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Internal Revenue Service

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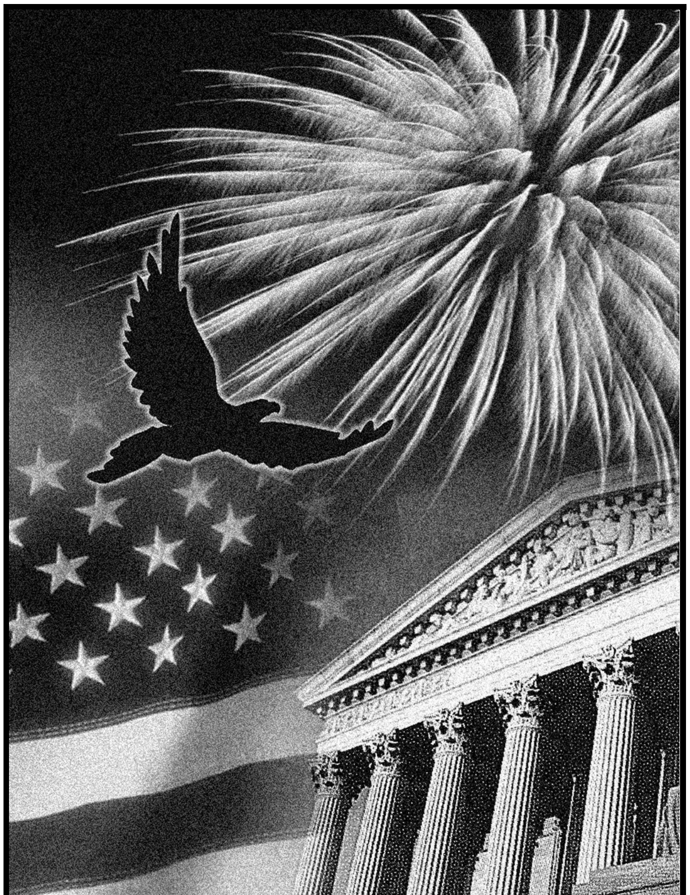
Divorced or Separated Individuals

For use in preparing

2010 Returns



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What's New

Limit on personal exemptions ended. For 2010, you will no longer lose part of your deduction for personal exemptions, regardless of the amount of your adjusted gross income.

Reminders

Relief from joint liability. In some cases, one spouse may be relieved of joint liability for tax, interest, and penalties on a joint tax return. For more information, see *Relief from joint liability* under *Married Filing Jointly*.

Social security numbers for dependents. You must include the taxpayer identification number (generally the social security number) of every person for whom you claim an exemption. See *Exemptions for Dependents* under *Exemptions*, later.

Jan 10, 2011

Individual taxpayer identification number (ITIN). The IRS will issue an ITIN to a nonresident or resident alien who does not have and is not eligible to get a social security number (SSN). To apply for an ITIN, file Form W-7, Application for IRS Individual Taxpayer Identification Number, with the IRS. It takes about 6 to 10 weeks to get an ITIN. The ITIN is entered wherever an SSN is requested on a tax return. If you are required to include another person's SSN on your return and that person does not have and cannot get an SSN, enter that person's ITIN.

Change of address. If you change your mailing address, be sure to notify the Internal Revenue Service. You can use Form 8822, Change of Address. Mail it to the Internal Revenue Service Center for your old address. (Addresses for the Service Centers are on the back of the form.)

Change of name. If you change your name, be sure to notify the Social Security Administration using Form SS-5, Application for a Social Security Card.

Change of withholding. If you have been claiming a withholding exemption for your spouse, and you divorce or legally separate, you must give your employer a new Form W-4, Employee's Withholding Allowance Certificate, within 10 days after the divorce or separation showing the correct number of exemptions.

Photographs of missing children. The Internal Revenue Service is a proud partner with the National Center for Missing and Exploited Children. Photographs of missing children selected by the Center may appear in this publication on pages that would otherwise be blank. You can help bring these children home by looking at the photographs and calling 1-800-THE-LOST (1-800-843-5678) if you recognize a child.

Introduction

This publication explains tax rules that apply if you are divorced or separated from your spouse. It covers general filing information and can help you choose your filing status. It also can help you decide which exemptions you are entitled to claim, including exemptions for dependents.

The publication also discusses payments and transfers of property that often occur as a result of divorce and how you must treat them on your tax return. Examples include alimony, child support, other court-ordered payments, property settlements, and transfers of individual retirement arrangements. In addition, this publication also explains deductions allowed for some of the costs of obtaining a divorce and how to handle tax withholding and estimated tax payments.

The last part of the publication explains special rules that may apply to persons who live in community property states.

Comments and suggestions. We welcome your comments about this publication and your suggestions for future editions.

You can write to us at the following address:

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Individual Forms and Publications Branch
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We respond to many letters by telephone. Therefore, it would be helpful if you would include your daytime phone number, including the area code, in your correspondence.

You can email us at *taxforms@irs.gov. (The asterisk must be included in the address.) Please put "Publications Comment" on the subject line. You can also send us comments from www.irs.gov/formspubs/, select "Comment on Tax Forms and Publications" under "Information about."

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Tax questions. If you have a tax question, check the information available on IRS.gov or call 1-800-829-1040. We cannot answer tax questions sent to either of the above addresses.

Useful Items

You may want to see:

Publications

- ❏ **501** Exemptions, Standard Deduction, and Filing Information
- ❏ **544** Sales and Other Dispositions of Assets
- ❏ **555** Community Property
- ❏ **590** Individual Retirement Arrangements (IRAs)
- ❏ **971** Innocent Spouse Relief

Form (and Instructions)

- ❏ **8332** Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent
- ❏ **8379** Injured Spouse Allocation
- ❏ **8857** Request for Innocent Spouse Relief

See *How To Get Tax Help* near the end of this publication for information about getting publications and forms.

Filing Status

Your filing status is used in determining whether you must file a return, your standard deduction, and the correct tax. It may also be used in determining whether you can claim certain other deductions and credits. The filing status you can choose depends partly on your marital status on the last day of your tax year.

Marital status. If you are unmarried, your filing status is single or, if you meet certain requirements, head of household or qualifying widow(er). If you are married, your filing status is either married filing a joint return or married filing a separate return. For information about the single and qualifying widow(er) filing statuses, see Publication 501.

For federal tax purposes, a marriage means only a legal union between a man and a woman as husband and wife.

Unmarried persons. You are unmarried for the whole year if either of the following applies.

- You have obtained a final decree of divorce or separate maintenance by the last day of your tax year. You must follow your state law to determine if you are divorced or legally separated.

  Exception. If you and your spouse obtain a divorce in one year for the sole purpose of filing tax returns as unmarried individuals, and at the time of divorce you intend to remarry each other and do so in the next tax year, you and your spouse must file as married individuals.

- You have obtained a decree of annulment, which holds that no valid marriage ever existed. You must file amended returns (Form 1040X, Amended U.S. Individual Income Tax Return) for all tax years affected by the annulment that are not closed by the statute of limitations. The statute of limitations generally does not end until 3 years after the due date of your original return. On the amended return you will change your filing status to single, or if you meet certain requirements, head of household.

Married persons. You are married for the whole year if you are separated but you have not obtained a final decree of divorce or separate maintenance by the last day of your tax year. An interlocutory decree is not a final decree.

Exception. If you live apart from your spouse, under certain circumstances, you may be considered unmarried and can file as head of household. See *Head of Household*, later.

Married Filing Jointly

If you are married, you and your spouse can choose to file a joint return. If you file jointly, you both must include all your income, exemptions, deductions, and credits on that return. You can file a joint return even if one of you had no income or deductions.

TIP *If both you and your spouse have income, you should usually figure your tax on both a joint return and separate returns (using the filing status of married filing separately) to see which gives the two of you the lower combined tax.*

Nonresident alien. To file a joint return, at least one of you must be a U.S. citizen or resident alien at the end of the tax year. If either of you was a nonresident alien at any time during the tax year, you can file a joint return only if you agree to treat the nonresident spouse as a resident of the United States. This means that your combined worldwide incomes are subject to U.S. income tax. These rules are explained in Publication 519, U.S. Tax Guide for Aliens.

Signing a joint return. Both you and your spouse generally must sign the return, or it will not be considered a joint return.

Joint and individual liability. Both you and your spouse may be held responsible, jointly and individually, for the tax and any interest or penalty due on your joint return. This means that one spouse may be held liable for all the tax due even if all the income was earned by the other spouse.

Divorced taxpayers. If you are divorced, you are jointly and individually responsible for any tax, interest, and penalties due on a joint return for a tax year ending before your divorce. This responsibility applies even if your divorce decree states that your former spouse will be responsible for any amounts due on previously filed joint returns.

Relief from joint liability. In some cases, a spouse may be relieved of the tax, interest, and penalties on a joint return. You can ask for relief no matter how small the liability.

There are three types of relief available.

- Innocent spouse relief.
- Separation of liability, which applies to joint filers who are divorced, widowed, legally separated, or who have not lived together for the 12 months ending on the date election of this relief is filed.
- Equitable relief.

Married persons who live in community property states, but who did not file joint returns, may also qualify for relief from liability arising from community property law or for equitable relief. See *Relief from liability arising from community property law*, later, under *Community Property*.

Each kind of relief has different requirements. You must file Form 8857 to request relief under any of these categories. Publication 971 explains these kinds of relief and who may qualify for them. You can also find information on our website at IRS.gov.

Tax refund applied to spouse's debts. The overpayment shown on your joint return may be used to pay the past-due amount of your spouse's debts. This includes your spouse's federal tax, state income tax, child or spousal support payments, or a federal nontax debt, such as a student loan. You can get a refund of your share of the overpayment if you qualify as an injured spouse.

Injured spouse. You are an injured spouse if you file a joint return and all or part of your share of the overpayment was, or is expected to be, applied against your spouse's past-due debts. An injured spouse can get a refund for his or her share of the overpayment that would otherwise be used to pay the past-due amount.

To be considered an injured spouse, you must:

1. Have made and reported tax payments (such as federal income tax withheld from wages or estimated tax payments), or claimed a refundable tax credit, such as the earned income credit or additional child tax credit on the joint return, and
2. Not be legally obligated to pay the past-due amount.

Note. If the injured spouse's permanent home is in a community property state, then the injured spouse must only meet (2) on the previous page. For more information, see Publication 555.

Refunds that involve community property states must be divided according to local law. If you live in a community property state in which all community property is subject to the debts of either spouse, your entire refund is generally used to pay those debts.

If you are an injured spouse, you must file Form 8379 to have your portion of the overpayment refunded to you. Follow the instructions for the form.

If you have not filed your joint return and you know that your joint refund will be offset, file Form 8379 with your return. You should receive your refund within 14 weeks from the date the paper return is filed or within 11 weeks from the date the return is filed electronically.

If you filed your joint return and your joint refund was offset, file Form 8379 by itself. When filed after offset, it can take up to 8 weeks to receive your refund. Do not attach the previously filed tax return, but do include copies of all Forms W-2 and W-2G for both spouses and any Forms 1099 that show income tax withheld.

An injured spouse claim is different from an innocent spouse relief request. An injured spouse uses Form 8379 to request an allocation of the tax overpayment attributed to each spouse. An innocent spouse uses Form 8857 to request relief from joint liability for tax, interest, and penalties on a joint return for items of the other spouse (or former spouse) that were incorrectly reported on or omitted from the joint return. For information on innocent spouses, see Relief from joint liability*, earlier.*

Married Filing Separately

If you and your spouse file separate returns, you should each report only your own income, exemptions, deductions, and credits on your individual return. You can file a separate return even if only one of you had income. For information on exemptions you can claim on your separate return, see *Exemptions*, later.

Community or separate income. If you live in a community property state and file a separate return, your income may be separate income or community income for income tax purposes. For more information, see *Community Income* under *Community Property*, later.

Separate liability. If you and your spouse file separately, you each are responsible only for the tax due on your own return.

Itemized deductions. If you and your spouse file separate returns and one of you itemizes deductions, the other spouse cannot use the standard deduction and should also itemize deductions.

Dividing itemized deductions. You may be able to claim itemized deductions on a separate return for certain expenses that you paid separately or jointly with your spouse. See Table 1, later.

