

# Divorce and non-custodial, separated, or never married parents

This publication presents basic information about some of the tax consequences of a divorce and some tax issues of non-custodial, separated, or never married parents.

## Tax Benefits and Credits

**Divorce Decree:** An agreement between divorced parties. Generally, it is not binding upon the IRS.

**Community Property State:** Special rules may apply if you live in a community property state.

See [IRS Publications 504 and 555](#)

**Filing Status:** In general, your filing status depends on whether you are considered unmarried or married on the last day of your tax year. If you file jointly, each spouse is responsible for the entire tax liability, even if only one spouse had income.

Caution: If you and your spouse file a joint return, filing another return for the same tax period, by either you or your spouse, may cause a delayed and/or a reduced refund.

**Amending Filing Status:** If either you or your spouse files a separate return, you can change to a joint return any time within three years from the due date of the separate returns. If you and your spouse file a joint return, you cannot file separate returns after the due date of the joint return.

See [IRS Publications 501 and 504](#)

**Claiming Your Child as a Dependent:** Generally, the parent who has custody of the child for the greater part of the year (the custodial parent) is allowed to claim the exemption for the child.

A special rule applies to children of divorced or separated parents. 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 may be treated as the “qualifying child” of the noncustodial parent under certain circumstances.

See [IRS Publication 501](#)

Caution: Claiming the same child on multiple tax returns for the same tax period may cause a delayed and/or a reduced refund.

**Custodial Parent:** The custodial parent is the parent with whom the child lived for the greater part of the year. The other parent is the noncustodial parent.

See [IRS Publications 501, 504, and Form 8332](#)

**Parents who never married:** The special rule for divorced or separated parents also applies to parents who never married.

**Earned Income Tax Credit:** The Earned Income Tax Credit (EITC) is a tax credit for certain people who work and have earned income below a certain amount. A tax credit usually means more money in your pocket. It reduces the amount of tax you owe. The EIC may also give you a refund.

See [IRS Publication 596](#)

**Child Tax Credit:** The Child Tax Credit is for people who have a “qualifying child”. This credit is in addition to the credit for child and dependent care expenses and the earned income credit.

See [IRS Publication 972](#)

**Deductions:** The same itemized deductions cannot be claimed by both parties. For married filing separate returns, if one spouse itemizes, the other must also itemize. Child support is not a deductible expense nor is it taxable income.

See [IRS Publication 504](#)

**Alimony:** Alimony is deductible by the payer and taxable income to the payee.

See [IRS Publication 504](#)

**Attorney Fees:** Except for a few limited circumstances, attorney fees for your divorce are not deductible.

See [IRS Publication 504](#)

**Personal Residence:** If you sold your main home, you may be able to exclude up to \$250,000 (up to \$500,000 if you and your spouse file a joint return) of gain on the sale.

See [IRS Publication 504 and 523](#)

**Tax Withholding:** When you become divorced or separated, you may need to file a new Form W-4, Employee’s Withholding Allowance Certificate, with your employer to claim your proper withholding allowances.

See [IRS Publications 504, 505, and Form W-4](#)

**Estimated Tax Payments:** If you and your spouse made joint estimated tax payments but subsequently file separate returns, either of you can claim all of your payments, or you can divide them in any way on which you both agree.

See [IRS Publications 504 and 505](#)

# ...Divorce and non-custodial, separated, or never married parents... (continued...) ▶

**Responsibility for Tax Due:** Generally, if you file a joint return with your spouse and later obtain a divorce, you are still responsible for the tax due on the joint return or any subsequent tax, interest, and penalties due as a result of an audit or amendment of the joint return. This applies even if your divorce decree states that your spouse is responsible for the payment of taxes. It also applies even though you may not have had any income on that tax return.

See [IRS Publication 504](#)

**Innocent Spouse Relief:** In some cases, a spouse will be relieved of the tax, interest, and penalties resulting from a liability on a jointly filed return. Generally, if you thought your spouse had paid the taxes due, or the IRS increased your taxes because of your spouse's unreported income or disallowed deductions and you knew nothing about your spouse's unreported or erroneous items when you signed the return, tax relief may be available to you.

See [IRS Publications 504, 971, and Form 8857](#)

**Injured Spouse Relief:** If you file a joint return and all or part of your share of the overpayment is applied against your spouse's past-due federal tax, state income tax, child or spousal support, or federal nontax debt, such as a student loan, you may be entitled to injured spouse relief.

See [IRS Publication 504 and Form 8379](#)

**Refund Checks:** Refund checks issued from a joint return are usually mailed to the address shown on the tax return or deposited in the account specified. The IRS will not issue two checks payable to each spouse separately.

**Address Change:** If you change your mailing address, be sure to notify IRS using Form 8822, Change of Address.

See [IRS Form 8822](#)

**Name Change:** If you change your name, be sure to notify the Social Security Administration office so the name on your tax return is the same as the one the SSA has on its records.

**Tax Records:** Determine a mutually acceptable location for tax records and a procedure for accessing them. You may need these records in the future to prepare tax returns, assist in future tax planning, or for support in the event of an audit.

See [IRS Publication 17](#)

## **Important Note about Health Insurance Coverage:**

If you, your spouse, or your dependent enrolled in health insurance coverage through the Health Insurance Marketplace and advance payments of the premium tax credit were made to the insurance company, let the Marketplace know if you have a change in circumstances such as a change in income. Reporting changes will help you get the proper type and amount of financial assistance so you can avoid getting too much or too little assistance in advance. Find out more about the tax-related provisions of the health care law at [IRS.gov/aca](#).

See [IRS Publication 974, Premium Tax Credit](#).

## **REQUEST FOR PUBLICATIONS ◀ ▶**

You can get these forms and publications from the IRS. They are available to view or download at [www.irs.gov](#).

- Publication 501, Exemptions, Standard Deduction, and Filing Information
- Publication 504, Divorced or Separated Individuals
- Publication 505, Tax Withholding and Estimated Tax
- Publication 523, Selling Your Home
- Publication 555, Community Property
- Publication 596, Earned Income Credit
- Publication 971, Innocent Spouse Relief
- Publication 972, Child Tax Credit
- Form W-4, Employee's Withholding Allowance Certificate
- Form 8332, Release of Claim to Exemption for Child of Divorced or Separated Parents
- Form 8379, Injured Spouse Claim and Allocation
- Form 8822, Change of Address
- Form 8857, Request for Innocent Spouse Relief

If you would like a paper copy mailed to you, call **1-800-829-3676 (1-800-TAXFORM)**.

For questions about any of these credits or benefits, call **1-800-829-1040**.

## **FREE TAX RETURN ASSISTANCE ◀ ▶**

Volunteer Income Tax Assistance (VITA) Sites offer free tax return preparation to individuals having low to moderate income. Call 1-800-829-1040 (TTY/TDD call 1-800-829-4059) for a VITA site near you.