's adjusted gross income is \$25,000. You are treated as your child's custodial parent because you have the higher adjusted gross income.

Example 4—child is at parent's home but with other parent. Your child normally lives with you during the week and with the other

parent, your ex-spouse, every other weekend. You become ill and are hospitalized. The other parent lives in your home with your child for 10 consecutive days while you are in the hospital. Your child is treated as living with you during this 10-day period because the child was living in your home.

Example 5—child emancipated in May.

When your child turned age 18 in May 2023, the child became emancipated under the law of the state where the child lives. As a result, the child isn't considered in the custody of the parents for more than half of the year. The special rule for children of divorced or separated parents (or parents who live apart) doesn't apply.

Example 6—child emancipated in August.

Your child lives with you from January 1, 2023, until May 31, 2023, and lives with the other parent, your ex-spouse, from June 1, 2023, through the end of the year. The child turns 18 and is emancipated under state law

on August 1, 2023. Because the child is treated as not living with either parent beginning on August 1, the child is treated as living with you the greater number of nights in 2023. You are the custodial parent.

Written declaration. The custodial parent must use either Form 8332, Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent, or a similar statement (containing the same information required by the form) to make a written declaration to release a claim to an exemption for a child to the noncustodial parent. Although the exemption amount is zero for tax year 2023, this release allows the noncustodial parent to claim the child tax credit, additional child tax credit, and credit for other dependents, if applicable, for the child. The noncustodial parent must attach a copy of the form or statement to their tax return each year the custodial parent releases their claims.

The release can be for 1 year, for a number of specified years (for example, alternate years), or for all future years, as specified in the declaration.



Form 8332 doesn't apply to other tax benefits, such as the earned income credit, dependent care credit, or head of household filing status. See Pub. 501.

Divorce decree or separation agreement that went into effect after 1984 and before 2009. If the divorce decree or separation agreement went into effect after 1984 and before 2009, the noncustodial parent may be able to attach certain pages from the decree or agreement instead of Form 8332. The decree or agreement must state all three of the following.

1. The noncustodial parent can claim the child as a dependent without regard to any condition, such as payment of support.

2. The custodial parent won't claim the child as a dependent for the year.
3. The years for which the noncustodial parent, rather than the custodial parent, can claim the child as a dependent.

The noncustodial parent must attach all of the following pages of the decree or agreement to their tax return.

- The cover page (write the other parent's SSN on this page).
- The pages that include all of the information identified in items (1) through (3) above.
- The signature page with the other parent's signature and the date of the agreement.

Post-2008 divorce decree or separation agreement. If the decree or agreement went into effect after 2008, a noncustodial parent claiming a child as a dependent can't attach

pages from a divorce decree or separation agreement instead of Form 8332. The custodial parent must sign either a Form 8332 or a similar statement. The only purpose of this statement must be to release the custodial parent's claim to an exemption. The noncustodial parent must attach a copy to their return. The form or statement must release the custodial parent's claim to the child without any conditions. For example, the release must not depend on the noncustodial parent paying support.



The noncustodial parent must attach the required information even if it was filed with a return in an earlier year.

Revocation of release of claim to an exemption. The custodial parent can revoke a release of claim to an exemption that they previously released to the noncustodial parent. For the revocation to be effective for 2023, the custodial parent must have given (or made reasonable efforts to give) written

notice of the revocation to the noncustodial parent in 2022 or earlier. The custodial parent can use Part III of Form 8332 for this purpose and must attach a copy of the revocation to their return for each tax year the custodial parent claims the child as a dependent as a result of the revocation.

Remarried parent. If you remarry, the support provided by your new spouse is treated as provided by you.

Child support under pre-1985 agreement. All child support payments actually received from the noncustodial parent under a pre-1985 agreement are considered used for the support of the child.

Example. Under a pre-1985 agreement, the noncustodial parent provides \$1,200 for the child's support. This amount is considered support provided by the noncustodial parent even if the \$1,200 was actually spent on things other than support.

Parents who never married. This rule for divorced or separated parents also applies to parents who never married and lived apart at all times during the last 6 months of the year.