Separate returns may give you a higher tax. Some married couples file separate returns because each wants to be responsible only for his or her own tax. There is no joint liability. But in almost all instances, if you file separate returns, you will pay more combined federal tax than you would with a joint return. This is because the following special rules apply if you file a separate return.

1. Your tax rate generally will be higher than it would be on a joint return.
2. Your exemption amount for figuring the alternative minimum tax will be half of that allowed a joint return filer.
3. You cannot take the credit for child and dependent care expenses in most cases.
4. You cannot take the earned income credit.
5. You cannot take the exclusion or credit for adoption expenses in most instances.
6. You cannot take the credit for higher education expenses (American opportunity and lifetime learning credits), the deduction for student loan interest, or the tuition and fees deduction.
7. You cannot exclude the interest from qualified savings bonds that you used for higher education expenses.
8. If you lived with your spouse at any time during the tax year:
   a. You cannot claim the credit for the elderly or the disabled, and
   b. You will have to include in income more (up to 85%) of any social security or equivalent railroad retirement benefits you received.
9. Your income limits that reduce the child tax credit and the retirement savings contributions credit are half of the limits for a joint return filer.
10. Your capital loss deduction limit is $1,500 (instead of $3,000 on a joint return).
11. Your basic standard deduction, if allowable, is half of that allowed a joint return filer. See *Itemized deductions*, earlier.
12. Your first-time homebuyer credit is limited to $4,000 (instead of $8,000 if you filed a joint return). If the special rule for long-time residents of the same main home applies, the credit is limited to $3,250 (instead of $6,500 if you filed a joint return).

Joint return after separate returns. If either you or your spouse (or both of you) file a separate return, you generally can change to a joint return any time within 3 years from the due date (not including extensions) of the separate return or returns. This applies to a return either of you filed claiming married filing separately, single, or head of household filing status. Use Form 1040X to change your filing status.

Table 1. **Itemized Deductions on Separate Returns** *Keep for Your Records*

This table shows itemized deductions you can claim on your married filing separate return whether you paid the expenses separately with your own funds or jointly with your spouse. ***Caution:*** *If you live in a community property state, these rules do not apply. See* Community Property.

IF you paid ...	AND you ...	THEN you can deduct on your separate federal return...
medical expenses	paid with funds deposited in a joint checking account in which you and your spouse have an equal interest	half of the total medical expenses, subject to certain limits, unless you can show that you alone paid the expenses.
state income tax	file a separate state income tax return	the state income tax you alone paid during the year.
	file a joint state income tax return and you and your spouse are jointly and individually liable for the full amount of the state income tax	the state income tax you alone paid during the year.
	file a joint state income tax return and you are liable for only your own share of state income tax	the smaller of: • the state income tax you alone paid during the year, or • the total state income tax you and your spouse paid during the year multiplied by the following fraction. The numerator is your gross income and the denominator is your combined gross income.
property tax	paid the tax on property held as tenants by the entirety	the property tax you alone paid.
mortgage interest	paid the interest on a qualified home[1] held as tenants by the entirety	the mortgage interest you alone paid.
casualty loss	have a casualty loss on a home you own as tenants by the entirety	half of the loss, subject to the deduction limits. Neither spouse may report the total casualty loss.

[1] For more information on a qualified home and deductible mortgage interest, see Publication 936, Home Mortgage Interest Deduction.

Separate returns after joint return. After the due date of your return, you and your spouse cannot file separate returns if you previously filed a joint return.

Exception. A personal representative for a decedent can change from a joint return elected by the surviving spouse to a separate return for the decedent. The personal representative has 1 year from the due date (including extensions) of the joint return to make the change.

Head of Household

Filing as head of household has the following advantages.

- You can claim the standard deduction even if your spouse files a separate return and itemizes deductions.
- Your standard deduction is higher than is allowed if you claim a filing status of single or married filing separately.
- Your tax rate usually will be lower than it is if you claim a filing status of single or married filing separately.
- You may be able to claim certain credits (such as the dependent care credit and the earned income credit) you cannot claim if your filing status is married filing separately.
- Income limits that reduce your child tax credit and retirement savings contributions credit are higher than the income limits if you claim a filing status of married filing separately.

Requirements. You may be able to file as head of household if you meet all the following requirements.

- You are unmarried or "considered unmarried" on the last day of the year.
- You paid more than half the cost of keeping up a home for the year.
- A "qualifying person" lived with you in the home for more than half the year (except for temporary absences, such as school). However, if the "qualifying person" is your dependent parent, he or she does not have to live with you. See *Special rule for parent*, later, under *Qualifying person*.

Considered unmarried. You are considered unmarried on the last day of the tax year if you meet all the following tests.

- You file a separate return. A separate return includes a return claiming married filing separately, single, or head of household filing status.
- You paid more than half the cost of keeping up your home for the tax year.
- Your spouse did not live in your home during the last 6 months of the tax year. Your spouse is considered to live in your home even if he or she is temporarily absent due to special circumstances. See *Temporary absences*, later.
- Your home was the main home of your child, stepchild, or foster child for more than half the year. (See *Qualifying person*, on this page, for rules applying to a child's birth, death, or temporary absence during the year.)
- You must be able to claim an exemption for the child. However, you meet this test if you cannot claim the exemption only because the noncustodial parent can claim the child using the rule described later in *Special rule for divorced or separated parents (or parents who live apart)* under *Exemptions for Dependents*. The general rules for claiming an exemption for a dependent are shown later in Table 3.

CAUTION *If you were considered married for part of the year and lived in a community property state (one of the states listed later under Community Property), special rules may apply in determining your income and expenses. See Publication 555 for more information.*

Nonresident alien spouse. If your spouse was a nonresident alien at any time during the tax year, and you have not chosen to treat your spouse as a resident alien, you are considered unmarried for head of household purposes. However, your spouse is not a qualifying person for head of household purposes. You must have another qualifying person and meet the other requirements to file as head of household.

Keeping up a home. You are keeping up a home only if you pay more than half the cost of its upkeep for the year. This includes rent, mortgage interest, real estate taxes, insurance on the home, repairs, utilities, and food eaten in the home. This does not include the cost of clothing, education, medical treatment, vacations, life insurance, or transportation for any member of the household.

Qualifying person. Table 2, later, shows who can be a qualifying person. Any person not described in Table 2 is not a qualifying person.

Generally, the qualifying person must live with you for more than half of the year.

Special rule for parent. If your qualifying person is your father or mother, you may be eligible to file as head of household even if your father or mother does not live with you. However, you must be able to claim an exemption for your father or mother. Also, you must pay more than half the cost of keeping up a home that was the main home for the entire year for your father or mother. You are keeping up a main home for your father or mother if you pay more than half the cost of keeping your parent in a rest home or home for the elderly.

Death or birth. You may be eligible to file as head of household if the individual who qualifies you for this filing status is born or dies during the year. You must have provided more than half of the cost of keeping up a home that was the individual's main home for more than half of the year, or, if less, the period during which the individual lived.

Example. You are unmarried. Your mother, for whom you can claim an exemption, lived in an apartment by herself. She died on September 2. The cost of the upkeep of her apartment for the year until her death was $6,000. You paid $4,000 and your brother paid $2,000. Your brother made no other payments towards your mother's support. Your mother had no income. Because you paid more than half of the cost of keeping up your mother's apartment from January 1 until her death, and you can claim an exemption for her, you can file as a head of household.

Temporary absences. You and your qualifying person are considered to live together even if one or both of you are temporarily absent from your home due to special circumstances such as illness, education, business, vacation, or military service. It must be reasonable to assume that the absent person will return to the home after the temporary absence. You must continue to keep up the home during the absence.

Kidnapped child. You may be eligible to file as head of household, even if the child who is your qualifying person has been kidnapped. You can claim head of household filing status if all the following statements are true.

- The child must be presumed by law enforcement authorities to have been kidnapped by someone who is not a member of your family or the child's family.
- In the year of the kidnapping, the child lived with you for more than half the part of the year before the kidnapping.
- You would have qualified for head of household filing status if the child had not been kidnapped.

This treatment applies for all years until the child is returned. However, the last year this treatment can apply is the earlier of:

- The year there is a determination that the child is dead, or
- The year the child would have reached age 18.

More information. For more information on filing as head of household, see Publication 501.

Table 2. **Who Is a Qualifying Person Qualifying You To File as Head of Household?**[1]

Keep for Your Records

Caution. *See the text of this publication for the other requirements you must meet to claim head of household filing status.*

IF the person is your ...	AND ...	THEN that person is ...
qualifying child (such as a son, daughter, or grandchild who lived with you more than half the year and meets certain other tests)[2]	he or she is single	a qualifying person, whether or not you can claim an exemption for the person.
	he or she is married and you can claim an exemption for him or her	a qualifying person.
	he or she is married and you cannot claim an exemption for him or her	not a qualifying person.[3]
qualifying relative[4] who is your father or mother	you can claim an exemption for him or her[5]	a qualifying person.[6]
	you cannot claim an exemption for him or her	not a qualifying person.
qualifying relative[4] other than your father or mother (such as a grandparent, brother, or sister who meets certain tests)	he or she lived with you more than half the year, and he or she is related to you in one of the ways listed under *Relatives who do not have to live with you* in Publication 501 and you can claim an exemption for him or her[5]	a qualifying person.
	he or she did not live with you more than half the year	not a qualifying person.
	he or she is not related to you in one of the ways listed under *Relatives who do not have to live with you* in Publication 501 and is your qualifying relative only because he or she lived with you all year as a member of your household	not a qualifying person.
	you cannot claim an exemption for him or her	not a qualifying person.

[1] A person cannot qualify more than one taxpayer to use the head of household filing status for the year.
[2] See Table 3, later, for the tests that must be met to be a qualifying child. **Note.** If you are a noncustodial parent, the term "qualifying child" for head of household filing status does not include a child who is your qualifying child for exemption purposes only because of the rules described under *Children of Divorced or Separated Parents (or Parents Who Live Apart)* under *Exemptions for Dependents*, later. If you are the custodial parent and those rules apply, the child is generally your qualifying child for head of household filing status even though the child is not a qualifying child for whom you can claim an exemption.
[3] This person is a qualifying person if the only reason you cannot claim the exemption is that you can be claimed as a dependent on someone else's return.
[4] See Table 3, later, for the tests that must be met to be a qualifying relative.
[5] If you can claim an exemption for a person only because of a multiple support agreement, that person is not a qualifying person. See *Multiple Support Agreement* in Publication 501.
[6] See *Special rule for parent* for an additional requirement.

Exemptions

You can deduct $3,650 for each exemption you claim in 2010.

There are two types of exemptions: personal exemptions and exemptions for dependents. If you are entitled to claim an exemption for a dependent (such as your child), that dependent cannot claim his or her personal exemption on his or her own tax return.

Personal Exemptions

You can claim your own exemption unless someone else can claim it. If you are married, you may be able to take an exemption for your spouse. These are called personal exemptions.

Exemption for Your Spouse

Your spouse is never considered your dependent.

Joint return. On a joint return, you can claim one exemption for yourself and one for your spouse.

If your spouse had any gross income, you can claim his or her exemption only if you file a joint return.

Separate return. If you file a separate return, you can take an exemption for your spouse only if your spouse had no gross income, is not filing a return, and was not the dependent of another taxpayer. If your spouse is the dependent of another taxpayer, you cannot claim an exemption for your spouse even if the other taxpayer does not actually claim your spouse's exemption.

Alimony paid. If you paid alimony to your spouse, you cannot take an exemption for your spouse. This is because alimony is gross income to the spouse who received it.

Divorced or separated spouse. If you obtained a final decree of divorce or separate maintenance during the year, you cannot take your former spouse's exemption. This rule applies even if you provided all of your former spouse's support.

Exemptions for Dependents

You are allowed one exemption for each person you can claim as a dependent. You can claim an exemption for a dependent even if your dependent files a return.

The term "dependent" means:

- A qualifying child, or
- A qualifying relative.

Table 3 shows the tests that must be met to be either a qualifying child or qualifying relative, plus the additional requirements for claiming an exemption for a dependent. For detailed information, see Publication 501.

