

# Publication 17

## Your Federal Income

For use in preparing  
**2023** Returns)

Volume 3 of 14



This page is intentionally left blank

## **Penalties**

The law provides penalties for failure to file returns or pay taxes as required.

### **Civil Penalties**

If you don't file your return and pay your tax by the due date, you may have to pay a penalty. You may also have to pay a penalty if you substantially understate your tax, understate a reportable transaction, file an erroneous claim for refund or credit, file a frivolous tax submission, or fail to supply your SSN or ITIN. If you provide fraudulent information on your return, you may have to pay a civil fraud penalty.

**Filing late.** If you don't file your return by the due date (including extensions), you may have to pay a failure-to-file penalty. The penalty is usually 5% for each month or part of a month that a return is late, but not more than 25%. The penalty is based on the tax

not paid by the due date (without regard to extensions).

***Fraud.*** If your failure to file is due to fraud, the penalty is 15% for each month or part of a month that your return is late, up to a maximum of 75%.

***Return over 60 days late.*** If you file your return more than 60 days after the due date, or extended due date, the minimum penalty is the smaller of \$485 or 100% of the unpaid tax.

***Exception.*** You won't have to pay the penalty if you show that you failed to file on time because of reasonable cause and not because of willful neglect.

***Paying tax late.*** You will have to pay a failure-to-pay penalty of  $\frac{1}{2}$  of 1% (0.50%) of your unpaid taxes for each month, or part of a month, after the due date that the tax isn't paid. This penalty doesn't apply during the automatic 6-month extension of time to

file period if you paid at least 90% of your actual tax liability on or before the due date of your return and pay the balance when you file the return.

The monthly rate of the failure-to-pay penalty is half the usual rate (0.25% instead of 0.50%) if an installment agreement is in effect for that month. You must have filed your return by the due date (including extensions) to qualify for this reduced penalty.

If a notice of intent to levy is issued, the rate will increase to 1% at the start of the first month beginning at least 10 days after the day that the notice is issued. If a notice and demand for immediate payment is issued, the rate will increase to 1% at the start of the first month beginning after the day that the notice and demand is issued.

This penalty can't be more than 25% of your unpaid tax. You won't have to pay the penalty

if you can show that you had a good reason for not paying your tax on time.

**Combined penalties.** If both the failure-to-file penalty and the failure-to-pay penalty (discussed earlier) apply in any month, the 5% (or 15%) failure-to-file penalty is reduced by the failure-to-pay penalty. However, if you file your return more than 60 days after the due date or extended due date, the minimum penalty is the smaller of \$485 or 100% of the unpaid tax.

**Accuracy-related penalty.** You may have to pay an accuracy-related penalty if you underpay your tax because:

1. You show negligence or disregard of the rules or regulations,
2. You substantially understate your income tax,
3. You claim tax benefits for a transaction that lacks economic substance, or

4. You fail to disclose a foreign financial asset.

The penalty is equal to 20% of the underpayment. The penalty is 40% of any portion of the underpayment that is attributable to an undisclosed noneconomic substance transaction or an undisclosed foreign financial asset transaction. The penalty won't be figured on any part of an underpayment on which the fraud penalty (discussed later) is charged.

***Negligence or disregard.*** The term “negligence” includes a failure to make a reasonable attempt to comply with the tax law or to exercise ordinary and reasonable care in preparing a return. Negligence also includes failure to keep adequate books and records. You won't have to pay a negligence penalty if you have a reasonable basis for a position you took.

The term “disregard” includes any careless, reckless, or intentional disregard.

***Adequate disclosure.*** You can avoid the penalty for disregard of rules or regulations if you adequately disclose on your return a position that has at least a reasonable basis. See *Disclosure statement*, later.

This exception won't apply to an item that is attributable to a tax shelter. In addition, it won't apply if you fail to keep adequate books and records, or substantiate items properly.

***Substantial understatement of income tax.*** You understate your tax if the tax shown on your return is less than the correct tax. The understatement is substantial if it is more than the larger of 10% of the correct tax or \$5,000. However, the amount of the understatement may be reduced to the extent the understatement is due to:

1. Substantial authority, or
2. Adequate disclosure and a reasonable basis.



If an item on your return is attributable to a tax shelter, there is no reduction for an adequate disclosure. However, there is a reduction for a position with substantial authority, but only if you reasonably believed that your tax treatment was more likely than not the proper treatment.

***Substantial authority.*** Whether there is or was substantial authority for the tax treatment of an item depends on the facts and circumstances. Some of the items that may be considered are court opinions, Treasury regulations, revenue rulings, revenue procedures, and notices and announcements issued by the IRS and published in the Internal Revenue Bulletin that involve the same or similar circumstances as yours.

***Disclosure statement.*** To adequately disclose the relevant facts about your tax treatment of an item, use Form 8275. You

must also have a reasonable basis for treating the item the way you did.

In cases of substantial understatement only, items that meet the requirements of Revenue Procedure 2022-41 (or later update) are considered adequately disclosed on your return without filing Form 8275.

Use Form 8275-R to disclose items or positions contrary to regulations.

***Transaction lacking economic substance.***

For more information on economic substance, see section 7701(o).

***Foreign financial asset.*** For more information on undisclosed foreign financial assets, see section 6662(j).

***Reasonable cause.*** You won't have to pay a penalty if you show a good reason (reasonable cause) for the way you treated an item. You must also show that you acted in good faith. This doesn't apply to a transaction that lacks economic substance.

**Filing erroneous claim for refund or credit.** You may have to pay a penalty if you file an erroneous claim for refund or credit. The penalty is equal to 20% of the disallowed amount of the claim, unless you can show a reasonable basis for the way you treated an item. However, any disallowed amount due to a transaction that lacks economic substance won't be treated as having a reasonable basis. The penalty won't be figured on any part of the disallowed amount of the claim that relates to the earned income credit or on which the accuracy-related or fraud penalties are charged.

**Frivolous tax submission.** You may have to pay a penalty of \$5,000 if you file a frivolous tax return or other frivolous submissions. A frivolous tax return is one that doesn't include enough information to figure the correct tax or that contains information clearly showing that the tax you reported is substantially incorrect. For more information on frivolous

returns, frivolous submissions, and a list of positions that are identified as frivolous, see Notice 2010-33, 2010-17 I.R.B. 609, available at [IRS.gov/irb/ 2010-17 IRB/ar13.html](https://www.irs.gov/irb/2010-17_IRB/ar13.html).

