



## Tax Filing Status for Survivors

### **FILING STATUS FOR SURVIVORS**

A survivor who decides to file a tax return must deal with the issue of selecting a filing status. There are five filing statuses, each with its own requirements. They are:

- Single
- Married Filing Jointly
- Married Filing Separately
- Head of Household
- Qualifying Widow(er) with Dependent Child

The qualifications for each filing status are explained in [IRS Publication 501](#). In addition, IRS has an [interactive assistant](#) on its website that survivors can use to determine which filing status applies to them and, if more than one would apply, which would lead to the lowest tax.

#### **Practice Tip**

Survivors who were married at the end of the tax year face the biggest challenge in determining what filing status to use. It is critical to remember that married spouses, including those who are divorcing, are not required to file a joint tax return.

Marital status is determined as of December 31, the last day of the tax year for which the return is being filed. Thus, a survivor's marital status on December 31, 2016 must be considered in determining which filing status the survivor can use when filing a 2016 tax return in 2017

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## **Married Taxpayers**

Married taxpayers can choose one of the following statuses:

1. married filing jointly,

- 2. married filing separately, or
- 3. head of household.

**Note that a taxpayer who is still married on the last day of the tax year may not file as single.**

The following charts set out some of the requirements, benefits, and disadvantages to selecting one of the three filing statuses that may be available to married survivors.

	<b>Married Filing Jointly</b>
<b>Requirements</b>	Parties must be married (do <b>not</b> need to be living together)
<b>Advantages</b>	A taxpayer who selects married filing separately is only liable for their tax debt for that tax year. They are not responsible for their spouse's tax debt.
<b>Disadvantages</b>	<ul style="list-style-type: none"> <li>• Joint filers are jointly and severally liable for tax arising from the return. Even if only one spouse had income, both are liable for any resulting tax liability whether it appears on an original return or results from a later exam by IRS.</li> <li>• IRS may pursue one or both taxpayers to recover tax owed as the result of a joint return.</li> <li>• IRS may offset [take] the entire refund to pay towards one spouse's prior tax or other debt [including child support, student loan, etc.]. There is a remedy for this – file a request for <b>Injured Spouse Relief</b> using IRS form 8379.</li> </ul>

	<b>Married Filing Separately</b>
<b>Requirements</b>	Parties must be married (but whether they live together or apart is immaterial.)
<b>Advantages</b>	<p>May be eligible for:</p> <ul style="list-style-type: none"> <li>• Earned Income Tax Credit and Child and Dependent Care Credit</li> <li>• Student loan interest deduction and other deductions and credits related to education.</li> </ul> <p>If the filer lived with their spouse at any point during the year, married filing jointly allows them to exclude more Social Security income from taxation.</p>

<b>Disadvantages</b>	<p>Not eligible for:</p> <ul style="list-style-type: none"> <li>• Earned Income Tax Credit</li> <li>• Student loan interest deduction and other deductions and credits related to education.</li> <li>• Child and Dependent Care Credit</li> </ul>
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	<b>Head of Household</b>
<b>Requirements</b>	<p>Filer must:</p> <ol style="list-style-type: none"> <li>1. Provide the principal place of abode for any dependents;</li> <li>2. Provide more than half of the annual support for the household [e.g. rent, insurance, utilities, food consumed on the premises] and</li> <li>3. Be considered “unmarried” which includes a married taxpayer who lived apart from their spouse for the last 6 months of the tax year.</li> </ol>
<b>Advantages</b>	<ul style="list-style-type: none"> <li>• Although taxpayer is fully liable for any tax arising from the return, they avoid liability that might have been imposed had they filed jointly with a spouse who misstated income or other return items.</li> <li>• Allows a higher standard deduction than married filing separately.</li> <li>• Permits eligibility for the Earned Income Tax Credit.</li> </ul>
<b>Disadvantages</b>	<p>IRS may audit the taxpayer’s return and require the taxpayer to prove that all of the requirements for filing as head of household are met.</p>

## Should a Joint Return Be Filed?

Advocates can help survivors assess the wisdom of filing a joint return by discussing issues raised by the following questions.

- Is your spouse secretive about financial information?
- Do you have access to the household bank account and other financial records?
- Does your spouse control the household financial decisions?
- Are you and your spouse current in filing required tax returns?
- Do you or your spouse owe tax for past years? If so, do you know why?
- Have you ever received a notice of tax due from the IRS?
- Do you have a history of filing joint returns with your spouse?
- Did you participate in preparing and filing joint returns with your spouse?
- Did you have a chance to review joint tax returns filed with your spouse?
- Do you trust your spouse to report accurately income, deductions, and other information?

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## Why Filing Status Matters

Filing status is important for several reasons. When married spouses file a joint return, both spouses are responsible for the entire amount of tax due (which is called “joint and several liability”) even if only one spouse had income or even if one spouse put mistaken or false information on the tax return.

The filing status you choose can also impact things like the amount of income that is taxable, credits that are available, and the amount of tax owed. Many couples choose to file joint returns because doing so may result in a lower tax liability or a bigger refund.

Spouses may choose to file a joint return even if they do not live together.

### Practice tip

Survivors of abuse often conclude that filing a joint tax return with their abusive spouse is unwise. If the abuser has a history of not paying taxes, is dishonest, and/or is secretive about financial matters, it may be a good idea for a survivor to file a separate return. For survivors, like Leah, may be in a position where it is dangerous to refuse to file a joint return.

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## Can Filing Status Be Changed After Filing A Return?

Taxpayers who choose a particular filing status may, within certain time limits, change to a different filing status after filing the return. A taxpayer who files a joint return has until the return’s actual due date [usually April 15] to amend and file married filing separately or head of household. That is a very limited opportunity to switch from married filing jointly to another filing status. By contrast, taxpayers who file separately generally have 3 years from the return’s due date to amend the returns and file married filing jointly.

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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 for Survivors of Domestic Violence and Sexual Assault.

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<http://www.indianalegalservices.org/Survivors-tax-filing-status>

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