CAUTION

Dependent not allowed a personal exemption. *If you can claim an exemption for your dependent, the dependent cannot claim his or her own exemption on his or her own tax return. This is true even if you do not claim the dependent's exemption on your return.*

TIP

You may be entitled to a child tax credit for each qualifying child who was under age 17 at the end of the year if you claimed an exemption for that child. For more information, see the instructions for the tax form you file (Form 1040, 1040A, or 1040EZ).

Table 3. **Overview of the Rules for Claiming an Exemption for a Dependent**

Caution. *This table is only an overview of the rules. For details, see Publication 501.*

- You cannot claim any dependents if you, or your spouse if filing jointly, could be claimed as a dependent by another taxpayer.
- You cannot claim a married person who files a joint return as a dependent unless that joint return is only a claim for refund and there would be no tax liability for either spouse on separate returns.
- You cannot claim a person as a dependent unless that person is a U.S. citizen, U.S. resident alien, U.S. national, or a resident of Canada or Mexico, for some part of the year.[1]
- You cannot claim a person as a dependent unless that person is your **qualifying child** or **qualifying relative.**

Tests To Be a Qualifying Child	Tests To Be a Qualifying Relative
1. The child must be your son, daughter, stepchild, foster child, brother, sister, half brother, half sister, stepbrother, stepsister, or a descendant of any of them.	1. The person cannot be your qualifying child or the qualifying child of anyone else.
2. The child must be (a) under age 19 at the end of the year and younger than you (or your spouse, if filing jointly), (b) under age 24 at the end of the year, a full-time student, and younger than you (or your spouse, if filing jointly), or (c) any age if permanently and totally disabled.	2. The person either (a) must be related to you in one of the ways listed under *Relatives who do not have to live with you* in Publication 501 or (b) must live with you all year as a member of your household [2] (and your relationship must not violate local law).
3. The child must have lived with you for more than half of the year.[2]	3. The person's gross income for the year must be less than $3,650.[3]
4. The child must not have provided more than half of his or her own support for the year.	4. You must provide more than half of the person's total support for the year.[4]
5. The child is not filing a joint return for the year (unless that joint return is filed only as a claim for refund).	
If the child meets the rules to be a qualifying child of more than one person, only one person can actually treat the child as a qualifying child. See *Special Rule for Qualifying Child of More Than One Person*, later, to find out which person is the person entitled to claim the child as a qualifying child.	

[1] Exception exists for certain adopted children.
[2] Exceptions exist for temporary absences, children who were born or died during the year, children of divorced or separated parents (or parents who live apart), and kidnapped children.
[3] Exception exists for persons who are disabled and have income from a sheltered workshop.
[4] Exceptions exist for multiple support agreements, children of divorced or separated parents (or parents who live apart), and kidnapped children. See Publication 501.

Children of Divorced or Separated Parents (or Parents Who Live Apart)

In most cases, because of the residency test (see item 3 under *Tests To Be a Qualifying Child* in Table 3), a child of divorced or separated parents is the qualifying child of the custodial parent. However, the child will be treated as the qualifying child of the noncustodial parent if the special rule (discussed next) applies.

Special rule for divorced or separated parents (or parents who live apart). A child will be treated as the qualifying child of his or her noncustodial parent if all four of the following statements are true.

1. The parents:
   a. Are divorced or legally separated under a decree of divorce or separate maintenance,
   b. Are separated under a written separation agreement, or
   c. Lived apart at all times during the last 6 months of the year, whether or not they are or were married.
2. The child received over half of his or her support for the year from the parents.
3. The child is in the custody of one or both parents for more than half of the year.
4. Either of the following applies.
   a. The custodial parent signs a written declaration, discussed later, that he or she will not claim the child as a dependent for the year, and the noncustodial parent attaches this written declaration to his or her return. (If the decree or agreement went into effect after 1984, see *Divorce decree or separation agreement that went into effect after 1984 and before 2009*, later.
   b. A pre-1985 decree of divorce or separate maintenance or written separation agreement that applies to 2010 states that the noncustodial parent can claim the child as a dependent, the decree or agreement was not changed after 1984 to say the noncustodial parent cannot claim the child as a dependent, and the noncustodial parent provides at least $600 for the child's support during 2010. See *Child support under pre-1985 agreement*, later.

Custodial parent and noncustodial parent. The custodial parent is the parent with whom the child lived for the greater number of nights during the year. The other parent is the noncustodial parent.

If the parents divorced or separated during the year and the child lived with both parents before the separation, the custodial parent is the one with whom the child lived for the greater number of nights during the rest of the year.

A child is treated as living with a parent for a night if the child sleeps:

- At that parent's home, whether or not the parent is present, or
- In the company of the parent, when the child does not sleep at a parent's home (for example, the parent and child are on vacation together).

Equal number of nights. If the child lived with each parent for an equal number of nights during the year, the custodial parent is the parent with the higher adjusted gross income.

December 31. The night of December 31 is treated as part of the year in which it begins. For example, December 31, 2010, is treated as part of 2010.

Emancipated child. If a child is emancipated under state law, the child is treated as not living with either parent. See *Examples 5 and 6*.

Absences. If a child was not with either parent on a particular night (because, for example, the child was staying at a friend's house), the child is treated as living with the parent with whom the child normally would have lived for that night, except for the absence. But if it cannot be determined with which parent the child normally would have lived or if the child would not have lived with either parent that night, the child is treated as not living with either parent that night.

Parent works at night. If, due to a parent's nighttime work schedule, a child lives for a greater number of days but not nights with the parent who works at night, that parent is treated as the custodial parent. On a school day, the child is treated as living at the primary residence registered with the school.

Example 1 – child lived with one parent greater number of nights. You and your child's other parent are divorced. In 2010, your child lived with you 210 nights and with the other parent 155 nights. You are the custodial parent.

Example 2 – child is away at camp. In 2010, your daughter lives with each parent for alternate weeks. In the summer, she spends 6 weeks at summer camp. During the time she is at camp, she is treated as living with you for 3 weeks and with her other parent, your ex-spouse, for 3 weeks because this is how long she would have lived with each parent if she had not attended summer camp.

Example 3 – child lived same number of days with each parent. Your son lived with you 180 nights during the year and lived the same number of nights with his other parent, your ex-spouse. Your adjusted gross income is $40,000. Your ex-spouse's adjusted gross income is $25,000. You are treated as your son's custodial parent because you have the higher adjusted gross income.

Example 4 – child is at parent's home but with other parent. Your son normally lives with you during the week and with his other parent, your ex-spouse, every other weekend. You become ill and are hospitalized. The other parent lives in your home with your son for 10 consecutive days while you are in the hospital. Your son is treated as living with you during this 10-day period because he was living in your home.

Example 5 – child emancipated in May. When your son turned age 18 in May 2010, he became emancipated under the law of the state where he lives. As a result, he is not considered in the custody of his parents for more than half of the year. The special rule for children of divorced or separated parents (or parents who live apart) does not apply.

Example 6 – child emancipated in August. Your daughter lives with you from January 1, 2010, until May 31, 2010, and lives with her other parent, your ex-spouse, from June 1, 2010, through the end of the year. She turns 18 and is emancipated under state law on August 1, 2010. Because she is treated as not living with either parent beginning on August 1, she is treated as living with you the greater number of nights in 2010. You are the custodial parent.

Written declaration. The custodial parent must use either Form 8332 or a similar statement (containing the same information required by the form) to make the written declaration to release the exemption to the noncustodial parent. The noncustodial parent must attach a copy of the form or statement to his or her tax return.

The exemption can be released for 1 year, for a number of specified years (for example, alternate years), or for all future years, as specified in the declaration.

Divorce decree or separation agreement that went into effect after 1984 and before 2009. If the divorce decree or separation agreement went into effect after 1984 and before 2009, the noncustodial parent may be able to attach certain pages from the decree or agreement instead of Form 8332. To be able to do this, the decree or agreement must state all three of the following.

1. The noncustodial parent can claim the child as a dependent without regard to any condition, such as payment of support.
2. The custodial parent will not claim the child as a dependent for the year.
3. The years for which the noncustodial parent, rather than the custodial parent, can claim the child as a dependent.

The noncustodial parent must attach all of the following pages of the decree or agreement to his or her return.

- The cover page (write the other parent's social security number on this page).
- The pages that include all of the information identified in items (1) through (3) above.
- The signature page with the other parent's signature and the date of the agreement.

CAUTION

The noncustodial parent must attach the required information even if it was filed with a return in an earlier year.

Post-2008 divorce decree or separation agreement. A noncustodial parent claiming an exemption for a child can no longer attach certain pages from a divorce decree or separation agreement instead of Form 8332 if the decree or agreement went into effect after 2008. The custodial parent must sign either a Form 8332 or a similar statement. The only purpose of this statement must be to release the custodial parent's claim to the child's exemption. The noncustodial parent must attach a copy to his or her return. The form or statement must release the custodial parent's claim to the child without any conditions. For example, the release must not depend on the noncustodial parent paying support.

The noncustodial parent must attach the required information even if it was filed with a return in an earlier year.

Revocation of release of claim to an exemption. The custodial parent can revoke a release of claim to exemption that he or she previously released to the noncustodial parent on Form 8332 or a similar statement. If the custodial parent provided, or made reasonable efforts to provide, the noncustodial parent with written notice of the revocation in 2009, the revocation can be effective no earlier than 2010. The custodial parent can use Part III of Form 8332 for this purpose and must attach a copy of the revocation to his or her return for each tax year he or she claims the child as a dependent as a result of the revocation.

Remarried parent. If you remarry, the support provided by your new spouse is treated as provided by you.

Child support under pre-1985 agreement. All child support payments actually received from the noncustodial parent under a pre-1985 agreement are considered used for the support of the child, even if such amounts are not actually spent for child support.

Example. Under a pre-1985 agreement, the noncustodial parent provides $1,200 for the child's support. This amount is considered support provided by the noncustodial parent even if the $1,200 was actually spent on things other than support.

Parents who never married. The special rule for divorced or separated parents also applies to parents who never married and lived apart at all times during the last 6 months of the year.

Alimony. Payments to your spouse that are includible in his or her gross income as either alimony, separate maintenance payments, or similar payments from an estate or trust, are not treated as a payment for the support of a dependent.

Special Rule for Qualifying Child of More Than One Person

TIP

If your qualifying child is not a qualifying child of anyone else, this special rule does not apply to you and you do not need to read about it. This is also true if your qualifying child is not a qualifying child of anyone else except your spouse with whom you file a joint return.

If a child is treated as the qualifying child of the noncustodial parent under the Special rule for divorced or separated parents (or parents who live apart), earlier, see Applying this special rule to divorced or separated parents (or parents who live apart), later.

Sometimes, a child meets the relationship, age, residency, support, and joint return tests to be a qualifying child of more than one person. (For a description of these tests, see list items 1 through 5 under *Tests To Be a Qualifying Child* in *Table 3*). Although the child meets the conditions to be a qualifying child of each of these persons, only one person can actually use the child as a qualifying child to take all of the following tax benefits (provided the person is eligible for each benefit).

1. The exemption for the child.
2. The child tax credit.
3. Head of household filing status.
4. The credit for child and dependent care expenses.
5. The exclusion from income for dependent care benefits.
6. The earned income credit.

The other person cannot take any of these benefits based on this qualifying child. In other words, you and the other person cannot agree to divide these tax benefits between you. The other person cannot take any of these tax benefits unless he or she has a different qualifying child.

Tiebreaker rules. To determine which person can treat the child as a qualifying child to claim these six tax benefits, the following tie-breaker rules apply.

- If only one of the persons is the child's parent, the child is treated as the qualifying child of the parent.
- If the parents do not file a joint return together but both parents claim the child as a qualifying child, the IRS will treat the child as the qualifying child of the parent with whom the child lived for the longer period of time during the year. If the child lived with each parent for the same amount of time, the IRS will treat the child as the qualifying child of the parent who had the higher adjusted gross income (AGI) for the year.
- If no parent can claim the child as a qualifying child, the child is treated as the qualifying child of the person who had the highest AGI for the year.
- If a parent can claim the child as a qualifying child but no parent does so claim the child, the child is treated as the qualifying child of the person who had the highest AGI for the year, but only if that person's AGI is higher than the highest AGI of any of the child's parents who can claim the child. If the child's parents file a joint return with each other, this rule can be applied by dividing the parents' total AGI evenly between them; see Pub. 501 for details.

