Custodial v. Non-Custodial

STEP

02

STEP

03

STEP

04

Are you the

Custodial

Parent?

You are the Custodial Parent if your child meets the "Qualifying Child" test

laid out in this brochure. If

you are not the custodial parent, you are not allowed

to claim the child unless you obtain an IRS Form

by the Custodial Parent.

"physically" lives with both

parents equally? Move to

8332 releasing the dependency claim signed

What if the child

Step 3.

Did the

Parent

your claim.

improperly

Non-Custodial

claim your child?

File a paper tax return by mail and expect to get audited by the IRS.

Gather substantiation to support

Are you Divorced, Legally Separated, or have been living STEP 01 apart from your spouse? If YES, move to Step 2. Be sure to consult an advisor on how this impacts your filing status and options.

Do both parents qualify as a custodial parent because the child lives with both parents equally during the tax year? If this is the case, the

Tiebreaker Rule applies. Look inside the brochure to determine whether you meet the test

Did you erroneously

claim your child as a dependent?

You can correct your error by filing an amended tax return.

STEP

05

Got Questions or a Tax Problem?

Contact us for FREE assistance*

ADDRESS

Washington and Lee University School of Law Low-Income Taxpayer Clinic East Denny Circle, Lewis Hall Lexington, Virginia 24450

EMAIL

taxclinic@wlu.edu

NUMBER

540-458-8918

WEBSITE

http://law.wlu.edu/taxclinic

* The Tax Clinic is a FREE legal clinic. We provide income-eligible taxpayers legal assistance with tax controversies. Eligibility will depend on household income.



IS YOUR EX-SPOUSE IMPROPERLY CLAIMING YOUR **CHILDREN?**

You can still claim your children on your taxes if you are the custodial parent!



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QUALIFICATIONS

1. Do you have a "Qualifying Child" for a Dependency Exemption?

- Relationship Test: The qualifying child must be a son/daughter, sister/brother, stepchild, nephew/niece, grandchild, adopted child, or foster child.
- Age Test: The child must be under age 19 or under age 24 if he or she is a full-time student, or a child with a total and permanent disability regardless of his/her age.
- Residence Test*: The child must have lived with the taxpayer more than half of the year. The IRS counts nights spent at the taxpayer's house when determining whether the test is met.
- Support Test: The child must NOT have provided more than half of his or her support.

IF YOU MEET ALL OF THE TESTS ABOVE THEN YOU ARE A CUSTODIAL PARENT ELIGIBLE TO CLAIM THE DEPENDENCY EXEMPTION.

2. What if both parents claim the qualifying child because he or she lives with the parents for the same amount of time?

Under the tie-breaker test, the IRS will grant the qualifying child to a taxpayer in the following order:

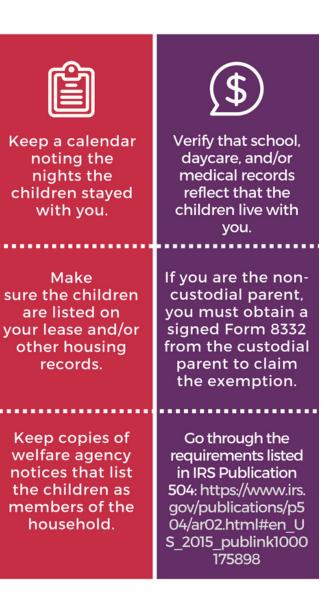
- The parent, if only one of the persons claiming the child is the child's parent.
- The parent with the highest Adjusted Gross Income (AGI) if the child lived with each parent for the same amount of time during the tax year.

* The IRS may require verification of residency to determine which parent is entitled to claim the child.

CUSTODIAL PARENT

NON-CUSTODIAL PARENT

TIP SHEET



RACE TO FILE

The custodial parent (the one who can claim the qualifying child) is generally entitled to the exemption. However, a non-custodial parent sometimes tries to improperly claim the child by filing his or her tax return first. IT DOES NOT MEAN IT IS THE END OF THE STORY.

STEPS TO CLAIM THE QUALIFYING CHILD

Filing first prevents the second parent from filing electronically. If you are entitled to claim the child and your electronic return is rejected:

- You should file the return by MAIL and keep proof of mailing.
- After about 6 weeks, the IRS will review both returns and AUDIT one or both taxpayers.
- If the IRS has already processed the non-custodial parent's return, it should still review the custodial parent's return and give him or her the exemption if he or she meets the "Qualifying Child" test.
- The non-custodial parent will be asked to return the part of his or her refund that is attributable to the qualifying child exemption.