

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

In general, your marital status for tax filing is determined the last day of the year. If you are married on December 31, you must file as married for that year. If you are divorced as of December 31, you must file as single for that year.

What is a Dependent Exemption?

A dependent is a person – not you or your spouse – that you support. A dependent exemption is a tax deduction on your tax return. A tax deduction helps you pay less income tax. A tax deduction might even increase your tax refund.

I'm divorced or separated--can I claim my child as a dependent?

In order to claim a child as a dependent, you must provide over one-half of the child's total support for the year. In most cases, the parent who the child lives with for most of the year is treated as the parent who provides more than half of the child's support. Generally, if you have primary residential custody of your child for most of the year, you can claim the child as a dependent.

Can the Dependent Exemption be given to the other parent?

In most cases, the parent who lives most of the time with the child during the year is treated as the parent who provides

more than half of the child's support. However, the other parent can claim the child as a dependent if:

1. S/he can prove that s/he provided more than half of the child's support and the primary parent will not claim the child; AND
2. S/he attaches IRS form 8332 to the return. (Some parents may be able to attach pages from a divorce/custody decree instead. See IRS tax publication 501 for more information about what to attach to the return.)

If I do NOT claim the Dependent Exemption, can I claim the Earned Income Credit (EIC)?

Yes, if you qualify. The Dependent Exemption and EIC have different rules. Generally, if the child lived with you for more than half the year, you can claim the EIC for that child. For more information about whether you can claim the EIC, please see IRS tax publication number 596.

Can the Earned Income Credit be given to the other parent?

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

Can I get the Child Tax Credit if I do not claim the Dependent Exemption?

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

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." 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?

You may be eligible for innocent spouse relief if you signed a joint return that understated the tax due because of unreported income or incorrect deductions by your spouse. In order to be eligible for the relief you must show that you did not know about the error when you signed the joint tax return.

You may also be eligible for relief by separation of liability. With this type of

relief, the IRS separates the understatement of unpaid taxes between you and your spouse.

If you do not qualify for either innocent spouse or relief by separation of liability, you may still be relieved through equitable relief if the IRS finds that it would be unfair to hold you responsible for the tax debt.

How do I request Innocent Spouse Relief?

Read the instructions and fill out IRS tax form number 8857 which can be found at www.irs.gov. You must attach a statement explaining why you think you qualify for Innocent Spouse Relief. If you are requesting Innocent Spouse Relief for more than one year, you should file one petition, but make a separate statement for each year explaining why you qualify.

When Can I File for Innocent Spouse Relief?

You should file Form 8857 as soon as you become aware of the tax debt. Do not wait to file Form 8857 with your income tax return.

Tax Resources

- Volunteer Income Tax Assistance (VITA): 1-800-829-1040
- I-CAN! E-File allows you to file your taxes and apply for the Earned Income Credit for free at: www.icanefile.org.
- IRS Tax Information for Individuals: <http://www.irs.gov/individuals/index.html>
- MLSA Low-Income Taxpayer Clinic (LITC helps with IRS disputes, it does not help you prepare and file your taxes): 1-800-666-6899

www.MTLSA.org

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

www.MontanaLawHelp.org

Need legal information? Go online. Visit www.MontanaLawHelp.org.

You can find information about legal problems such as divorce, parenting plans, landlord and tenant issues, and public benefits. You can also find information about getting legal help, community resources, and courts.

This pamphlet is meant to provide general legal information not specific legal advice about your situation. The law changes frequently, and each case is different. Please consult an attorney about the specifics of your situation.

Montana Legal Services Association

Low-Income Taxpayer Clinic



Post-Dissolution Tax Information

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