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

A series of informational publications designed to educate taxpayers about the tax impact of significant life events.

FREE TAX RETURN ASSISTANCE
Volunteer Income Tax Assistance (VITA) Sites offer free tax return preparation to individuals having low to moderate income. Call 1-800-829-1046 (TTY/TDD call 1-800-829-4059) for a VITA site near you.
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.

**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 Publication 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 has income. Caution: If you and your spouse file a joint return, filing another return for the same tax period 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 Publication 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. Caution: Claiming the same child on multiple tax returns for the same tax period may cause a delayed and/or a reduced refund.

**Non-custodial Parent:** The custodial parent is the parent with whom the child lived with for the greater part of the year. The other parent is the noncustodial parent. See IRS Publication 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. 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

**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 non-tax 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 552