

Divorce and Taxes

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Divorce and Taxes

Filing status. Your filing status is based on your marital status as of December 31. If you are divorced under a final decree by the last day of the year, you are considered unmarried for the whole year and you cannot choose a married filing status. If you are still married at the end of the year (your divorce is not yet finalized), then you must file as Married Filing Jointly or Married Filing Separately, or Head of Household, if qualified. You cannot file as Single if you are married.

Joint responsibility. You may be held jointly and individually responsible for any tax, interest, and penalties due on a joint return filed before your divorce. This responsibility may apply even if your divorce decree states that your former spouse will be responsible for any amounts due on previously filed joint returns.

Name change. If you changed your name because of divorce, be sure to report the change to your local Social Security Administration office before filing your tax return. The name you enter on your tax return must be the same as what is on your Social Security card.

Dependents. In most cases, a child of divorced or separated parents is the qualifying child of the custodial parent (the parent with whom the child resides for the greater number of nights during the year). If the parents divorced or separated during the year and a 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.

Form 8332. The custodial parent may sign Form 8332, *Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent,* or a substantially similar statement that he or she will not claim the child as a dependent for the tax year. The noncustodial parent must include a copy of the form or statement with his or her tax return.

Withholdings. Update your W-4 with your employer to ensure you are withholding the appropriate amount.

Estimated tax. If you made joint estimated tax payments for the current year and you were divorced during the year, either you or your former spouse can claim all of the joint payments, or you each can claim part of them. If you cannot agree on how to divide the payments, you must divide them in proportion to each spouse's individual tax as shown on your separate returns for the current year.

Property Settlements and Transfers

Residence. If you transfer your home to your spouse or former spouse incident to your divorce, you will not recognize gain or loss.

Incident to divorce. Transfers are incident to divorce if they are:

- Made within one year after the date the marriage ends, or
- Related to the ending of the marriage—made under an original or modified divorce or separation instrument within six years after the date the marriage ends.

Sale of residence. For purposes of the sale of home exclusion of gain, an owner is treated as using property as his or her principal residence during any period that use is granted to a spouse or former spouse under a divorce or separation instrument.

Deducting Costs of Divorce

Legal fees paid for a spouse or former spouse may qualify as alimony. Fees paid to determine tax or for tax advice and fees paid to get or collect alimony are not deductible.



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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 not made under the instrument.

Alimony is deductible by the payer and must be included in the recipient's income if the divorce or separation instrument was entered into prior to January 1, 2019.

For any divorce or separate maintenance agreement executed after December 31, 2018, alimony and separate maintenance payments are not deductible by the payer and are not included in the income of the recipient. This also applies to an existing divorce or separate maintenance agreement modified after that date, if the modification expressly provides that this law applies to the modification.

Designating payments as "not alimony." Spouses can agree not to treat otherwise qualifying payments as alimony. A provision clearly instructing that the payment is not to be treated as alimony must be included in a divorce or separation instrument or in a written statement signed by both spouses that refers to a previous written separation agreement. If spouses are subject to temporary support orders, the designation must be in an order. A copy of the written instrument must be attached to the recipient's return.

Payments to third parties. Payments to third parties under a divorce or separation instrument can qualify as alimony. Payments are treated as received by the spouse and then paid to the third party. The recipient can claim deductions for items paid with the alimony.

Home occupied by spouse. If, under the terms of a divorce or separation instrument, one spouse occupies a home that belongs to the other, the owner's payments for mortgage, real estate tax, insurance, and repairs are not alimony. Payments for utilities may be alimony. Rent-free use of property is not alimony.

Alimony Requirements

Alimony. Payments are alimony if ALL the following are true.	***Not Alimony.*** Payments are not alimony if ANY of the following are true.
• Payments are required by a divorce or separation instrument. • Payer and recipient spouse do not file a joint return. • Payment is in cash (including checks and money orders). • Payment is not designated in the instrument as "not alimony." • Divorced and legally separated spouses are not members of the same household when payment is made.* • Payments are not required after the death of the recipient spouse. • Payment is not treated as child support.	• Payments are not required by a divorce or separation instrument. • Payer and recipient spouse file a joint return. • Payment is: – Not in cash. – A noncash property settlement. – Spouse's part of community income. • Payment is for upkeep or use of the payer's property. • Payment is designated in the instrument as "not alimony." • Divorced and legally separated spouses are members of the same household when payment is made.* • Payments are required after death of the recipient spouse. • Payment is treated as child support.

* A house formerly shared by the spouses is considered one household. Spouses are not treated as members of the same household if one spouse is preparing to leave and does in fact leave no later than one month after payment. Until divorce or legal separation is final, spouses can be members of the same household.

Child Support

Child support is not deductible by the payer or taxable to the recipient. Payments specifically designated as child support in a divorce or separation instrument are not alimony. Payments not specifically designated "child support" are treated as child support if they are reduced either:

- On the happening of a contingency relating to a child (reaching a specific age or income level, leaving school, marrying, becoming employed, dying, leaving the household, etc.).
- At a time that can be clearly associated with such a contingency.

Underpayment of alimony or child support. If alimony and child support are both required under a divorce or separation instrument, and payments are less than the total required, payments apply first to child support and then to alimony.

Contact Us

There are many events that occur during the year that can affect your tax situation. Preparation of your tax return involves summarizing transactions and events that occurred during the prior year. In most situations, treatment is firmly established at the time the transaction occurs. However, negative tax effects can be avoided by proper planning. Please contact us in advance if you have questions about the tax effects of a transaction or event, including the following:

- Pension or IRA distributions.
- Significant change in income or deductions.
- Job change.
- Marriage.
- Attainment of age 59½ or 73.
- Sale or purchase of a business.
- Sale or purchase of a residence or other real estate.
- Retirement.
- Notice from IRS or other revenue department.
- Divorce or separation.
- Self-employment.
- Charitable contributions of property in excess of $5,000.

This brochure contains general information for taxpayers and should not be relied upon as the only source of authority. Taxpayers should seek professional tax advice for more information.

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