

Who Gets To Claim Children As Dependents On Tax Return?

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I got divorced last year and will be filing taxes separately from my ex for the first time. We have two kids and share joint custody. Who gets to claim them on their income tax forms for deductions?

Claiming a child as a dependent on your tax returns can be a valuable right. Claiming a child allows filers to claim an exemption on their income tax return, thereby reducing taxable income. This in turn can result in either a higher refund or, if taxes are still owed, a lower amount of taxes due.

How parents claim the children on his or her taxes is often dealt with at the time of your divorce. If you settled your case with your former spouse and have a written agreement – often called a Property Settlement Agreement, or a Marital Settlement Agreement – there should be a provision in that document that spells out who has the right to claim the child as a dependent, or in your case, children, on their taxes. An experienced matrimonial attorney will cover this issue, along with all of your other rights and obligations, during settlement discussions. However, if a person represents himself/herself during a divorce, the issue of taxes can get overlooked, especially if tax time is not right around the corner and therefore not front of mind.

As you and your former spouse have two children, if you are both working or receiving taxable income of some sort, then each of you claiming one of the children as a dependent may make the most sense. Each of you could receive a benefit by claiming a child as a dependent, and as there is an even number of children, splitting them up as exemptions is not complicated. Once one of the children is emancipated, and there is only one child, then you and your former spouse could alternate claiming the remaining dependent child in filing years until that child is also emancipated.

The right to claim children as dependents on tax returns can be affected by several factors. First, if one of the parents' tax benefits will not be affected by claiming a child on the tax returns, then sometimes it makes more sense for the person who will benefit to take all the deductions, or to claim the child every year. For example, if you earn below the amount necessary for filing a tax return (a figure determined by the federal government), and you do not need to file a tax return in a given year, then claiming a child as a dependent will not benefit you as you are not filing taxes. Similarly, if one parent earns a very high amount of income and claiming a child on the taxes will not make a significant impact on the tax liability and the other parent will derive a significant benefit if a child is claimed as a dependent, then it makes more sense for the person who will benefit from the dependent exemption to claim it for as long as that benefit continues.

Another factor that can affect claiming a child as a dependent exemption is the status of child support obligations. The obligation to support one's child goes hand in hand with the right to claim them as a dependent on a tax return. Therefore, if a person is significantly delinquent in paying his/her child support obligations, the parent receiving the child support may – with the Court's permission or by agreement of the parties – claim all the children as dependents on his or her taxes.

If you do not have an agreement with your former spouse on this issue, I caution against acting unilaterally. If you file your taxes and claim both children as dependents without reaching agreement with your former spouse first, the other person can file an application with the Court requesting that you be directed to file an amended tax return and only claim one child, allowing him/her to claim the other. If your former spouse takes this step, you have the right to file a similar application with the Court, also. However, this is a time-consuming and costly process which can easily be avoided by communication and/or advance planning. Additionally, you may risk triggering an IRS audit if both parties claim the same child as a dependent.

If there is no agreement on this issue and if you believe that you fall into one of the categories described above, or if possibly there is some other scenario which might entitle you to claim both of your children as dependents on your tax returns, I recommend consulting with an experienced family law attorney. Working with both your attorney and a tax professional will provide you with clear answers and help you decide how to proceed as April 15th draws closer.

