



CENTER FOR SURVIVOR
AGENCY & JUSTICE

GUIDEBOOK ON CONSUMER & ECONOMIC CIVIL LEGAL ADVOCACY FOR SURVIVORS

A COMPREHENSIVE AND SURVIVOR-CENTERED GUIDE FOR
DOMESTIC VIOLENCE ATTORNEYS AND LEGAL ADVOCATES



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The Center for Survivor Agency and Justice is a national organization dedicated to enhancing advocacy for survivors of intimate partner violence. CSAJ envisions a world where all people have equal access to physical safety, economic security, and human dignity. CSAJ develops and promotes advocacy approaches that remove systemic barriers, enhance organizational responses, and improve professional practices to meet the self-defined needs of domestic and sexual violence survivors.

The Consumer Rights for Domestic and Sexual Violence Survivors Initiative (Consumer Rights Initiative) is a national project of CSAJ that seeks to enhance consumer rights for domestic and sexual violence survivors by enhancing the capacity of and partnerships between domestic/sexual violence and consumer law and advocacy. Consumer and other economic civil legal remedies have the potential to provide survivors with the legal tools to address issues such as debt collection, credit discrimination, bankruptcy, damaged credit, tax liability, and foreclosure. To achieve survivors' joint goals of physical and economic safety also requires purposeful cross-training, networking, and sustained partnership building on the local and national levels. Therefore, CSAJ's Consumer Rights Initiative offers technical assistance to lawyers, advocates, programs, and communities across the nation through: advocacy tools and resources, webinar trainings, national conferences, individual technical assistance, and Building Partnerships Demonstration Sites.

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Nine



Tax Advocacy for Survivors

By **Jamie Andree**

Introduction

Survivors of domestic violence frequently have tax problems.¹ These problems may be obvious: the survivor is receiving collection notices from IRS and/or is having funds taken to pay an existing tax debt. Some tax problems are subtler. For example, a survivor may be unaware of or unable to take advantage of tax benefits, such as the Earned Income Tax Credit, which were specifically designed to help low to moderate income workers make ends meet. Many, but not all, of the tax problems faced by survivors, are directly related to abuse.

The purpose of this chapter is threefold. First, it provides basic tax information that can be used by survivors to identify and make important tax-related decisions. Second, it identifies some of the most common tax problems faced by survivors and discusses possible solutions to those problems. Finally, it informs survivors how they can obtain tax help. Topics addressed in this chapter include the issues related to filing tax returns, tax benefits related to children, IRS audits, innocent spouse relief, IRS collection, and finding tax help.

¹ This chapter will focus on the federal income tax issues faced by survivors, which means those issues that involve IRS. Some states do not have a state income tax. Those that do have a state income tax have rules and procedures that differ significantly from one another and are, therefore, beyond the scope of this chapter. However, advocates should keep in mind that some survivors have state tax problems that are often as economically devastating as federal tax problems.

Leah's Story

Leah's story, described below, highlights some of the tax problems that survivors face.

Leah grew up in a small town and married John in 2001 shortly after finishing high school. They separated in June 2013. They have two children who were born in 2005 and 2007. John was self-employed in construction. Leah worked as a receptionist in an office. John was extremely controlling of Leah in all aspects of their lives including the family finances. He demanded that all her income be turned over to him. He doled out money for groceries and other necessities as he determined they were needed. He was secretive about his own income, so Leah had no idea what he earned or even when or where he was working. John controlled whom Leah could see, where she could go, and when. He tolerated no dissent or questioning and would attack her verbally and physically whenever he felt challenged. Leah did not question John about anything, including money.

During their marriage, John and Leah filed joint tax returns using a tax preparer that John selected. Leah handed over each year's W2 to John. She did not participate any further in the preparation of the return until it was completed. Until 2007, John would show Leah the second page of the completed return and have her sign it. He never gave her an opportunity to review the entire return before or after signing, and Leah was afraid to ask to see it. She never knew whether tax was owed or whether John received refunds. Starting in 2007, their returns were filed electronically. After that, Leah was never presented with a tax return to sign although she believed joint returns were being filed. Leah was so focused on merely surviving life with John and protecting their children from his abuse that she didn't even consider asking him about tax returns.

Starting in 2010, Leah noticed that she and John were receiving mail from IRS, but she did not know what was inside the envelopes. She was afraid to ask.

In early 2013, a coworker noticed bruises on Leah's arms. After years of concealing abuse, Leah connected with an agency that served survivors. By late 2013, she and her children were living in transitional housing, and Leah had obtained a legal aid lawyer and filed for divorce. In March 2014, she went to a VITA site and had her 2013 tax return prepared for free. She was delighted to learn that she was due a large refund – over \$3,000 – because her income was low, her children lived with her, and she was eligible for the Earned Income Tax Credit. The refund would enable her to buy a car and purchase other items she and her children badly needed.

Unfortunately, Leah never received the refund. IRS kept it and applied it to a 2008 tax debt owed jointly by Leah and John. After calling IRS, Leah learned that she and John were both liable for over \$25,000 in federal income tax stemming from John's misreporting of his income and deductions on joint tax returns they had filed from 2008 through 2012. Not only was Leah unable to obtain refunds until the debt was paid in full, but IRS was threatening to levy her wages and her tiny bank account.

To make matters worse, Leah then received a letter from IRS stating that IRS was auditing her 2013 tax return. The letter said she had 30 days to provide proof to IRS that she was related to her own children and that she had lived with them in 2013. It also asked for proof of her marital status. Leah had no idea where she would obtain this proof. She had been unable to take important papers with her when she and her children left John.

In addition to the problems with IRS, Leah's divorce attorney told her that John's lawyer was demanding that John be granted the right to claim both of their children as dependents on his future tax returns.

Federal Tax and Economic Security for Survivors

Congress has chosen to use the tax system to deliver a range of benefits to taxpayers. Unfortunately, for a number of reasons related to abuse and to the complexity of the tax rules, survivors may often miss out on receiving these very important tax benefits. Access to tax benefits can substantially improve a survivor's economic stability and security. Even a refund composed entirely of tax withheld from a survivor's paycheck can be a great help. The primary tax benefits generally associated with claiming children on a tax return are the dependent exemption, the Child Tax Credit, the Additional Child Tax Credit, the Child and Dependent Care Credit, and the Earned Income Tax Credit (EITC.) The EITC alone can be worth over \$6,000 to a survivor with three or more qualifying children. The 2013 tax return that was prepared for Leah at a VITA site showed that she was eligible for a refund of \$3,815, more than half of which resulted from claiming the EITC and the Additional Child Tax Credit, but all of which was taken by IRS to repay her joint tax debt with John.

In addition to losing out on tax benefits, survivors may find themselves saddled with tax debt, often resulting from the action of an abusive spouse. For example, a survivor may not know that a joint tax return was prepared incorrectly or that a return was not filed at all, resulting in a cascade of collateral consequences. Leah was unaware that John misstated his income and business expenses on their joint return for five years. Tax problems that go unaddressed can severely undermine a survivor's economic stability and security. IRS employs a number of collection strategies that may impair survivors' ability to provide for themselves or their families. IRS can and will levy (garnish) a tax debtor's wages, Social Security benefits, and other income, will levy on bank and retirement accounts, and will retain refunds to apply to existing tax debts. Just as Leah was taking steps toward economic stability, she found herself facing IRS collection action as well as the loss of her badly needed refund. Also, a record of tax debts, even those that have been paid, can impair a survivor's credit for years.