Alimony. Payments to your spouse that are includible in their gross income as either alimony, separate maintenance payments, or similar payments from an estate or trust aren't treated as a payment for the support of a dependent.

Qualifying Child of More Than One Person



If your qualifying child isn't a qualifying child of anyone else, this topic doesn't apply to you and you don't need to read about it. This is also true if your qualifying child isn't a qualifying child of anyone else except your spouse with whom you plan to file a joint return.



If a child is treated as the qualifying child of the noncustodial parent under the rules for Children of divorced or separated parents (or parents who live apart), earlier, see Applying the tiebreaker rules to divorced or separated parents (or parents who live apart), later.

Sometimes, a child meets the relationship, age, residency, support, and joint return tests to be a qualifying child of more than one person. (For a description of these tests, see list items 1 through 5 under Tests To Be a Qualifying Child in Table 3). Although the child meets the conditions to be a qualifying child of each of these persons, only one person can actually claim the child as a qualifying child to take the following tax benefits (provided the person is eligible).

1. The child tax credit, the credit for other dependents, and the additional child tax credit.
2. Head of household filing status.

3. The credit for child and dependent care expenses.
4. The exclusion from income for dependent care benefits.
5. The earned income credit.

In other words, you and the other person can't agree to divide these tax benefits between you.

Tiebreaker rules. To determine which person can treat the child as a qualifying child to claim these tax benefits, the following tiebreaker rules apply.

- If only one of the persons is the child's parent, the child is treated as the qualifying child of the parent.
- If the parents file a joint return together and can claim the child as a qualifying child, the child is treated as the qualifying child of the parents.

- If the parents don't file a joint return together but both parents claim the child as a qualifying child, the IRS will treat the child as the qualifying child of the parent with whom the child lived for the longer period of time during the year.
- If the parents don't file a joint return together but both can claim the child as a qualifying child and the child lived with each parent for the same amount of time, the IRS will treat the child as the qualifying child of the parent who had the higher adjusted gross income (AGI) for the year.
- If no parent can claim the child as a qualifying child, the child is treated as the qualifying child of the person who had the highest AGI for the year.
- If a parent can claim the child as a qualifying child but no parent claims the child, the child is treated as the qualifying child of the person who had the highest

AGI for the year, but only if that person's AGI is higher than the highest AGI of any of the child's parents who can claim the child. See Pub. 501 for details.

Subject to these tiebreaker rules, you and the other person may be able to choose which of you claims the child as a qualifying child.

You may be able to qualify for the earned income credit under the rules for taxpayers without a qualifying child if you have a qualifying child for the earned income credit who is claimed as a qualifying child by another taxpayer. For more information, see Pub. 596.

Example 1—separated parents. You, your spouse, and your 10-year-old child lived together until August 1, 2023, when your spouse moved out of the household. In August and September, your child lived with you. For the rest of the year, your child lived with your spouse, the child's other parent. Your child is a qualifying child of both you and

your spouse because your child lived with each of you for more than half the year and because the child met the relationship, age, support, and joint return tests for both of you. At the end of the year, you and your spouse still weren't divorced, legally separated, or separated under a written separation agreement, so the rule for children of divorced or separated parents (or parents who live apart) doesn't apply.

You and your spouse will file separate returns. Your spouse agrees to let you treat your child as a qualifying child. This means, if your spouse doesn't claim your child as a qualifying child, you can claim your child as a dependent and treat your child as a qualifying child for the child tax credit and exclusion for dependent care benefits, if you qualify for each of those tax benefits. However, you can't claim head of household filing status because you and your spouse didn't live apart the last 6 months of the year. And, as a result

of your filing status being married filing separately, you can't claim the credit for child and dependent care expenses.

Example 2—separated parents claim same child. The facts are the same as in *Example 1* except that you and your spouse both claim your child as a qualifying child. In this case, only your spouse will be allowed to treat your child as a qualifying child. This is because, during 2023, the child lived with the other parent longer than with you. If you claimed the child tax credit for your child, the IRS will disallow your claim to the child tax credit. If you don't have another qualifying child or dependent, the IRS will also disallow your claim to the exclusion for dependent care benefits. In addition, because you and your spouse didn't live apart the last 6 months of the year, your spouse can't claim head of household filing status. And, as a result of the other spouse's filing status being married filing separately, the other spouse

can't claim the credit for child and dependent care expenses.