Subject to these tiebreaker rules, you and the other person may be able to choose which of you claims the child as a qualifying child.

Example 1—separated parents. You, your husband, and your 10-year-old son lived together until August 1, 2010, when your husband moved out of the household. In August and September, your son lived with you. For the rest of the year, your son lived with your husband, the boy's father. Your son is a qualifying child of both you and your husband because your son lived with each of you for more than half the year and because he met the relationship, age, support, and joint return tests for both of you. At the end of the year, you and your husband still were not divorced, legally separated, or separated under a written separation agreement, so the special rule for divorced or separated parents (or parents who live apart) does not apply.

You and your husband will file separate returns. Your husband agrees to let you treat your son as a qualifying child. This means, if your husband does not claim your son as a qualifying child, you can claim your son as a dependent and treat him as a qualifying child for the child tax credit and exclusion for dependent care benefits, if you qualify for each of those tax benefits. However, you cannot claim head of household filing status because you and your husband did not live apart the last 6 months of the year. As a result, your filing status is married filing separately, so you cannot claim the earned income credit or the credit for child and dependent care expenses.

Example 2—separated parents claim same child. The facts are the same as in *Example 1* except that you and your husband both claim your son as a qualifying child. In this case, only your husband will be allowed to treat your son as a qualifying child. This is because, during 2010, the boy lived with him longer than with you. If you claimed an exemption, the child tax credit, or the exclusion for dependent care benefits for your son, the IRS will disallow your claim to all these tax benefits, unless you have another qualifying child. In addition, because you and your husband did not live apart the last 6 months of the year, your husband cannot claim head of household filing status. As a result, his filing status is married filing separately, so he cannot claim the earned income credit or the credit for child and dependent care expenses.

Applying this special rule to divorced or separated parents (or parents who live apart). If a child is treated as the qualifying child of the noncustodial parent under the special rule for divorced or separated parents (or parents who live apart) described earlier, only the noncustodial parent can claim an exemption and the child tax credit for the child. However, the noncustodial parent cannot claim the child as a qualifying child for head of household filing status, the credit for child and dependent care expenses, the exclusion for dependent care benefits, and the earned income credit. Only the custodial parent, if eligible, or another eligible taxpayer can claim the child as a qualifying child for those four tax benefits. If the child is the qualifying child of more than one person for those tax benefits, the tiebreaker rules determine which person can treat the child as a qualifying child.

Example 1. You and your 5-year-old son lived all year with your mother, who paid the entire cost of keeping up the home. Your AGI is $10,000. Your mother's AGI is $25,000. Your son's father does not live with you or your son. Under the rules for children of divorced or separated parents (or parents who live apart), your son is treated as the qualifying child of his father, who can claim an exemption and the child tax credit for the child if he meets all the requirements to do so. Because of this, you cannot claim an exemption or the child tax credit for your son. However, your son's father cannot claim your son as a qualifying child for head of household filing status, the credit for child and dependent care expenses, the exclusion for dependent care benefits, or the earned income credit. You and your mother did not have any child care expenses or dependent care benefits, but the boy is a qualifying child of both you and your mother for head of household filing status and the earned income credit because he meets the relationship, age, residency, support, and joint return tests for both you and your mother. (Note: The support test does not apply for the earned income credit.) However, you agree to let your mother claim your son. This means she can claim him for head of household filing status and the earned income credit if she qualifies for each and if you do not claim him as a qualifying child for the earned income credit. (You cannot claim head of household filing status because your mother paid the entire cost of keeping up the home.)

Example 2. The facts are the same as in *Example 1* except that your AGI is $25,000 and your mother's AGI is $21,000. Your mother cannot claim your son as a qualifying child for any purpose because her AGI is not higher than yours.

Example 3. The facts are the same as in *Example 1* except that you and your mother both claim your son as a qualifying child for the earned income credit. Your mother also claims him as a qualifying child for head of household filing status. You as the child's parent will be the only one allowed to claim your son as a qualifying child for the earned income credit. The IRS will disallow your mother's claim to the earned income credit and head of household filing status unless she has another qualifying child.

Alimony

Alimony is a payment to or for a spouse or former spouse under a divorce or separation instrument. It does not include voluntary payments that are not made under a divorce or separation instrument.

Alimony is deductible by the payer and must be included in the spouse's or former spouse's income. Although this discussion is generally written for the payer of the alimony, the recipient can use the information to determine whether an amount received is alimony.

To be alimony, a payment must meet certain requirements. Different requirements generally apply to payments under instruments executed after 1984 and to payments under instruments executed before 1985. The requirements that apply to payments under post-1984 instruments are discussed later.

Spouse or former spouse. Unless otherwise stated, the term "spouse" includes former spouse.

Divorce or separation instrument. The term "divorce or separation instrument" means:

- A decree of divorce or separate maintenance or a written instrument incident to that decree,
- A written separation agreement, or
- A decree or any type of court order requiring a spouse to make payments for the support or maintenance of the other spouse. This includes a temporary decree, an interlocutory (not final) decree, and a decree of alimony *pendente lite* (while awaiting action on the final decree or agreement).

Invalid decree. Payments under a divorce decree can be alimony even if the decree's validity is in question. A divorce decree is valid for tax purposes until a court having proper jurisdiction holds it invalid.

Amended instrument. An amendment to a divorce decree may change the nature of your payments. Amendments are not ordinarily retroactive for federal tax purposes. However, a retroactive amendment to a divorce decree correcting a clerical error to reflect the original intent of the court will generally be effective retroactively for federal tax purposes.

Example 1. A court order retroactively corrected a mathematical error under your divorce decree to express the original intent to spread the payments over more than 10 years. This change also is effective retroactively for federal tax purposes.

Example 2. Your original divorce decree did not fix any part of the payment as child support. To reflect the true intention of the court, a court order retroactively corrected the error by designating a part of the payment as child support. The amended order is effective retroactively for federal tax purposes.

Deducting alimony paid. You can deduct alimony you paid, whether or not you itemize deductions on your return. You must file Form 1040. You cannot use Form 1040A, 1040EZ, or 1040NR.

Enter the amount of alimony you paid on Form 1040, line 31a. In the space provided on line 31b, enter your spouse's social security number.

If you paid alimony to more than one person, enter the social security number of one of the recipients. Show the social security number and amount paid to each other recipient on an attached statement. Enter your total payments on line 31a.

CAUTION *If you do not provide your spouse's social security number, you may have to pay a $50 penalty and your deduction may be disallowed.*

Reporting alimony received. Report alimony as income you received on Form 1040, line 11, or on Schedule NEC (Form 1040NR), line 12. You cannot use Form 1040A, 1040EZ, or 1040NR-EZ.

You must give the person who paid the alimony your social security number. If you do not, you may have to pay a $50 penalty.

Withholding on nonresident aliens. If you are a U.S. citizen or resident alien and you pay alimony to a nonresident alien spouse, you may have to withhold income tax at a rate of 30% on each payment. However, many tax treaties provide for an exemption from withholding for alimony payments. For more information, see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities.

General Rules

The following rules apply to alimony regardless of when the divorce or separation instrument was executed.

Payments not alimony. Not all payments under a divorce or separation instrument are alimony. Alimony does not include:

- Child support,
- Noncash property settlements,
- Payments that are your spouse's part of community income, as explained later under Community Property,
- Payments to keep up the payer's property, or
- Use of the payer's property.

Example. Under your written separation agreement, your spouse lives rent-free in a home you own and you must pay the mortgage, real estate taxes, insurance, repairs, and utilities for the home. Because you own the home and the debts are yours, your payments for the mortgage, real estate taxes, insurance, and repairs are not alimony. Neither is the value of your spouse's use of the home.

If they otherwise qualify, you can deduct the payments for utilities as alimony. Your spouse must report them as income. If you itemize deductions, you can deduct the real estate taxes and, if the home is a qualified home, you can also include the interest on the mortgage in figuring your deductible interest. However, if your spouse owned the home, see Example 2 under Payments to a third party, later. If you owned the home jointly with your spouse, see Table 4. For more information on a qualified home and deductible mortgage interest, see Publication 936, Home Mortgage Interest Deduction.

Child support. To determine whether a payment is child support, see the discussion under Instruments Executed After 1984, later. If your divorce or separation agreement was executed before 1985, see the 2004 revision of Publication 504 on the IRS website at IRS.gov.

Underpayment. If both alimony and child support payments are called for by your divorce or separation instrument, and you pay less than the total required, the payments apply first to child support and then to alimony.

Example. Your divorce decree calls for you to pay your former spouse $200 a month ($2,400 ($200 x 12) a year) as child support and $150 a month ($1,800 ($150 x 12) a year) as alimony. If you pay the full amount of $4,200 ($2,400 + $1,800) during the year, you can deduct $1,800 as alimony and your former spouse must report $1,800 as alimony received. If you pay only $3,600 during the year, $2,400 is child support. You can deduct only $1,200 ($3,600 − $2,400) as alimony and your former spouse must report $1,200 as alimony received.

Payments to a third party. Cash payments, checks, or money orders to a third party on behalf of your spouse under the terms of your divorce or separation instrument

Table 4. **Expenses for a Jointly-Owned Home**

Keep for Your Records

Use the table below to find how much of your payment is alimony and how much you can claim as an itemized deduction.

IF you must pay all of the ...	AND your home is ...	THEN you can deduct and your spouse (or former spouse) must include as alimony ...	AND you can claim as an itemized deduction ...
mortgage payments (principal and interest)	jointly owned	half of the total payments	half of the interest as interest expense (if the home is a qualified home).[1]
real estate taxes and home insurance	held as tenants in common	half of the total payments	half of the real estate taxes[2] and none of the home insurance.
	held as tenants by the entirety or in joint tenancy	none of the payments	all of the real estate taxes and none of the home insurance.

[1] Your spouse (or former spouse) can deduct the other half of the interest if the home is a qualified home.
[2] Your spouse (or former spouse) can deduct the other half of the real estate taxes.

can be alimony, if they otherwise qualify. These include payments for your spouse's medical expenses, housing costs (rent, utilities, etc.), taxes, tuition, etc. The payments are treated as received by your spouse and then paid to the third party.

Example 1. Under your divorce decree, you must pay your former spouse's medical and dental expenses. If the payments otherwise qualify, you can deduct them as alimony on your return. Your former spouse must report them as alimony received and can include them in figuring deductible medical expenses.

Example 2. Under your separation agreement, you must pay the real estate taxes, mortgage payments, and insurance premiums on a home owned by your spouse. If they otherwise qualify, you can deduct the payments as alimony on your return, and your spouse must report them as alimony received. If itemizing deductions, your spouse can deduct the real estate taxes and, if the home is a qualified home, also include the interest on the mortgage in figuring deductible interest. However, if you owned the home, see the example under *Payments not alimony*, earlier. If you owned the home jointly with your spouse, see Table 4 on the previous page.

Life insurance premiums. Alimony includes premiums you must pay under your divorce or separation instrument for insurance on your life to the extent your spouse owns the policy.

Payments for jointly-owned home. If your divorce or separation instrument states that you must pay expenses for a home owned by you and your spouse or former spouse, some of your payments may be alimony. See Table 4.

However, if your spouse owned the home, see *Example 2* under *Payments to a third party*, on this page. If you owned the home, see the example under *Payments not alimony*, earlier.

Instruments Executed After 1984

The following rules for alimony apply to payments under divorce or separation instruments executed after 1984.

Exception for instruments executed before 1985. There are two situations where the rules for instruments executed after 1984 apply to instruments executed before 1985.

1. A divorce or separation instrument executed before 1985 and then modified after 1984 to specify that the after-1984 rules will apply.
2. A temporary divorce or separation instrument executed before 1985 and incorporated into, or adopted by, a final decree executed after 1984 that:
   a. Changes the amount or period of payment, or
   b. Adds or deletes any contingency or condition.

For the rules for alimony payments under pre-1985 instruments not meeting these exceptions, see the 2004 revision of Publication 504 on the IRS website at IRS.gov.