You will have to pay the penalty if you filed this kind of return or submission based on a frivolous position or a desire to delay or interfere with the administration of federal tax laws. This includes altering or striking out the preprinted language above the space provided for your signature.

This penalty is added to any other penalty provided by law.

**Fraud.** If there is any underpayment of tax on your return due to fraud, a penalty of 75% of the underpayment due to fraud will be added to your tax.

**Joint return.** The fraud penalty on a joint return doesn't apply to a spouse unless some part of the underpayment is due to the fraud of that spouse.

**Failure to supply SSN.** If you don't include your SSN or the SSN of another person where required on a return, statement, or other document, you will be subject to a penalty of \$50 for each failure. You will also be subject to a penalty of \$50 if you don't give your SSN to another person when it is required on a return, statement, or other document.

For example, if you have a bank account that earns interest, you must give your SSN to the bank. The number must be shown on the Form 1099-INT or other statement the bank sends you. If you don't give the bank your SSN, you will be subject to the \$50 penalty. (You may also be subject to "backup" withholding of income tax. See chapter 4.)

You won't have to pay the penalty if you are able to show that the failure was due to reasonable cause and not willful neglect.

## **Criminal Penalties**

You may be subject to criminal prosecution (brought to trial) for actions such as:

1. Tax evasion;
2. Willful failure to file a return, supply information, or pay any tax due;
3. Fraud and false statements;
4. Preparing and filing a fraudulent return; or
5. Identity theft.

## **Identity Theft**

Identity theft occurs when someone uses your personal information such as your name, SSN, or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your SSN has been lost or stolen or you suspect you are a victim of tax-related identity theft, visit [IRS.gov/IdentityTheft](https://www.irs.gov/IdentityTheft) to learn what steps you should take.

For more information, see Pub. 5027.



*All taxpayers are now eligible for an Identity Protection Personal Identification Number (IP PIN). For more information, see Pub. 5477. To apply for an IP PIN, go to [IRS.gov/IPPIN](https://www.irs.gov/IPPIN) and use the Get an IP PIN tool.*

Victims of identity theft who are experiencing economic harm or a systemic problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the National Taxpayer Advocate helpline at 877-777-4778 or 800-829-4059 (TTY/ TDD). Deaf or hard-of-hearing individuals can also contact the IRS through the Telecommunications Relay Services (TRS) at [FCC.gov/TRS](https://www.fcc.gov/TRS).

***Protect yourself from suspicious emails or phishing schemes.*** Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common form is the act of sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.



The IRS doesn't initiate contacts with taxpayers via emails. Also, the IRS doesn't request detailed personal information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward the message to [\*phishing@irs.gov\*](mailto:phishing@irs.gov). You may also report misuse of the IRS name, logo, forms, or other IRS property to the Treasury Inspector General for Tax Administration toll free at 800-366-4484. You can forward suspicious emails to the Federal Trade Commission (FTC) at [\*spam@uce.gov\*](mailto:spam@uce.gov) or report them at [\*ftc.gov/complaint\*](https://ftc.gov/complaint). You can contact them at [\*ftc.gov/idtheft\*](https://ftc.gov/idtheft) or 877-IDTHEFT (877-438-4338). If you have been a victim of identity theft, see [\*IdentityTheft.gov\*](https://IdentityTheft.gov) or Pub. 5027. People who are deaf, hard of hearing, or have

a speech disability and who have access to TTY/TDD equipment can call 866-653-4261.

Go to [IRS.gov/IDProtection](https://www.irs.gov/IDProtection) to learn more about identity theft and how to reduce your risk.

## **2.**

# **Filing Status**

## **Introduction**

This chapter helps you determine which filing status to use. There are five filing statuses.

- Single.
- Married filing jointly.
- Married filing separately.
- Head of household.
- Qualifying surviving spouse.



*If more than one filing status applies to you, choose the one that will give you the lowest tax.*

You must determine your filing status before you can determine whether you must file a tax return ([chapter 1](#)), your standard deduction ([chapter 10](#)), and your tax ([chapter 11](#)). You also use your filing status to determine whether you are eligible to claim certain deductions and credits.

## Useful Items

You may want to see:

### Publication

- ☐ **3** Armed Forces' Tax Guide
- ☐ **501** Dependents, Standard Deduction, and Filing Information
- ☐ **503** Child and Dependent Care Expenses
- ☐ **519** U.S. Tax Guide for Aliens

- ☐ **555** Community Property
- ☐ **559** Survivors, Executors, and Administrators
- ☐ **596** Earned Income Credit (EIC)
- ☐ **925** Passive Activity and At-Risk Rules
- ☐ **971** Innocent Spouse Relief

For these and other useful items, go to [IRS.gov/ Forms](https://www.irs.gov/forms).

## **Marital Status**

In general, your filing status depends on whether you are considered unmarried or married.

**Unmarried persons.** You are considered unmarried for the whole year if, on the last day of your tax year, you are either:

- Unmarried, or
- Legally separated from your spouse under a divorce or separate maintenance decree.

State law governs whether you are married or legally separated under a divorce or separate maintenance decree.

***Divorced persons.*** If you are divorced under a final decree by the last day of the year, you are considered unmarried for the whole year.

***Divorce and remarriage.*** If you obtain a divorce for the sole purpose of filing tax returns as unmarried individuals, and at the time of divorce you intend to and do, in fact, remarry each other in the next tax year, you and your spouse must file as married individuals in both years.

***Annulled marriages.*** If you obtain a court decree of annulment, which holds that no valid marriage ever existed, you are considered unmarried even if you filed joint returns for earlier years. File Form 1040-X, Amended U.S. Individual Income Tax Return, claiming single or head of household status for all tax years that are affected by the annulment and not closed by the statute of

limitations for filing a tax return. Generally, for a credit or refund, you must file Form 1040-X within 3 years (including extensions) after the date you filed your original return or within 2 years after the date you paid the tax, whichever is later. If you filed your original return early (for example, March 1), your return is considered filed on the due date (generally April 15). However, if you had an extension to file (for example, until October 15) but you filed earlier and we received it on July 1, your return is considered filed on July 1.

