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Tax Rules for Divorced and Separated Individuals

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This page explains basic tax rules that apply if you are divorced or separated from your spouse.

Did you change your name?

If as a result of your divorce you changed your name, be sure to notify the Social Security Administration using Form SS-5.

Did you claim your former spouse as a withholding exemption?

If you have been claiming a withholding exemption for your spouse, you must file a new W-4 with your employer within 10 days after the divorce or separation.

What is your filing status?

Your filing status is used in determining whether you must file a return, your standard deduction, and the correct tax. It may also be used in determining whether you can claim certain other deductions and credits. The filing status you can choose depends partly on your marital status on the last day of your tax year.

- **Unmarried Status** – You are considered unmarried if you have obtained a final decree of divorce or separation by the last day of the tax year.
- **Married Status** – You are considered married the whole year if you are separated but you have not obtained a decree by the end of the tax years.
- **Head of Household Status** – If you are considered unmarried and you paid for more than half the cost of keeping up a home for the year, and you have a qualifying person who lived with you, you may file as Head of Household.

Who may claim the children as dependents?

In most cases, a child of divorced or separated parents can be claimed as a dependent by the custodial parent. However, if as part of the divorce decree the noncustodial may claim a child as dependent, the custodial parent must signed Form 8332 (found at irs.gov) to make written declaration to release the exemption to the noncustodial parent.

Do I have to report child support as income?

No, any money received as child support is not reported as income by the recipient, and cannot be deducted by the payer.

Do I have to report alimony as income?

Yes, alimony must be included as income by the recipient, and is deductible by the payer.

What about Earned Income Tax Credit (EITC)?

Although the custodial parent may waive the claim of a child as dependent, this waiver is only for purposes of exemption and Child Tax Credit. However, the noncustodial parent may not claim EITC.

What if I owe past due taxes for joint returns filed while married?

When you file a joint income tax return, the law makes both you and your spouse responsible for the entire tax liability. Joint and several liability applies not only to the tax liability you show on the return but also to any additional tax liability the IRS determines to be due. You remain jointly and severally liable for taxes, and the IRS can still collect them from you, even if you later divorce and the divorce decree states that your former spouse will be solely responsible for the tax. In some cases, a spouse (or former spouse) will be relieved of the tax, interest, and penalties on a joint tax re-turn.

Three types of relief are available to married persons who filed joint returns.

1. Innocent spouse relief.
2. Separation of liability relief
3. Equitable relief.

How can Legal Aid Service of Collier County (LAS) help?

LAS provide Controversy Resolution to income-eligible taxpayer of Collier County. To be eligible the amount in controversy must NOT exceed \$50,000 for any taxable year and your current income cannot exceed 250% of federal poverty guideline.

To find out if you are eligible, call us at

- Naples Office (239) 775-4455
- Immokalee Office (239) 657-7442

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