



Tax Issues Arising In Family Law Cases With Children

A survey of common issues facing low
and moderate income parents

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Main Topics We Will Cover

- ▶ Why family law mediators need to know something about tax.
- ▶ Filing status.
- ▶ Validity of a tax return.
- ▶ Claiming the kids
- ▶ Earned Income Tax Credit (EITC)
- ▶ Information related to abuse survivors
- ▶ Innocent Spouse Relief
- ▶ IRS Disclosure Rules
- ▶ Where to get help

Objectives

- ▶ After today's training, you should be able to:
 - ▶ Understand some important tax concepts that impact divorcing or separated parents
 - ▶ Identify tax issues that parents in mediation may wish to address
 - ▶ Know where taxpayers can get free tax help

Why Do Family Law Mediators Need To Know About Tax?

- ▶ Tax comes up in family law cases, primarily when
- ▶ Parties may be required to file a tax return(s) while case is pending and/or
- ▶ The case involves children - decisions made during family law proceedings impact whether either and, if so, which party can claim tax benefits related to kids.
- ▶ Both of these situations can have a significant economic impact on the parties.

More reasons . . .

- ▶ Parties may have existing tax problems:
 - ▶ Facing collection which might include
 - ▶ Levies on bank account
 - ▶ Levies on wages or other income, such as Social Security benefits
 - ▶ Refund is not issued but is applied to tax debt
 - ▶ Tax liens may encumber marital property
 - ▶ Tax problems may interfere with paying child support or other debts.
- ▶ One spouse's share of joint refund was taken to pay the other spouse's debt (child support, student loans, etc.)
- ▶ A party's tax problems may be related to abuse.

And More Reasons . . .

- ▶ Many parents are confused about their tax rights and obligations.
 - ▶ Little or no experience dealing with tax
 - ▶ Don't know where to go to get help
 - ▶ Tax has its own language
 - ▶ Tax is intimidating
 - ▶ Parties will have questions
 - ▶ Taking control of one's financial situation including the part involving tax is empowering and is a step toward financial independence.

Keep In Mind: Tax Problems Can Be A Sign Of Abuse

- ▶ One spouse was forced to sign a tax return.
- ▶ One spouse was not allowed to review tax return before signing.
- ▶ One spouse was kept in the dark about household finances including other spouse's income and expenses.
- ▶ One spouse may have filed joint returns without the other's knowledge.
- ▶ Spouse may have refused to file and prevented the other spouse from filing tax returns.

Questions That Can Help Identify Existing Tax Problems

- ▶ Do you have tax problems?
- ▶ Did you file a tax return this year? If so, did you pay any tax owed? If due a refund, did you get it? If not, what happened to it?
- ▶ Did you file tax returns in the past?
- ▶ What filing status did you use?
- ▶ Have you received IRS notices saying you owe tax?
- ▶ Have you been able to claim your children since separating from the other parent?

Warning!

- ▶ Tax law is complicated, even basic stuff like who can claim a child. Can't cover everything in an hour or two.
- ▶ There is rarely a quick and easy fix to a tax problem.
- ▶ Goal is to alert you to problems that separated parents may face.
- ▶ The parent (or the parent's lawyer) may need to consult a tax practitioner.
- ▶ There are free clinics that help low income taxpayers with existing tax problems. You can find them at <https://taxpayeradvocate.irs.gov/about/litc>
- ▶ Good source of tax information is www.irs.gov

One More Caveat

- ▶ I am not a mediator, and I haven't been through mediation training.
- ▶ I can't tell you what you, as a mediator, can or should do.
- ▶ All I can do is provide information about these tax topics.

To Make Matters More Complicated . . .

- ▶ Tax Cuts and Jobs Act of 2017 made significant changes which impact almost all taxpayers.
- ▶ The changes relevant to our discussion went into in effect for the 2018 returns. Taxpayers who requested an extension to file their 2018 return had to file the return on or before October 15, 2019.
- ▶ The law is scheduled to expire after 2025 if it is not renewed.
- ▶ The new law does not apply to prior year tax returns (for tax years 2017 and earlier.) You may encounter parties who have not filed prior years' returns and need to do so. Different rules than the ones that are in effect now apply to returns for tax years before 2018.

And A Bit More Complicated As . . .