***Head of household or qualifying surviving spouse.*** If you are considered unmarried, you may be able to file as head of household or as qualifying surviving spouse. See Head of Household and Qualifying Surviving Spouse, later, to see if you qualify.

**Married persons.** If you are considered married, you and your spouse can file a joint return or separate returns.

***Considered married.*** You are considered married for the whole year if, on the last day of your tax year, you and your spouse meet any one of the following tests.

1. You are married and living together.
2. You are living together in a common law marriage recognized in the state where you now live or in the state where the common law marriage began.
3. You are married and living apart, but not legally separated under a decree of divorce or separate maintenance.
4. You are separated under an interlocutory (not final) decree of divorce.

***Spouse died during the year.*** If your spouse died during the year, you are considered married for the whole year for filing status purposes.

If you didn't remarry before the end of the tax year, you can file a joint return for yourself and your deceased spouse. For the next 2 years, you may be entitled to the special benefits described later under *Qualifying Surviving Spouse*.

If you remarried before the end of the tax year, you can file a joint return with your new spouse. Your deceased spouse's filing status is married filing separately for that year.

***Married persons living apart.*** If you live apart from your spouse and meet certain tests, you may be able to file as head of household even if you aren't divorced or legally separated. If you qualify to file as head of household instead of married filing separately, your standard deduction will be higher. Also, your tax may be lower, and you may be able to claim the earned income credit (EIC). See *Head of Household*, later.



## Single

Your filing status is single if you are considered unmarried and you don't qualify for another filing status. To determine your marital status, see Marital Status, earlier.

**Spouse died before January 1, 2023.** Your filing status may be single if your spouse died before January 1, 2023, and you didn't remarry before the end of 2023. You may, however, be able to use another filing status that will give you a lower tax. See Head of Household and Qualifying Surviving Spouse, later, to see if you qualify.

**How to file.** On Form 1040 or 1040-SR, show your filing status as single by checking the "Single" box on the *Filing Status* line near the top of the form. Use the *Single* column of the Tax Table, or Section A of the Tax Computation Worksheet, to figure your tax.

## Married Filing Jointly

You can choose married filing jointly as your filing status if you are considered married and both you and your spouse agree to file a joint return. On a joint return, you and your spouse report your combined income and deduct your combined allowable expenses. You can file a joint return even if one of you had no income or deductions.

If you and your spouse decide to file a joint return, your tax may be lower than your combined tax for the other filing statuses. Also, your standard deduction (if you don't itemize deductions) may be higher, and you may qualify for tax benefits that don't apply to other filing statuses.

**How to file.** On Form 1040 or 1040-SR, show your filing status as married filing jointly by checking the "Married filing jointly" box on the *Filing Status* line near the top of the form. Use the *Married filing jointly* column of the

Tax Table, or Section B of the Tax Computation Worksheet, to figure your tax.



*If you and your spouse each have income, you may want to figure your tax both on a joint return and on separate returns (using the filing status of married filing separately). You can choose the method that gives the two of you the lower combined tax unless you are required to file separately.*

**Spouse died.** If your spouse died during the year, you are considered married for the whole year and can choose married filing jointly as your filing status. See *Spouse died during the year* under *Married persons*, earlier, for more information.

If your spouse died in 2024 before filing a 2023 return, you can choose married filing jointly as your filing status on your 2023 return.

**Divorced persons.** If you are divorced under a final decree by the last day of the year, you are considered unmarried for the whole year and you can't choose married filing jointly as your filing status.

## **Filing a Joint Return**

Both you and your spouse must include all of your income and deductions on your joint return.

**Accounting period.** Both of you must use the same accounting period, but you can use different accounting methods. See Accounting Periods and Accounting Methods in chapter 1.

**Joint responsibility.** Both of you may be held responsible, jointly and individually, for the tax and any interest or penalty due on your joint return. This means that if one spouse doesn't pay the tax due, the other may have to. Or, if one spouse doesn't report the correct tax, both spouses may be responsible for any additional taxes assessed

by the IRS. One spouse may be held responsible for all the tax due even if all the income was earned by the other spouse. You may want to file separately if:

- You believe your spouse isn't reporting all of their income, or
- You don't want to be responsible for any taxes due if your spouse doesn't have enough tax withheld or doesn't pay enough estimated tax.

***Divorced taxpayer.*** You may be held jointly and individually responsible for any tax, interest, and penalties due on a joint return filed before your divorce. This responsibility may apply 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 responsibility.*** In some cases, one spouse may be relieved of joint responsibility for tax, interest, and penalties

on a joint return for items of the other spouse that were incorrectly reported on the joint return. You can ask for relief no matter how small the liability.

There are three types of relief available.

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

You must file Form 8857, Request for Innocent Spouse Relief, to request relief from joint responsibility. Pub. 971 explains these kinds of relief and who may qualify for them.

**Signing a joint return.** For a return to be considered a joint return, both spouses must generally sign the return.

***Spouse died before signing.*** If your spouse died before signing the return, the executor or administrator must sign the return for your spouse. If neither you nor anyone else has yet been appointed as executor or administrator, you can sign the return for your spouse and enter "Filing as surviving spouse" in the area where you sign the return.

***Spouse away from home.*** If your spouse is away from home, you should prepare the return, sign it, and send it to your spouse to sign so that it can be filed on time.

***Injury or disease prevents signing.*** If your spouse can't sign because of disease or injury and tells you to sign for them, you can sign your spouse's name in the proper space on the return followed by the words "By (your name), Spouse." Be sure to sign in the space provided for your signature. Attach a dated statement, signed by you, to the return. The statement should include the form number of

the return you are filing, the tax year, and the reason your spouse can't sign; it should also state that your spouse has agreed to your signing for them.

***Signing as guardian of spouse.*** If you are the guardian of your spouse who is mentally incompetent, you can sign the return for your spouse as guardian.