Applying the tiebreaker rules to divorced or separated parents (or parents who live apart).

If a child is treated as the qualifying child of the noncustodial parent under the rules for children of divorced or separated parents (or parents who live apart) described earlier, only the noncustodial parent can claim the child tax credit or the credit for other dependents for the child.

However, the custodial parent, if eligible, or other eligible person can claim the child as a qualifying child for head of household filing status, the credit for child and dependent care expenses, the exclusion for dependent care benefits, and the earned income credit. If the child is a qualifying child of more than one person for these benefits, then the tiebreaker rules determine whether the custodial parent or another eligible person can treat the child as a qualifying child.

Example 1. You and your 5-year-old child lived all year with your parent, who paid the entire cost of keeping up the home. Your AGI is \$10,000. Your parent's AGI is \$25,000. Your child's other parent doesn't live with you or your child.

Under the rules for children of divorced or separated parents (or parents who live apart), your child is treated as the qualifying child of the other parent, who can claim the child tax credit for the child if the other parent meets all the requirements to do so. Because of this, you can't claim the child tax credit for your child. However, your child's other parent can't claim your child as a qualifying child for head of household filing status, the credit for child and dependent care expenses, the exclusion for dependent care benefits, or the earned income credit.

You and your parent didn't have any childcare expenses or dependent care benefits, but the child is a qualifying child of both you and your

parent for head of household filing status and the earned income credit because the child meets the relationship, age, residency, support, and joint return tests for both you and your parent. (**Note:** The support test doesn't apply for the earned income credit.) However, you agree to let your parent claim your child. This means your parent can claim the child for head of household filing status and the earned income credit if your parent qualifies for each and if you don't claim the child as a qualifying child for the earned income credit. (You can't claim head of household filing status because your parent paid the entire cost of keeping up the home.)

Example 2. The facts are the same as in Example 1 except that your AGI is \$25,000 and your parent's AGI is \$21,000. Your parent can't claim your child as a qualifying child for any purpose because your parent's AGI isn't higher than yours.

Example 3. The facts are the same as in Example 1 except that you and your parent both claim your child as a qualifying child for the earned income credit. Your parent also claims your child as a qualifying child for head of household filing status. You, as the child's parent, will be the only one allowed to claim your child as a qualifying child for the earned income credit. The IRS will disallow your parent's claim to the earned income credit and head of household filing status unless your parent has another qualifying child.

Alimony



Amounts paid as alimony or separate maintenance payments under a divorce or separation instrument executed after 2018 won't be deductible by the payer. Such amounts also won't be includible in the income of the recipient. The same is true of alimony paid under a divorce or separation instrument executed before 2019 and modified after 2018, if the

modification expressly states that the alimony isn't deductible to the payer or includible in the income of the recipient. See Certain Rules for Instruments Executed or Modified After 2018, later.

Alimony is a payment to or for a spouse or former spouse under a divorce or separation instrument. It doesn't include voluntary payments that aren't made under a divorce or separation instrument.

Although this discussion is generally written for the payer of the alimony, the recipient can also use the information to determine whether an amount received is alimony.

To be alimony, a payment must meet certain requirements. There are some differences between the requirements that apply to payments under instruments executed after 1984 and to payments under instruments executed before 1985. General alimony requirements and specific requirements that apply to post-1984 instruments (and, in

certain cases, some pre-1985 instruments) are discussed in this publication. See *Instruments Executed Before 1985*, later, if you are looking for information on where to find the specific requirements that apply to pre-1985 instruments.

Spouse or former spouse. Unless otherwise stated, the term “spouse” includes former spouse.