Example 1. In November 1984, you and your former spouse executed a written separation agreement. In February 1985, a decree of divorce was substituted for the written separation agreement. The decree of divorce did not change the terms for the alimony you pay your former spouse. The decree of divorce is treated as executed before 1985. Alimony payments under this decree are not subject to the rules for payments under instruments executed after 1984.

Example 2. Assume the same facts as in *Example 1* except that the decree of divorce changed the amount of the alimony. In this example, the decree of divorce is not treated as executed before 1985. The alimony payments are subject to the rules for payments under instruments executed after 1984.

Alimony Requirements

A payment to or for a spouse under a divorce or separation instrument is alimony if the spouses do not file a joint return with each other and all the following requirements are met.

- The payment is in cash.
- The instrument does not designate the payment as not alimony.
- The spouses are not members of the same household at the time the payments are made. This requirement applies only if the spouses are legally separated under a decree of divorce or separate maintenance.
- There is no liability to make any payment (in cash or property) after the death of the recipient spouse.
- The payment is not treated as child support.

Each of these requirements is discussed below.

Cash payment requirement. Only cash payments, including checks and money orders, qualify as alimony. The following do not qualify as alimony.

- Transfers of services or property (including a debt instrument of a third party or an annuity contract).
- Execution of a debt instrument by the payer.
- The use of the payer's property.

Payments to a third party. Cash payments to a third party under the terms of your divorce or separation instrument can qualify as cash payments to your spouse. See *Payments to a third party* under *General Rules*, earlier.

Also, cash payments made to a third party at the written request of your spouse may qualify as alimony if all the following requirements are met.

- The payments are in lieu of payments of alimony directly to your spouse.
- The written request states that both spouses intend the payments to be treated as alimony.
- You receive the written request from your spouse before you file your return for the year you made the payments.

Payments designated as not alimony. You and your spouse can designate that otherwise qualifying payments are not alimony. You do this by including a provision in your divorce or separation instrument that states the payments are not deductible as alimony by you and are excludable from your spouse's income. For this purpose, any instrument (written statement) signed by both of you that makes this designation and that refers to a previous written separation agreement is treated as a written separation agreement (and therefore a divorce or separation instrument). If you are subject to temporary support orders, the designation must be made in the original or a later temporary support order.

Your spouse can exclude the payments from income only if he or she attaches a copy of the instrument designating them as not alimony to his or her return. The copy must be attached each year the designation applies.

Spouses cannot be members of the same household. Payments to your spouse while you are members of the same household are not alimony if you are legally separated under a decree of divorce or separate maintenance. A home you formerly shared is considered one household, even if you physically separate yourselves in the home.

You are not treated as members of the same household if one of you is preparing to leave the household and does leave no later than 1 month after the date of the payment.

Exception. If you are not legally separated under a decree of divorce or separate maintenance, a payment under a written separation agreement, support decree, or other court order may qualify as alimony even if you are members of the same household when the payment is made.

Liability for payments after death of recipient spouse. If any part of payments you make must continue to be made for any period after your spouse's death, that part of your payments is not alimony whether made before or after the death. If all of the payments would continue, then none of the payments made before or after the death are alimony.

The divorce or separation instrument does not have to expressly state that the payments cease upon the death of your spouse if, for example, the liability for continued payments would end under state law.

Example. You must pay your former spouse $10,000 in cash each year for 10 years. Your divorce decree states that the payments will end upon your former spouse's death. You must also pay your former spouse or your former spouse's estate $20,000 in cash each year for 10 years. The death of your spouse would not terminate these payments under state law.

The $10,000 annual payments may qualify as alimony. The $20,000 annual payments that do not end upon your former spouse's death are not alimony.

Substitute payments. If you must make any payments in cash or property after your spouse's death as a substitute for continuing otherwise qualifying payments before the death, the otherwise qualifying payments are not alimony. To the extent that your payments begin, accelerate, or increase because of the death of your spouse, otherwise qualifying payments you made may be treated as payments that were not alimony. Whether or not such payments will be treated as not alimony depends on all the facts and circumstances.

Example 1. Under your divorce decree, you must pay your former spouse $30,000 annually. The payments will stop at the end of 6 years or upon your former spouse's death, if earlier.

Your former spouse has custody of your minor children. The decree provides that if any child is still a minor at your spouse's death, you must pay $10,000 annually to a trust until the youngest child reaches the age of majority. The trust income and corpus (principal) are to be used for your children's benefit.

These facts indicate that the payments to be made after your former spouse's death are a substitute for $10,000 of the $30,000 annual payments. Of each of the $30,000 annual payments, $10,000 is not alimony.

Example 2. Under your divorce decree, you must pay your former spouse $30,000 annually. The payments will stop at the end of 15 years or upon your former spouse's death, if earlier. The decree provides that if your former spouse dies before the end of the 15-year period, you must pay the estate the difference between $450,000 ($30,000 × 15) and the total amount paid up to that time. For example, if your spouse dies at the end of the tenth year, you must pay the estate $150,000 ($450,000 − $300,000).

These facts indicate that the lump-sum payment to be made after your former spouse's death is a substitute for the full amount of the $30,000 annual payments. None of the annual payments are alimony. The result would be the same if the payment required at death were to be discounted by an appropriate interest factor to account for the prepayment.

Child support. A payment that is specifically designated as child support or treated as specifically designated as child support under your divorce or separation instrument is not alimony. The amount of child support may vary over time. Child support payments are not deductible by the payer and are not taxable to the payee.

Specifically designated as child support. A payment will be treated as specifically designated as child support to the extent that the payment is reduced either:

- On the happening of a contingency relating to your child, or
- At a time that can be clearly associated with the contingency.

A payment may be treated as specifically designated as child support even if other separate payments are specifically designated as child support.

Contingency relating to your child. A contingency relates to your child if it depends on any event relating to that child. It does not matter whether the event is certain or likely to occur. Events relating to your child include the child's:

- Becoming employed,
- Dying,
- Leaving the household,

- Leaving school,
- Marrying, or
- Reaching a specified age or income level.

Clearly associated with a contingency. Payments that would otherwise qualify as alimony are presumed to be reduced at a time clearly associated with the happening of a contingency relating to your child only in the following situations.

1. The payments are to be reduced not more than 6 months before or after the date the child will reach 18, 21, or local age of majority.
2. The payments are to be reduced on two or more occasions that occur not more than 1 year before or after a different one of your children reaches a certain age from 18 to 24. This certain age must be the same for each child, but need not be a whole number of years.

In all other situations, reductions in payments are not treated as clearly associated with the happening of a contingency relating to your child.

Either you or the IRS can overcome the presumption in the two situations above. This is done by showing that the time at which the payments are to be reduced was determined independently of any contingencies relating to your children. For example, if you can show that the period of alimony payments is customary in the local jurisdiction, such as a period equal to one-half of the duration of the marriage, you can overcome the presumption and may be able to treat the amount as alimony.

Recapture of Alimony

If your alimony payments decrease or terminate during the first 3 calendar years, you may be subject to the recapture rule. If you are subject to this rule, you have to include in income in the third year part of the alimony payments you previously deducted. Your spouse can deduct in the third year part of the alimony payments he or she previously included in income.

The 3-year period starts with the first calendar year you make a payment qualifying as alimony under a decree of divorce or separate maintenance or a written separation agreement. Do not include any time in which payments were being made under temporary support orders. The second and third years are the next 2 calendar years, whether or not payments are made during those years.

The reasons for a reduction or termination of alimony payments that can require a recapture include:

- A change in your divorce or separation instrument,
- A failure to make timely payments,
- A reduction in your ability to provide support, or
- A reduction in your spouse's support needs.

When to apply the recapture rule. You are subject to the recapture rule in the third year if the alimony you pay in the third year decreases by more than $15,000 from the second year or the alimony you pay in the second and third years decreases significantly from the alimony you pay in the first year.

When you figure a decrease in alimony, do not include the following amounts.

Worksheet 1. **Recapture of Alimony**

Keep for Your Records

Note. *Do not enter less than -0- on any line.*

1.	Alimony paid in **2nd year**		1. ________	
2.	Alimony paid in **3rd year**	2. ________		
3.	Floor	3. $15,000		
4.	Add lines 2 and 3		4. ________	
5.	Subtract line 4 from line 1			5. ________
6.	Alimony paid in **1st year**		6. ________	
7.	Adjusted alimony paid in **2nd year** (line 1 minus line 5)	7. ________		
8.	Alimony paid in **3rd year**	8. ________		
9.	Add lines 7 and 8	9. ________		
10.	Divide line 9 by 2	10. ________		
11.	Floor	11. $15,000		
12.	Add lines 10 and 11		12. ________	
13.	Subtract line 12 from line 6			13. ________
14.	**Recaptured alimony**. Add lines 5 and 13			*14. ________

***** If you deducted alimony paid, report this amount as income on Form 1040, line 11.
If you reported alimony received, deduct this amount on Form 1040, line 31a.

Worksheet 1. **Recapture of Alimony—Illustrated**

Note. *Do not enter less than -0- on any line.*

1. Alimony paid in **2nd year**		1. *$39,000*		
2. Alimony paid in **3rd year**	2. *28,000*			
3. Floor	3. **$15,000**			
4. Add lines 2 and 3		4. *43,000*		
5. Subtract line 4 from line 1			5.	*-0-*
6. Alimony paid in **1st year**		6. *50,000*		
7. Adjusted alimony paid in **2nd year** (line 1 minus line 5)	7. *39,000*			
8. Alimony paid in **3rd year**	8. *28,000*			
9. Add lines 7 and 8	9. *67,000*			
10. Divide line 9 by 2	10. *33,500*			
11. Floor	11. **$15,000**			
12. Add lines 10 and 11		12. *48,500*		
13. Subtract line 12 from line 6			13.	*1,500*
14. **Recaptured alimony**. Add lines 5 and 13			*14.	*1,500*

* If you deducted alimony paid, report this amount as income on Form 1040, line 11.
If you reported alimony received, deduct this amount on Form 1040, line 31a.

- Payments made under a temporary support order.
- Payments required over a period of at least 3 calendar years that vary because they are a fixed part of your income from a business or property, or from compensation for employment or self-employment.
- Payments that decrease because of the death of either spouse or the remarriage of the spouse receiving the payments before the end of the third year.

How to figure and report the recapture. Both you and your spouse can use Worksheet 1 to figure recaptured alimony.

Including the recapture in income. If you must include a recapture amount in income, show it on Form 1040, line 11 ("Alimony received"). Cross out "received" and enter "recapture." On the dotted line next to the amount, enter your spouse's last name and social security number.

Deducting the recapture. If you can deduct a recapture amount, show it on Form 1040, line 31a ("Alimony paid"). Cross out "paid" and enter "recapture." In the space provided, enter your spouse's social security number.

Example. You pay your former spouse $50,000 alimony the first year, $39,000 the second year, and $28,000 the third year. You complete Worksheet 1 as illustrated above. In the third year, you report $1,500 as income on Form 1040, line 11, and your former spouse reports $1,500 as a deduction on Form 1040, line 31a.

Instruments Executed Before 1985

Information on pre-1985 instruments was included in this publication through 2004. If you need the 2004 revision, please go to the IRS website at IRS.gov.

Qualified Domestic Relations Order

A qualified domestic relations order (QDRO) is a judgment, decree, or court order (including an approved property settlement agreement) issued under a state's domestic relations law that:

- Recognizes someone other than a participant as having a right to receive benefits from a qualified retirement plan (such as most pension and profit-sharing plans) or a tax-sheltered annuity,
- Relates to payment of child support, alimony, or marital property rights to a spouse, former spouse, child, or other dependent of the participant, and
- Specifies certain information, including the amount or portion of the participant's benefits to be paid to the participant's spouse, former spouse, child, or other dependent.

Benefits paid to a child or other dependent. Benefits paid under a QDRO to the plan participant's child or other dependent are treated as paid to the participant. For information about the tax treatment of benefits from retirement plans, see Publication 575, Pension and Annuity Income.

Benefits paid to a spouse or former spouse. Benefits paid under a QDRO to the plan participant's spouse or former spouse generally must be included in the spouse's or former spouse's income. If the participant contributed to the retirement plan, a prorated share of the participant's cost (investment in the contract) is used to figure the taxable amount.