- ▶ The changes are still new enough that we cannot predict with absolute certainty how language put into a court decree or settlement this year will be read by IRS or a court over the next few years.
- ▶ So new that many lawyers handling family law cases are still not up to speed.
- ▶ The relevant changes in the TCJA end after tax year 2025, and we have no idea whether they will be extended.

Important General Tax Concepts

- ▶ Tax deduction reduces income
- ▶ $\text{Income} - \text{deductions} = \text{taxable income}$
- ▶ Tax liability is calculated based on taxable income
- ▶ Credit reduces tax liability
- ▶ Big enough “non-refundable” credit can reduce tax liability to zero.
- ▶ Refundable credit can be paid to taxpayer as part of a credit if tax liability is down to zero before refundable credit is entirely used.

For Example

- \$25,000 in adjusted gross income
- \$18,350 standard deduction for HOH filing status
- = \$ 6,650 taxable income
- Tax on \$6,650 for HOH = \$668
- Assume nothing was withheld
- If taxpayer is entitled to \$1,000 in tax credits:
 - Tax is 0 if credits are non-refundable
 - If credits are fully refundable, tax is 0 and credits add \$332 to taxpayer's refund.

Filing Status: Why It Matters

- ▶ Parents may be required to file tax returns while case is pending
 - ▶ Judge in the family law case may try to dictate filing status.
 - ▶ If so, the judge needs to be educated as to why that may not be appropriate.
- ▶ There may also be prior years when tax returns were not filed.
- ▶ Selected filing status has implications for which child-related tax benefits are available, how much tax is owed, and/or how much of a refund is due.
- ▶ Choosing the wrong filing status may result in an audit, liability for increased tax, or a smaller refund.

Filing Status Choices

- ▶ Married filing jointly
- ▶ Married filing separately
- ▶ Head of household
- ▶ Single (not available if you were still legally married on December 31 of the year for which you are filing the return.)
- ▶ Qualifying widow or widower with dependent child

Filing Status Determines Amount of Standard Deduction

- ▶ Standard deduction lowers amount of income subject to tax. Taxpayers can choose to use it or itemize deductions.
- ▶ Standard Deduction Amounts have increased substantially under Tax Cuts and Jobs Act for 2018 - 2025:
 - ▶ Single: From \$6,350 (2017) to \$12,200 (2019)
 - ▶ Married Filing Jointly: From \$12,700 (2017) to \$24,400 (2019)
 - ▶ Married Filing Separately: From \$6,350 (2017) to \$12,200 (2019)
 - ▶ Head of Household: From \$9,350 (2017) to \$18,350 (2019)
- ▶ Indexed for inflation for 2019 through 2025.
- ▶ Increased standard deduction means fewer taxpayers will itemize.

Married Taxpayers Do Not Have To File Joint Returns!

- ▶ Married taxpayers can choose one of 3 filing statuses:
 - ▶ Married Filing Jointly (MFJ)
 - ▶ Married Filing Separately (MFS)
 - ▶ Head of Household (but must meet specific legal requirements to choose HOH)
- ▶ MFJ & MFS do not depend on living arrangements but HOH does
- ▶ Married taxpayer cannot file using Single filing status
- ▶ Marital status is determined as of 12/31 of the tax year
 - ▶ Filing a 2019 tax return in 2020? Marital status at end of 12/31/19 is what matters.

Advantages to MFJ

- ▶ Higher standard deduction (reduces income subject to tax)
- ▶ Certain benefits are not available using MFS
 - ▶ Earned income tax credit (reduces tax owed and is refundable)
 - ▶ Student loan interest and other deductions and credits related to education
 - ▶ Child and dependent care credit
 - ▶ Premium tax credit (except for some victims of domestic abuse & abandonment)
- ▶ If you lived with your spouse at any time during tax year, MFJ allows you to exclude more Social Security income from taxation
- ▶ Usually pay less tax/due bigger refund than using other filing statuses

Risks to MFJ

- ▶ Spouses filing MFJ are jointly and severally liable for info on the return. Even if only one spouse had income or made errors, both are liable for any resulting tax due whether shown on the return or added from a later audit.
- ▶ IRS may pursue either one or both spouses to collect the tax.
- ▶ IRS may offset (take) entire joint refund to apply to one spouse's sole debt (such as spouse's tax, student loan, child support debt.)
 - ▶ Can be fixed using request for Injured Spouse Relief using IRS Form 8379
- ▶ Judges should not be forcing spouses to file MFJ. Federal law gives spouses the choice of filing separately or jointly. IRS agrees that return filed under duress is not a valid return.

