



# Tax Considerations for taxpayers after Separation or Divorce

Individuals who change their marital status through a legal separation or divorce must also change their tax filing status. For filing purposes, the IRS generally considers a couple married until they receive their final decree of divorce or separation.

**Once an individual has their final decree of separation or divorce, they will need to consider the following:**

## **Updating their withholding**

Newly divorced or legally separated individuals will likely need to file with their employer a new Form W-4, Employee's Withholding Certificate, to ensure they're having the proper amount of tax withheld. If an individual receives alimony, they may need to increase their withholding or make estimated payments.

## **Paying or receiving alimony or separate maintenance**

For federal tax purposes, amounts paid to a spouse or a former spouse under a divorce or separate maintenance decree, or a written separation agreement, may be alimony or separate maintenance payments. How such payments are treated depends on when the documents were finalized.

Generally, alimony or separate maintenance payments made under a divorce decree or separation agreement finalized before December 31, 2018, are deductible by the payor spouse and included in the payee spouse's income.

However, alimony and separate maintenance payments made under an agreement finalized after 2018 aren't deductible by the payor spouse, and the recipient spouse doesn't need to include the payments in income.

For payments made pursuant to a divorce decree or separation agreement finalized before 2019 but later modified, the payments are nondeductible to the payor spouse if the modification expressly states the alimony deduction repeal applies to the modification.



## **Who claims the children?**

Generally, the parent who has custody of a child can claim that child on their tax return. For tax purposes, "custody" means the parent who has the child the most (more than 50% of the time). Parents who split custody 50-50 and file separate returns will have to determine which parent gets to claim the child. There are tie breaker rules if the parents can't agree.

Child support payments aren't deductible by the payer and aren't taxable to the payee.

A custodial parent can release their right to claim a child as their dependent to the noncustodial parent by signing Form 8332, Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent . The noncustodial parent should attach Form 8332 to their tax return when claiming the dependent.

## Reporting property transfers

Usually, there is no recognized gain or loss on the transfer of property between spouses, or between former spouses if the transfer is because of a divorce. In other circumstances, the transferor may be required to report the transaction on a gift tax return.



## Filing status

Divorcing couples who are still married as of the end of the year are treated as married for the year and must determine their filing status. There are four filing statuses.

### For married couples:

#### Married filing jointly

On a joint return, married people report their combined income and deduct their combined allowable expenses. For many couples, filing jointly results in a lower tax than filing separately. However, joint filers are also jointly responsible for any tax reported on the return, even if the tax is related to only one spouse's income.

#### Married filing separately

If spouses file separate tax returns, they each report only their own income, deductions, and credits on their individual return. Each spouse is responsible only for the tax due on their own return. Couples should consider whether filing separately or jointly is better for them. Separate filers aren't responsible for the taxes reported on their spouse's return.

### For individuals who are, or are treated as, not married:

#### Head of household

Individuals who are not legally separated may be eligible to file as head of household if all the following apply:

- Their spouse didn't live in their home for the last six months of the year.
- They paid more than half the cost of keeping up their home for the year.
- Their home was the main home of their dependent child for more than half the year.

#### Single

Once the final decree of divorce or separate maintenance is issued, a taxpayer will file as single starting for the year it was issued, unless they are eligible to file as head of household or they remarry by the end of the year.