The spouse or former spouse can use the special rules for lump-sum distributions if the benefits would have been treated as a lump-sum distribution had the participant received them. For this purpose, consider only the balance to the spouse's or former spouse's credit in determining whether the distribution is a total distribution. See *Lump-Sum Distributions* in Publication 575 for information about the special rules.

Rollovers. If you receive an eligible rollover distribution under a QDRO as the plan participant's spouse or former spouse, you may be able to roll it over tax free into a traditional individual retirement arrangement (IRA) or another qualified retirement plan.

For more information on the tax treatment of eligible rollover distributions, see Publication 575.

Individual Retirement Arrangements

The following discussions explain some of the effects of divorce or separation on traditional individual retirement arrangements (IRAs). Traditional IRAs are IRAs other than Roth or SIMPLE IRAs.

Spousal IRA. If you get a final decree of divorce or separate maintenance by the end of your tax year, you cannot deduct contributions you make to your former spouse's traditional IRA. You can deduct only contributions to your own traditional IRA.

IRA transferred as a result of divorce. The transfer of all or part of your interest in a traditional IRA to your spouse or former spouse, under a decree of divorce or separate maintenance or a written instrument incident to the decree, is not considered a taxable transfer. Starting from the date of the transfer, the traditional IRA interest transferred is treated as your spouse's or former spouse's traditional IRA.

IRA contribution and deduction limits. All taxable alimony you receive under a decree of divorce or separate maintenance is treated as compensation for the contribution and deduction limits for traditional IRAs.

More information. For more information about IRAs, including Roth IRAs, see Publication 590.

Property Settlements

Generally, 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. You may, however, have to report the transaction on a gift tax return. See *Gift Tax on Property Settlements*, later. If you sell property that you own jointly to split the proceeds as part of your property settlement, see *Sale of Jointly-Owned Property*, later.

Transfer Between Spouses

Generally, no gain or loss is recognized on a transfer of property from you to (or in trust for the benefit of):

- Your spouse, or
- Your former spouse, but only if the transfer is incident to your divorce.

This rule applies even if the transfer was in exchange for cash, the release of marital rights, the assumption of liabilities, or other consideration.

Exceptions to nonrecognition rule. This rule does not apply in the following situations.

- Your spouse or former spouse is a nonresident alien.
- Certain transfers in trust, discussed later.
- Certain stock redemptions under a divorce or separation instrument or a valid written agreement that are taxable under applicable tax law, as discussed in Regulations section 1.1041-2.

Property subject to nonrecognition rule. The term "property" includes all property whether real or personal, tangible or intangible, or separate or community. It includes property acquired after the end of your marriage and transferred to your former spouse. It does not include services.

Health savings account (HSA). If you transfer your interest in an HSA to your spouse or former spouse under a divorce or separation instrument, it is not considered a taxable transfer. After the transfer, the interest is treated as your spouse's HSA.

Archer medical savings account (MSA). If you transfer your interest in an Archer MSA to your spouse or former spouse under a divorce or separation instrument, it is not considered a taxable transfer. After the transfer, the interest is treated as your spouse's Archer MSA.

Individual retirement arrangement (IRA). The treatment of the transfer of an interest in an IRA as a result of divorce is similar to that described above for the transfer of an interest in an HSA and an Archer MSA. See *IRA transferred as a result of divorce*, earlier, under *Individual Retirement Arrangements*.

Incident to divorce. A property transfer is incident to your divorce if the transfer:

Table 5. **Property Transferred Pursuant to Divorce**

Keep for Your Records

The tax treatment of items of property transferred from you to your spouse or former spouse pursuant to your divorce is shown below.

IF you transfer ...	THEN you ...	AND your spouse or former spouse ...	FOR more information, see ...
income-producing property (such as an interest in a business, rental property, stocks, or bonds)	include on your tax return any profit or loss, rental income or loss, dividends, or interest generated or derived from the property during the year until the property is transferred	reports any income or loss generated or derived after the property is transferred.	Publication 550, Investment Income and Expenses. (See *Ownership transferred* under *U. S. Savings Bonds* in chapter 1.)
interest in a passive activity with unused passive activity losses	cannot deduct your accumulated unused passive activity losses allocable to the interest	increases the adjusted basis of the transferred interest by the amount of the unused losses.	Publication 925, Passive Activity and At-Risk Rules.
investment credit property with recapture potential	do not have to recapture any part of the credit	may have to recapture part of the credit if he or she disposes of the property or changes its use before the end of the recapture period.	Form 4255, Recapture of Investment Credit.
interests in nonstatutory stock options and nonqualified deferred compensation	do not include any amount in gross income upon the transfer	includes an amount in gross income when he or she exercises the stock options or when the deferred compensation is paid or made available to him or her.	

- Occurs within 1 year after the date your marriage ends, or
- Is related to the ending of your marriage.

A divorce, for this purpose, includes the ending of your marriage by annulment or due to violations of state laws.

Related to the ending of marriage. A property transfer is related to the ending of your marriage if both of the following conditions apply.

- The transfer is made under your original or modified divorce or separation instrument.
- The transfer occurs within 6 years after the date your marriage ends.

Unless these conditions are met, the transfer is presumed not to be related to the ending of your marriage. However, this presumption will not apply if you can show that the transfer was made to carry out the division of property owned by you and your spouse at the time your marriage ended. For example, the presumption will not apply if you can show that the transfer was made more than 6 years after the end of your marriage because of business or legal factors which prevented earlier transfer of the property and the transfer was made promptly after those factors were taken care of.

Transfers to third parties. If you transfer property to a third party on behalf of your spouse (or former spouse, if incident to your divorce), the transfer is treated as two transfers.

- A transfer of the property from you to your spouse or former spouse.
- An immediate transfer of the property from your spouse or former spouse to the third party.

You do not recognize gain or loss on the first transfer. Instead, your spouse or former spouse may have to recognize gain or loss on the second transfer.

For this treatment to apply, the transfer from you to the third party must be one of the following.

- Required by your divorce or separation instrument.
- Requested in writing by your spouse or former spouse.
- Consented to in writing by your spouse or former spouse. The consent must state that both you and your spouse or former spouse intend the transfer to be treated as a transfer from you to your spouse or former spouse subject to the rules of Internal Revenue Code section 1041. You must receive the consent before filing your tax return for the year you transfer the property.

CAUTION

This treatment does not apply to transfers to which Regulations section 1.1041-2 (certain stock redemptions) applies.

Transfers in trust. If you make a transfer of property in trust for the benefit of your spouse (or former spouse, if incident to your divorce), you generally do not recognize any gain or loss.

However, you must recognize gain or loss if, incident to your divorce, you transfer an installment obligation in trust for the benefit of your former spouse. For information on the disposition of an installment obligation, see Publication 537, Installment Sales.

You also must recognize as gain on the transfer of property in trust the amount by which the liabilities assumed by the trust, plus the liabilities to which the property is subject, exceed the total of your adjusted basis in the transferred property.

Example. You own property with a fair market value of $12,000 and an adjusted basis of $1,000. You transfer the property in trust for the benefit of your spouse. The trust did not assume any liabilities. The property is subject to a $5,000 liability. Your recognized gain is $4,000 ($5,000 − $1,000).

Reporting income from property. You should report income from property transferred to your spouse or former spouse as shown in Table 5, earlier.

For information on the treatment of interest on transferred U.S. savings bonds, see chapter 1 of Publication 550, Investment Income and Expenses.

RECORDS

When you transfer property to your spouse (or former spouse, if incident to your divorce), you must give your spouse sufficient records to determine the adjusted basis and holding period of the property on the date of the transfer. If you transfer investment credit property with recapture potential, you also must provide sufficient records to determine the amount and period of the recapture.

Tax treatment of property received. Property you receive from your spouse (or former spouse, if the transfer is incident to your divorce) is treated as acquired by gift for income tax purposes. Its value is not taxable to you.

Basis of property received. Your basis in property received from your spouse (or former spouse, if incident to your divorce) is the same as your spouse's adjusted basis. This applies for determining either gain or loss when you later dispose of the property. It applies whether the property's adjusted basis is less than, equal to, or greater than either its value at the time of the transfer or any consideration you paid. It also applies even if the property's liabilities are more than its adjusted basis.

This rule generally applies to all property received after July 18, 1984, under a divorce or separation instrument in effect after that date. It also applies to all other property received after 1983 for which you and your spouse (or former spouse) made a "section 1041 election" to apply this rule. For information about how to make that election, see Temporary Regulations section 1.1041-1T(g).

Example. Karen and Don owned their home jointly. Karen transferred her interest in the home to Don as part of their property settlement when they divorced last year. Don's basis in the interest received from Karen is her adjusted basis in the home. His total basis in the home is their joint adjusted basis.

Property received before July 19, 1984. Your basis in property received in settlement of marital support rights before July 19, 1984, or under an instrument in effect before that date (other than property for which you and your spouse (or former spouse) made a "section 1041 election") is its fair market value when you received it.

Example. Larry and Gina owned their home jointly before their divorce in 1983. That year, Gina received Larry's interest in the home in settlement of her marital support rights. Gina's basis in the interest received from Larry is the part of the home's fair market value proportionate to that interest. Her total basis in the home is that part of the fair market value plus her adjusted basis in her own interest.

Property transferred in trust. If the transferor recognizes gain on property transferred in trust, as described earlier under *Transfers in trust*, the trust's basis in the property is increased by the recognized gain.

Example. Your spouse transfers property in trust, recognizing a $4,000 gain. Your spouse's adjusted basis in the property was $1,000. The trust's basis in the property is $5,000 ($1,000 + $4,000).

Gift Tax on Property Settlements

The federal gift tax does not apply to most transfers of property between spouses, or between former spouses because of divorce. The transfers usually qualify for one or more of the exceptions explained in this discussion. However, if your transfer of property does not qualify for an exception, or qualifies only in part, you must report it on a gift tax return. See *Gift Tax Return*, later.

For more information about the federal gift tax, see Publication 950, Introduction to Estate and Gift Taxes, and Form 709 and its instructions.

Exceptions

Your transfer of property to your spouse or former spouse is not subject to gift tax if it meets any of the following exceptions.

- It is made in settlement of marital support rights.
- It qualifies for the marital deduction.
- It is made under a divorce decree.
- It is made under a written agreement, and you are divorced within a specified period.
- It qualifies for the annual exclusion.

Settlement of marital support rights. A transfer in settlement of marital support rights is not subject to gift tax to the extent the value of the property transferred is not more than the value of those rights. This exception does not apply to a transfer in settlement of dower, curtesy, or other material property rights.

Marital deduction. A transfer of property to your spouse before receiving a final decree of divorce or separate maintenance is not subject to gift tax. However, this exception does not apply to:

- Transfers of certain terminable interests, or
- Transfers to your spouse if your spouse is not a U.S. citizen.

Transfer under divorce decree. A transfer of property under the decree of a divorce court having the power to prescribe a property settlement is not subject to gift tax. This exception also applies to a property settlement agreed on before the divorce if it was made part of or approved by the decree.

Transfer under written agreement. A transfer of property under a written agreement in settlement of marital rights or to provide a reasonable child support allowance is not subject to gift tax if you are divorced within the 3-year period beginning 1 year before and ending 2 years after the date of the agreement. This exception applies whether or not the agreement is part of or approved by the divorce decree.

Annual exclusion. The first $13,000 of gifts of present interests to each person during 2010 is not subject to gift tax. The annual exclusion is $134,000 for transfers to a spouse who is not a U.S. citizen provided the gift would otherwise qualify for the gift tax marital deduction if the donee were a U.S. citizen.

Present interest. A gift is considered a present interest if the donee has unrestricted rights to the immediate use, possession, and enjoyment of the property or income from the property.

Gift Tax Return

Report a transfer of property subject to gift tax on Form 709. Generally, Form 709 is due April 15 following the year of the transfer.

Transfer under written agreement. If a property transfer would be subject to gift tax except that it is made under a written agreement, and you do not receive a final decree of divorce by the due date for filing the gift tax return, you must report the transfer on Form 709 and attach a copy of your written agreement. The transfer will be treated as not subject to the gift tax until the final decree of divorce is granted, but no longer than 2 years after the effective date of the written agreement.

Within 60 days after you receive a final decree of divorce, send a certified copy of the decree to the IRS office where you filed Form 709.