***Spouse in combat zone.*** You can sign a joint return for your spouse if your spouse can't sign because they are serving in a combat zone (such as the Persian Gulf Area, Serbia, Montenegro, Albania, or Afghanistan), even if you don't have a power of attorney or other statement. Attach a signed statement to your return explaining that your spouse is serving in a combat zone. For more information on special tax rules for persons who are serving in a combat zone, or who are in missing status as a result of serving in a combat zone, see Pub. 3.



***Power of attorney.*** In order for you to sign a return for your spouse in any of these cases, you must attach to the return a power of attorney (POA) that authorizes you to sign for your spouse. You can use a POA that states that you have been granted authority to sign the return, or you can use Form 2848. Part I of Form 2848 must state that you are granted authority to sign the return.

**Nonresident alien or dual-status alien.**

Generally, a married couple can't file a joint return if either one is a nonresident alien at any time during the tax year. However, if one spouse was a nonresident alien or dual-status alien who was married to a U.S. citizen or resident alien at the end of the year, the spouses can choose to file a joint return. If you do file a joint return, you and your spouse are both treated as U.S. residents for the entire tax year. See chapter 1 of Pub. 519.

## **Married Filing Separately**

You can choose married filing separately as your filing status if you are married. This filing status may benefit you if you want to be responsible only for your own tax or if it results in less tax than filing a joint return.

If you and your spouse don't agree to file a joint return, you must use this filing status unless you qualify for head of household status, discussed later.

You may be able to choose head of household filing status if you are considered unmarried because you live apart from your spouse and meet certain tests (explained under *Head of Household*, later). This can apply to you even if you aren't divorced or legally separated. If you qualify to file as head of household, instead of as married filing separately, your tax may be lower, you may be able to claim the EIC and certain other benefits, and your standard deduction will be higher. The head

of household filing status allows you to choose the standard deduction even if your spouse chooses to itemize deductions. See Head of Household, later, for more information.



*You will generally pay more combined tax on separate returns than you would on a joint return for the reasons listed under Special Rules, later. However, unless you are required to file separately, you should figure your tax both ways (on a joint return and on separate returns). This way, you can make sure you are using the filing status that results in the lowest combined tax. When figuring the combined tax of a married couple, you may want to consider state taxes as well as federal taxes.*

**How to file.** If you file a separate return, you generally report only your own income, credits, and deductions.

Select this filing status by checking the “Married filing separately” box on the *Filing Status* line near the top of Form 1040 or 1040-SR. Enter your spouse's full name and SSN or ITIN in the entry space at the bottom of the *Filing Status* section. If your spouse doesn't have and isn't required to have an SSN or ITIN, enter “NRA” in the space for your spouse's SSN. Use the *Married filing separately* column of the Tax Table, or Section C of the Tax Computation Worksheet, to figure your tax.

## **Special Rules**

If you choose married filing separately as your filing status, the following special rules apply. Because of these special rules, you usually pay more tax on a separate return than if you use another filing status you qualify for.

1. Your tax rate is generally higher than on a joint return.

2. Your exemption amount for figuring the alternative minimum tax is half 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). However, 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. For more information about these expenses, the credit, and the exclusion, see *What's Your Filing Status?* in Pub. 503.
4. You can't take the EIC, unless you have a qualifying child and meet certain other requirements. See Pub. 596.

5. You can't take the exclusion or credit for adoption expenses in most cases.
6. You can't take the education credits (the American opportunity credit and lifetime learning credit), or the deduction for student loan interest.
7. You can't exclude any interest income from qualified U.S. savings bonds you used for higher education expenses.
8. 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 must include in income a greater percentage (up to 85%) of any social security or equivalent railroad retirement benefits you received.

9. The following credits and deductions are reduced at income levels half of those for a joint return.
  - a. The child tax credit and the credit for other dependents.
  - b. The retirement savings contributions credit.
10. Your capital loss deduction limit is \$1,500 (instead of \$3,000 on a joint return).
11. 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 of the amount allowed on a joint return.

**Adjusted gross income (AGI) limits.** If your AGI on a separate return is lower than it would have been on a joint return, you may be able to deduct a larger amount for certain

deductions that are limited by AGI, such as medical expenses.

### **Individual retirement arrangements**

**(IRAs).** You may not be able to deduct all or part of your contributions to a traditional IRA if you or your spouse was covered by an employee retirement plan at work during the year. Your deduction is reduced or eliminated if your income is more than a certain amount. This amount is much lower for married individuals who file separately and lived together at any time during the year. For more information, see *How Much Can You Deduct* in chapter 9.

**Rental activity losses.** If you actively participated in a passive rental real estate activity that produced a loss, you can generally deduct the loss from your nonpassive income, up to \$25,000. This is called a special allowance. However, married persons filing separate returns who lived together at any time during the year can't



claim this special allowance. Married persons filing separate returns who lived apart at all times during the year are each allowed a \$12,500 maximum special allowance for losses from passive real estate activities. See *Rental Activities* in Pub. 925 for more information.

**Community property states.** If you live in a community property state and file separately, your income may be considered separate income or community income for income tax purposes. Community property states include Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin. See Pub. 555 for more information.

## **Joint Return After Separate Returns**

You can change your filing status from a separate return to a joint return by filing an amended return using Form 1040-X.

You can generally change to a joint return any time within 3 years from the due date of the separate return or returns. This doesn't include any extensions. A separate return includes a return filed by you or your spouse claiming married filing separately, single, or head of household filing status.

### **Separate Returns After Joint Return**

Once you file a joint return, you can't choose to file separate returns for that year after the due date of the return.

**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 return to make the change. See Pub. 559 for more information on filing a return for a decedent.

## Head of Household

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

1. You are unmarried or considered unmarried on the last day of the year. See Marital Status, earlier, and Considered Unmarried, later.
2. You paid more than half of the cost of keeping up a home for the year.
3. 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, your dependent parent doesn't have to live with you. See Special rule for parent, later, under *Qualifying Person*.



*If you qualify to file as head of household, your tax rate will usually be lower than the rates for single or married filing separately. You will also receive*

*a higher standard deduction than if you file as single or married filing separately.*

**How to file.** Indicate your choice of this filing status by checking the “Head of household” box on the *Filing Status* line near the top of Form 1040 or 1040-SR. If the child who qualifies you for this filing status isn't claimed as your dependent in the *Dependents* section of Form 1040 or 1040-SR, enter the child's name in the entry space at the bottom of the *Filing Status* section. Use the *Head of a household* column of the Tax Table, or Section D of the Worksheet, to figure your tax.