Finally, for survivors who earn income but are not treated as employees, the failure to file tax returns may impact their economic stability and security far into the future. These survivors, and others who work informally and are paid in cash, do not get credit with the Social Security Administration for the work they have done unless they file tax returns and report this income. As a result, they may not be eligible for Social Security retirement or disability benefits, or the amount they receive may be less than their employment history would warrant.

Long term impact of tax issues facing survivors

As noted above, there are immediate as well as long-term impacts from the tax issues survivors face. As in Leah's situation, missing out on important tax benefits and refunds restrict survivors' access to financial resources needed for safety; Leah had planned to buy a car and cover some basic needs for her children with the refund that was taken by IRS and applied to the joint tax liability. Many survivors use tax refunds for transportation, relocating or securing housing, covering legal fees, or getting a leg-up on other basic needs.

In the long term, tax debt can damage survivors' credit, restricting access to housing, employment, utilities, and other basic needs. Failure to file tax returns can also threaten future income such as retirement and disability benefits. The tax system was designed to deliver a range of benefits to low and moderate income taxpayers, yet survivors often miss out on these benefits while grappling with the consequences of tax issues generated by abusive partners.

Where Tax Issues Start: Filing a Tax Return

The tax return is the starting point for understanding tax issues faced by survivors. All potential taxpayers face a range of questions and choices related to the filing of a tax return,² the answers to which may have profound financial implications for the individual and the individual's family.

Some of the most significant questions and choices related to filing a tax return may include:

- Am I required by law to file a tax return?
- Even if I am not required to file, are there reasons that I should file a tax return?
- Are there any reasons not to file a tax return?
- What filing status may I and should I use?
- If I am married, must I file a joint tax return with my spouse?
- What information do I need to file a return and where can I get it if I don't have it?
- Who is going to prepare my tax return?

Survivors who are married or who have been married face issues related to the filing of a tax return, including:

- Whether to file a joint return with a spouse to whom they are currently married;
- Whether to file a joint return with a spouse from whom they are divorced or divorcing, but to whom they were married at the end of the tax year.

Who is required to file a tax return?

IRS rules establish who is required, based on the amount of their income and other factors, to file a tax return. Those rules can be found on the IRS website which is located at www.irs.gov, [IRS Publication 501](#). The rules for determining who has to file a tax return can be confusing. They are particularly challenging for individuals who are unfamiliar with the American tax system and for certain groups, such as married people who live together but file separately.

In general, the rules are based on the taxpayer's filing status, age (under 65 or age 65 and older), and amount of income. For example, for tax year 2015, a single taxpayer under age 65 who does not qualify for any filing status other than single would be required to file a tax return if the taxpayer's gross income was at least \$10,300.³ There are also special filing requirement rules for people who can be claimed as dependents by someone else. People with annual net income of at least \$400.00 from self-employment are required to file a tax return.

² Many survivors have not had the opportunity to make their own decisions or participate in the decision-making process related to filing a tax return. This issue will be discussed later in this chapter.

³ Taxpayers generally receive "information returns" – W2s and 1099s – which tell them how much income they have received from the issuer of the return during the tax year and which contain other important information such as the amount of tax withheld, if any.

Key Terms

Tax return: A tax return is a form you submit to IRS stating your income and certain personal circumstances from the past year. This form is used to assess how much tax, if any; you owe or whether you are due a refund.

Refund: A refund is money owed to you, generally because more tax has been withheld or paid than you actually owe. Certain tax credits may also create or increase your refund. A refund is also referred to as an "overpayment" of tax.

Credit: A tax credit is reported on your tax return. Credits are deducted from the tax you would otherwise owe. Some credits are "refundable" meaning that they can also result in a refund or increase the size of your refund. Some of the common credits¹ are the Earned Income Tax Credit (EITC), the Premium Tax Credit (PTC), and the Child Tax Credit (CTC.)

Deduction: A tax deduction is reported on your tax return. It reduces the amount of income that is taxed and, generally, the amount of tax you owe.

Exemption: A tax exemption is an amount that is deducted from your income to reduce the amount of income that is taxed. Generally, you can claim an exemption for yourself. You may also be able to claim exemptions for your spouse or dependents if they qualify under IRS's rules.

Filing status: Filing status is a category that is based on a number of factors including your marital status. Everyone who files a tax return must select the appropriate "filing status." There are five filing statuses: single, married filing jointly, married filing separately, head of household and qualifying widow(er) with dependent child. Each filing status has its own requirements, advantages, and disadvantages.

Key Terms (cont.)

Joint and several liability: When married taxpayers file a tax return, each spouse is jointly and severally liable for the full amount of tax shown on the return or as adjusted by IRS. This means that each spouse is responsible for paying the full amount of the tax even if only one spouse had all or most of the income or took some action that led to tax being owed, such as failing to report income or misreporting deductions. IRS is free to collect the entire amount or any part of what is owed from either taxpayer.

Innocent spouse relief: A taxpayer who has filed a joint return with their spouse and who owes tax as a result of that return can ask IRS to grant “innocent spouse relief.” If granted, the taxpayer is not responsible for some or all of the tax that results from the joint tax return.

Injured spouse relief: A taxpayer who has filed a joint return with a spouse can request injured spouse relief when the taxpayer’s share of the resulting refund has been or will be taken to pay for the spouse’s past due tax, child support, student loan, or other debt. If granted injured spouse relief, the taxpayer will get their share of the joint refund instead of having it applied to repay the spouse’s separate debt.

Tax audit: An examination by IRS of a taxpayer’s accounts, documents, and other information to determine the correctness of a tax return filed by the taxpayer.

Taxpayers who have a filing obligation but who fail to file or who file after the due date of the return may be subject to penalties. A taxpayer who files late but is due a refund is not penalized for filing

after the due date. However, a taxpayer can only obtain the refund if the taxpayer files the return within three years of its due date. In limited circumstances, a taxpayer may be granted additional time to claim a tax refund if the taxpayer provides a statement from a physician documenting that the taxpayer was unable to manage their financial affairs due to a mental or physical disability.

A “failure to file” penalty, which applies when a taxpayer files a return after its due date, is normally 5% of the unpaid taxes due for each month or part of a month that a return is late. The maximum failure to file penalty is 25% of the unpaid tax. There is also a failure to pay penalty applicable when payment is not made by the return’s due date. The failure to file penalty is greater than the failure to pay penalty, so survivors who cannot afford to pay the amount due should still file their returns by the due date.

Some taxpayers who would not otherwise have a filing obligation are, nevertheless, required to file tax returns. Starting with tax year 2014, taxpayers who have signed up for marketplace health insurance (“Obamacare”) and for whom the Advance Premium Tax Credit (APTC) was paid directly to their health insurer are required to file tax returns, even if they do not otherwise have a tax filing obligation. Those taxpayers must reconcile the amount of APTC that was paid on their behalf with the APTC that they were actually entitled to have paid. IRS Form 8962 is used to reconcile the amount of APTC that was received; it is filled out and attached to the tax return that is filed for that year. A survivor who received the benefit of the APTC and who fails to file a tax return reconciling the APTC that was received, will not qualify for the APTC or other cost-sharing reductions to help pay for Marketplace health insurance in future years. Taxpayers who are not exempt from the health insurance requirement and do not have health insurance for themselves and/or their dependents are required to pay a penalty called the Individual Shared Responsibility Payment (ISRP.) The ISRP is reported on the taxpayer’s tax return. The amount of the ISRP is based on the taxpayer’s income and the number of uninsured individuals.

Practice Tip

The IRS website has an “interactive interview” program that a survivor or a survivor and advocate together can use to determine if the survivor has a filing requirement. To locate that interactive interview, go to www.irs.gov, click on “Filing” and then click on “Do you need to file a return?” An individual using the interactive interview program is not asked to provide identifying information.

