


Addressing Tax Issues in Family Law Cases with Survivors

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**CENTER FOR SURVIVOR AGENCY & JUSTICE**

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Faculty Today



**Jamie Andree**, Volunteer Attorney, Indiana Legal Services, Inc., Low Income Taxpayer Clinic



**Laura Russell**, Citywide Director of Family/DV Unit, The Legal Aid Society



**Katie VonDeLinde**, CSAJ Expert Advisor & Adjunct Faculty, Washington University Brown School of Social Work

Hosted By: Erika Sussman & Sara Wee, CSAJ

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What We Will Cover

- Why taxes and family law?
- What do family lawyers need to know about tax?
- What do tax issues look like in the family law context?
- What you can do to address tax issues in family law cases with survivors?

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## Objectives

After today's training, you should be able to:

1. Understand some important tax concepts that impact survivors including the changes resulting from the Tax Cuts and Jobs Act of 2017
2. Issue Spot how tax issues show up for survivors using case scenarios and your own experience, particularly for underserved survivors
3. Help a survivor in family court to maximize basic tax benefits
4. Describe ways you (based on your role) can help address tax issues in family law

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## Before we begin...

- Don't forget Part 2 next week!
- Format:
  - Hear from Taxpayer Opportunity Network & Kentucky Coalition Against Domestic Violence
  - Have deep conversations with faculty about strategies: needs, partnership building, systems change
- Come with questions and ready to talk!

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## Why tax and family law?

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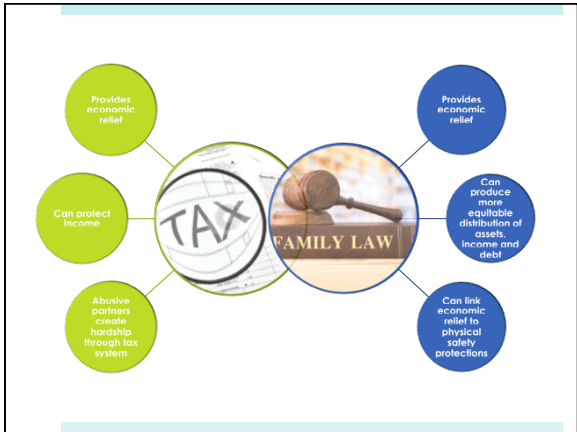
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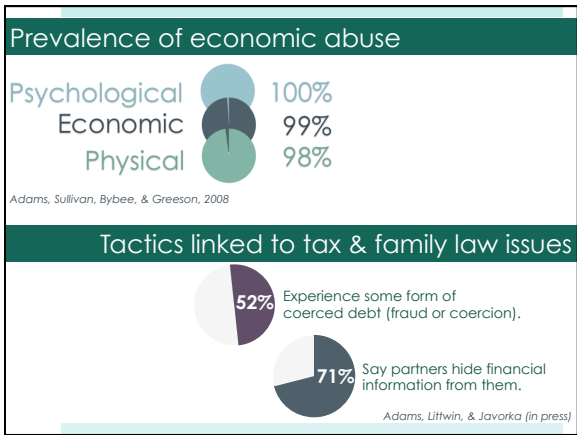
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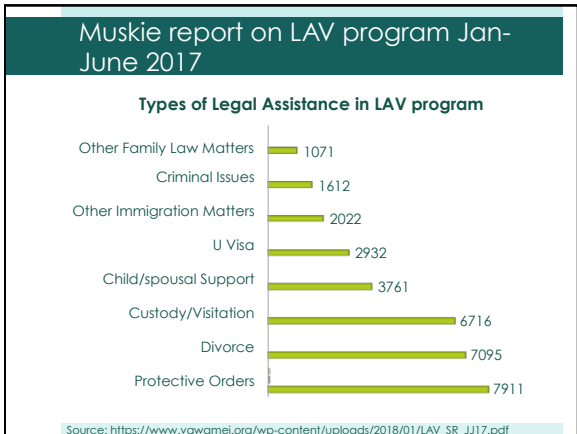
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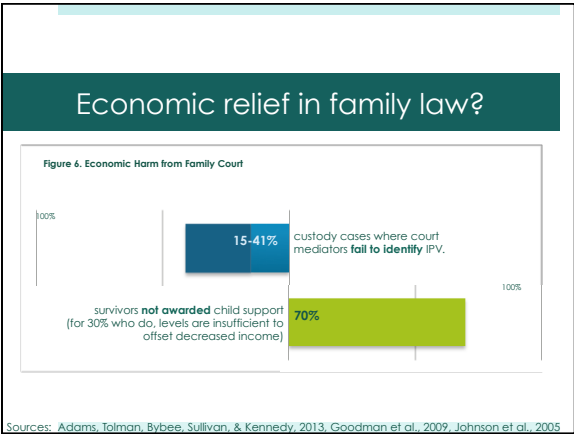
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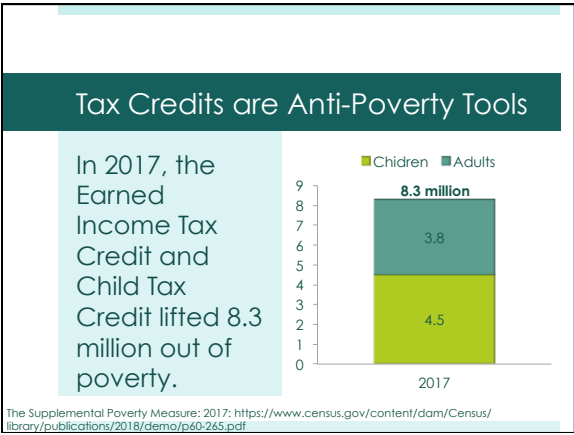
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### Why Do Family Law Lawyers Need To Know About Tax?

