FAMILY LAW AND TAXES:
HOW A DIVORCE OR PARENTING CASE MIGHT IMPACT YOUR TAXES

Introduction

Divorce brings many changes, including how you file your taxes. Understanding how to file your taxes correctly after a divorce can benefit you in many ways. This fact sheet is intended to provide you information regarding common tax issues that arise when a person is going through a divorce or parenting case. This fact sheet provides only general information; it does not provide legal advice to address your specific needs. If your situation is complicated or if you have further questions, you should talk with a tax professional. If you are in need of legal assistance, please consult an attorney.

Section #1: Definitions.

Here are a few terms you'll need to know to file your taxes:

Custodial 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 non-custodial parent.

Exemptions. How much you owe in taxes depends upon your income: generally, the more you earn, the more you pay. Exemptions are a way to lower the amount of your income that is taxed, allowing you to keep more money.

Filing Status. Your filing status tells you what type of tax form you'll use to file taxes. It also helps determine what tax benefits you can receive.

Tax Credits. Tax credits reduce the amount of taxes you would normally have to pay. You can get tax credits for many reasons, such as having a child or buying a home.

Tax Year. This term refers to the year for which you are paying taxes. You pay taxes for the year preceding the year you file. For example, you pay taxes by April 2013 for what was earned between January and December of 2012.

Qualifying Child. A "qualifying child" is required for some filing statuses or to receive certain tax benefits. Whether you have a "qualifying child" depends on your filing status or on the tax credit you're trying to claim.

To be a qualifying child, the following must be true:

1. The person must be your child, stepchild, foster child, sibling, half-sibling, step sibling, or a descendant of one of these (such as a grandchild or nephew).
2. The person must be under a certain age, ranging from 16 to 24.
3. The person must not mostly support himself or herself during the tax year.
4. The person must have lived with you during the prior year.

These are just some of the requirements. Depending on the circumstances in your particular case, there might be more requirements for a person to be a qualifying child. If you are uncertain whether you have a qualifying child, you should talk with a tax professional.

Section #2: What is my filing status?

Filing Status. **Your filing status depends mainly on whether or not you are married at the end of the calendar year. You are filing taxes for the prior year (e.g. you file 2012 taxes in 2013). When you are determining your filing status, look at your marital status on December 31 of the prior year. (For example, to determine your filing status for 2012 you will look at your marital status as of December 31, 2012.)**

Basic Rule: If you received a final decree of divorce, separation, or annulment by December 31 of the prior year, you are "unmarried" that year for tax purposes. If you were married on December 31 of the prior year and did not receive a divorce, separation or annulment, you are considered "married" for tax purposes.

Types of Filing Statuses. You may be entitled to file under several different filing statuses, so you will want to determine which status will benefit you the most. Factors to consider when choosing a status include:

- Do you qualify for the filing status?
- Are you and your ex-spouse willing to work together to file your taxes?
- Which filing status will give you the most benefits, such as tax credits and exemptions?
- Do you want to be liable if your ex-spouse doesn't pay his or her share of the taxes?

Married Filing Jointly. If you choose this filing status, you and your spouse file a single return.

What are the requirements for "Married Filing Jointly" status?

1. Married on December 31 of the prior year; and

2. Both spouses must sign the tax form.

What's special about the "Married Filing Jointly" status?

1. If your spouse doesn't pay his or her taxes, the IRS can come after you for the difference (or take your tax refund).
2. You'll usually pay lower taxes under this status than if you file "single" or "married filing separately."
3. You and your spouse will have to cooperate to file your taxes together.

Married Filing Separately. You and your spouse file separate tax forms.

What are the requirements for filing "Married Filing Separately"? You must have been married on December 31 of the prior year.

What's special about the "Married Filing Separately" status?

1. If your spouse doesn't pay his or her taxes, you won't have to pay for his or her tax liability.
2. You'll usually have higher taxes than if you file "married filing jointly" because you may qualify for fewer tax benefits. For instance, you may not qualify for the child and dependent care expenses credits or the earned income credit, and your child tax credit may be reduced.

Single. You file your own tax form.

What are the requirements for filing "Single"? You have to have been unmarried on December 31 of the prior year.

What's special about the "Single" status? Filing "single" may require you to pay more taxes and you may qualify for fewer benefits.

Qualifying Widower with Dependent Child. This filing status applies to individuals whose spouses recently died. As this brochure only addresses tax issues that arise from divorce, it does not address this status. If you have questions regarding this filing status, you should seek the advice of a tax professional.

Head of Household. "Head of household" is a filing status for individuals who are unmarried or "considered unmarried" on December 31of the prior year.

