

## Custodial v. Non-Custodial

Are you Divorced, Legally Separated, or have been living 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.

STEP  
**01**

### 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 8332 releasing the dependency claim signed by the Custodial Parent. What if the child "physically" lives with both parents **equally**? Move to **Step 3**.

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.

STEP  
**02**

STEP  
**03**

STEP  
**04**

### Did the Non-Custodial Parent improperly claim your child ?

File a paper tax return by mail and expect to get audited by the IRS. Gather substantiation to support your claim.

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](mailto: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

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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.

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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

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## NON-CUSTODIAL PARENT

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### TIP SHEET

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Keep a calendar noting the nights the children stayed with you.

Make sure the children are listed on your lease and/or other housing records.

Keep copies of welfare agency notices that list the children as members of the household.



Verify that school, daycare, and/or medical records reflect that the children live with you.

If you are the non-custodial parent, you must obtain a signed Form 8332 from the custodial parent to claim the exemption.

Go through the requirements listed in IRS Publication 504: [https://www.irs.gov/publications/p504/ar02.html#en\\_US\\_2015\\_publink1000175898](https://www.irs.gov/publications/p504/ar02.html#en_US_2015_publink1000175898)

## RACE TO FILE

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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.**

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### 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.