## **Considered Unmarried**

To qualify for head of household status, you must be either unmarried or considered unmarried on the last day of the year. You are considered unmarried on the last day of the tax year if you meet all of the following tests.

1. You file a separate return. A separate return includes a return claiming married filing separately, single, or head of household filing status.
2. You paid more than half of the cost of keeping up your home for the tax year.
3. 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 under *Qualifying Person*, later.
4. Your home was the main home of your child, stepchild, or foster child for more than half the year. (See Home of qualifying person under *Qualifying Person*, later, for rules applying to a child's birth, death, or temporary absence during the year.)

5. 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 using the rules described in *Children of divorced or separated parents (or parents who live apart)* under *Qualifying Child* in chapter 3, or referred to in *Support Test for Children of Divorced or Separated Parents (or Parents Who Live Apart)* under *Qualifying Relative* in chapter 3. The general rules for claiming a child as a dependent are explained in chapter 3.

You may be considered unmarried for the purpose of using head of household status but not for other purposes, such as claiming the EIC. Different tests apply depending on the tax benefit you claim.



*If you were considered married for part of the year and lived in a community property state (listed earlier under Married Filing Separately), special rules may apply in determining your income and expenses. See Pub. 555 for more information.*

**Nonresident alien spouse.** You are considered unmarried for head of household purposes if your spouse was a nonresident alien at any time during the year and you don't choose to treat your nonresident spouse as a resident alien. However, your spouse isn't a qualifying person for head of household purposes. You must have another qualifying person and meet the other tests to be eligible to file as head of household.

***Choice to treat spouse as resident.*** You are considered married if you choose to treat your spouse as a resident alien. See chapter 1 of Pub. 519.

## Keeping Up a Home

To qualify for head of household status, you must pay more than half of the cost of keeping up a home for the year. You can determine whether you paid more than half of the cost of keeping up a home by using Worksheet 2-1.

**Costs you include.** Include in the cost of keeping up a home expenses, such as rent, mortgage interest, real estate taxes, insurance on the home, repairs, utilities, and food eaten in the home.

**Costs you don't include.** Don't include the costs of clothing, education, medical treatment, vacations, life insurance, or transportation. Also don't include the value of your services or those of a member of your household.



## Qualifying Person

See Table 2-1 to see who is a qualifying person. Any person not described in Table 2-1 isn't a qualifying person.

***Example 1—Child.*** Your unmarried child lived with you all year and was 18 years old at the end of the year. Your child didn't provide more than half of their own support and doesn't meet the tests to be a qualifying child of anyone else. As a result, this child is your qualifying child (see Qualifying Child in chapter 3) and, because this child is single, this is your qualifying person for head of household purposes.

***Example 2—Child who isn't qualifying person.*** The facts are the same as in *Example 1*, except your child was 25 years old at the end of the year and your child's gross income was \$5,000. Because your child doesn't meet the age test (explained under Qualifying Child in chapter 3), your child isn't

your qualifying child. Because the child doesn't meet the gross income test (explained under *Qualifying Relative* in chapter 3), the child isn't your qualifying relative. As a result, this child isn't your qualifying person for head of household purposes.

## Worksheet 2-1. **Cost of Keeping Up a Home**



*Keep for Your Records*

	<b>Amount You Paid</b>	<b>Total Cost</b>
Property taxes	\$	\$
Mortgage interest expense		
Rent		
Utility charges		

Repairs/Maintenance		
Property insurance		
Food eaten in the home		
Other household expenses		
<b>Totals</b>	\$	\$
Minus total <b>amount you paid</b>		(_____)
<b>Amount others paid</b>		\$
<p>If the total amount you paid is more than the amount others paid, you meet the requirement of paying more than half of the cost of keeping up the home.</p>		

**Example 3—Friend.** Your friend lived with you all year. Even though your friend may be your qualifying relative if the gross income and support tests (explained in chapter 3) are met, your friend isn't your qualifying person

for head of household purposes because your friend isn't related to you in one of the ways listed under *Relatives who don't have to live with you* in chapter 3. See Table 2-1.

**Example 4—Friend's child.** The facts are the same as in *Example 3*, except your friend's 10-year-old child also lived with you all year. Your friend's child isn't your qualifying child and, because the child is your friend's qualifying child, your friend's child isn't your qualifying relative (see *Not a Qualifying Child Test* in chapter 3). As a result, your friend's child isn't your qualifying person for head of household purposes.

**Home of qualifying person.** Generally, the qualifying person must live with you for more than half 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 of the cost of keeping up a home that was the main home for the entire year for your parent.

If you pay more than half of the cost of keeping your parent in a rest home or home for the elderly, that counts as paying more than half of the cost of keeping up your parent's main home.

***Death or birth.*** You may be eligible to file as head of household even if the individual who qualifies you for this filing status is born or dies during the year. If the individual 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 individual is anyone else, see Pub. 501 for more information.

***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 the ab-sent person will return to the home after the temporary absence. You must continue to keep up the home during the absence.

***Adopted child or foster child.*** You may be eligible to file as head of household if the person who qualifies you for this filing status was an adopted child or foster child. For more information, see Pub. 501.

***Kidnapped child.*** You may be eligible to file as head of household even if the child who is your qualifying person has been kidnapped. For more information, see Pub. 501.

## **Qualifying Surviving Spouse**

If your spouse died in 2023, you can use married filing jointly as your filing status for 2023 if you otherwise qualify to use that status. The year of death is the last year for which you can file jointly with your deceased spouse. See *Married Filing Jointly*, earlier.

You may be eligible to use qualifying surviving spouse as your filing status for 2 years following the year your spouse died. For example, if your spouse died in 2022, and you haven't re-married, you may be able to use this filing status for 2023 and 2024.

This filing status entitles you to use joint return tax rates and the highest standard deduction amount (if you don't itemize deductions). It doesn't entitle you to file a joint return.