Case Scenario: *In Leah’s case, if she continues to claim her two children as dependents, starting with tax year 2014, she is required to report whether they (and she) had or were exempt from having “minimum essential coverage.” An ISRP is charged for each non-exempt individual without coverage.*

Other reasons to file a tax return

Survivors who have not gotten the APTC and/or do not have enough income to be required to file a tax return may still have a number of good reasons for filing a tax return. These include:

- Obtaining a refund of tax withheld from income.
- Obtaining a refundable tax credit such as the Earned Income Tax Credit.
- Applying for financial aid to attend school.
- Reducing the odds of being the victim of tax-related identity theft since people who fail to file tax returns are more likely than others to be the victim of this type of ID theft. When survivors file their own tax returns, it reduces the odds that their name and Social Security number will be used by their abusive partner to file a false joint return.
- Improving immigration status. For example, lawful permanent residents who wish to become citizens will have to provide proof of filing all required tax returns.
- Filing bankruptcy as the trustee will want to see copies of recent years' tax returns.
- Applying for a loan.

Tax Returns and Privacy

Some survivors worry that filing a tax return will increase the likelihood that their abusive partner will be able to locate them. Fortunately, a provision in the federal tax law, Internal Revenue Code §6103, provides that all tax return information, including the filer's address, is kept confidential from anyone who did not file the tax return. There are some exceptions to the confidentiality rules including individuals or entities specifically designated by the survivor who filed the return, state tax departments, law enforcement agencies, and other similar entities. In cases where survivors have filed joint tax returns, the other taxpayer can get information contained on the original return as well as copies of subsequent correspondence from IRS. Survivors can use IRS Form 8822 to notify IRS of a change in mailing address.

Filing status

A survivor who decides to file a tax return must deal with the issue of selecting a filing status. There are five filing statuses, each with its own requirements. They are:

- Single
- Married Filing Jointly
- Married Filing Separately
- Head of Household
- Qualifying Widow(er) with Dependent Child

Practice Tip

Survivors who were married at the end of the tax year⁴ face the biggest challenge in determining what filing status to use. It is critical to remember that married spouses, including those who are divorcing, are not required to file a joint tax return.

The qualifications for each filing status are contained in [IRS Publication 501](#). In addition, IRS has an interactive assistant on its website that survivors can use to determine which filing status applies to them and, if more than one would apply, which would lead to the lowest tax.

⁴ Marital status is determined as of December 31, the last day of the tax year for which the return is being filed. Thus, a survivor's marital status on December 31, 2016, must be considered in determining which filing status the survivor can use when filing a 2016 tax return in 2017.

Married taxpayers can choose one of the following statuses:

- (1) married filing jointly,
- (2) married filing separately, or
- (3) head of household.

Note that a taxpayer who is still married on the last day of the tax year may not file as single. **The chart below sets out some of the requirements, benefits, and disadvantages to selecting one of the three filing statuses that may be available to married survivors.**

The filing status you choose can also impact things like the amount of income that is taxable, credits that are available, and the amount of tax owed. Many couples choose to file joint returns because doing so may result in a lower tax liability or a bigger refund. Spouses may choose to file a joint return even if they do not live together.

Assessing tax issues

Each survivor's experience is unique. Advocates assisting with tax issues must keep this in mind and respect the complexity of the survivor's experience and feelings. The assessment questions presented below can help a survivor decide whether to file a joint tax return with their spouse. However, conversations about tax should not be limited to these questions. These questions can be part of a broader assessment with the attorney/advocate relying on the survivor's insights and priorities. For a fuller description of a *survivor-centered approach* to economic assessment, see the **Introductory** chapter in this Guidebook (pg. 11).

Advocates can help survivors assess the wisdom of filing a joint return by discussing issues raised by the following questions:

- Is your spouse secretive about financial information?
- Do you have access to the household bank account and other financial records?
- Does your spouse control the household financial decisions?
- Are you and your spouse current in filing required tax returns?
- Do you or your spouse owe tax for past years? If so, do you know why?
- Have you ever received a notice of tax due from the IRS?
- Do you have a history of filing joint returns with your spouse?
- Did you participate in preparing and filing joint returns with your spouse?
- Did you have a chance to review joint tax returns filed with your spouse?
- Do you trust your spouse to report income, deductions, and other information accurately?

Practice Tip

Survivors of abuse often conclude that filing a joint tax return with their abusive spouse is unwise. If the abusive partner has a history of not paying taxes, is dishonest, and/or is secretive about financial matters, it may be a good idea for a survivor to file a separate return. However, some survivors, like Leah, may be in a position where it is dangerous to refuse to file a joint return. Some questions to help determine the best strategy for the survivor can include: How do you think that John will react if you file separately? What are some strategies that may make that decision safer?

Filing status is important for several reasons. When married spouses file a joint return, both spouses are responsible for the entire amount of tax due (which is called "joint and several liability") even if only one spouse had income or even if one spouse put mistaken or false information on the tax return. Leah is jointly and severally liable with John for the entire amount of tax due from

Considerations for Selecting a Filing Status

	Married Filing Jointly	Married Filing Separately	Head of Household
Requirements	Parties must be married (do not need to be living together)	Parties must be married (but whether they live together or apart is immaterial.)	Filer must (1) Provide the principal place of abode for any dependents; (2) Provide more than half of the annual support for the household [e.g. rent, insurance, utilities, food consumed on the premises] and (3) Be considered “unmarried” which includes a married taxpayer who lived apart from their spouse for the last 6 months of the tax year.
Benefits	<p>May be eligible for:</p> <ul style="list-style-type: none"> - Earned Income Tax Credit and Child and Dependent Care Credit - Student loan interest deduction and other deductions and credits related to education. <p>If the filer lived with their spouse at any point during the year, married filing jointly allows them to exclude more Social Security income from taxation.</p>	A taxpayer who selects married filing separately is only liable for their tax debt for that tax year. They are not responsible for their spouse’s tax debt.	<ul style="list-style-type: none"> - Although taxpayer is fully liable for any tax arising from the return, they avoid liability that might have been imposed had they filed jointly with a spouse who misstated income or other return items. - Allows a higher standard deduction than married filing separately. - Permits eligibility for the Earned Income Tax Credit.
Disadvantages	<ul style="list-style-type: none"> - Joint filers are jointly and severally liable for tax arising from the return. Even if only one spouse had income, both are liable for any resulting tax liability whether it appears on an original return or results from a later exam by IRS. - IRS may pursue one or both taxpayers to recover tax owed as the result of a joint return. - IRS may offset [take] the entire refund to pay towards one spouse’s prior tax or other debt [including child support, student loan, etc]. There is a remedy for this – file a request for Injured Spouse Relief using IRS form 8379. 	<p>Not eligible for:</p> <ul style="list-style-type: none"> - Earned Income Tax Credit - Student loan interest deduction and other deductions and credits related to education. - Child and Dependent Care Credit 	IRS may audit the taxpayer’s return and require the taxpayer to prove that all of the requirements for filing as head of household are met.
Safety Concerns	Filing jointly with an abusive spouse generally requires communication with that spouse and sharing information that may raise safety concerns for survivors. Even seeking Innocent Spouse Relief (discussed below) which is relief from joint and several liability from tax owed on a jointly-filed return, raises safety issues as IRS will notify the abusive spouse that relief has been sought and will give that spouse an opportunity to respond.	Filing separately does not require communication with or sharing information with one’s spouse.	Filing as head of household does not require communication with or sharing information with one’s spouse.

their joint returns even though only John made errors in reporting his income and deductions. The filing status you choose can also impact things like the amount of income that is taxable, credits that are available, and the amount of tax owed. Many couples choose to file joint returns because doing so may result in a lower tax liability or a bigger refund. Spouses may choose to file a joint return even if they do not live together.