Injured Spouse Relief

- ▶ Injured Spouse Relief - IRS Form 8379
 - ▶ Useful to spouse who has filed a joint return and had their share of refund taken to pay toward other spouse's individual debt (child support, student loan, etc.)
 - ▶ Not useful if refund was applied to a joint debt of spouses.
 - ▶ Not applicable if tax return did not generate a refund.
 - ▶ Form 8379 can be filed with the joint return or by itself.
 - ▶ A spouse can still go back and get their share of joint refunds for last 3 years using Form 8379.
- ▶ Availability of Injured Spouse Relief allows married couple to file joint returns without one spouse being forced to pay the other's debts.

Consider Before Filing Jointly

- ▶ MFS advantage - taxpayer is responsible only for own tax debt and will not be jointly and severally liable for a tax debt arising from return filed with their spouse.
- ▶ Can you change your mind?
 - ▶ Switch from MFJ to MFS - only have until tax return due date (usually 4/15) to switch from MFJ to MFS
 - ▶ Married taxpayers who file separately generally have 3 years from return's due date to switch to MJF
- ▶ There are other rules and considerations not addressed here.

Also Consider Before Filing MFJ

- ▶ Is spouse secretive about finances?
- ▶ Does client have access to household bank and financial records?
- ▶ Does client know how much spouse earns?
- ▶ Is spouse abusive?
- ▶ Is spouse self-employed?
- ▶ If so, does spouse keep good records?
- ▶ Does spouse control household financial decisions?
- ▶ Does spouse owe tax or have unfiled returns?
- ▶ Sometimes it's better for one or both spouses to keep separate tax lives.

Head of Household Has Benefits

- ▶ Unlike MFJ, avoids problem of joint and several liability
- ▶ Has higher standard deduction (which reduces taxable income) than MFS
- ▶ Permits taxpayer to claim Earned Income Tax Credit (EITC) - a significant monetary benefit for low to moderate income working taxpayers with children.
- ▶ It is available to filers who meet certain rules, even if still married.

Can You Satisfy HOH Requirements?

- ▶ Must provide principal place of abode for at least 1 dependent, and
- ▶ Provide more than half the annual support for the household (e.g. rent, utilities, insurance, food) and
- ▶ Be “unmarried” - includes a married taxpayer who lived apart from their spouse for at least the last 6 months of the tax year.
- ▶ Definition of HOH is at IRC §2(b)
- ▶ For detailed information see IRS Publications 17, 501, 504
- ▶ IRS forms and publications are on www.irs.gov

Head of Household is Not Available When

- ▶ The taxpayer was married to their spouse when the tax year ended and lived with that spouse at any time during the last six months of the year; or
- ▶ The taxpayer did not provide the main home of a qualifying person for more than half the year; or
- ▶ The taxpayer did not pay more than half the cost of keeping up the home for the tax year.

Is A Tax Return A Valid Return?

- ▶ A return signed under duress is not a valid return.
- ▶ A forged signature or PIN # (electronic filing) does not give rise to a valid election to file a return.
- ▶ Even if forged, IRS will determine whether there's "tacit consent"
 - ▶ Lack of reason to refuse to file jointly
 - ▶ Past history of filing jointly
 - ▶ Absence of objections
 - ▶ Delivery of tax information to spouse
 - ▶ Financial advantage to MFJ

Valid Return? (continued)

- ▶ Indications of coercion:
 - ▶ Physical, sexual, or emotional abuse
 - ▶ Threatened harm to children
 - ▶ Threats related to immigration status
 - ▶ Isolation
 - ▶ Surveillance
 - ▶ Shaming
 - ▶ Control of access to necessities
 - ▶ Other financial control, exploitation

What If MFJ Return Is Not Valid?

