Who claims the child as a dependent for tax purposes?

In general, the custodial parent claims the child for tax purposes. If the court does not make any orders about the tax deduction, then the custodial parent automatically claims the child as a dependent for tax purposes. This is an IRS rule.

A court, can, however, order that the non-custodial parent be allowed to claim the child for tax purposes. The court will order the custodial parent to sign the proper IRS forms to allow the non-custodial parent to claim the child for tax purposes. Often, the court will allow the non-custodial parent to claim the child for tax purposes only if that parent is current on his or her child support payments.

The court may consider several factors when deciding whether to grant the non-custodial parent the tax deduction, including:

- Whether the non-custodial parent will be paying the majority of the support for the child.
- The incomes of the parties.
- The tax consequences for each parent.

What if the parents have joint legal custody?

The parent with physical custody will claim the child on his or her taxes unless the court has said otherwise. The income tax rules say that the parent having custody for a greater portion of the calendar year receives the deduction.

What if the custodial parent refuses to sign the IRS forms to allow the non-custodial parent to have the deduction?

The court could hold the custodial parent in contempt of court for refusing to follow a court order. The court could also lower the non-custodial parent’s child support payment based upon the extra taxes the non-custodial parent would have to pay without the child deduction.

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