

Child Support and Taxes: Information you need to know

Child support is tax-free for federal income tax purposes, meaning neither the recipient spouse nor the child owes taxes on it. However, unlike spousal support, child support payments are not tax-deductible by the parent who makes the payments. (Spousal support is tax-deductible for the person who makes the payments and taxable to the recipient.)

Be careful how support is characterized in your marital settlement agreement, as it may have significant tax consequences.

What Qualifies as Child Support?

To qualify as child support, payments must be designated as child support in a divorce or separation agreement. If the agreement lumps the payments together as "family support" or "alimony," or doesn't otherwise designate a specific portion of each payment as child support, none of the payment will be considered child support for tax purposes.

This can have adverse tax consequences for the recipient of child support payments, because family support or alimony is taxable to the recipient. So instead of receiving non-taxable child support, the ex-spouse will be receiving alimony, which is taxable to the payee regardless of what the money is actually used for.

Who Gets to Claim a Child as a Dependent?

Generally, in order for someone to claim a child as a dependent, a parent must provide at least 50% of the child's support during the tax year. For couples who are still married and living together, claiming kids as dependents is usually a slam-dunk.

Things get complicated, however, when parents divorce or separate. Now, only one parent can claim the dependent exemption. (The IRS will come down hard if both try to claim it; they cross-reference dependents' Social Security numbers to make sure taxpayers aren't doing this.)
Special Rule for Parents Living Apart

If parents lived apart at all times during the last six months of the calendar year, or if they have a written divorce decree, maintenance agreement, or separation agreement, there is a special rule that applies to the dependent exemption.

Under these circumstances, if the child received more than half of his or her total support for the year from one or both parents (the rest can be paid by other relatives or public benefits) and was in the custody of one or both parents during the year, the IRS rules assume that the custodial parent (defined as the parent who had custody of the child for the greater part of the year) should get the exemption for the dependent. However, the parties may change this presumption and allocate the exemption to the non-custodial parent if either of the following are true:

- The divorce decree or separation agreement contains a provision in which the custodial parent waives the right to claim the dependent exemption. (The rules are slightly different if the agreement was entered into prior to 1985; the non-custodial parent must also provide at least \$600 of support to receive the exemption.)
- The custodial parent signs a declaration (using IRS Form 8332) relinquishing the right to claim the dependent exemption, and the non-custodial parent attaches this declaration to that year's tax return. Using this form, the custodial parent can relinquish the exemption for one year, a number of years, or forever, depending on what the parties agree to.

Warning If you relinquish the exemption, you are also relinquishing eligibility for the child tax credit.

The IRS is very picky about Form 8332, and can (and often does) disallow the dependent exemption for the non-custodial parent if this form isn't signed and attached to the tax return, even if the divorce decree or separation agreement allocates the exemption to the non-custodial parent. That means it's very important for the non-custodial parent to attach a copy of this declaration to the tax return for every tax year in which the exemption is claimed.

If the custodial parent refuses to sign Form 8332, the non-custodial parent can attach part of the divorce decree or separation agreement (the cover page, the page that discusses the exemption and the signature page) to the tax return to prove entitlement to the exemption. However, the IRS will accept this only if the decree or agreement doesn't require that certain conditions be met before the non-custodial parent can claim the exemption. If there are conditions, the non-custodial parent must use Form 8332 or not get the exemption.

Rule for Unmarried Parents or Those Still Living Together

If the parents are not married, did not live apart during the last six months of the calendar year, or do not have a written document, the test for determining which parent can claim the child as a dependent is that the parent who provides more than 50% of a child's support during the tax year can claim the child as a dependent.

Rules for Parents Who Contribute Equal Amounts of Support

If neither parent provides more than half of the child's support for the year, things get even more complicated. For more information on how to handle this situation, see IRS Publication 504, Divorced or Separated Individuals, which you can download for free from www.irs.gov.

In some cases the court issuing the support order will make a determination as to who can claim the child as a deduction. This determination is based on the benefit to the family as a whole.

Remember, the law and the tax law change often. You must consult an attorney or tax professional to make a determination in your specific case.

For more information on this topic go http://www.divorcehelppa.com/Child_Support_taxes.html
visit my website at [Pittsburgh Divorce Lawyer](#)
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