- ▶ If IRS can be convinced that it is not valid, it is a nullity.
- ▶ Abuse survivor has right to and often should file their own return although may need help from Taxpayer Advocate Service to get it processed.
- ▶ Can use IRS Identity Theft procedure to remove tax debt arising from invalid return
 - ▶ ID Theft Affidavit - IRS Form 14039
- ▶ IRS's Innocent Spouse unit will work duress and forged signature issues even though innocent spouse relief is only available for returns legitimately using MFJ status

Claiming The Kids

- ▶ Caveats:
 - ▶ Rules are lengthy and complex
 - ▶ Terms don't mean what it sounds like they should mean
 - ▶ These slides barely touch the issue
- ▶ We will sketch out issues that are most common when parents are not living together
- ▶ These relate primarily, but not entirely, to children the parents have in common.

Main Tax Benefits Related to Kids

- ▶ Dependent (“Dependency”) Exemption (reduces taxable income on returns for tax year 2017 and earlier but not on returns filed for 2018-2025)
- ▶ Child Tax Credit (reduces tax)
- ▶ Additional Child Tax Credit (reduces tax and is refundable)
- ▶ Earned Income Tax Credit (reduces tax and is refundable)
- ▶ Dependent Care Credit (reduces tax)
- ▶ Premium Tax Credit (reduces tax and is refundable)

Exemptions (2017 and Earlier Returns)

- ▶ Exemptions reduce your taxable income.
- ▶ You can deduct \$4050 from your income for each exemption you claim on your 2017 tax return.
- ▶ Taxpayer can claim a “personal exemption” for self and 2 personal exemptions (self and spouse) if MFJ.
- ▶ There is an exemption for each person who qualifies as dependent as “qualifying child” or “qualifying relative.”
- ▶ IRS Publication 501 explains the rules in detail.

Exemptions for Tax Years 2018 - 2025

- ▶ TCJA reduces exemption amount to zero for tax years 2018 - 2025.
- ▶ Don't know whether this will be extended for future years or whether an actual deduction for exemption will return after 2025.
- ▶ **Whether child qualifies as a dependent impacts whether the child can be claimed for the child tax credit, even though the dependency exemption amount is zero so you need to know the dependency exemption rules going forward.**
- ▶ Uncertainty about post-2025 tax rules complicates divorce proceedings that will result in decrees that govern child tax benefits both before and starting in 2026.

Dependency Exemption

- ▶ IRS rules: Qualifying child (QC) must meet 5 tests to be claimed:
 - ▶ Relationship - taxpayer's biological, step, adoptive, foster child OR sibling OR taxpayer's child's or sibling's descendant.
 - ▶ Age - At end of tax year, QC must be under 19, or under 24 if full time student, or any age if permanently and totally disabled. QC must be younger than taxpayer (unless disabled).
 - ▶ Residence - QC must live with taxpayer for more than half the year (doesn't have to be consecutive.)
 - ▶ Support - QC can't have provided more than half of own support.
 - ▶ Joint tax return - QC can't have filed a joint return except to get a refund.

Dependency Exemption For Other Dependents

- ▶ Even if someone does not meet the QC tests, they can meet other (more stringent) tests to be claimed as a Qualifying Relative.
- ▶ You don't actually have to be related to claim someone as a Qualifying Relative, so the terminology is confusing.
- ▶ See IRS Publication 501 for information about who can be claimed as a dependent under the rules for Qualifying Relative

Child Tax Credit Dependents Age 17 and Older

- ▶ A person who qualifies as a dependent and who is age 17 or over will qualify for a smaller maximum child tax credit than a person under age 17. Applies 2018 - 2025.
- ▶ The smaller child tax credit for dependents age 17 and over is also not refundable, which means that it can be used to reduce tax owed (assuming there is tax owed to be reduced) but it is not refundable, meaning that the left over portion, after tax is reduced to zero, cannot be paid to the taxpayer as part of the refund.

Dependency Exemption (continued)

- ▶ For divorced or separated parents, custodial parent generally gets to claim the child as a dependent. Later slide has exceptions.
- ▶ IRS defines custodial parent as one with whom child has spent most number of nights during tax year.
 - ▶ If equal, it's parent with highest Adjusted Gross Income (AGI)
 - ▶ Parent must be able to document (which is not always easy) that child was there if IRS audits
- ▶ Court can decide which parent gets dependent exemption, but IRS is not bound by that decision. IRS goes by its own rules.