Sale of Jointly-Owned Property

If you sell property that you and your spouse own jointly, you must report your share of the recognized gain or loss on your income tax return for the year of the sale. Your share of the gain or loss is determined by your state law governing ownership of property. For information on reporting gain or loss, see Publication 544.

Sale of home. If you sold your main home, you may be able to exclude up to $250,000 (up to $500,000 if you and your spouse file a joint return) of gain on the sale. For more information, including special rules that apply to separated and divorced individuals selling a main home, see Publication 523, Selling Your Home.

Costs of Getting a Divorce

You cannot deduct legal fees and court costs for getting a divorce. But you may be able to deduct legal fees paid for tax advice in connection with a divorce and legal fees to get alimony. In addition, you may be able to deduct fees you pay to appraisers, actuaries, and accountants for services in determining your correct tax or in helping to get alimony.

TIP *Fees you pay may include charges that are deductible and charges that are not deductible. You should request a breakdown showing the amount charged for each service performed.*

You can claim deductible fees only if you itemize deductions on Schedule A (Form 1040). Claim them as miscellaneous itemized deductions subject to the 2%-of-adjusted-gross-income limit. For more information, see Publication 529, Miscellaneous Deductions.

Fees for tax advice. You can deduct fees for advice on federal, state, and local taxes of all types, including income, estate, gift, inheritance, and property taxes.

If a fee is also for other services, you must determine and prove the expense for tax advice. The following examples show how you can meet this requirement.

Example 1. The lawyer handling your divorce consults another law firm, which handles only tax matters, to get information on how the divorce will affect your taxes. You can deduct the part of the fee paid over to the second firm and separately stated on your bill, subject to the 2% limit.

Example 2. The lawyer handling your divorce uses the firm's tax department for tax matters related to your divorce. Your statement from the firm shows the part of the total fee for tax matters. This is based on the time required, the difficulty of the tax questions, and the amount of tax involved. You can deduct this part of your bill, subject to the 2% limit.

Example 3. The lawyer handling your divorce also works on the tax matters. The fee for tax advice and the fee for other services are shown on the lawyer's statement. They are based on the time spent on each service and the fees charged locally for similar services. You can deduct the fee charged for tax advice, subject to the 2% limit.

Fees for getting alimony. Because you must include alimony you receive in your gross income, you can deduct fees you pay to get or collect alimony.

Example. You pay your attorney a fee for handling your divorce and an additional fee that is for services in getting and collecting alimony. You can deduct the fee for getting and collecting alimony, subject to the 2% limit, if it is separately stated on your attorney's bill.

Nondeductible expenses. You cannot deduct the costs of personal advice, counseling, or legal action in a divorce. These costs are not deductible, even if they are paid, in part, to arrive at a financial settlement or to protect income-producing property.

However, you can add certain legal fees you pay specifically for a property settlement to the basis of the property you receive. For example, you can add the cost of preparing and filing a deed to put title to your house in your name alone to the basis of the house.

You cannot deduct fees you pay for your spouse or former spouse, unless your payments qualify as alimony. (See *Payments to a third party* under *General Rules*, earlier.) If you have no legal responsibility arising from the divorce settlement or decree to pay your spouse's legal fees, your payments are gifts and may be subject to the gift tax.

Tax Withholding and Estimated Tax

When you become divorced or separated, you will usually have to file a new Form W-4, Employee's Withholding Allowance Certificate, with your employer to claim your proper withholding allowances. If you receive alimony, you may have to make estimated tax payments.

CAUTION *If you do not pay enough tax either through withholding or by making estimated tax payments, you will have an underpayment of estimated tax and you may have to pay a penalty. If you do not pay enough tax by the due date of each payment, you may have to pay a penalty even if you are due a refund when you file your tax return.*

For more information, see Publication 505, Tax Withholding and Estimated Tax.

Joint estimated tax payments. If you and your spouse made joint estimated tax payments for 2010 but file separate returns, either of you can claim all of your payments, or you can divide them in any way on which you both agree. If you cannot agree, the estimated tax you can claim equals the total estimated tax paid times the tax shown on your separate return for 2010, divided by the total of the tax shown on your 2010 return and your spouse's 2010 return.

If you claim any of the payments on your tax return, enter your spouse's or former spouse's social security number in the space provided on the front of Form 1040 or Form 1040A. If you were divorced and remarried in 2010, enter your present spouse's social security number in that space and enter your former spouse's social security number, followed by "DIV" to the left of Form 1040, line 62, or Form 1040A, line 39.

Community Property

If you are married and your domicile (permanent legal home) is in a community property state, special rules determine your income. Some of these rules are explained in the following discussions. For more information, see Publication 555.

Community property states. The community property states are:

- Arizona,
- California,
- Idaho,
- Louisiana,
- Nevada,
- New Mexico,
- Texas,
- Washington, and
- Wisconsin.

Community Income

If your domicile is in a community property state during any part of your tax year, you may have community income. Your state law determines whether your income is separate or community income. If you and your spouse file separate returns, you must report half of any income described by state law as community income and all of your separate income, and your spouse must report the other half of any community income plus all of his or her separate income. Each of you can claim credit for half the income tax withheld from community income.

Community Property Laws Disregarded

The following discussions are situations where special rules apply to community property.

Certain community income not treated as community income by one spouse. Community property laws may not apply to an item of community income that you received but did not treat as community income. You will be responsible for reporting all of it if:

- You treat the item as if only you are entitled to the income, and
- You do not notify your spouse of the nature and amount of the income by the due date for filing the return (including extensions).

Relief from liability arising from community property law. You are not responsible for the tax on an item of community income if all five of the following conditions exist.

1. You did not file a joint return for the tax year.

2. You did not include an item of community income in gross income on your separate return.
3. The item of community income you did not include is one of the following.
   a. Wages, salaries, and other compensation your spouse (or former spouse) received for services he or she performed as an employee.
   b. Income your spouse (or former spouse) derived from a trade or business he or she operated as a sole proprietor.
   c. Your spouse's (or former spouse's) distributive share of partnership income.
   d. Income from your spouse's (or former spouse's) separate property (other than income described in (a), (b), or (c)). Use the appropriate community property law to determine what is separate property.
   e. Any other income that belongs to your spouse (or former spouse) under community property law.
4. You establish that you did not know of, and had no reason to know of, that community income.
5. Under all facts and circumstances, it would not be fair to include the item of community income in your gross income.

Requesting relief. For information on how and when to request relief from liabilities arising from community property laws, see *Community Property Laws* in Publication 971.

Spousal agreements. In some states a husband and wife may enter into an agreement that affects the status of property or income as community or separate property. Check your state law to determine how it affects you.

Spouses living apart all year. If you are married at any time during the calendar year, special rules apply for reporting certain community income. You must meet **all** the following conditions for these special rules to apply.

1. You and your spouse lived apart all year.
2. You and your spouse did not file a joint return for a tax year beginning or ending in the calendar year.
3. You and/or your spouse had earned income for the calendar year that is community income.
4. You and your spouse have not transferred, directly or indirectly, any of the earned income in (3) between yourselves before the end of the year. Do not take into account transfers satisfying child support obligations or transfers of very small amounts or value.

If all these conditions exist, you and your spouse must report your community income as explained in the following discussions. See also *Certain community income not treated as community income by one spouse*, earlier.

Earned income. Treat earned income that is not trade or business or partnership income as the income of the spouse who performed the services to earn the income. Earned income is wages, salaries, professional fees, and other pay for personal services.

Earned income does not include amounts paid by a corporation that are a distribution of earnings and profits rather than a reasonable allowance for personal services rendered.

Trade or business income. Treat income and related deductions from a trade or business that is not a partnership as those of the spouse carrying on the trade or business.

Partnership income or loss. Treat income or loss from a trade or business carried on by a partnership as the income or loss of the spouse who is the partner.

Separate property income. Treat income from the separate property of one spouse as the income of that spouse.

Social security benefits. Treat social security and equivalent railroad retirement benefits as the income of the spouse who receives the benefits.

Other income. Treat all other community income, such as dividends, interest, rents, royalties, or gains, as provided under your state's community property law.

Example. George and Sharon were married throughout the year but did not live together at any time during the year. Both domiciles were in a community property state. They did not file a joint return or transfer any of their earned income between themselves. During the year their incomes were as follows:

	George	Sharon
Wages	$20,000	$22,000
Consulting business	5,000	
Partnership		10,000
Dividends from separate property	1,000	2,000
Interest from community property	500	500
Totals	$26,500	$34,500

Under the community property law of their state, all the income is considered community income. (Some states treat income from separate property as separate income—check your state law.) Sharon did not take part in George's consulting business.

Ordinarily, on their separate returns they would each report $30,500, half the total community income of $61,000 ($26,500 + $34,500). But because they meet the four conditions listed earlier under *Spouses living apart all year*, they must disregard community property law in reporting all their income (except the interest income) from community property. They each report on their returns only their own earnings and other income, and their share of the interest income from community property. George reports $26,500 and Sharon reports $34,500.

Other separated spouses. If you and your spouse are separated but do not meet the four conditions discussed earlier under *Spouses living apart all year*, you must treat your income according to the laws of your state. In some states, income earned after separation but before a decree of divorce continues to be community income. In other states it is separate income.

Ending the Marital Community

When the marital community ends as a result of divorce or separation, the community assets (money and property) are divided between the spouses. Each spouse is taxed on half the community income for the part of the year before the community ends. However, see *Spouses living apart all year*, earlier. Income received after the community ended is separate income, taxable only to the spouse to whom it belongs.

An absolute decree of divorce or annulment ends the marital community in all community property states. A decree of annulment, even though it holds that no valid marriage ever existed, usually does not nullify community property rights arising during the "marriage." However, you should check your state law for exceptions.

A decree of legal separation or of separate maintenance may or may not end the marital community. The court issuing the decree may terminate the marital community and divide the property between the spouses.

A separation agreement may divide the community property between you and your spouse. It may provide that this property, along with future earnings and property acquired, will be separate property. This agreement may end the community.

In some states, the marital community ends when the spouses permanently separate, even if there is no formal agreement. Check your state law.

Alimony (Community Income)

Payments that may otherwise qualify as alimony are not deductible by the payer if they are the recipient spouse's part of community income. They are deductible by the payer as alimony and taxable to the recipient spouse only to the extent they are more than that spouse's part of community income.

Example. You live in a community property state. You are separated but the special rules explained earlier under *Spouses living apart all year* do not apply. Under a written agreement, you pay your spouse $12,000 of your $20,000 total yearly community income. Your spouse receives no other community income. Under your state law, earnings of a spouse living separately and apart from the other spouse continue as community property.

On your separate returns, each of you must report $10,000 of the total community income. In addition, your spouse must report $2,000 as alimony received. You can deduct $2,000 as alimony paid.

How To Get Tax Help

You can get help with unresolved tax issues, order free publications and forms, ask tax questions, and get information from the IRS in several ways. By selecting the method that is best for you, you will have quick and easy access to tax help.

Contacting your Taxpayer Advocate. The Taxpayer Advocate Service (TAS) is an independent organization within the IRS. We help taxpayers who are experiencing economic harm, such as not being able to provide necessities like housing, transportation, or food; taxpayers who are seeking help in resolving tax problems with the IRS; and those who believe that an IRS system or procedure is not working as it should. Here are seven things every taxpayer should know about TAS:

- The Taxpayer Advocate Service is your voice at the IRS.
- Our service is free, confidential, and tailored to meet your needs.
- You may be eligible for our help if you have tried to resolve your tax problem through normal IRS channels and have gotten nowhere, or you believe an IRS procedure just isn't working as it should.
- We help taxpayers whose problems are causing financial difficulty or significant cost, including the cost of professional representation. This includes businesses as well as individuals.
- Our employees know the IRS and how to navigate it. If you qualify for our help, we'll assign your case to an advocate who will listen to your problem, help you understand what needs to be done to resolve it, and stay with you every step of the way until your problem is resolved.
- We have at least one local taxpayer advocate in every state, the District of Columbia, and Puerto Rico. You can call your local advocate, whose number is in your phone book, in Pub. 1546, Taxpayer Advocate Service—Your Voice at the IRS, and on our website at *www.irs.gov/advocate*. You can also call our toll-free line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.
- You can learn about your rights and responsibilities as a taxpayer by visiting our online tax toolkit at *www.taxtoolkit.irs.gov*. You can get updates on hot tax topics by visiting our YouTube channel at *www.youtube.com/tasnta* and our Facebook page at *www.facebook.com/YourVoiceAtIRS*, or by following our tweets at *www.twitter.com/YourVoiceAtIRS*.