**How to file.** Indicate your choice of this filing status by checking the "Qualifying surviving spouse" box on the *Filing Status* line near the top of Form 1040 or 1040-SR. If the child who qualifies you for this filing status isn't claimed as your dependent in the *Dependents* section of Form 1040 or 1040-SR, enter the child's name in the entry space at the bottom of the *Filing Status* section. Use the *Married filing jointly* column of the Tax Table, or

Section B of the Tax Computation Worksheet, to figure your tax.

**Eligibility rules.** You are eligible to file your 2023 return as a qualifying surviving spouse if you meet all of the following tests.

- You were entitled to file a joint return with your spouse for the year your spouse died. It doesn't matter whether you actually filed a joint return.
- Your spouse died in 2021 or 2022 and you didn't remarry before the end of 2023.
- You have a child or stepchild (not a foster child) whom you can claim as a dependent or could claim as a dependent except that, for 2023:
  - a. The child had gross income of \$4,700 or more,
  - b. The child filed a joint return, or



- c. You could be claimed as a dependent on someone else's return.

If the child isn't claimed as your dependent in the *Dependents* section on Form 1040 or 1040-SR, enter the child's name in the entry space at the bottom of the *Filing Status* section. If you don't enter the name, it will take us longer to process your return.

- This child lived in your home all year, except for temporary absences. See *Temporary absences*, earlier, under *Head of Household*. There are also exceptions, described later, for a child who was born or died during the year and for a kidnapped child.
- You paid more than half of the cost of keeping up a home for the year. See *Keeping Up a Home*, earlier, under *Head of Household*.

**Example.** Your spouse died in 2021 and you haven't remarried. During 2022 and 2023 you continued to keep up a home for you and your child who lives with you and whom you can claim as a dependent. For 2021, you were entitled to file a joint return for you and your deceased spouse. For 2022 and 2023, you can file as qualifying surviving spouse. After 2023, you can file as head of household if you qualify.

**Death or birth.** You may be eligible to file as a qualifying surviving spouse if the child who qualifies you for this filing status is born or dies during the year. You must have provided more than half of the cost of keeping up a home that was the child's main home during the entire part of the year the child was alive.

**Adopted child.** You may be eligible to file as a qualifying surviving spouse if the child who qualifies you for this filing status you adopted in 2023 or was lawfully placed with you for legal adoption by you in 2023. The child is

considered to have lived with you for all of 2023 if your main home was this child's main home for the entire time since this child was adopted or placed with you in 2023.

**Kidnapped child.** You may be eligible to file as a qualifying surviving spouse even if the child who qualifies you for this filing status has been kidnapped. See Pub. 501 for more information.



*As mentioned earlier, the filing status qualifying surviving spouse is available for only 2 years following the year your spouse died.*

This page intentionally left blank

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

**Caution.** See the text of this chapter 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) <sup>2</sup>	the child is single	a qualifying person, whether or not the child meets the <a href="#">Citizen or Resident Test</a> in chapter 3.
	the child is married <b>and</b> you can claim the child as a dependent	a qualifying person.
	the child is married <b>and</b> you can't claim the child as a dependent	not a qualifying person. <sup>3</sup>
qualifying relative <sup>4</sup> who is your father or mother	you can claim your parent as a dependent <sup>5</sup>	a qualifying person. <sup>6</sup>
	you can't claim your parent as a dependent	not a qualifying person.
qualifying relative <sup>4</sup> 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, <b>and</b> your relative is related to you in one of the ways listed under <a href="#">Relatives who don't have to live with you</a> in chapter 3 <b>and</b> you can claim your relative as a dependent <sup>5</sup>	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 <a href="#">Relatives who don't have to live with you</a> in chapter 3 <b>and</b> 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.

This page intentionally left blank

# 3.

## Dependents

### Introduction

This chapter discusses the following topics.

- Dependents—You can generally claim your qualifying child or qualifying relative as a dependent.
- Social security number (SSN) requirement for dependents—You must list the SSN of any person you claim as a dependent.

**How to claim dependents.** On page 1 of your Form 1040 or 1040-SR, enter the names of your dependents in the *Dependents* section.

# Useful Items

You may want to see:

## Publication

- ☐ **501** Dependents, Standard Deduction, and Filing Information
- ☐ **503** Child and Dependent Care Expenses
- ☐ **526** Charitable Contributions
- ☐ **Form (and Instructions)**
- ☐ **2120** Multiple Support Declaration
- ☐ **8332** Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent

## Dependents

The term “dependent” means:

- A qualifying child, or
- A qualifying relative.



Table 3-1. **Overview of the Rules for Claiming a Dependent**

**Caution.** This table is only an overview of the rules. For details, see the rest of this chapter.

<ul style="list-style-type: none"><li>You can't claim any dependents if you (or your spouse if filing jointly) could be claimed as a dependent by another taxpayer, unless that taxpayer files a return only to claim a refund of withheld income tax or estimated tax paid.</li><li>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.</li><li>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.<sup>1</sup></li><li>You can't claim a person as a dependent unless that person is your <b>qualifying child</b> or <b>qualifying relative</b>.</li></ul>	
Tests To Be a Qualifying Child	Tests To Be a Qualifying Relative
<div><div><div>1. 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.</div><div>2. 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.</div><div>3. The child must have lived with you for more than half of the year.<sup>2</sup></div><div>4. The child must not have provided more than half of the child's own support for the year.</div><div>5. The child must not be filing a joint return for the year (unless that joint return is filed only to get a refund of income tax withheld or estimated tax paid).</div></div><div>If the child meets the rules to be a qualifying child of more than one person, generally only one person can actually treat the child as a qualifying child. See <a href="#">Qualifying Child of More Than One Person</a>, later, to find out which person is the person entitled to claim the child as a qualifying child.</div></div>	<div><div><div>1. The person can't be your qualifying child or the qualifying child of any other taxpayer.</div><div>2. The person either (a) must be related to you in one of the ways listed under <a href="#">Relatives who don't have to live with you</a>, or (b) must live with you all year as a member of your household<sup>2</sup> (and your relationship must not violate local law).</div><div>3. The person's gross income for the year must be less than \$4,700.<sup>3</sup></div><div>4. You must provide more than half of the person's total support for the year.<sup>4</sup></div></div></div>
<div><div><sup>1</sup> There is an exception for certain <a href="#">adopted children</a>.</div><div><sup>2</sup> There are exceptions for <a href="#">temporary absences</a>, <a href="#">children who were born or died during the year</a>, children who were <a href="#">adopted</a> or lawfully placed for adoption during the year, children who are eligible <a href="#">foster children</a> placed during the year, <a href="#">children of divorced or separated parents (or parents who live apart)</a>, and <a href="#">kidnapped children</a>.</div><div><sup>3</sup> There is an exception if the person is disabled and has income from a <a href="#">sheltered workshop</a>.</div><div><sup>4</sup> There are exceptions for <a href="#">multiple support agreements</a>, <a href="#">children of divorced or separated parents (or parents who live apart)</a>, and <a href="#">kidnapped children</a>.</div></div>	

This page intentionally left blank

The terms “qualifying child” and “qualifying relative” are defined later.