Dependency Exemption continued

- ▶ Parent who claims the child is responsible for ensuring the child has minimum essential health coverage under ACA. Starting with tax year 2019, no longer a penalty for failing to have health insurance.
 - ▶ Medicaid is a qualifying coverage.
 - ▶ There are exemptions to MEC requirement.
- ▶ Parent who claims the child has the benefit of including the child in household size calculations for determining available Premium Tax Credit (to help pay for coverage) for Marketplace health plans.
- ▶ Taxpayer who got Advance PTC will have to reconcile eligibility on that year's tax return.
- ▶ ISRP (penalty for not having insurance) repealed for months after 12/31/18.

Dependency Exemption continued

- ▶ Exception to custodial parent claiming exemption: if custodial parent releases claim to the exemption (usually as a result of divorce or other court decree.)
- ▶ Release entitles non-custodial parent (NCP) to claim Child Tax Credit and educational credit and puts child in NCP's household for ACA.
- ▶ Custodial parent, if otherwise eligible, gets to claim Earned Income Tax Credit and Dependent Care Credit - can't be given to NCP.
- ▶ Release: for divorces finalized after 2008, NCP must file IRS Form 8332 signed by custodial parent with NCP's tax return.
- ▶ CP can revoke grant of exemption using IRS Form 8332 which should be sent to NCP and attached to CP's tax return.

Practice Tips Re: Claiming Kids

- ▶ Try to avoid custody orders that split physical custody 50-50.
- ▶ Precise 50-50 splits cause neither parent to have child greater than half the year and will disqualify both parents from claiming EITC (which can be worth a lot.)
- ▶ Parties should keep track of nights children are there.
- ▶ Custodial parent, as defined by IRS, should make sure documents (leases) and records of institutions (schools, FSSA, medical offices) reflect that children live with the custodial parent.

Child Tax Credit

- ▶ Reduces tax that would otherwise be owed.
- ▶ Worth up to \$2,000 for 2018 - 2025 for each dependent under age 17 and up to \$500 for older dependents. Up to \$1,400 is refundable for child under age 17.
- ▶ May be claimed by CP (even if filing MFS) unless CP has released dependency exemption - then NCP gets CTC.
- ▶ Taxpayer who earns \$2,500+ starting in 2018 may qualify for refundable Additional Child Tax Credit. Refundable means taxpayer receives money (up to amount of unused CTC) even if taxpayer has no tax liability to reduce.
- ▶ IRS Publication 972.

Child Tax Credit Continued

- ▶ Under TCJA, child tax credit for dependents age 17 and over is non-refundable, which means it can only be used to reduce the amount of tax owed, if any, and is limited to \$500.
- ▶ Starting with 2018 tax returns, no credit will be allowed for a qualifying child unless the taxpayer provides the child's Social Security number.
- ▶ Child tax credit is not available to taxpayers with modified adjusted gross income over:
 - ▶ \$400,000 if MFJ
 - ▶ \$200,000 for taxpayers who use a different filing status

Earned Income Tax Credit

- ▶ A refundable tax credit - paid to taxpayer as part of a refund even if taxpayer had no tax withheld. (Most credits are non-refundable; they reduce tax to zero, but don't produce a refund.)
- ▶ EITC is the largest cash anti-poverty program in U.S. for working people with children.
- ▶ Maximum EITC for 2019 is \$6,557 for household with at least 3 qualifying kids; \$5,828 for 2; \$3,526 for 1; \$529 with no qualifying kids.
- ▶ Amount is based on income, filing status, # of dependents. Phases out for MFJ with 3 kids at income level of \$55,952 (less for other filing statuses and/or fewer children.)

EITC continued

- ▶ Must file a tax return to get it.
- ▶ Unlike dependency exemption and CTC, cannot be transferred to NCP.
- ▶ Only person who qualifies may claim it.
- ▶ Parent who qualifies can claim it even if other parent is granted dependency exemption for that year.
- ▶ Not available to taxpayer filing MFS
- ▶ Not available to taxpayers filing MFJ if one spouse has ITIN
- ▶ Is available to taxpayers filing MFJ, HOH, Single

EITC - To Qualify

- ▶ Must be US citizen, permanent resident, or nonresident filing jointly with citizen/resident.
- ▶ Must have earned income.
- ▶ Must have SSN and qualifying child (QC) must have SSN
- ▶ QC must satisfy relationship, age, residence, and joint filing test.
- ▶ TP w/o QC must be age 25-64 at end of tax year.
- ▶ Cannot qualify if spouse has ITIN, unless filing HOH
- ▶ Investment income has to be below \$3,600 (2019)

EITC: Who Gets To Claim Kids When Both Parents Appear To Qualify?