Divorce or separation instrument. The term “divorce or separation instrument” means:

- A decree of divorce or separate maintenance or a written instrument incident to that decree;
- A written separation agreement; or
- A decree or any type of court order requiring a spouse to make payments for the support or maintenance of the other spouse. This includes a temporary decree, an interlocutory (not final) decree, and a

decree of alimony pendente lite (while awaiting action on the final decree or agreement).

Invalid decree. Payments under a divorce decree can be alimony even if the decree's validity is in question. A divorce decree is valid for tax purposes until a court having proper jurisdiction holds it invalid.

Amended instrument. An amendment to a divorce decree may change the nature of your payments. Amendments aren't ordinarily retroactive for federal tax purposes. However, a retroactive amendment to a divorce decree correcting a clerical error to reflect the original intent of the court will generally be effective retroactively for federal tax purposes.

Example 1. A court order retroactively corrected a mathematical error under your divorce decree to express the original intent to spread the payments over more than 10

years. This change is also effective retroactively for federal tax purposes.

Example 2. Your original divorce decree didn't fix any part of the payment as child support. To reflect the true intention of the court, a court order retroactively corrected the error by designating a part of the payment as child support. The amended order is effective retroactively for federal tax purposes.

Deducting alimony paid. Alimony is deductible by the payer, and the recipient must include it in income if you entered into a divorce or separation agreement on or before December 31, 2018. Alimony paid is not deductible if you entered into a divorce or separation agreement on or before December 31, 2018, and the agreement is changed after December 31, 2018, to expressly provide that alimony received is not included in your former spouse's income. Alimony paid is not deductible if you entered into a divorce or

separation agreement after December 31, 2018.

You must use Form 1040 or 1040-SR to deduct alimony you paid. You can't use Form 1040-NR.

Enter the amount of alimony you paid on Schedule 1 (Form 1040), line 19a. In the space provided on line 19b, enter your recipient's SSN or ITIN.

If you paid alimony to more than one person, enter the SSN or ITIN of one of the recipients. Show the SSN or ITIN and amount paid to each other recipient on an attached statement. Enter your total payments on line 19a.



If you don't provide your spouse's SSN or ITIN, you may have to pay a \$50 penalty and your deduction may be disallowed.

Reporting alimony received. If your alimony is included in your income, and you file Form 1040 or 1040-SR, report alimony you received on Schedule 1 (Form 1040), line 2a. If you file Form 1040-NR, report alimony you received on Schedule NEC (Form 1040-NR).



You must give the person who paid the alimony your SSN or ITIN. If you don't, you may have to pay a \$50 penalty.

Withholding on nonresident aliens. If you are a U.S. citizen or resident alien and you pay alimony to a nonresident alien spouse, you may have to withhold income tax at a rate of 30% on each payment. However, many tax treaties provide for an exemption from withholding for alimony payments. For more information, see Pub. 515.

Alimony Payment Rules for Instruments Executed Prior to 2019

If you entered into a divorce or separation agreement on or before December 31, 2018, and the agreement has not been changed after December 31, 2018, to expressly provide that alimony received is not included in your former spouse's income, the following rules apply.

Payments not alimony. Not all payments under a divorce or separation instrument are alimony. Alimony doesn't include:

- Child support,
- Noncash property settlements,
- Payments that are your spouse's part of community income, as explained later under Community Property,
- Payments to keep up the payer's property, or
- Use of the payer's property.

Example. Under your written separation agreement, your spouse lives rent-free in a home you own and you must pay the mortgage, real estate taxes, insurance, repairs, and utilities for the home. Because you own the home and the debts are yours, your payments for the mortgage, real estate taxes, insurance, and repairs aren't alimony. Neither is the value of your spouse's use of the home.

If utility payments otherwise qualify as alimony, you may be able to deduct these payments as alimony. Your spouse must report them as income. If you itemize deductions, you can deduct the real estate taxes and, if the home is a qualified home, you can also include the interest on the mortgage in figuring your deductible interest. However, if your spouse owned the home, see Example 2 under *Payments to a third party*, later. If you owned the home jointly with your

spouse, see Table 4. For more information, see Pub. 936.