Taxpayers who choose a particular filing status may, within certain time limits, change to a different filing status after filing the return. A taxpayer who files a joint return has until the return's actual due date [usually April 15] to amend and file married filing separately or head of household. That is a very limited opportunity to switch from married filing jointly to another filing status. By contrast, taxpayers who file separately generally have three years from the return's due date to amend the returns and file married filing jointly.

Information needed to file a tax return

The first step toward filing a tax return is the collection of information needed to prepare the return. All taxpayers must collect income information for all income they received during the tax year. Employers are required to send each of their employees an IRS Form W2 that reports annual income and the amount of tax that was withheld. Independent contractors may receive IRS Form 1099-Misc from businesses that have paid them at least \$600.00 during the tax year. Other common sources of income that result in the issuance of a 1099 (or a W2) are Social Security benefits, unemployment benefits, and VA benefits, interest, dividends, pensions, canceled debts, state and local tax refunds, and gambling winnings.

Case Scenario: *John prevented Leah from participating in the preparation and filing of their joint tax returns, and she was not allowed to review the returns before they were filed. Leah was understandably fearful of asking about taxes or other financial matters. She left without being able to take important tax information with her. Requesting access to information could pose continued safety risks to her and her children. John continues to try to control access to certain tax benefits through his lawyer. Assessing Leah's knowledge of John's potential reactions is critical when determining how to gather the necessary documentation for filing.*

Think About It

For a number of reasons, many survivors do not have access to the documents needed to prepare a tax return. Documents may have been destroyed or taken by the abusive partner. Other survivors, like Leah, lose access to documents when relocating to escape abuse, or it may pose a safety risk for a survivor to search for needed documentation. Reconstructing tax information is often possible but may be time-consuming and/or require payment for replacement documents.

Employers and other payers will often furnish replacement W2s and 1099s. IRS can provide survivors with free Wage and Income Transcripts. These are transcripts of all W2s, 1099s, and other income-related information documents. However, IRS Wage and Income Transcripts for the most recent tax year are generally not available in full until the middle of the following tax year, although partial information may be available. Unfortunately, IRS does not include state and local tax withholding on its Wage and Income Transcripts. Taxpayers will have to get that information from the entity that issued the original W2 because many state departments of revenue are unable to provide it.

Other information needed to file a tax return includes:

- Personal information such as the date of birth and Social Security number of the taxpayer and each person the taxpayer will claim as a dependent.
- Records of the taxpayer's and family members' health insurance coverage including records of employer-provided coverage or premiums paid and type of coverage for private coverage to show that all had and maintained minimum essential coverage. Taxpayers who are exempt from coverage should retain certificates of exemption received from the Marketplace or other documentation needed to support an exemption claimed on the return. As noted above, taxpayers who claim the Premium Tax Credit are required to reconcile the amount of the Advance PTC paid to their health insurer with the amount that they were actually entitled to receive.
- Taxpayers who are paid in cash should collect documentation of all payments. Useful forms of documentation of cash income can include records of bank deposits, receipts, job contracts, and ledger books.

The Invalid Tax Return

Sometimes a survivor will discover, often after getting a notice of tax due from IRS, that a joint return has been filed by their abusive partner, without the survivor's knowledge or consent. Fortunately, there are remedies available to the survivor. These remedies involve persuading IRS that the joint return was a not a valid return. The determination of whether

Practice Tip

A survivor can treat the situation as a form of identity theft and use IRS procedures for resolving cases of identity theft.⁵ Or the survivor can raise the invalidity of a purported joint tax return with the IRS unit responsible for resolving claims for Innocent Spouse relief, even though, as discussed below, Innocent Spouse relief is only available to taxpayers who have actually filed joint tax returns.

a joint return is valid is based on the facts and circumstances surrounding the filing of the return. There are many factors to consider when determining whether a joint return is a valid return.

Duress

A tax return signed under duress or coercion does not constitute a valid tax return. It is up to the taxpayer to establish the existence of duress; if successful, they will not be responsible for the tax shown on the return or later imposed by IRS.

A tax return signed under duress

To show the return was signed under duress, the taxpayer must show that they were unable to resist their spouse's demands and that they would not have signed but for such constraint on their will. IRS will consider the following as possible indicators of coercion:

Practice Tip

A survivor who disputes the validity of a joint return should file their own tax return in that year, even if they had no income for that year. By filing their own tax return, they are showing they did not intend to file a joint return with their abusive partner. If the taxpayer learns of the invalid return prior to its due date, the taxpayer has the right to file their own return using a different filing status than married filing jointly without having to establish the invalidity of the originally filed joint return.

⁵ The IRS website contains information and procedures for victims of tax-related identity theft. At a minimum, the identity theft victim should complete and submit IRS Form 14039 according to the instructions.

- Physical, sexual or emotional abuse;
- Financial exploitation;
- Threatened or actual harm to children;
- A threat of separation from the children.
- Threats related to immigration status;
- Isolation from family and friends;
- Surveillance;
- Shaming;
- Control over access to necessities.

It is possible that Leah may be able to convince IRS that the joint returns with John were invalid because she signed them under duress. The determination of whether a return was the result of duress is made initially by the Cincinnati Centralized Innocent Spouse Operation which also makes the determination of whether a survivor is entitled to innocent spouse relief, discussed later in this chapter. Duress is defined more narrowly than abuse and, unlike abuse, is determined at the moment that return was signed. Particularly where multiple years of returns are involved, survivors face an uphill challenge asserting duress. An experienced tax professional can help survivors like Leah determine whether to pursue invalidating returns based on duress is the best strategy.

Forgery

A forged signature does not give rise to a valid decision to file a joint return. The burden is on the taxpayer to prove forgery and no intent to file. If the return was forged, IRS will determine if there was tacit consent, i.e. implied or understood consent. IRS will look to the following as indication of tacit consent:

- Lack of reason to refuse a joint return;
- History of filing jointly;
- Absence of objections;
- Delivery of tax information to spouse;
- Whether the joint return provided advantages to both spouses.

Challenging an invalid return

In addition to raising the invalidity of a joint return through IRS Identity Theft procedures and/or IRS Innocent Spouse Relief procedures, there is another avenue available to survivors who are receiving collection notices from IRS but who have not had the opportunity to contest the validity of their tax debt. Taxpayers who are facing the levy (garnishment) of property, such as wages, Social Security benefits, and bank accounts, have the right to pre-levy Collection Due Process hearing before the IRS Office of Appeals. These appeal hearings generally take place by telephone unless a taxpayer specifically requests a face-to-face hearing. Although the purpose of the Collection Due Process hearing is to give the taxpayer an opportunity to get into an IRS collection alternative instead of the levy, the Appeals Office will consider underlying liability issues if the taxpayer has not had the opportunity to previously contest the tax debt.

Think About It

There are a number of situations in which a survivor would not have had the opportunity to contest a tax debt. Abusive partners deny some survivors access to mail and survivors never see notices from IRS containing proposed assessments. A survivor escaping abuse may not have had a reliable address at which to receive mail. Sometimes IRS continues to send mail to the address shared by the survivor and abusive partner even after the survivor has provided IRS with a new address.

