

TAX LAW AND FAMILY LAW

John Young
jyoung@laslou.org

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 $\frac{1}{2}$ the year
 - The child must not have provided more than $\frac{1}{2}$ 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 child¹, stepchild, foster child or a descendent 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?