What are the requirements for filing "Head of Household"? You must have been unmarried or "considered unmarried" on December 31 of the prior year. You are "considered unmarried" if all of the following are true:

(a) You file a separate return;
(b) You paid more than half the cost of keeping up your home for the tax year;
(c) Your spouse did not live in your home during the last six months of the tax year;
(d) Your home was the main home of your child, stepchild, or foster child for more than half of the year; and

What's special about the "Head of Household" status?

1. You will typically pay lower taxes when you file as "Head of Household" than you would with other filing statuses.
2. You will typically receive a higher standard deduction than if you file "Married filing Separately" or "Single."
3. You can claim some tax credits you won't get under other filing statuses.

Section #3. Tax Credits for divorced or single parents.

Following are tax credits that can benefit divorced or single people with children:

Child Tax Credit. This tax credit is for individuals who have a qualifying child. If you qualify for this tax credit, you may also qualify for another credit called the child and dependent care tax credit.

Amount of Credit: You may reduce your federal income tax by up to $1000 for each qualifying child under the age of 17 years.

Requirements for Claiming Child Tax Credit:

1. You must have a qualifying child. To have a qualifying child for the child tax credit, the person must:
   (a) be under 17 years of age at the end of the tax year;
   (b) be your son, daughter, adopted child, stepchild, foster child, brother, sister, stepbrother, stepsister or a descendant of any of these individuals, which includes your grandchild, niece or nephew;
   (c) not have provided more than half of their own support;
   (d) be claimed as a dependent on your federal tax return;
   (e) be a U.S. citizen, U.S. national, or U.S. resident alien; and
   (f) have lived with you for more than half of the tax year.
2. You cannot earn over a certain income.

Earned Income Tax Credit. This tax credit is for working people and their families. You can actually get money from the government with this tax credit.
Amount of Credit: Varies depending upon your income and number of children.
Requirements for Qualifying for Earned Income Tax Credit:

1. You cannot file as "married filing separately."
2. You cannot earn over a certain income.
3. You must have earned income. Public assistance does not count as earned income.
4. There may be other requirements depending upon whether or not you have a qualifying child.

Tax Exemptions. There are many kinds of exemptions. They are important because the more exemptions you are able to claim, the less you pay in taxes. An important exemption in regard to parenting is the *dependent exemption*, which is an exemption you can claim for each dependent you have in your household. Generally, a dependent is a qualifying child or other qualifying relative (see definition above).

Section #4. Special Rules for Divorced Parents/People who Co-Parent.
These rules apply specifically to divorced people or people who share custody of a child:

- Even if the court said you have to file taxes in a certain way, you'll need to make sure you follow the IRS rules for filing. A court order does not trump your tax obligation.
- As a general rule, you and your child's other parent cannot both claim a child as a qualifying child for all tax purposes (for example, you can't both use a qualifying child to get a dependent exemption).
- Generally, you and your children's other parent cannot divide the tax benefits of having a qualifying child. Whoever claims the qualifying child that year claims the child *for every tax benefit*. There's one exception: If the noncustodial parent (the parent with whom the child spent fewer than half the nights during the year) claims the child for the child tax credit or dependent exemption, the custodial parent can still claim the child for the Head of Household filing status and Earned Income Tax Credit.
- The noncustodial parent cannot claim a child as a qualifying child for the Head of Household filing status or Earned Income Tax Credit. However, the non-custodial parent can claim a child as a qualifying child for the child tax credit and dependent exemption only if the following four requirements are met:

1. The couple is divorced or legally separated, or they lived apart for the last six months of the year.
2. The parents provided most of the child's support during the prior year.
3. The child lived with one or both of the parents for most of the prior year.
4. The custodial parent signs IRS form 8332. This form says the custodial parent won't claim the child as a dependent for the prior year. The noncustodial parent will need to send a copy of the IRS form 8332 that has been signed by the custodial parent with his or her tax forms.

If your children's non-custodial parent filed first and claimed the child tax credit when you were the one who qualified, you should talk to a tax professional **before you file** to ensure you get the income tax credits you deserve.

Section #5. Property Settlements in Divorce
Dividing marital property can be complicated for couples going through a divorce. It is possible that the division of marital property may affect your taxes. Following are some basic rules regarding issues that are commonly addressed in divorce cases:
Transfers of Property
Often, when you transfer property to another person, you'll claim a "gain" or "loss" on your taxes. If you have a "gain" from a sale, you'll pay more in taxes; if you have a "loss," you'll pay less in taxes.
Generally, property that is transferred from one spouse to another in a divorce does not have to be reported as a gain or loss.
Sale of Joint Assets
If you and your ex-spouse sell something you own together, such as a car, you'll each need to claim your share of the gain or loss from the sale. For example: if there is a $1000 gain from the sale and you receive $300, you'll need to report that $300 as a gain on your taxes.

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