Tax Benefits Related to Children

Survivors, particularly those with earnings, can receive a significant economic benefit if they are able to claim their children for some or all of these tax benefits. Unfortunately, many survivors lose out on these benefits. The reasons are complex and may involve a range of factors including being unrepresented in family law court proceedings, being represented by counsel with insufficient knowledge of child-related tax benefits, or because abuse has made it difficult or impossible for survivors to take advantage of these benefits. Even after escaping abuse, Leah is now facing John’s demands for future tax benefits. For many survivors, especially those without representation, demands like these are, themselves, a form of intimidation and/or abuse.

In order to access these tax benefits, a taxpayer must claim them on a tax return. The rules for claiming tax benefits related to children are found in IRS Publications 501, 503, 972, and 596, all of which can be obtained on the IRS website. The rules are complex, and the criteria for claiming the benefits vary among the different benefits.

Think About It

Basic eligibility for some of these benefits generally goes to the “custodial” parent. However, IRS is not bound by a state court’s determination of which parent is the custodial parent. IRS considers the custodial parent to be the parent with whom the child has spent the most nights in the past year. If the child has spent the same number of nights with each parent, the parent with the highest adjusted gross income (AGI) is the custodial parent.

The primary child-related benefits are:

Tax Credit/Exemption	Benefit to Taxpayer	Transferable to Non-Custodial Parent?
Dependent Exemption ⁶	Reduces income that is subject to tax. For tax year 2016, a taxpayer can deduct \$4,050 for each exemption claimed.	Yes. The release entitles the non-custodial parent to also claim the child tax credit and puts the child into the non-custodial parent’s household for the Affordable Care Act.
Child Tax Credit	Reduces the amount of tax that the taxpayer would otherwise be required to pay.	Yes. The credit goes to the parent claiming the dependent exemption for the child.
Additional Child Tax Credit	Reduces tax. If the tax is reduced to zero, the ACTC may create or increase the taxpayer’s refund as it is a “refundable credit.” ⁷	Yes. The credit goes to the parent claiming the dependent exemption for the child.
Earned Income Tax Credit	Reduces tax & refundable.	No.
Dependent Care Credit	Reduces tax.	No.
Premium Tax Credit	Reduces tax & refundable.	

⁶ IRC §152, IRS Publication 501

⁷ Refundable in this context means that the taxpayer may receive money back from the IRS after their tax is reduced to zero.

The parent who claims the child as a dependent is responsible for ensuring that the child has minimum essential health coverage under the Affordable Care Act (ACA). If the child does not have minimum essential health coverage and is not exempt, the parent will incur a penalty called the Individual Shared Responsibility Penalty (ISRP). The ISRP appears as an additional tax on the parent's tax return. The parent who claims the child has the benefit of including the child in household size calculations for determining how much Premium Tax Credit the household qualifies for; the PTC helps pay for coverage under marketplace health plans.

Practice Tip

Many survivors, like Leah, will face demands from the spouse they are divorcing to be granted the child-related tax benefits. Attorneys who represent survivors facing these choices should provide calculations to the survivors showing what these child-related benefits are worth.

Think About It

For example, a survivor whose sole income is SSI and who does not intend to enter or return to the workforce may decide that the child-related tax benefits are worth little or nothing compared to other benefits, such as child support or divisions of property, that are being negotiated in the divorce case. Another survivor may discover that the tax benefits associated with the children are actually worth far more than the amount of child support the survivor is likely to receive from the other parent. Each survivor's situation is unique, and survivors' priorities will differ. What survivors will likely share is the need for detailed, accurate information upon which to make informed decisions.

The Race To File The Tax Return

When parents are separated, both may want and attempt to claim the same child as a dependent or as a qualifying child for the EITC. This occurs even after a divorce court has awarded child-related tax benefits to one of the parents. As noted above, IRS is not bound by a state divorce court's decision concerning which parent may claim a child because IRS has its own rules that determine which parent is eligible to claim a child.

After one parent has filed a return claiming a child, the second parent will be unable to file electronically a tax return claiming the same child. The second parent can still file a paper tax return by mail claiming that child. According to IRS, it takes six to eight weeks to process a paper tax return, which is why many taxpayers choose to "e-file" their tax returns. A taxpayer who has e-filed a return should receive a refund within 21 days and will often receive it much sooner.

Depending upon how close in time IRS receives two returns claiming the same child or children, IRS may review both before processing, may process one instead of the other, or may process both and then audit one or both.

Practice Tip

If a survivor fears that the other parent has filed first, the survivor can still try to file electronically. Sometimes the other parent has not filed first but has threatened to or lied about filing. The survivor will be unable to e-file a return and will have to file a paper return if the other parent has actually filed a tax return claiming the same child.

IRS has “tie-breaker” rules, which apply to determine which parent may claim a child for the dependent exemption and the EITC when both parents meet the basic criteria for claiming the same child. The credit is given to the parent with whom the child has resided the longest during the year. If a child resided with both

Practice Tip

Family law attorneys should try to avoid custody orders that split physical custody of children 50-50. When custody is split equally, neither parent has the child greater than half the year, so neither may claim the Earned Income Tax Credit (EITC). The EITC can provide a substantial cash benefit to an eligible working parent; care should be taken to ensure that this source of funds is not inadvertently lost as the result of decisions made in the family law case.

parents an equal amount of time, then the Earned Income Tax Credit goes to the parent with the highest adjusted gross income.

IRS Audit (Examination)

An audit is an examination by IRS of a taxpayer’s accounts, documents, and other information to determine the correctness of a tax return filed by the taxpayer.

Most audits are done by correspondence, which means that IRS sends the taxpayer a letter requesting documentation of certain items on the taxpayer’s return. Leah received such a letter from IRS after she filed her 2013 tax return. IRS was requesting that she

Think About It

Survivors, particularly those who have recently left their abusive partner, are often asked to provide proof that they are related to the children they are claiming as well as proof of the children’s ages⁸, that those children lived with them for more than half the tax year, and that the survivor did not reside with their spouse during the last six months of the tax year.

document that she was entitled to claim her children as dependents and that she qualified for the CTC, ACTC, and the EITC which made up most of her refund. IRS was also requesting documentation that she qualified to choose the filing status Head of Household, which required her to prove, among other things, that she and John had lived apart for the last six

months of 2013. The letter Leah received from IRS contained examples of the type of paperwork IRS expected her to provide as documentation.

Practice Tip

A taxpayer has 30 days to provide the requested documentation to IRS. The taxpayer can request an extension of time to provide the documents. Documents must be mailed or faxed to the IRS examination unit that issued the audit notice. Each document submitted should have the taxpayer’s Social Security number on each page.

Many taxpayers have great difficulty locating documents to prove they are entitled to use Head of Household filing status and/or that they can claim their children as dependents as well as claim certain child tax credits. Survivors, in particular, may have difficulty if they do not have access to

records. Survivors who have moved frequently or recently and/or who may, due to abuse, have been unable to hang on to important paperwork, may not have access to the proof requested by IRS.

Below are examples of the type of documents that are most likely to persuade IRS that the taxpayer was entitled to claim a child or to use the head of household filing status:

⁸ Eligibility to claim children for certain tax benefits, such as the EITC, is based, in part, upon the age of the child.

- Divorce or legal separation decrees.
- Leases that cover the tax year under audit and that list the residents and the address of the premises.
- School and day care records that list the child's name and address and dates of attendance.
- Dated medical records that list the child's name and address.
- Postmarked envelopes that are addressed to the child.
- Dated welfare department records listing the child's name and address.
- Court records listing the names of the child and the parents in adoption, paternity, and other actions.
- Birth certificates and other records documenting relationships.

