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## Tax benefits related to children

### Tax benefits come with complex rules

Survivors, particularly those with earnings, can receive a significant economic benefit if they are able to claim their children for some or all of these tax benefits. Unfortunately, many survivors lose out on these benefits.

The reasons are complex and may involve a range of factors including being unrepresented in family law court proceedings, being represented by counsel with insufficient knowledge of child-related tax benefits, or because abuse has made it difficult or impossible for survivors to take advantage of these benefits.

Taxpayers must claim these benefits on their tax return to access them. The rules for claiming tax benefits related to children are found in the following IRS Publications:

- [Publication 501](#), Exemptions, Standard Deduction, and Filing Information;
- [Publication 503](#), Child and Dependent Care Expenses;
- [Publication 504](#), Divorced or Separated Individuals;
- [Publication 596](#), Earned Income Credit
- [Publication 929](#), Tax Rules for Children and Dependents; and
- [Publication 972](#), Child Tax Credit.

#### Leah's story of child-

for survivors to take

In Leah's case, not only did John likely claim child benefits when filing throughout their marriage, but continues to demand his right to claim them and is using his lawyer to threaten and intimidate Leah.

## Who gets to claim the children?

Generally, only the "custodial parent" gets to claim a qualifying child for tax purposes. The custodial parent is the parent with whom the child lived for the greater number of nights in the tax year. The noncustodial parent is the other parent. If the child was with each parent for an equal number of nights, the custodial parent is the parent with the higher adjusted gross income.

**However, there are exceptions for the children of divorced or separated parents.**

A child will be treated as the qualifying child or qualifying relative of his or her noncustodial parent

if the following four (4) conditions are met:

1. **Separation.** The parents are divorced, legally separated, separated under a written separation agreement, or lived apart at all times during the last 6 months of the year (whether or not they are or were married).
2. **Support.** The child received over half of his or her support for the year from the parents. Support of a child received from a parent's spouse is treated as provided by the parent.
3. **Custody.** The child is in custody of one or both of the parents for more than half of the year.
4. **Release Agreement.** The custodial parent signs Form 8332 or a substantially similar statement that he or she won't claim the child as a dependent for the year, and the noncustodial parent includes a copy of the form or statement with his or her return.

These exceptions do not apply to ALL tax benefits. Certain credits can only be claimed by the custodial parent, such as the Earned Income Credit. See the table in the next section for more details, as well as Publication 501 and the Instructions to Form 1040, line 6c.

### Consider...

Although the release agreement entitles the non-custodial parent to claim the child for various benefits, it does not qualify for Marketplace and Individual Mandate calculations.

## Examples of Tax Benefits

The primary child-related benefits are shown in this table:

Tax Credit/Exemption	Benefit to Taxpayer	Transferable to Non-Custodial Parent?
<b>Dependent Exemption</b>	Reduces taxable income. For example, in tax year 2016, a taxpayer can deduct \$4,050 for each dependent exemption claimed.	Yes, if the 4 conditions listed above are met.

<b>Child Tax Credit</b>	Reduces the actual amount of tax that the taxpayer would otherwise be required to pay. Currently, the credit is \$1000 per child, for a maximum of 3 children.	Yes, if the 4 conditions listed above are met.
<b>Additional Child Tax Credit</b>	If the tax owed is reduced to zero by the Child Tax Credit, the ACTC may create or increase the taxpayer's refund since it is a "refundable credit."	Yes, if the 4 conditions listed above are met.
<b>Earned Income Tax Credit</b>	Reduces the tax owed and can be refundable if the tax is reduced to \$0. The maximum credit in 2016 for claiming 3 qualifying children is \$6,269.	No. This credit can only be claimed by the custodial parent.
<b>Dependent Care Credit</b>	Reduces tax owed based on a percentage of expenses for providing care for a child in order to allow the parent to work. Cannot be claimed if <u>filing status</u> is married filing separately.	No. Also, the custodial parent may claim this credit even if the non-custodial parent is entitled to claim the dependent exemption.
<b>Premium Tax Credit</b>	Refundable credit that helps pay for health insurance purchased through the Health Insurance Marketplace. View <u>Publication 974</u> for more details on the premium tax credit.	No.

## **Affordable Care Act ("Obamacare") considerations**

The parent who claims the child as a dependent is responsible for ensuring that the child has minimum essential health coverage under the Affordable Care Act (ACA). If the child does not

have minimum essential health coverage and is not exempt, the parent will incur a penalty called the Individual Shared Responsibility Penalty (ISRP).

The ISRP appears as an additional tax on the parent's tax return. The parent who claims the child has the benefit of including the child in household size calculations for determining how much Premium Tax Credit the household qualifies for; the PTC helps pay for coverage under marketplace health plans.

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## Reponding to spouses demands for tax benefits

Many survivors, like Leah, will face demands from the spouse they are divorcing to be granted the child-related tax benefits. Attorneys who represent survivors facing these choices should provide calculations to the survivors showing what these child-related benefits are worth.

### **Consider...**

For example, a survivor whose sole income is SSI and who does not intend to enter or return to the work force may find that the tax benefits are worth little or nothing compared to other benefits, such as child support or divisions of property, that are more valuable.

Another survivor may discover that the tax benefits associated with the children are actually worth far more than the child support they are to receive from the other parent. Each survivor's situation is unique, and survivors' priorities will differ.

What survivors will likely share is the need for detailed, accurate information upon which to make informed decisions.

## The Race To File The Tax Return

When parents are separated, both may want and attempt to claim the same child as a dependent or as a qualifying child for valuable tax benefits, such as the EITC. This often occurs even after a divorce court has awarded child-related tax benefits to one of the parents.

As noted above, IRS is not bound by a state divorce court's decision concerning which parent may claim a child because IRS has its own rules that determine which parent is eligible to claim a child.

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## Time is of the essence

After one parent has filed a return claiming a child, the second parent will be unable to file electronically a tax return claiming the same child. The second parent can still file a paper tax return by mail claiming that child. According to IRS, it takes six to eight weeks to process a

paper tax return, which is why many taxpayers choose to “e-file” their tax returns. A taxpayer who has e-filed a return should receive a refund within 21 days and will often receive it much sooner.

Depending upon how close in time IRS receives two returns claiming the same child or children, IRS may review both before processing, may process one instead of the other, or may process both and then audit one or both.

### Practice Tip

If a survivor fears that the other parent has filed first, the survivor can still try to file electronically. S threatened to or lied about filing. The survivor will be unable to e-file a return and will have to file a p return claiming the same child.

## Tie-Breaker rules

IRS has “tie-breaker” rules, which apply to determine which parent may claim a child for the dependent exemption and the EITC when both parents meet the basic criteria for claiming the same child. The credit is given to the parent with whom the child has resided the longest during the year. If a child resided with both parents an equal amount of time, then the Earned Income Tax Credit goes to the parent with the highest adjusted gross income.

### Practice Tip

Family law attorneys should try to avoid custody orders that split physical custody of children 50-50 child greater than half the year, so neither may claim the Earned Income Tax Credit (EITC).

The EITC can provide a substantial cash benefit to an eligible working parent; care should be taken lost as the result of decisions made in the family law case.

The ILS Low Income Taxpayer Clinic is proud to partner with the [Center for Survivor Agency & Justice](#). Together, we seek to provide education, representation, and advocacy for survivors of domestic violence and sexual assault. The content of this page is adapted from a chapter to an upcoming guidebook for survivors published by the CSAJ, the [Guidebook on Consumer and Financial Rights](#).

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