- ▶ Tiebreaker rules apply if both parents want to claim children for EITC.
- ▶ Credit is allowed to parent with whom child resided the longest during the tax year.
- ▶ If child resided equal time with both parents, EITC goes to parent with highest adjusted gross income (for 2018, AGI is on Form 1040, line 7.)

EITC Audits

- ▶ Around 1/3 of all IRS audits are of taxpayers claiming EITC.
- ▶ Error rate is high because:
 - ▶ EITC rules are very complicated.
 - ▶ EITC is subject to abuse by tax preparers and taxpayers
- ▶ IRS usually require taxpayer to prove:
 - ▶ Relationship to claimed children.
 - ▶ Proving children lived with taxpayer for more than 6 months of the year.
 - ▶ Proving taxpayer had cash income reported on the return.
- ▶ IRS requires documentation which is often hard to get.

Tips For Taxpayers Who Might Face Kid-Related Audit

- ▶ Keep a contemporaneous calendar noting when you had kids.
- ▶ Make sure lease lists children if they live with you.
- ▶ Correct school, day care, medical records to reflect where kids live.
- ▶ Don't let kids who live with you receive benefits elsewhere.
- ▶ Save copies of FSSA notices that list members of household.
- ▶ Keep birth certificates, paternity orders, and other documents which document relationship
- ▶ Make sure parent knows how to get legal help to deal with an audit!

Race To File To Claim The Kids

- ▶ What happens when one parent files a return claiming children the other parent intended to claim?
- ▶ Filing first prevents second parent from filing electronically.
- ▶ Second parent can and should file a return by mail and keep proof of mailing. It takes IRS around 6-8 weeks to process a paper return.
- ▶ IRS may review both before processing, process one of the other, or audit one or both.
- ▶ If a parent fears the other parent has filed first, the worried parent should still try to file electronically.

Race To Claim Kids continued

- ▶ Remember - IRS considers the custodial parent (CP) to be the one with whom the child spent the most nights (regardless of what decree says.) But IRS usually doesn't "know" where child is.
- ▶ Often CP in decree is also the one who has child most nights.
- ▶ NCP can't claim child unless CP releases exemption by signing a form (8332) covering the specific year. (Remember, can't release right to claim EITC.)
- ▶ Solution for CP when NCP has wrongfully claimed CP's child is for CP to file a paper tax return claiming the child and let IRS figure it out.

More Dependent Tips

- ▶ Knowing rules for claiming kids is vitally important.
 - ▶ For IRS purposes: custodial parent is one with whom child spent most nights.
 - ▶ Custodial parent can claim child or release dependency exemption.
 - ▶ Only custodial parent can claim EITC (even if released exemption.)
- ▶ Does it ever make sense to give up exemption?
 - ▶ Yes. When a parent only has SSI income and won't benefit from exemption.
 - ▶ If the other parent works and gets the exemption, it can improve chances that CP will actually receive child support.
 - ▶ Can use giving up exemption to negotiate for better settlement.

Information For Abuse Survivors

- ▶ Married people are not required to file joint tax returns.
- ▶ Filing your own return, even if no filing obligation, is a way to protect yourself from an involuntary or fraudulent joint return filed by spouse.
- ▶ If your spouse is using your SSN and other ID without consent, file a police report and an ID theft report with IRS using IRS Form 14039, ID Theft Affidavit.
- ▶ File IRS Form 8822 listing reliable mailing address, so you will get notices of IRS audit, collection activity, etc.

More Information For Abuse Survivors

- ▶ The mechanics of splitting the refund from a joint return are tricky and not always satisfactory.
- ▶ Filers can designate up to 3 accounts into which portions of a refund will be deposited. No way to do this on a joint return without revealing information about survivor's bank account.
- ▶ A portion of the refund can be issued in the form of a paper check.
- ▶ Divorce decree can designate who is responsible for paying tax debts, but IRS is not bound by what the decree says. Will pursue both spouses if tax arises from joint return.

