

I just got a divorce. What is my status for filing taxes?

Your tax filing status is determined the last day of the year. If you are married on December 31st, you must file as married for that year. If you are divorced as of December 31st, you must file as single or head of household for that year.

I'm divorced or separated. Can I claim my child on my taxes?

The custodial parent (the parent who lives with the child for most of the year) will generally be entitled to claim a child on their taxes. Even if the custodial parent pays less child support, the custodial parent may still claim the child.

However, a custodial parent may give the other parent the right to claim a child for the dependent exemption and the Child Tax Credit by signing IRS Form 8332.

What are the benefits of claiming my child on my taxes?

If you claim a “qualifying child” on your taxes, you may claim the child for a dependent exemption and you may be eligible for tax credits such as the Child Tax Credit and the Earned Income Tax Credit.

What is the exemption for dependents?

The exemption for dependents is a tax deduction on your tax return. A dependent is a person that is not you or your spouse that you support, such as your child. A tax deduction helps you pay less income tax. A tax deduction might increase your tax refund.

Can I get the Child Tax Credit if I do not claim an exemption for my child?

No. You must claim an exemption for an eligible dependent to get the Child Tax Credit.

Can the dependent exemption and Child Tax Credit be given to the other parent?

Yes, a custodial parent can give the other parent the right to claim a child for the dependent exemption and the Child Tax Credit by signing IRS Form 8332. The non-custodial parent must attach the signed Form 8332 to their tax return. The custodial parent's release of the exemption can be permanent or cover one or more years.

Can the Earned Income Tax Credit (EITC) be given to the other parent?

No. The EITC can only be claimed by the parent who the child lived with for most of the year. Only one person can claim the EITC for a child.

If I do NOT claim a dependent exemption or Child Tax Credit for my child, can I claim the EITC?

Yes, if you qualify. The dependent exemption, Child Tax Credit, and the EITC have different rules. Generally, if a child lived with you for more than half the year, you can claim the EITC for that child. For more information about whether you can claim the EITC, please read IRS tax publication number 596.

What happens if my ex claims my child but I am entitled to claim the child?

The IRS uses “tiebreaker rules” to decide who gets to claim a child when multiple people claim the same child. The IRS will examine the tax returns of everyone who tries to claim the same child and may require you to submit evidence to prove you can claim the child, such as proof of how you are related to the child, proof that you support the child and proof of where the child lives.

In general, the parent who lives with the child most of the time during the tax year will receive tax benefits for the child. However, if the child resides with both parents equally during the year, then the parent with the highest Adjusted Gross Income (AGI) will generally be allowed to claim tax benefits for the child.

What if the IRS says I owe money from my former spouse's earnings?

When you get married and sign a joint income tax return, both you and your spouse are agreeing to be responsible for any tax debt listed on the tax return. This means that you could be responsible for the entire tax debt, even if you did not earn any money that year or the debt belongs to your spouse.

Depending on your circumstances, knowledge of the tax debt, and other factors you may qualify for relief as an “Innocent Spouse Relief.” If you qualify for Innocent Spouse Relief you may not be responsible for all or part of the joint tax debt.

Do I qualify for Innocent Spouse Relief?

Whether you qualify depends on many factors, including your involvement with family

finances and tax preparation, and whether you were a victim of domestic violence. Please read IRS Form 8857 for more information.

How do I request Innocent Spouse Relief?

You must fill out IRS Form 8857, which can be found at www.irs.gov. You should also attach a statement explaining why you think you qualify for Innocent Spouse Relief.

You should file Form 8857 as soon as you become aware of the tax debt. Do not file Form 8857 with your income tax return. There is a separate address to which Form 8857 must be sent. For additional information on your Innocent Spouse Claim or on Form 8857, please call MLSA.

Tax Help

- Volunteer Income Tax Assistance (VITA) provides free tax preparation services: 1-800-906-9887 or www.MontanaFreeFile.org
- MLSA provides low-income taxpayers with legal assistance on tax matters: 1-800-666-6899. Apply online at www.mltsa.org.
- www.MontanaFreeFile.org helps you find free tax assistance and free tax filing options
- IRS Tax Information for Individuals: <http://www.irs.gov/individuals/index.html>
- State of Montana Tax Information: <http://revenue.mt.gov/default.mcp>

How do I get more help?

Montana Legal Services Association (MLSA) provides free civil legal help to low-income people who meet certain eligibility criteria:

- Apply at anytime online at mltsa.org;
- Call our Helpline at 1-800-666-6899 (Helpline hours may be limited to certain day time hours).

What help can I find at MLSA?

- Legal advice and representation;
- Referrals to pro bono attorneys and other providers;
- Self-help clinics and materials.

www.MontanaLawHelp.org

Need legal information or forms? Visit www.MontanaLawHelp.org.

Can't find what you want? Use LiveHelp. Click on the LiveHelp picture and get help finding the information you need.

www.MTLSA.org

Find copies of all our brochures online. They are all available for free download!

This pamphlet is meant to give basic legal information, not legal advice about your problem. The law changes often and each case is different. This pamphlet may not apply to your problem. You should not rely on it only. Please talk to an attorney about your problem.

Montana Legal Services Association

Low Income Taxpayer Clinic: Divorce & Taxes



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