All the requirements for claiming a dependent are summarized in Table 3-1.

**Housekeepers, maids, or servants.** If these people work for you, you can’t claim them as dependents.

**Child tax credit.** 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. For more information, see chapter 14.

**Credit for other dependents.** You may be entitled to a credit for other dependents for each qualifying child who does not qualify you for the child tax credit and for each qualifying relative. For more information, see chapter 14.

## Exceptions

Even if you have a qualifying child or qualifying relative, you can claim that person as a dependent only if these three tests are met.

1. Dependent taxpayer test.
2. Joint return test.
3. Citizen or resident test.

These three tests are explained in detail here.

### **Dependent Taxpayer Test**

If you can be claimed as a dependent by another taxpayer, you can't claim anyone else as a dependent. Even if you have a qualifying child or qualifying relative, you can't claim that person as a dependent.

If you are filing a joint return and your spouse can be claimed as a dependent by another taxpayer, you and your spouse can't claim any dependents on your joint return.

**Exception.** If you can be claimed as a dependent by another taxpayer, you can claim someone else as a dependent if the person who can claim you (or your spouse if filing a joint return) as a dependent files a return only to claim a refund of income tax withheld or estimated.

## **Joint Return Test**

You generally can't claim a married person as a dependent if that person files a joint return.

**Exception.** You can claim a person as a dependent who files a joint return if that person and that person's spouse file the joint return only to claim a refund of income tax withheld or estimated tax paid.

***Example 1—Child files joint return.*** You supported your 18-year-old child who lived with you all year while your child's spouse was in the Armed Forces. Your child's spouse earned \$35,000 for the year. The couple files

a joint return. You can't claim your child as a dependent.

***Example 2—Child files joint return only as claim for refund of withheld tax.*** Your 18-year-old child and your child's 17-year-old spouse had \$800 of wages from part-time jobs and no other income. They lived with you all year. Neither is required to file a tax return. They don't have a child. Taxes were taken out of their pay, so they filed a joint return only to get a refund of the withheld taxes. The exception to the joint return test applies, so you aren't disqualified from claiming each of them as a dependent just because they file a joint return. You can claim each of them as a dependent if all the other tests to do so are met.

***Example 3—Child files joint return to claim American opportunity credit.*** The facts are the same as in *Example 2*, except no taxes were taken out of your child's pay or your child's spouse's pay. However, they file a

joint return to claim an American opportunity credit of \$124 and get a refund of that amount. Because they filed a joint return claiming the American opportunity credit, they aren't filing it only to get a refund of income tax withheld or estimated tax paid. The exception to the joint return test doesn't apply, so you can't claim either of them as a dependent.

## **Citizen or Resident Test**

You generally 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. However, there is an exception for certain adopted children, as explained next.

**Exception for adopted child.** If you are a U.S. citizen or U.S. national who has legally adopted a child who isn't a U.S. citizen, U.S. resident alien, or U.S. national, this test is met if the child lived with you as a member of your household all year. This exception also

applies if the child was lawfully placed with you for legal adoption and the child lived with you for the rest of the year after placement.

**Child's place of residence.** Children are usually citizens or residents of the country of their parents.

If you were a U.S. citizen when your child was born, the child may be a U.S. citizen and meet this test even if the other parent was a nonresident alien and the child was born in a foreign country.

**Foreign students' place of residence.**

Foreign students brought to this country under a qualified international education exchange program and placed in American homes for a temporary period generally aren't U.S. residents and don't meet this test. You can't claim them as dependents. However, if you provided a home for a foreign student, you may be able to take a charitable contribution deduction. See *Expenses Paid for Student Living With You* in Pub. 526.



**U.S. national.** A U.S. national is an individual who, although not a U.S. citizen, owes their allegiance to the United States. U.S. nationals include American Samoans and Northern Mariana Islanders who chose to become U.S. nationals instead of U.S. citizens.

## **Qualifying Child**

Five tests must be met for a child to be your qualifying child. The five tests are:

1. Relationship,
2. Age,
3. Residency,
4. Support, and
5. Joint return.

These tests are explained next.



*If a child meets the five tests to be the qualifying child of more than one person, there are rules you must use to determine which person can actually treat*

*the child as a qualifying child. See Qualifying Child of More Than One Person, later.*

## **Relationship Test**

To meet this test, a child must be:

- Your son, daughter, stepchild, or foster child, or a descendant (for example, your grandchild) of any of them; or
- Your brother, sister, half brother, half sister, stepbrother, or stepsister, or a descendant (for example, your niece or nephew) of any of them.

**Adopted child.** An adopted child is always treated as your own child. The term “adopted child” includes a child who was lawfully placed with you for legal adoption.

**Foster child.** A foster child is an individual who is placed with you by an authorized placement agency or by judgment, decree, or other order of any court of competent jurisdiction.

## Age Test

To meet this test, a child must be:

- Under age 19 at the end of the year and younger than you (or your spouse if filing jointly);
- A student under age 24 at the end of the year and younger than you (or your spouse if filing jointly); or
- Permanently and totally disabled at any time during the year, regardless of age.

**Example.** Your child turned 19 on December 10. Unless this child was permanently and totally disabled or a student, this child doesn't meet the age test because, at the end of the year, this child wasn't **under** age 19.