The Divorce Decree/Settlement Document

- ▶ Language in the document can allocate certain child tax benefits. It can state which parent can claim a specific child as a dependent (which governs claiming the child tax credit and additional child tax credit.)
- ▶ Document can address future years in different ways, such as alternating claiming the kids, and can address each child differently.
- ▶ Document can, for example, condition the NCP claiming the child on the NCP being current on support or having paid a certain % of ordered support.
- ▶ IRS is not bound by the divorce decree. IRS has its own rules. So if decree permits the NCP to claim the child, the decree should order the CP to release exemption using form 8332. Form 8332 must be attached to NCP's tax return to claim the child.

Suggestion For Decrees Following TCJA

- ▶ Even though the exemption amount for a dependent will be \$0 for 2018 - 2025, it may have value after 2025, so specify which parent can claim the child “as a dependent and for the child tax credits.”
- ▶ TCJA creates a new child tax credit (up to \$500 non-refundable) for persons who eligible to be claimed as dependents who are age 17 and over, which is another reason to specify who can claim the child as a dependent and for the child tax credit.
- ▶ Remember: Custodial parent who releases the exemption can still claim the child for the dependent care credit, the EITC, and HOH filing status.

Other Tips For Divorce Decree

- ▶ Decree/settlement document can also include language that:
 - ▶ Abuse survivor was not aware of any omitted income or over-stated deductions on jointly filed return.
 - ▶ Survivor believed any taxes due from joint return would be paid by spouse.
 - ▶ Spouse will be liable for any tax liabilities or balance due from joint return.
- ▶ IRS is not bound by language in court document. But IRS may be persuaded to grant survivor relief from joint liability based, in part, on language in decree or settlement document.

Child Support and Alimony

- ▶ Child support is not taxable to recipient and it is not a deduction for payer.
- ▶ For 2017 and 2018 tax returns, alimony is still taxable income for the person who receives it and must be reported on the recipient's tax return. It is also a tax deduction for person paying it. IRS has its own definition of alimony.
- ▶ Under the TCJA, for divorce decrees signed after 12/31/2018, alimony is neither a deduction for the payer or income for the recipient.
- ▶ Divorcing spouses with decrees signed prior to 1/1/2019 can elect to use the new alimony rules.
- ▶ Modifications of decrees signed prior to 1/1/2019 are governed by new rules.

Innocent Spouse Relief

- ▶ Married taxpayers who file joint returns are **jointly and severally liable** for the tax and any penalty and interest due on a joint return even if:
 - ▶ Only one spouse had income.
 - ▶ Only one spouse made errors in reporting income or deductions.
 - ▶ The spouses later divorce and only one spouse is held liable for the debt.
- ▶ Relief may be available to spouse who believes it's unfair to be responsible for joint debt.
- ▶ Different procedures apply in case of invalid return.

Innocent Spouse Relief Continued

- ▶ Mechanics of obtaining relief are beyond scope of this training. A party seeking innocent spouse relief needs professional tax help!
- ▶ There are 3 kinds of relief - different rules/remedies for each type.
- ▶ Relief is sought using IRS Form 8857.
 - ▶ Victims of domestic violence should write “Domestic Abuse Case” across the top.
 - ▶ IRS is required by law to contact non-requesting spouse for response even when requesting spouse is a DV victim. Personal information is protected (current name, address, employer, etc.)
- ▶ No collection action against requesting spouse while request pends.

Information About Innocent Spouse Relief

- ▶ IRS website: www.irs.gov Use search function.
 - ▶ IRS Publication 971 (Innocent Spouse Relief)
 - ▶ Revenue Procedure 2013-34
 - ▶ IRS Form 8857.
- ▶ Even though these resources are available, survivors are best served when they have a tax professional representing them to seek Innocent Spouse Relief.

