

Tax Season And We're Separated: Things Both Parties Should Consider

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By David Pedrazas

Tax season can cause anxiety for families, and much more so for those struggling with the added complications involved in managing tax matters during the [divorce process](#). Variables may significantly impact your calculations and overall tax liability, for example, when establishing spousal and [child support](#) or temporary [alimony](#).



How Can I Prevent Paying More than Legally Required to the IRS?

In order to ensure that all of your tax factors are thoroughly analyzed and that your overall tax burden has been properly reduced to the fullest extent allowed by law, the two critical actions you should take when you become separated and plan to divorce are to:

- ***Work with an experienced divorce attorney.***
- ***Obtain services of a qualified tax preparer to work with you and your divorce lawyer.***

What are My Options for Tax Filing Status During Divorce?

There are several filing options to consider. Though you have probably been filing as Married Filing Jointly up to the time you and your spouse separated, that is not necessarily the best option for you during your separation while in the process of divorce. Your tax filing status alternatives include:

- ***Married Filing Jointly (MFJ)***
- ***Married Filing Separately (MFS)***
- ***Head of Household (HoH)***

Even after filing your divorce complaint, the IRS allows you to file as MFJ. However, again, that may not be the best option under your current circumstances. Consider the information in the following sections to help you determine the best status for you when filing your tax returns during your [divorce process](#).

What if My Spouse and I are Separated But Still Live in the Same House?

If you have separated from your spouse by virtue of [filing a divorce complaint](#) with the Utah family court, but you and your spouse and minor children all continue to reside in the same house, then your tax filing status alternatives are likely to include MFJ, “Married Filing Separately” (MFS) or “Head of Household” (HoH).

- **If you are the family's primary income earner**, you will probably be best advised to file as MFJ, due to the more favorable tax treatment under that filing status for the person in that earning position.
- **If you are a homemaker**, without taxable income, then your filing status may not have much impact on the outcome of your tax return filing. Filing MFS will not really make your income tax obligation better or worse. But, some of your other financial interests relevant to your lower earning position, can become factors that you should consider before agreeing to file as MJS (including those addressed in the section below).

As the Income-Dependent Spouse, What is the Best Way for Me to File?

The kinds of questions that become relevant for you, as an income-dependent spouse during a divorce are:

- What is your personal financial responsibility for any overall tax liability that may exist as a result of your spouse's income (after all deductions and allowances have been processed in your joint tax return filing)?
- What has been formally agreed about the financial benefits you will personally receive, in return for your agreement to permit filing as MFJ?
- Has it been formally agreed that you will receive half of any tax savings realized due to filing MFJ with your spouse?
- How will any tax refund be allotted and issued to you?

IMPORTANT: Although an amended tax return can be filed for three prior tax years, your tax filing status cannot be changed from MFJ to another status. Therefore, you need to have the above questions answered and resultant formal agreements executed (put in writing) before you sign the tax return or enable verification of an e-filing.

What Happens When a Support Obligation is Involved?

Consider which of these situations applies to you, before making a determination on how to file your income taxes.

- Neither you nor your spouse is eligible to receive temporary alimony or [spousal support](#) or [child support](#) while you and your spouse and minor children are all still living in the same house.
- **If you and your spouse live in separate houses**, even if a divorce complaint has not been filed, the IRS requirements and allowances may be very different for you, depending upon your tax filing status.
- If your position is as an income-dependent spouse, and if you also maintain physical [custody](#) of your children during 50% or more of nights, then you are likely to be entitled under Utah family law to file a claim for child support with the family court. And, you may also be eligible for temporary alimony/spousal support. If this is this case, then your tax filing status is evaluable under an entirely different kind of analysis.

What is the Best Way to Account for Child and Spousal Support?

If you have filed for spousal support, the date you started receiving support payments is important for your personal tax purposes. Keep in mind that:

- Child support you pay cannot be deducted from your taxable income. And, you are not required to claim child support paid by your child's **other** parent as income.
- However, temporary alimony/spousal support **is** deductible for the spouse who pays this kind of support. And, it must be included in the taxable income of the spouse who receives the support.
- So, a careful analysis of the comparative benefits (to you as the payee) of the option of claiming this kind of support as a deduction, as opposed to MFS filing should be **performed by your tax preparer, in conjunction with your divorce attorney**, to ensure that all unique factors of your situation are considered.

- You may opt to file under the status of HoH, by claiming your child as a dependent. And, if you are receiving temporary alimony/spousal support, while you are the primary custodian of your children, you have no legal obligation to relinquish the exemption for your child as a dependent to your spouse/ex-spouse.
- When [calculating support obligations](#), remember that support laws base the amounts of such obligations on the parties' net incomes. So, applying the proper tax analysis can vary significantly impact the amount of support assessed. In other words, the less that you pay in tax, the more you net in income that can be considered in calculations to determine support.

For Further Questions on Filing Taxes While Separated, Contact Divorce Attorney David Pedrazas in Salt Lake City, Utah Today

[David Pedrazas](#) is a [Salt Lake City divorce lawyer](#) who has helped clients through the divorce process, for the past 15 years. The [Law Office of David Pedrazas, PLLC](#) is dedicated to providing you with the kinds of real help needed to help you make the best-informed choices possible, to fully protect your rights, to receive all financial benefits to which you are legally entitled, and to help you and your family move beyond the [divorce](#) toward happier times.

David Pedrazas is well recognized as one of Salt Lake City's [most professional and effective divorce attorneys](#). Included among the honors he has received are:

- *Top 10 Attorneys in Salt Lake City—UT* by the National Academy of Family Law Association
- *Premier Top 100 Trial Attorneys in Family & Divorce—American Academy of Trial Attorneys*
- *10 Best Divorce Attorney (both 2014 and 2015—American Institute of Family Law*

If you are facing a separation and divorce, and need to speak with a qualified Salt Lake City divorce attorney, give us a call at **801-263-7078** or [contact us](#) through our website. Since 1998, David Pedrazas has been practicing divorce and family law to protect the rights of clients throughout the divorce process.

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