Taxes & Children: What Divorcing Parents Need to Know

By Divorce Strategies Group On 06/02/2023

Taxes can be a major concern for parents. The ability to claim children as dependents can potentially affect the amount of taxes a single parent will be refunded or pay. Here's what you need to know about claiming children on your taxes when divorced and the child tax credit. This article does not address the potential Earned Income Tax Credit.

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Claiming Children on Taxes & Child Tax Credits

If you are not married on 12/31, your filing status must be either "Single" or "Head of Household." Head of Household status is reserved for persons with a qualifying child who pay more than ½ of the cost of keeping up the main home where that child resided for more than ½ of the year. There are two components of claiming children on taxes. First, who claims Head of Household status. Second, who can claim credits for children under current tax law. These are two different issues.

Let's address the first – claiming Head of Household or Single status on your taxes. If you paid more than ½ of the cost of keeping up a home where your child lived (spent the most nights) more than ½ of the year, then you are the parent who has the right to claim the child. If you are unmarried, that would be the Head of Household status. If you split custody 50/50 and you cannot agree with the other parent, then the highest earning parent can claim the status.

We are often asked if the couple has two children, can't both parents claim, "Head of Household" and each take 1 child. The answer is yes – depending on the circumstance. Both parents would need to maintain a separate home and have at least one child living with them for more than 50% of the year (more nights). This is not customary with smaller children. As such, if both of your children spend more nights with one parent during a tax year, that parent, only, has earned and can claim Head of Household status.

As Head of Household, you can pay less tax with equal dollars than the filing status Single. The brackets for 2023 are below:

2023 Single Filer Tax Brackets

If taxable income is:	The tax due is:
Not over $11,000	10% of taxable income
Over $11,000 but not over $44,725	$1,100 plus 12% of the excess over $11,000
Over $44,725 but not over $95,375	$5,147 plus 22% of the excess over $44,725

Over $95,375 but not over $182,100	$16,290 plus 24% of the excess over $95,375
Over $182,100 but not over $231,250	$37,104 plus 32% of the excess over $182,100
Over $231,250 but not over $578,125	$52,832 plus 35% of the excess over $231,250

Over $578,125 $174,238.25 plus 37% of the excess over $578,125

2023 Head of Household Tax Brackets

If taxable income is:	The tax due is:
Not over $15,700	10% of taxable income
Over $15,700 but not over $59,850	$1,570 plus 12% of the excess over $15,700
Over $59,850 but not over $95,350	$6,868 plus 22% of the excess over $59,850
Over $95,350 but not over $182,100	$14,678 plus 24% of the excess over $95,350
Over $182,100 but not over $231,250	$35,498 plus 32% of the excess over $182,100
Over $231,250 but not over $578,100	$51,226 plus 35% of the excess over $231,250

Over $578,100 $172,623.50 plus 37% of the excess over $578,100

In addition to the extended tax brackets, the Head of Household status has a higher standard deduction than Single status. For 2023, the standard deduction for Head of Household is $20,800 while the standard deduction for Single is $13,850. These amounts are what you deduct (unless you are itemizing deductions which are higher than the standard deduction) from your income for calculating taxes.

The second part of having a child on your tax return is the Child Tax Credit. The Child Tax Credit follows the child. The custodial parent (where the child lived more than 50% of the time) is the default person to claim the credit. This credit has limits. It is a partially refundable credit. You must have at least $2,500.00 of earned income to claim the refundable part of the credit, and it is completely phased out for individuals earning more than $200,000.00. For divorcing parents, this can be moved from one parent to the other with the use of Form 8332. For example, if you have just one child together, you could agree to alternate years claiming the child tax credit on your respective returns. If you have multiple children, you might decide to divide them between the two of you. This way, both parents can take advantage of the tax credit. Don’t forget that age matters. If you have a 10-year-old and a 5-year-old, the 5-year-old can be claimed for a much longer period of time. Whatever the two of you decide, it is important that parents formalize the agreement in their decree and follow this up with a Form 8332, *Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent.* This form can be used for the current or future tax years.

Who Qualifies for the Child Tax Credit?

You can claim the Child Tax Credit of $2,000 for each qualifying child who has a Social Security number that is valid for employment in the United States. To be a qualifying child for the 2023 tax year, your dependent generally must:

- Be under age 17 at the end of the year
- Be your son, daughter, stepchild, eligible foster child, brother, sister, stepbrother, stepsister, half-brother, half-sister, or a descendant of one of these (for example, a grandchild, niece, or nephew)
- Provide no more than half of their own financial support during the year
- Have lived with you for more than half the year
- Be properly claimed as your dependent on your tax return
- Not file a joint return with their spouse for the tax year or file it only to claim a refund of withheld income tax or estimated tax paid
- Have been a U.S. citizen, U.S. national, or U.S. resident alien

You qualify for the full amount of the Child Tax Credit for each qualifying child if you meet all eligibility factors and your annual income is not more than $200,000 ($400,000 if filing a joint return). Parents and guardians with higher incomes may be eligible to claim partial credit. Also, dependents over the age of 17 could qualify for a $500 credit if certain conditions apply.

It is critical to consult with a tax advisor (licensed CPA or EA) who is familiar with tax claiming issues surrounding divorce.   As an example of what can go wrong, read this article from Iowa State University dealing with a couple who thought they had the situation handled but the IRS disagreed, and the claim was disallowed. Keep in mind, the IRS and taxes follow federal laws and those as far as federal taxes are concerned, supersede your state divorce decree.

Where do you go from here?

At Divorce Strategies Group, we help parents walk through the tax ramifications of who can claim which credit for children when parents divorce. We can also help with general financial guidance in the divorce, whether you are an individual looking for guidance or a couple seeking neutral financial services to help get through the divorce in a more amicable fashion. Schedule your complimentary consultation today.

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