In the past, IRS generally did not audit a taxpayer's return until after the refund had been issued. A taxpayer who was unable to provide the required documentation would end up owing some or all of the refund amount to IRS, in addition to interest and possible penalties. Now, it is more common for IRS to freeze the portion of the refund that is composed of refundable tax credits, such as the EITC, until the audit is complete. Unfortunately, IRS will often take many months to issue an audit decision after receiving a taxpayer's documents. Because many survivors depend upon prompt receipt of their full tax refund in order to make ends meet, this delay can cause significant hardship.

Practice Tip

Advocates may be able to assist survivors in collecting documents. Letters from shelters where survivors and their children have stayed, written on shelter letterhead, may be helpful. IRS will also accept letters on official letterhead from schools, places of worship, landlords, and medical, day care, or social services providers that show names, common addresses, and dates.

IRS audits can be concluded in three ways:

1. IRS can issue a no change letter indicating that because the taxpayer has substantiated all of the items that were being reviewed, IRS has accepted the return as filed.
2. An audit may conclude with an agreement where IRS proposes changes and the taxpayer agrees with those changes. In that case, the taxpayer will be asked to sign the exam report or a form.
3. If the taxpayer does not agree with the changes, IRS will generally issue a Notice of Deficiency, which gives the taxpayer 90 days to file a petition in the U.S. Tax Court. The U.S. Tax Court's website, www.ustaxcourt.gov, contains information, including forms and a video, which can be used by a self-represented taxpayer to initiate a challenge to an IRS decision in court.

Practice Tip

There are steps that survivors can take in advance of an audit to improve their chance of getting through an audit without any adverse changes to their tax return. The most important step is to make sure that the records of agencies and other entities that provide services to or work with survivors and their families reflect the correct address of the survivor and any children or other dependents that the survivor may claim on a tax return. Too often taxpayers are unable to document that their dependents live with them because they have failed to provide corrected or updated addresses to schools, welfare agencies, and medical providers.

Survivors and other taxpayers are usually best served by having legal representation during an IRS audit. Options for free representation are discussed at the end of this chapter.

Innocent Spouse Relief

Many married taxpayers are not aware that they are not legally required to file a joint tax return with their spouse. Filing a joint tax return is often financially advantageous for the couple. However, spouses who file a joint tax return are “jointly and severally liable” for any tax shown on the return, or for any tax, penalty, and interest later assessed by IRS. That means that each spouse is individually liable for the entire tax, penalty, and interest even if only one of the spouses earned all of the income or only one of the spouses made errors that caused additional tax to be assessed. IRS does not distinguish between the spouses when attempting to collect tax arising from a joint return. While IRS has a variety of collection tools at its disposal, including levying wages, benefits, and bank accounts, the most common collection tool is to take refunds that would otherwise be due a taxpayer in the future and apply those refunds to a prior year’s tax debt.

Case Scenario: *This is precisely what happened to Leah when she filed her own tax return for tax year 2013. IRS took her refund and applied it to a joint tax debt that arose because John misstated his income and deductions on joint tax returns filed while they were living together. IRS is also threatening Leah with further collection action, including levy of her wages and bank accounts. Many survivors are not in a position to obtain advice about whether to file a joint return with their abusive partner, nor are they safely able to decline to file a joint return. Consequently, like Leah, they may find themselves in debt to IRS for thousands of dollars without having done anything to cause the debt or having had any way to avoid it.*

IRS offers survivors and other taxpayers the opportunity to request “innocent spouse relief⁹” which, if granted, can relieve the survivor from some or all of the joint tax debt. Survivors who believe, taking into account all of the facts and circumstances, that only their spouse (or ex-spouse) should be held responsible for all or part of the tax should request relief from the tax, including penalties and interest.

There are four different types of relief available. Although “innocent spouse relief” is technically a term for one type of relief from joint and several liability, it is also the term that many people use to describe all four kinds. People who are not tax professionals have a difficult time understanding the differences between the types of relief. The four types of relief are:

1. **Innocent spouse relief.** It is only available when the joint tax return understated the amount of tax due. To qualify, you must show that when you signed the return you did not know and had no reason to know that the tax return understated the amount of tax due. Taking into account all of the facts and

⁹ Technically, taxpayers who request what is commonly called innocent spouse relief are seeking relief from joint and several liability under Internal Revenue Code §6015(b), (c) or (f) for tax arising from a joint tax return. While the criteria and types of relief available under each of the subsections differ, those differences are beyond the scope of this chapter.

circumstances, it would be unfair to hold you liable for the full amount of tax due. This type of relief must be requested within two years of the date that IRS took its first collection action against you.

2. **Separation of liability relief.** It is only available when the joint tax return understated the amount of tax due. It is only available when the requesting spouse is divorced from, legally separated, or has lived apart from the other spouse for at least 12 months before requesting relief. It is also available if the other spouse is deceased. IRS can separate spouses' liability for the understated amount so that each spouse is responsible for only the amount of tax that would have been theirs, had the spouses filed joint returns. This type of relief must be requested within two years of the date that IRS took its first collection action against you. Taxpayers granted this type of relief are not entitled to a refund of any amounts paid toward the tax liability from which relief has been sought.
3. **Equitable relief.** It is available when the tax return understated the amount of tax due as well as when the amount was correctly stated, but the total tax due has not been paid (known as an understatement.) It is only available when the taxpayer is not entitled to Innocent Spouse Relief or Separation of Liability Relief described above. It requires IRS to take into account all relevant facts and circumstances in deciding whether to grant relief. A list of factors is discussed below.
4. **Relief from liability for tax attributable to an item of community income.** There are special rules for spouses living in the nine community property states. An overview of the rules related to seeking innocent spouse relief in community property states is contained in the instructions to IRS Form 8857, available on the IRS website.

IRS has issued guidelines¹⁰ for how it will handle equitable relief in innocent spouse claims, including a list of non-exclusive factors that it will take into account when resolving claims. **These factors are described in the chart on the following page.**

Practice Tip

While IRS is not bound by a divorce court's decision that the abusive partner is solely responsible for paying the parties' joint tax debt, it is still important that attorneys representing survivors in family court ask the judge to hold the abusive partner solely responsible for the debt. As noted below, IRS will consider such a provision in a divorce decree or separation agreement to be a factor favoring granting the survivor innocent spouse relief.

Requests for innocent spouse relief are most often made on IRS Form 8857 and are sent, along with any attachments or letters of explanation to the IRS Cincinnati Centralized Innocent Spouse Operation. Because of the complexity of the rules governing innocent spouse relief, survivors are well-advised to obtain assistance from an experienced tax professional to prepare their request. In general, a taxpayer should request innocent spouse relief as soon as it is apparent that this kind of relief from a joint tax liability is needed.

Practice Tip

Many survivors have no idea why their joint tax return has resulted in tax liability. Like Leah, they have been denied access to information about household finances by their abusive partners and have not been permitted to review returns before signing them. It is vitally important for a survivor to find out the source of the tax liability before submitting a request for innocent spouse relief. Some information can be gained by requesting account transcripts for the tax years in issue directly from IRS. In addition, formal requests made to IRS by the survivor under the Freedom of Information Act for the relevant IRS file can yield vital information, particularly where the liability is the result of an audit of the joint tax return.