**Child must be younger than you or spouse.** To be your qualifying child, a child who isn't permanently and totally disabled must be younger than you. However, if you are married filing jointly, the child must be

younger than you or your spouse but doesn't have to be younger than both of you.

***Example 1—Child not younger than you or spouse.*** Your 23-year-old sibling, who is a student and unmarried, lives with you and your spouse, who provide more than half of your sibling's support. Your sibling isn't disabled. Both you and your spouse are 21 years old, and you file a joint return. Your sibling isn't your qualifying child because your sibling isn't younger than you or your spouse.

***Example 2—Child younger than your spouse but not younger than you.*** The facts are the same as in *Example 1*, except your spouse is 25 years old. Because your sibling is younger than your spouse, and you and your spouse are filing a joint return, your sibling is your qualifying child, even though your sibling isn't younger than you.

**Student defined.** To qualify as a student, your child must be, during some part of each of any 5 calendar months of the year:

1. A full-time student at a school that has a regular teaching staff and course of study, and a regularly enrolled student body at the school; or
2. A student taking a full-time, on-farm training course given by a school described in (1), or by a state, county, or local government agency.

The 5 calendar months don't have to be consecutive.

***Full-time student.*** A full-time student is a student who is enrolled for the number of hours or courses the school considers to be full-time attendance.

***School defined.*** A school can be an elementary school; a junior or senior high school; a college; a university; or a technical, trade, or mechanical school. However, an on-the-job training course, correspondence school, or school offering courses only

through the Internet doesn't count as a school.

***Vocational high school students.*** Students who work on "co-op" jobs in private industry as a part of a school's regular course of classroom and practical training are considered full-time students.

**Permanently and totally disabled.** Your child is permanently and totally disabled if both of the following apply.

- Your child can't engage in any substantial gainful activity because of a physical or mental condition.
- A doctor determines the condition has lasted or can be expected to last continuously for at least a year or can lead to death.

## **Residency Test**

To meet this test, your child must have lived with you for more than half the year. There

are exceptions for temporary absences, children who were born or died during the year, adopted or foster children, kidnapped children, and children of divorced or separated parents.

**Temporary absences.** Your child is considered to have lived with you during periods of time when one of you, or both, is temporarily absent due to special circumstances such as:

- Illness,
- Education,
- Business,
- Vacation,
- Military service, or
- Detention in a juvenile facility.

**Death or birth of child.** A child who was born or died during the year is treated as having lived with you more than half of the

year if your home was the child's home more than half of the time the child was alive during the year. The same is true if the child lived with you more than half the year except for any required hospital stay following birth.

***Child born alive.*** You may be able to claim as a dependent a child born alive during the year, even if the child lived only for a moment. State or local law must treat the child as having been born alive. There must be proof of a live birth shown by an official document, such as a birth certificate. The child must be your qualifying child or qualifying relative, and all the other tests to claim the child as a dependent must be met.

***Stillborn child.*** You can't claim a stillborn child as a dependent.

***Adopted or foster child.*** You can treat your adopted child or foster child as meeting the residency test as follows if you adopted the child in 2023, the child was lawfully placed with you for legal adoption by you in 2023, or



the child was an eligible foster child placed with you during 2023. This child is considered to have lived with you for more than half of 2023 if your main home was this child's main home for more than half the time since this child was adopted or placed with you in 2023.

**Kidnapped child.** You may be able to treat your child as meeting the residency test even if the child has been kidnapped. See Pub. 501 for details.

**Children of divorced or separated parents (or parents who live apart).** In most cases, because of the residency test, 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 all four of the following statements are true.

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 child's 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 statements is true.
  - 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 and before 2009, see Post-1984 and pre-2009 divorce decree or separation agreement, later. If the decree or agreement went into effect after 2008, see 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.

If statements (1) through (4) are all true, only the noncustodial parent can:

- Claim the child as a dependent; and
- Claim the child as a qualifying child for the child tax credit, the credit for other dependents, or the additional child tax credit.

However, this doesn't allow the noncustodial parent to claim head of household filing status, the credit for child and dependent care expenses, the exclusion for dependent care benefits, or the earned income credit. See *Applying the tiebreaker rules to divorced or separated parents (or parents who live apart)*, later.

***Example—Earned income credit.*** Even if statements (1) through (4) are all true and the custodial parent signs Form 8332 or a

substantially similar statement that the custodial parent won't claim the child as a dependent for 2023, this doesn't allow the noncustodial parent to claim the child as a qualifying child for the earned income credit. The custodial parent or another taxpayer, if eligible, can claim the child for the earned income credit.

***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 AGI.

***December 31.*** The night of December 31 is treated as part of the year in which the night 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, your child spends 6 weeks at summer camp. During those 6 weeks, your child is treated as living with you for 3 weeks and with your child's other parent, your ex-spouse, for 3 weeks because this is how long the child would have lived with each parent if the child had not attended summer camp.

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



***Example 4—Child is at parent's home but with other parent.*** Your child normally lives with you during the week and with the child's 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 your child was living in your home.

***Example 5—Child emancipated in May.*** Your child turned 18 in May 2023 and became emancipated under the law of the state where your child lives. As a result, your child isn't considered in the custody of either parent for more than half of the year. The special rule for children of divorced or separated parents 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 child's other parent, your ex-spouse, from

June 1, 2023, through the end of the year. Your child turns 18 and is emancipated under state law on August 1, 2023. Because your child is treated as not living with either parent beginning on August 1, your 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 or a similar statement (containing the same information required by the form) to make the 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.

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.

***Post-1984 and pre-2009 divorce decree or separation agreement.*** 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.*** The noncustodial parent can't attach pages from the decree or agreement instead of Form 8332 if the decree or agreement went into effect after 2008. The custodial parent must sign either Form 8332 or a similar statement whose only purpose is to release the custodial parent's claim to an exemption for a child, and 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. 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.

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

### **Support Test (To Be a Qualifying Child)**

To meet this test, the child can't have provided more than half of the child's own support for the year.

This test is different from the support test to be a qualifying relative, which is described later. However, to see what is or isn't support, see *Support Test (To Be a Qualifying Relative)*, later. If you aren't sure whether a child provided more than half of their own support, you may find Worksheet 3-1 helpful.