Child support. To determine whether a payment is child support, see the discussion under *Certain Rules for Instruments Executed After 1984*, later. If your divorce or separation agreement was executed before 1985, see the 2004 revision of Pub. 504, available at [IRS.gov/ FormsPubs](https://www.irs.gov/forms-pubs).

Underpayment. If both alimony and child support payments are called for by your divorce or separation instrument, and you pay less than the total required, the payments apply first to child support and then to alimony.

Example. Your divorce decree calls for you to pay your former spouse \$200 a month (\$2,400 (\$200 x 12) a year) as child support and \$150 a month (\$1,800 (\$150 x 12) a year) as alimony. If you pay the full amount of \$4,200 (\$2,400 + \$1,800) during the year, you can deduct \$1,800 as alimony and your

former spouse must report \$1,800 as alimony received for a divorce decree executed prior to 2019. If you pay only \$3,600 during the year, \$2,400 is child support. You can deduct only \$1,200 ($\$3,600 - \$2,400$) as alimony and your former spouse must report \$1,200 as alimony received instead of \$1,800. This is because the payments apply first to child support and then to alimony.

Payments to a third party. Cash payments, checks, or money orders to a third party on behalf of your spouse under the terms of your divorce or separation instrument can be alimony, if they otherwise qualify. These include payments for your spouse's medical expenses, housing costs (rent, utilities, etc.), taxes, tuition, etc. The payments are treated as received by your spouse and then paid to the third party.

Example 1. Under your 2018 divorce decree, you must pay your former spouse's medical and dental expenses. If the payments

otherwise qualify, you can deduct them as alimony on your return. Your former spouse must report them as alimony received and can include them in figuring deductible medical expenses.

Example 2. Under your 2018 separation agreement, you must pay the real estate taxes and mortgage payments on a home owned by your spouse. If they otherwise qualify, you can deduct the payments as alimony on your return, and your spouse must report them as alimony received. Your spouse may be able to deduct the real estate taxes and home mortgage interest, subject to the limitations on those deductions. See the Instructions for Schedule A (Form 1040). However, if you owned the home, see the example under *Payments not alimony*, earlier. If you owned the home jointly with your spouse, see Table 4.

Table 4. **Expenses for a Jointly Owned Home**

Use the table below to find how much of your payment is alimony and how much you can claim as an itemized deduction.

IF you must pay all of the ...	AND your home is ...	THEN you can deduct and your spouse (or former spouse) must include as alimony ...	AND you can claim as an itemized deduction ...
mortgage payments (principal and interest)	jointly owned	half of the total payments	half of the interest as interest expense (if the home is a qualified home). ¹
real estate taxes	held as tenants in common	half of the total payments	half of the real estate taxes. ²
	held as tenants by the entirety or in joint tenancy	none of the payments	all of the real estate taxes.

¹ Your spouse (or former spouse) can deduct the other half of the interest if the home is a qualified home.

² Your spouse (or former spouse) can deduct the other half of the real estate taxes.

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Life insurance premiums. Alimony includes premiums you must pay under your divorce or separation instrument for insurance on your life to the extent your spouse owns the policy.

Payments for jointly owned home. If your divorce or separation instrument states that you must pay expenses for a home owned by you and your spouse or former spouse, some of your payments may be alimony. See Table 4.

However, if your spouse owned the home, see Example 2 under *Payments to a third party*, earlier. If you owned the home, see the example under *Payments not alimony*, earlier.

Certain Rules for Instruments Executed After 1984 But Before 2019

The following rules for alimony apply to payments under divorce or separation instruments executed after 1984 but before 2019.

Alimony Requirements

A payment to or for a spouse under a divorce or separation instrument is alimony if the spouses don't file a joint return with each other and all of the following requirements are met.

- The payment is in cash.
- The instrument doesn't designate the payment as not alimony.
- The spouses aren't members of the same household at the time the payments are made. This requirement applies only if the spouses are legally separated under a decree of divorce or separate maintenance.
- There is no liability to make any payment (in cash or property) after the death of the recipient spouse.
- The payment isn't treated as child support.

Each of these requirements is discussed next.

Cash payment requirement. Only cash payments, including checks and money orders, qualify as alimony. The following don't qualify as alimony.