¹⁰ Rev Proc. 2013-34

Summary of IRS Considerations when Resolving Innocent Spouse Relief Claims

Factor	Question	Favorability of Granting Relief
Marital status	What is the requesting spouse's current marital status?	If, at the time innocent spouse relief is sought, the requesting spouse is widowed, divorced, legally separated, or living apart for at least 12 months from the other spouse, this factor favors granting relief.
Economic Hardship	Would paying the tax cause the requesting spouse economic hardship?	Economic hardship is presumed for those taxpayers whose household income is below 250% of the federal poverty guidelines. The existence of economic hardship favors granting relief.
Knowledge of Tax Understatement	If the tax debt is due to an understatement of tax on the return, did the requesting spouse know or have reason to know of the item giving rise to the understatement?	Typically, the item would be unreported income or an incorrect deduction. If the requesting spouse did not know or have reason to know, this factor favors granting relief.
Knowledge of Failure to Pay	If the tax debt is due to a failure to pay, did the requesting spouse know or have reason to know at the time the return was filed that the other spouse would not pay the tax due?	If the requesting spouse did not know or have reason to know, this factor favors granting relief.
Violence/Abuse	Was the requesting spouse a victim of abuse?	If abuse is present, it changes how IRS will view other factors including the knowledge factors. The non-requesting spouse's alcohol and drug abuse can be considered abuse of the requesting spouse. Abuse of the requesting spouse's child is considered as part of the abuse determination.
Tax Law Compliance	Has the requesting spouse complied with the tax laws in the years since the joint returns were filed?	If so, this factor favors granting relief.
Legal Obligation to Pay	Who has the legal obligation to pay the tax?	If a divorce or separation agreement places sole responsibility for paying the tax on the non-requesting spouse, this factor favors granting relief (see Practice Tip below).
Benefits	Did the requesting spouse receive a significant benefit from the unpaid tax or from the deficiency?	If yes, this factor will favor denying relief. A significant benefit must be a benefit beyond normal support.
Mental/Physical Health Status	Does the requesting spouse have any mental or physical health issues?	If yes, this factor favors granting relief.

By law, when IRS receives a request for innocent spouse relief, it must contact the requesting taxpayer's spouse or former spouse. There are no exceptions, even for survivors of abuse. Thus, if Leah requests innocent spouse relief from the tax debts arising from the joint returns with John, IRS will notify John that she has filed Form 8857 and will allow him to participate in the process. IRS will not disclose personal information (current name, address, telephone number, employer, income, assets) to the spouse. Other information that is given to IRS may be shared with the other spouse, but the requesting spouse can black-out information that they do not want to be disclosed.

It usually takes IRS at least six months, and often much longer, to

make a preliminary determination on a request for innocent spouse relief. During the time a request for innocent spouse relief is pending, IRS will take no collection action against the requesting spouse. Thus, if Leah requests innocent spouse relief, IRS will stop taking her tax refunds and will not levy her income or bank account during the entire time it is considering her request for relief.

Think About It

For many survivors, the prospect of IRS notifying the abusive spouse or ex-spouse that innocent spouse relief has been requested raises significant safety issues. Some survivors may choose to delay requesting innocent spouse relief until safety concerns are alleviated. Others may decide to forego requesting innocent spouse relief. For some survivors who choose not to pursue innocent spouse relief at all, there may be IRS collection alternatives available to them under which little or no payment on the joint tax debt will have to be made.

Once IRS has reviewed the request for relief and given the other spouse the opportunity to participate, it will issue a preliminary decision, a copy of which will be sent to each spouse. If neither appeals, IRS will issue a final determination. A survivor may appeal an unfavorable decision to Tax Court. A survivor can also file a case in Tax Court requesting innocent spouse relief if IRS has not issued a final determination notice within six months of receiving a request for relief on Form 8857.

IRS denies thousands of claims for innocent spouse relief each year, frequently because the taxpayer requesting relief has failed to provide sufficient information or has not responded to requests for additional information. Most of those denied relief do not file timely petitions in the U.S. Tax Court.¹¹ Fortunately, IRS now has a reconsideration process. The requesting spouse is required to submit additional information beyond what was submitted initially.

Dealing With IRS Collections

Not all of the tax issues faced by survivors are related to abuse. It is not unusual for survivors to have, for example, filed their own individual tax returns showing a balance due. There are many reasons why taxpayers file returns with a balance due. They may have had insufficient tax withheld from earnings or, if self-employed, failed to make estimated tax payments. A debt, such as a student loan, may have been canceled during the tax year, which many people would not recognize as an event with tax consequences. Or they may have made a withdrawal from a retirement account, unaware of the 10% tax penalty on most withdrawals before age 59 ½. Some taxpayers make errors on their tax returns, which are later identified and corrected by IRS, resulting in a tax debt.

¹¹ A taxpayer denied innocent spouse relief has only 90 days from the date of the final determination to file an appeal in Tax Court.

IRS begins its collection efforts by sending the taxpayer a notice of tax due followed by bills with increasingly urgent requests for payment. If the taxpayer does not pay or set up

Practice Tip

Prior to taking other property of the taxpayer, such as wages, savings, or Social Security benefits, IRS will give the taxpayer the opportunity to request a Collection Due Process (CDP) hearing. The purpose of the CDP hearing is to offer the taxpayer an opportunity to enter into a collection alternative that is not as invasive as or as likely to cause economic hardship as a levy. A survivor can also request that Innocent Spouse Relief be considered as part of the CDP hearing.

an installment agreement, the case will move to collections. IRS can take a taxpayer's state or federal tax refund to apply to an existing tax debt.

IRS will take no collection action during the time a timely request for a CDP hearing is pending. IRS will issue a Notice of Determination at the conclusion of the CDP hearing process. A survivor who is not satisfied with the Notice of

Determination has 30 days from the mailing date of the Notice to file a petition in U.S. Tax Court appealing the determination. No collection action will occur while the Tax Court case is pending.

Many survivors fail to request a timely Collection Due Process hearing. Fortunately, IRS will always consider a taxpayer's request for a collection alternative even while collection action is being taken. The alternatives to levy include:

- **Being placed in currently not collectible status.** IRS will take no collection action, other than keeping a taxpayer's refunds to pay down the tax debt, if a taxpayer shows that paying the tax will cause economic hardship. The taxpayer will be required to furnish IRS with information about the household's income, assets, and expenses. If all of the taxpayer's income is needed to meet allowable expenses, and the taxpayer has no assets from which the tax can be readily paid, IRS will place the taxpayer in currently not collectible status. The taxpayer can generally stay in currently not collectible status until there has been a significant increase in the taxpayer's income (see Practice Tip below).
- **Entering into an installment agreement.** An installment agreement is a monthly payment plan with IRS. The taxpayer's refunds will be taken while the taxpayer is making installment agreement payments, which will speed up the rate at which the tax is paid. Installment agreements can be set up online, by telephone or by sending IRS Form 9465. IRS will not take collection action against a taxpayer while a request for an installment agreement is pending or once the agreement is in effect.
- **Negotiating settlement of a tax debt through the offer in compromise program.** IRS will often settle a taxpayers' tax debt for significantly less than is actually owed. The most common type of offer in compromise is based on "doubt as to collectability." IRS uses a formula, based on the taxpayer's income, assets, and allowable expenses, to calculate the amount required to settle the tax debt. IRS will take a taxpayer's refund and apply it to the underlying tax debt for any year in which an offer in compromise is pending before IRS, up to and including the year in which IRS accepts the offer. Offers must be submitted to IRS according to the instructions and using the forms contained in IRS Form 656-B.

Practice Tip

In cases where keeping a survivor's refund to pay toward an outstanding tax liability would, itself, cause economic hardship, the survivor can request IRS to issue all or part of the refund despite the existence of the outstanding liability. IRS is most likely to grant these requests when funds are needed to prevent an economic catastrophe such as eviction from the family home, disconnection of critical utilities, loss of a job due to inability to pay for childcare, and repossession of a car needed for employment. In these cases, survivors should obtain documentation of the hardship and seek help from the Taxpayer Advocate Service (discussed below) as soon as possible before filing the tax return for the needed refund. Unfortunately, this option is not available when a refund is taken because an accepted offer in compromise was pending.