Low Income Taxpayer Clinics (LITCs). The Low Income Taxpayer Clinic program serves individuals who have a problem with the IRS and whose income is below a certain level. LITCs are independent from the IRS. Most LITCs can provide representation before the IRS or in court on audits, tax collection disputes, and other issues for free or a small fee. If an individual's native language is not English, some clinics can provide multilingual information about taxpayer rights and responsibilities. For more information, see Publication 4134, Low Income Taxpayer Clinic List. This publication is available at IRS.gov, by calling 1-800-TAX-FORM (1-800-829-3676), or at your local IRS office.

Free tax services. Publication 910, IRS Guide to Free Tax Services, is your guide to IRS services and resources. Learn about free tax information from the IRS, including publications, services, and education and assistance programs. The publication also has an index of over 100 TeleTax topics (recorded tax information) you can listen to on the telephone. The majority of the information and services listed in this publication are available to you free of charge. If there is a fee associated with a resource or service, it is listed in the publication.

Accessible versions of IRS published products are available on request in a variety of alternative formats for people with disabilities.

Free help with your return. Free help in preparing your return is available nationwide from IRS-trained volunteers. The Volunteer Income Tax Assistance (VITA) program is designed to help low-income taxpayers and the Tax Counseling for the Elderly (TCE) program is designed to assist taxpayers age 60 and older with their tax returns. Many VITA sites offer free electronic filing and all volunteers will let you know about credits and deductions you may be entitled to claim. To find the nearest VITA or TCE site, call 1-800-829-1040.

As part of the TCE program, AARP offers the Tax-Aide counseling program. To find the nearest AARP Tax-Aide site, call 1-888-227-7669 or visit AARP's website at *www.aarp.org/money/taxaide*.

For more information on these programs, go to IRS.gov and enter keyword "VITA" in the upper right-hand corner.

Internet. You can access the IRS website at IRS.gov 24 hours a day, 7 days a week to:

- *E-file* your return. Find out about commercial tax preparation and *e-file* services available free to eligible taxpayers.
- Check the status of your 2010 refund. Go to IRS.gov and click on *Where's My Refund*. Wait at least 72 hours after the IRS acknowledges receipt of your e-filed return, or 3 to 4 weeks after mailing a paper return. If you filed Form 8379 with your return, wait 14 weeks (11 weeks if you filed electronically). Have your 2010 tax return available so you can provide your social security number, your filing status, and the exact whole dollar amount of your refund.
- Download forms, including talking tax forms, instructions, and publications.
- Order IRS products online.
- Research your tax questions online.
- Search publications online by topic or keyword.
- Use the online Internal Revenue Code, regulations, or other official guidance.

- View Internal Revenue Bulletins (IRBs) published in the last few years.
- Figure your withholding allowances using the withholding calculator online at www.irs.gov/individuals.
- Determine if Form 6251 must be filed by using our Alternative Minimum Tax (AMT) Assistant.
- Sign up to receive local and national tax news by email.
- Get information on starting and operating a small business.

Phone. Many services are available by phone.

- *Ordering forms, instructions, and publications.* Call 1-800-TAX -FORM (1-800-829-3676) to order current-year forms, instructions, and publications, and prior-year forms and instructions. You should receive your order within 10 days.
- *Asking tax questions.* Call the IRS with your tax questions at 1-800-829-1040.
- *Solving problems.* You can get face-to-face help solving tax problems every business day in IRS Taxpayer Assistance Centers. An employee can explain IRS letters, request adjustments to your account, or help you set up a payment plan. Call your local Taxpayer Assistance Center for an appointment. To find the number, go to www.irs.gov/localcontacts or look in the phone book under *United States Government, Internal Revenue Service*.
- *TTY/TDD equipment.* If you have access to TTY/TDD equipment, call 1-800-829-4059 to ask tax questions or to order forms and publications.
- *TeleTax topics.* Call 1-800-829-4477 to listen to pre-recorded messages covering various tax topics.
- *Refund information.* To check the status of your 2010 refund, call 1-800-829-1954 or 1-800-829-4477 (automated refund information 24 hours a day, 7 days a week). Wait at least 72 hours after the IRS acknowledges receipt of your e-filed return, or 3 to 4 weeks after mailing a paper return. If you filed Form 8379 with your return, wait 14 weeks (11 weeks if you filed electronically). Have your 2010 tax return available so you can provide your social security number, your filing status, and the exact whole dollar amount of your refund. If you check the status of your refund and are not given the date it will be issued, please wait until the next week before checking back.
- *Other refund information.* To check the status of a prior-year refund or amended return refund, call 1-800-829-1040.

Evaluating the quality of our telephone services. To ensure IRS representatives give accurate, courteous, and professional answers, we use several methods to evaluate the quality of our telephone services. One method is for a second IRS representative to listen in on or record random telephone calls. Another is to ask some callers to complete a short survey at the end of the call.

Walk-in. Many products and services are available on a walk-in basis.

- *Products.* You can walk in to many post offices, libraries, and IRS offices to pick up certain forms, instructions, and publications. Some IRS offices, libraries, grocery stores, copy centers, city and county government offices, credit unions, and office supply stores have a collection of products available to print from a CD or photocopy from reproducible proofs. Also, some IRS offices and libraries have the Internal Revenue Code, regulations, Internal Revenue Bulletins, and Cumulative Bulletins available for research purposes.
- *Services.* You can walk in to your local Taxpayer Assistance Center every business day for personal, face-to-face tax help. An employee can explain IRS letters, request adjustments to your tax account, or help you set up a payment plan. If you need to resolve a tax problem, have questions about how the tax law applies to your individual tax return, or you are more comfortable talking with someone in person, visit your local Taxpayer Assistance Center where you can spread out your records and talk with an IRS representative face-to-face. No appointment is necessary—just walk in. If you prefer, you can call your local Center and leave a message requesting an appointment to resolve a tax account issue. A representative will call you back within 2 business days to schedule an in-person appointment at your convenience. If you have an ongoing, complex tax account problem or a special need, such as a disability, an appointment can be requested. All other issues will be handled without an appointment. To find the number of your local office, go to www.irs.gov/localcontacts or look in the phone book under *United States Government, Internal Revenue Service*.

Mail. You can send your order for forms, instructions, and publications to the address below. You should receive a response within 10 days after your request is received.

Internal Revenue Service
1201 N. Mitsubishi Motorway
Bloomington, IL 61705-6613

DVD for tax products. You can order Publication 1796, IRS Tax Products DVD, and obtain:

- Current-year forms, instructions, and publications.
- Prior-year forms, instructions, and publications.
- Tax Map: an electronic research tool and finding aid.
- Tax law frequently asked questions.

- Tax Topics from the IRS telephone response system.
- Internal Revenue Code—Title 26 of the U.S. Code.
- Fill-in, print, and save features for most tax forms.
- Internal Revenue Bulletins.
- Toll-free and email technical support.
- Two releases during the year.
  – The first release will ship the beginning of January 2011.
  – The final release will ship the beginning of March 2011.

Purchase the DVD from National Technical Information Service (NTIS) at *www.irs.gov/cdorders* for $30 (no handling fee) or call 1-877-233-6767 toll free to buy the DVD for $30 (plus a $6 handling fee).

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Tax Publications for Individual Taxpayers

See *How To Get Tax Help* for a variety of ways to get publications, including by computer, phone, and mail.

General Guides

1 Your Rights as a Taxpayer
17 Your Federal Income Tax For Individuals
334 Tax Guide for Small Business (For Individuals Who Use Schedule C or C-EZ)
509 Tax Calendars for 2011
910 IRS Guide to Free Tax Services

Specialized Publications

3 Armed Forces' Tax Guide
54 Tax Guide for U.S. Citizens and Resident Aliens Abroad
225 Farmer's Tax Guide
463 Travel, Entertainment, Gift, and Car Expenses
501 Exemptions, Standard Deduction, and Filing Information
502 Medical and Dental Expenses (Including the Health Coverage Tax Credit)
503 Child and Dependent Care Expenses
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514 Foreign Tax Credit for Individuals
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523 Selling Your Home
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551 Basis of Assets
552 Recordkeeping for Individuals
554 Tax Guide for Seniors
555 Community Property
556 Examination of Returns, Appeal Rights, and Claims for Refund
559 Survivors, Executors, and Administrators
561 Determining the Value of Donated Property
570 Tax Guide for Individuals With Income From U.S. Possessions
571 Tax-Sheltered Annuity Plans (403(b) Plans) For Employees of Public Schools and Certain Tax-Exempt Organizations
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946 How To Depreciate Property
947 Practice Before the IRS and Power of Attorney
950 Introduction to Estate and Gift Taxes
967 The IRS Will Figure Your Tax
969 Health Savings Accounts and Other Tax-Favored Health Plans
970 Tax Benefits for Education
971 Innocent Spouse Relief
972 Child Tax Credit
1542 Per Diem Rates (For Travel Within the Continental United States)
1544 Reporting Cash Payments of Over $10,000 (Received in a Trade or Business)
1546 Taxpayer Advocate Service – Your Voice at the IRS

Spanish Language Publications

1SP Derechos del Contribuyente
17(SP) El Impuesto Federal sobre los Ingresos Para Personas Fisicas
547(SP) Hechos Fortuitos Desastres y Robos
584(SP) Registro de Pérdidas por Hechos Fortuitos (Imprevistos), Desastres y Robos (Propiedad de Uso Personal)
594SP El Proceso de Cobro del IRS
596SP Crédito por Ingreso del Trabajo
850(EN/SP) English-Spanish Glossary of Words and Phrases Used in Publications Issued by the Internal Revenue Service
1544(SP) Informe de Pagos en Efectivo en Exceso de $10,000 (Recibidos en una Ocupación o Negocio)

Commonly Used Tax Forms

See *How To Get Tax Help* for a variety of ways to get forms, including by computer, phone, and mail.

Form Number and Title

1040 U.S. Individual Income Tax Return
Sch A Itemized Deductions
Sch B Interest and Ordinary Dividends
Sch C Profit or Loss From Business
Sch C-EZ Net Profit From Business
Sch D Capital Gains and Losses
Sch D-1 Continuation Sheet for Schedule D
Sch E Supplemental Income and Loss
Sch EIC Earned Income Credit
Sch F Profit or Loss From Farming
Sch H Household Employment Taxes
Sch J Income Averaging for Farmers and Fishermen
Sch L Standard Deduction for Certain Filers
Sch M Making Work Pay
Sch R Credit for the Elderly or the Disabled
Sch SE Self-Employment Tax
1040A U.S. Individual Income Tax Return
1040EZ Income Tax Return for Single and Joint Filers With No Dependents
1040-ES Estimated Tax for Individuals
1040X Amended U.S. Individual Income Tax Return
2106 Employee Business Expenses
2106-EZ Unreimbursed Employee Business Expenses
2210 Underpayment of Estimated Tax by Individuals, Estates, and Trusts

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2441 Child and Dependent Care Expenses
2848 Power of Attorney and Declaration of Representative
2848(SP) Poder Legal y Declaración del Representante
3903 Moving Expenses
4562 Depreciation and Amortization
4868 Application for Automatic Extension of Time To File U.S. Individual Income Tax Return
4868(SP) Solicitud de Prórroga Automática para Presentar la Declaración del Impuesto sobre el Ingreso Personal de los Estados Unidos
4952 Investment Interest Expense Deduction
5329 Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts
6251 Alternative Minimum Tax—Individuals
8283 Noncash Charitable Contributions
8582 Passive Activity Loss Limitations
8606 Nondeductible IRAs
8812 Additional Child Tax Credit
8822 Change of Address
8829 Expenses for Business Use of Your Home
8863 Education Credits (American Opportunity, and Lifetime Learning Credits)
9465 Installment Agreement Request
9465(SP) Solicitud para un Plan de Pagos a Plazos