- Transfers of services or property (including a debt instrument of a third party or an annuity contract).
- Execution of a debt instrument by the payer.
- The use of the payer's property.

Payments to a third party. Cash payments to a third party under the terms of your divorce or separation instrument can qualify as cash payments to your spouse.

See *Payments to a third party* under *General Rules*, earlier.

Also, cash payments made to a third party at the written request of your spouse may

qualify as alimony if all the following requirements are met.

- The payments are in lieu of payments of alimony directly to your spouse.
- The written request states that both spouses intend the payments to be treated as alimony.
- You receive the written request from your spouse before you file your return for the year you made the payments.

Payments designated as not alimony. You and your spouse can designate that otherwise qualifying payments aren't alimony. You do this by including a provision in your divorce or separation instrument that states the payments aren't deductible as alimony by you and are excludable from your spouse's income. For this purpose, any instrument (written statement) signed by both of you that makes this designation and that refers to a previous written separation agreement is

treated as a written separation agreement (and therefore a divorce or separation instrument). If you are subject to temporary support orders, the designation must be made in the original or a later temporary support order.

Your spouse can exclude the payments from income only if they attach a copy of the instrument designating them as not alimony to their return. The copy must be attached each year the designation applies.

Spouses can't be members of the same household. Payments to your spouse while you are members of the same household aren't alimony if you are legally separated under a decree of divorce or separate maintenance. A home you formerly shared is considered one household, even if you physically separate yourselves in the home.

You aren't treated as members of the same household if one of you is preparing to leave the household and does leave no later than 1 month after the date of the payment.

Exception. If you aren't legally separated under a decree of divorce or separate maintenance, a payment under a written separation agreement, support decree, or other court order may qualify as alimony even if you are members of the same household when the payment is made.

Liability for payments after death of recipient spouse. If any part of payments you make must continue to be made for any period after your spouse's death, that part of your payments isn't alimony whether made before or after the death. If all of the payments would continue, then none of the payments made before or after the death are alimony.

The divorce or separation instrument doesn't have to expressly state that the payments cease upon the death of your spouse if, for example, the liability for continued payments would end under state law.

Example. You must pay your former spouse \$10,000 in cash each year for 10 years. Your divorce decree states that the payments will end upon your former spouse's death. You must also pay your former spouse or your former spouse's estate \$20,000 in cash each year for 10 years. The death of your spouse wouldn't end these payments under state law.

The \$10,000 annual payments may qualify as alimony. The \$20,000 annual payments that don't end upon your former spouse's death aren't alimony.

Substitute payments. If you must make any payments in cash or property after your spouse's death as a substitute for continuing otherwise qualifying payments before the death, the otherwise qualifying payments

aren't alimony. To the extent that your payments begin, accelerate, or increase because of the death of your spouse, otherwise qualifying payments you made may be treated as payments that weren't alimony. Whether or not such payments will be treated as not alimony depends on all the facts and circumstances.

Example 1. Under your divorce decree, you must pay your former spouse \$30,000 annually. The payments will stop at the end of 6 years or upon your former spouse's death, if earlier.

Your former spouse has custody of your minor children. The decree provides that if any child is still a minor at your spouse's death, you must pay \$10,000 annually to a trust until the youngest child reaches the age of majority. The trust income and corpus (principal) are to be used for your children's benefit.

These facts indicate that the payments to be made after your former spouse's death are a

substitute for \$10,000 of the \$30,000 annual payments. Of each of the \$30,000 annual payments, \$10,000 isn't alimony.

Example 2. Under your divorce decree, you must pay your former spouse \$30,000 annually. The payments will stop at the end of 15 years or upon your former spouse's death, if earlier. The decree provides that if your former spouse dies before the end of the 15-year period, you must pay the estate the difference between \$450,000 ($\$30,000 \times 15$) and the total amount paid up to that time. For example, if your spouse dies at the end of the 10th year, you must pay the estate \$150,000 ($\$450,000 - \$300,000$).

