TAX LAW AND FAMILY LAW

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Areas to be covered

• Overview of Income Tax
• Family Law
• Innocent Spouse Relief
Geography of a Tax Return

- Personal Information
- Income
- Adjusted Gross Income
- Deductions
- Income Tax
- Credits
- Other Taxes
- Payments
- Signature
“Can I claim my kids?”

- Question often presented by clients
- There are potentially six benefits to claim for children or dependents. A custodial parent may or may not be able to claim all or some of those benefits
Filing Status

- Single
- Married Filing Jointly
  - Joint and Several Liability
- Married Filing Separately
  - No EITC
- Head of Household
- Qualifying Widow or Widower
Qualifying for Head of Household Filing Status

• Single, divorced or legally separated, or married but your spouse did not live with you during the last 6 months of the tax year
• Qualifying Person Test
  • Qualifying Child or Qualifying Relative
• You must have paid more than \( \frac{1}{2} \) the cost of keeping up the home
Claiming Dependent Exemptions

- Reduces Taxable Income
- Qualifying Child
  - Your child, brother or sister, step-brother or step-sister, or any of their descendants; or your eligible foster child
  - Must be a U.S. citizen, resident alien, national, or a resident of Canada or Mexico
  - Age 19 or under, or age 24 or under if a full-time student and not living with you; or any age if permanently and totally disabled.
  - Must have lived with you for more than ½ the year
  - The child must not have provided more than ½ of her-his own support
  - The child is not filing a joint return (unless it is solely to claim a refund for tax withheld)
Claiming Dependent Exemptions
continued…

• Qualifying Relative
  • This person cannot be your qualifying child or the qualifying child of any other taxpayer
  • Not living with you, must be related to you as:
    A child, stepchild, foster child, or a descendant of any of them (for example, your grandchild). (A legally adopted child is considered your child)
    Your brother, sister, half brother, half sister, stepbrother, or stepsister
    Your father, mother, grandparent, or other direct ancestor, but not foster parent
    Your stepfather or stepmother
    A son or daughter of your brother or sister
    A son or daughter of your half brother or half sister
    A brother or sister of your father or mother
    Your son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law
  or must live with you all year as a member of your household (and your relationship must not violate local law)
  • Gross income must be less than $4,000
  • You must have provided more than ½ the person’s total support for the year
Multiple Support Agreements

- Custodial and Non-Custodial Parents can reach agreements to allocate dependent exemptions for children.
- Non-Custodial Parents can claim a child or children as dependent exemptions when the residency prong of the qualifying child test is not met.
- Form 8332, or equivalent to Form 8332.
- According to U.S. Tax Court, a state court cannot determine issues of Federal tax law, see Armstrong v. Comm., 139 T.C. 468. However, see Hart v. Hart, 774 S.W. 2d 455 and Adams-Smyrichinsky v. Smyrichinsky, 467 S.W.3d 767 (Ky. 2015).
Statute relating to Non-Custodial Parents claiming dependent exemptions

- IRC §152(e)(1) creates a “special rule for divorced parents”
  - Divorced or legally separated under a decree of divorce [§152(e)(1)(A)(i)]
  - Separated per a written separation agreement [§152(e)(1)(A)(ii)]
  - Lived apart from one another during the last six (6) months of the calendar year [§152(e)(1)(A)(iii)]
  - If the above criteria are met, the non-custodial parent can claim the qualifying child as a dependent if the conditions in §152(e)(2)(A) & (B) are met. These are
    - The custodial parent must sign a “written declaration (in such a manner and form as the Secretary may by regulations prescribe)” or release that the custodial parent will not claim such child as a dependent for tax exemption purposes for the tax year(s) in question
    - The non-custodial must attach the custodial parent’s written declaration to the non-custodial parent’s return for the tax year(s) in question.
Contents of Equivalent to Form 8332

- (1) the names of the children for which exemption claims were released,
- (2) the years for which the claims were released,
- (3) the signature of the custodial parent confirming his or her consent,
- (4) the Social Security number of the custodial parent,
- (5) the date of the custodial parent’s signature, and
- (6) the name and the Social Security number of the parent claiming the exemption*

*Overruled by *Bramante v. Commissioner*, T.C. Memo 2002-228
Earned Income Tax Credit

• Refundable Tax Credit

• Qualifying Child Test
  • Relationship
    • Your son, daughter, adopted child, stepchild, foster child or a descendant of any of them such as your grandchild
    • Brother, sister, half brother, half sister, step brother, step sister or a descendant of any of them such as a niece or nephew
  • Age
    • Age 19 or under, or age 24 or under if a full-time student and not living with you; or any age if permanently and totally disabled
  • Residency
    • Must have lived with you (or your spouse if filing a joint return), in the United States, for more than ½ the year

• Joint Return
  • The child is not filing a joint return (unless it is solely to claim a refund for tax withheld)
Innocent Spouse Relief

• IRC 6013(a): Married taxpayers may file joint returns
  • Each spouse individually responsible for accuracy and completeness of the return
  • Payment of the tax

• IRC 6015 allows an “innocent” spouse relief from the joint and several liability

• In 2013, the IRS increased the importance of domestic violence as a factor when making determination for innocent spouse relief.
Three Types of Innocent Spouse Relief

- Innocent Spouse Relief or Traditional Relief
  - 2-year statute of limitations to request
- Separation of Liability
  - Also a 2-year statute of limitations to request
- Equitable Relief
  - 10-year statute of limitations to request
Injured Spouse Relief

- If you have a client who filed jointly with their spouse and the IRS, or another federal or state agency, intercepts the refund to pay the other spouse’s debt, then your client may make a claim for injured spouse relief.

- Statute of limitations to make claim is 3 years if refund went toward tax debt.

- Statute of limitations to make claim is 6 years if refund went toward non-tax debt.
Questions?