Collection Alternatives

- ▶ IRS has many tools to collect tax including levying wages, bank accounts, and Social Security benefits.
- ▶ IRS offers alternatives to collection:
 - ▶ Currently not collectible status: Based on demonstrated hardship (financial analysis of income, assets, and allowable expenses), IRS will agree to take no action to collect tax other than keeping future refunds.
 - ▶ Installment agreement: IRS will accept proposal for monthly payments that will fully or partially pay tax.
 - ▶ Offer in Compromise - IRS will settle the tax debt for less than full amount due based on what taxpayer can afford.
- ▶ Taxpayer facing collection should consult a tax professional.

IRS Disclosure Rules

- ▶ IRC §6103 - all tax return info is kept confidential from anyone who did not sign the tax return. Exceptions include:
 - ▶ Individuals/entities specifically designated by taxpayer
 - ▶ State tax departments
 - ▶ State/local law enforcement agencies
 - ▶ Personal representative of deceased taxpayer
 - ▶ Guardian of legally incapacitated taxpayer
 - ▶ Bankruptcy trustee
 - ▶ Congressional committee

IRS Disclosure Rules continued

- ▶ Taxpayer authorizes disclosure verbally (as on a 3 party phone call with IRS) or by signing IRS Form 2848 or 8821 or 4506 (request for transcript of tax return.)
- ▶ Innocent Spouse Relief - by law IRS must contact non requesting spouse and allow NRS to participate in process. Information is available to public on Tax Court website although protective orders are available.
- ▶ Disclosure can be revoked.
- ▶ Penalties exist for IRS employees who make unauthorized disclosure.

Getting Information From IRS

- ▶ Taxpayers can get information about their own tax situation from IRS including:
 - ▶ Account Transcripts for all years showing tax return activity, audits, refunds, liabilities, payments, etc.
 - ▶ Wage and Income Transcript showing income reported to IRS on W2, 1099s, etc. for taxpayer (last 6-8 years.)
 - ▶ Tax Return Transcripts for last 3 years (Form 4506-T)
 - ▶ Actual copy of tax return for \$50 per return (Form 4506)
 - ▶ Freedom of Information Act request can provide much more detail and is particularly useful when there's been an audit, collection activity, IS relief request.

Getting Free Tax Help

- ▶ Low Income Taxpayer Clinics provide free legal representation to low income taxpayers with federal tax problems - include help with audits, collection, innocent spouse relief, appeals, and much more.
 - ▶ There are 3 LITCs in Indiana: Indiana Legal Services, Inc. (Bloomington), Neighborhood Christian Legal Clinic (Indianapolis), Notre Dame Law School Tax Clinic (South Bend).
 - ▶ The ILS LITC serves taxpayers living anywhere in Indiana.
 - ▶ ILS LITC also provides education and outreach to taxpayers, agencies, and other advocates with particular emphasis on outreach and education for survivors and for taxpayers who first language is not English.

What ILS'S LITC Can Do

- ▶ We can answer a taxpayer's tax questions and give advice (but not tax planning advice.)
- ▶ We can resolve tax problems.
- ▶ We may be able to answer your questions.
- ▶ We may be able to compute how much each parent would benefit from being able to claim the kids.
- ▶ We can speak to groups about issues related to tax.

Free Tax Help continued

- ▶ Indiana Legal Services LITC

- ▶ 214 S. College Ave., Bloomington, IN 47404
- ▶ Phone 812-339-7668; 800-822-4774
- ▶ Fax 812-339-6324
- ▶ www.indianalegalservices.org/LITC

- ▶ Taxpayer Advocate Service

- ▶ Independent organization within IRS providing free help to resolve problems with IRS.
- ▶ Phone 317-685-7840
- ▶ Fax 855-827-2637

More Free Tax Help

- ▶ VITA (Volunteer Income Tax Assistance) provides free tax preparation help for people earning under \$54,000/year.
- ▶ TCE (Tax Counseling For Elderly) also offers free tax help and specializes in income issues for older taxpayers.
- ▶ Types “VITA locator” into search function on www.irs.gov You’ll see a blue tab which provides the site location based on distance from a zip code you’ve typed in.
- ▶ Use “Free File” on IRS website to e-file your own tax return using free software, for taxpayers with income below \$62,000.

Questions?

- ▶ You can contact me, Jamie Andree, at Indiana Legal Services LITC
 - ▶ jamie.andree@ilsi.net (preferred)
- ▶ You can contact CSAJ at info@csaj.org