These facts indicate that the lump-sum payment to be made after your former spouse's death is a substitute for the full amount of the \$30,000 annual payments. None of the annual payments are alimony. The result would be the same if the payment required at death were to be discounted by an

appropriate interest factor to account for the prepayment.

Child support. A payment that is specifically designated as child support or treated as specifically designated as child support under your divorce or separation instrument isn't alimony. The amount of child support may vary over time. Child support payments aren't deductible by the payer and aren't taxable to the payee.

Specifically designated as child support.

A payment will be treated as specifically designated as child support to the extent that the payment is reduced either:

- On the happening of a contingency relating to your child, or
- At a time that can be clearly associated with the contingency.

A payment may be treated as specifically designated as child support even if other

separate payments are specifically designated as child support.

Contingency relating to your child. A

contingency relates to your child if it depends on any event relating to that child. It doesn't matter whether the event is certain or likely to occur. Events relating to your child include the child's:

- Becoming employed,
- Dying,
- Leaving the household,
- Leaving school,
- Marrying, or
- Reaching a specified age or income level.

Clearly associated with a contingency.

Payments that would otherwise qualify as alimony are presumed to be reduced at a time clearly associated with the happening of

a contingency relating to your child only in the following situations.

1. The payments are to be reduced not more than 6 months before or after the date the child will reach 18, 21, or local age of majority.
2. The payments are to be reduced on two or more occasions that occur not more than 1 year before or after a different one of your children reaches a certain age from 18 to 24. This certain age must be the same for each child, but need not be a whole number of years.

In all other situations, reductions in payments aren't treated as clearly associated with the happening of a contingency relating to your child.

Either you or the IRS can overcome the presumption in the two situations above. This is done by showing that the time at which the

payments are to be reduced was determined independently of any contingencies relating to your children. For example, if you can show that the period of alimony payments is customary in the local jurisdiction, such as a period equal to one-half of the duration of the marriage, you can overcome the presumption and may be able to treat the amount as alimony.

Recapture of Alimony

If your alimony payments decrease or end during the first 3 calendar years, you may be subject to the recapture rule. If you are subject to this rule, you have to include in income (in the third year) part of the alimony payments you previously deducted. Your spouse can deduct (in the third year) part of the alimony payments they previously included in income.

The 3-year period starts with the first calendar year you make a payment qualifying as alimony under a decree of divorce or

separate maintenance or a written separation agreement. Don't include any time in which payments were being made under temporary support orders. The second and third years are the next 2 calendar years, whether or not payments are made during those years.

The reasons for a reduction or end of alimony payments that can require a recapture include:

- A change in your divorce or separation instrument,
- A failure to make timely payments,
- A reduction in your ability to provide support, or
- A reduction in your spouse's support needs.

When to apply the recapture rule. You are subject to the recapture rule in the third year if the alimony you pay in the third year decreases by more than \$15,000 from the

second year or the alimony you pay in the second and third years decreases significantly from the alimony you pay in the first year.

When you figure a decrease in alimony, don't include the following amounts.

- Payments made under a temporary support order.
- Payments required over a period of at least 3 calendar years that vary because they are a fixed part of your income from a business or property, or from compensation for employment or self-employment.
- Payments that decrease because of the death of either spouse or the remarriage of the spouse receiving the payments before the end of the third year.

How to figure and report the recapture.

Both you and your spouse can use Worksheet 1 to figure recaptured alimony.

Including the recapture in income. If you must include a recapture amount in income, show it on Schedule 1 (Form 1040), line 2a ("Alimony received"). Cross out "received" and enter "recapture." On the dotted line next to the amount, enter your spouse's last name and SSN or ITIN.

Deducting the recapture. If you can deduct a recapture amount, show it on Schedule 1 (Form 1040), line 19a ("Alimony paid"). Cross out "paid" and enter "recapture." In the space provided, enter your spouse's SSN or ITIN.

Example. You pay your former spouse \$50,000 alimony the first year, \$39,000 the second year, and \$28,000 the third year. In the third year, you report \$1,500 as income on Schedule 1 (Form 1040), line 2a, and your former spouse reports \$1,500 as a deduction on Schedule 1 (Form 1040), line 19a.