Some tax debts can be discharged in bankruptcy. Survivors interested in this remedy should consult with a bankruptcy attorney who has experience dealing with tax debt.

Finding Tax Help

VITA programs: Tax preparation assistance

IRS's Volunteer Income Tax Assistance (VITA) program uses IRS-certified volunteers to provide free tax return preparation assistance to people who generally make no more than \$54,000/year, persons with disabilities, and limited English-speaking taxpayers. The Tax Counseling for the Elderly (TCE) program also uses IRS-certified volunteers to provide free tax preparation help to all taxpayers, particularly those who are age 60 and over. Generally, VITA and TCE services are only available during the traditional tax-filing season – from the end of January until April 15. There is a VITA/TCE locator tool on the IRS website. Free tax return preparation assistance is difficult, if not impossible, to find, once tax-filing season has ended. However, IRS provides on its website a program called Free File to enable low to moderate income taxpayers to file their tax returns electronically for free using taxpayer-friendly commercial software. Similarly, United Way offers taxpayers with annual income under \$62,000 the ability to use a program called My Free Taxes to file their tax returns electronically for free using easy to follow commercial tax software. My Free Taxes is found at www.unitedway.org/myfreetaxes/ AARP offers similar online assistance.

Low Income Taxpayer Clinics (LITCs)

LITCs are organizations that receive a matching grant from IRS to provide representation, education and outreach to low-income taxpayers and taxpayers with limited English proficiency. LITCs represent individuals in disputes with IRS. They handle a wide range of matters, including but not limited to IRS audits, collection matters, appeals to Tax Court, tax-related identity theft problems, and requests for innocent spouse relief. LITC services are free or of nominal cost to eligible individuals. Taxpayers can find contact information for LITCs in their state by visiting the IRS website. Many LITCs are located in legal services offices where survivors may receive other types of legal help in addition to tax help. Most LITCs use staff attorneys and/or CPAs and pro bono professionals to provide representation to their low-income clients.

Taxpayer Advocate Service (TAS)

TAS is an independent organization within IRS that will provide free help to taxpayers to resolve problems with IRS. To qualify for help, a taxpayer must be experiencing economic harm or significant cost (including fees to hire a representative), have experienced a delay of more than 30 days to resolve their tax problem, or have not received a response or resolution of their problem by the date promised by IRS. There is at least one TAS office in each state. A taxpayer needing help can locate the nearest TAS office using the search function on the IRS website. TAS routinely helps taxpayers with a wide range of problems including those involving identity theft and collection activity causing economic hardship.

Building partnerships with tax professionals

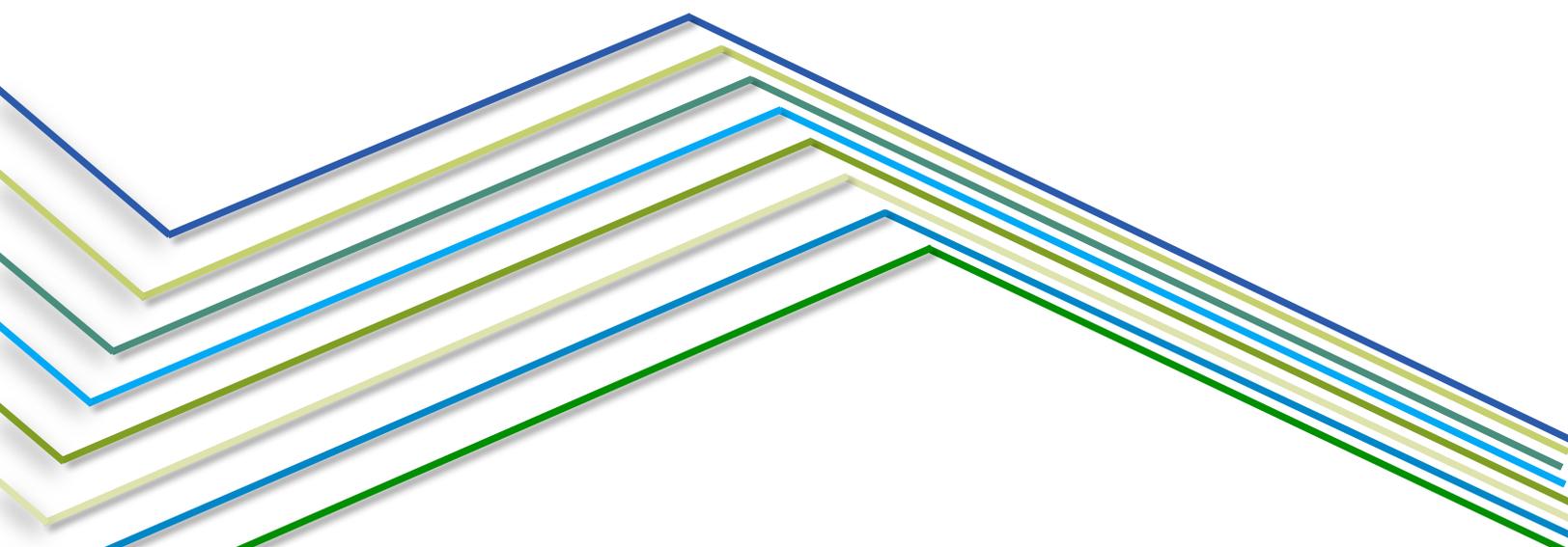
Many tax professionals – lawyers, CPAs and enrolled agents – have never been asked to do pro bono work. They rarely encounter low-income clients and may have no idea of the extent of the tax problems faced by low-income taxpayers, including survivors. Consequently, they are unaware of how much help they could be in resolving survivors' tax problems. See CSAJ's report, [Building Partnership for Economic Justice: A Report on Innovative Pilot Sites](#), for experiences and insights from one LITC from Indiana Legal Services in their efforts to build and enhance partnerships.

Conclusion

While the tax system is designed to deliver a range of benefits to taxpayers, and provide economic security for low-income taxpayers, survivors often have complex tax histories or miss out on these vital benefits. By addressing tax debt and preventing future tax issues, advocates and attorneys can help unleash the benefits tax can provide in survivors' options for safety. Understanding how tax fit within survivors' broader needs and developing partnerships between advocates, family law attorneys, and tax experts in your community are essential.

Additional Resources

- CSAJ's webinar featuring Jamie Andree, [Federal Tax Advocacy for Survivors: What Attorneys Need to Know](#)
- CSAJ's training featuring Susan Morgenstern and Susan Mitchell, [Tax Advocacy for Survivors in the Context of Military Life](#)
- CSAJ's Tax Advocacy Briefs: Dealing with Tax Debt & What Survivors Need to Know About Filing Status (available in CSAJ's [Resource Library](#))
- Indiana Legal Services, Inc. Low Income Taxpayer Clinic: [Website and resources](#)



GUIDEBOOK ON CONSUMER & ECONOMIC CIVIL LEGAL ADVOCACY FOR SURVIVORS

A COMPREHENSIVE AND SURVIVOR-CENTERED GUIDE FOR
DOMESTIC VIOLENCE ATTORNEYS AND LEGAL ADVOCATES



**CENTER FOR SURVIVOR
AGENCY & JUSTICE**

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The Center for Survivor Agency and Justice is a national organization dedicated to enhancing advocacy for survivors of intimate partner violence. CSAJ envisions a world where all people have equal access to physical safety, economic security, and human dignity. CSAJ develops and promotes advocacy approaches that remove systemic barriers, enhance organizational responses, and improve professional practices to meet the self-defined needs of domestic and sexual violence survivors.



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