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### Why Do Family Law Lawyers Need To Know About Tax?

			
Clients may have existing tax problems.	A client's tax problems may be related to abuse or actions of a former partner.	Many parents are confused about their tax rights and obligations.	Taxes are linked to or may impact issues often addressed in family law

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### Clients may have existing tax problems

	<ul style="list-style-type: none"><li>Facing collection which might include<ul style="list-style-type: none"><li>Levies on bank account</li><li>Levies on wages</li><li>Levies on Social Security benefits</li><li>Refund is not issued but is applied to tax debt</li></ul></li><li>Tax liens may encumber marital property</li><li>Client's spouse has tax problems which interfere with paying support or other marital debts.</li></ul>
<b>Clients may have existing tax problems.</b>	

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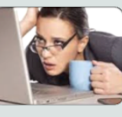
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### Many parents are confused about their tax rights and obligations

	<ul style="list-style-type: none"><li>Little or no experience dealing with tax</li><li>Don't know where to go to get help</li><li>Tax has its own language</li><li>Tax is intimidating</li><li>Taking control of one's financial situation including taxes is empowering and is a step toward financial independence.</li></ul>
<b>Many parents are confused about their tax rights and obligations.</b>	

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### Tax Problems Can Be A Sign Of Abuse



A client's tax problems may be related to abuse or actions of a former partner.

- Forced to sign a tax return.
- Prevented from reviewing a tax return before signing.
- Kept in the dark about household finances including other spouse's income and expenses.
- Having joint returns filed without your knowledge.
- Prevented from filing tax returns when a partner refuses to file
- Prevented from claiming children who are then improperly claimed by the other parent.

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### More reasons....



A client's tax problems may be related to abuse or actions of a former partner.

Due to the actions of a former partner:

- Client has been unable to claim children
- Client may be facing an audit
- Client may have a tax debt due
- Client may have inaccurate tax returns, causing issues when filing for various immigration statuses

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### Linked to family law issues



Taxes are linked to or may impact issues often addressed in family law

- Client's refunds were taken to pay spouse's debt (child support, student loans, etc.)
- Client may be required to (or have to make a decision whether to) file a tax return while divorce is pending.
- Family law case involving children – may have significant future economic impact due to tax benefits related to kids.
- Decisions made during court proceedings impact whether your client can claim tax benefits related to kids.
- Client who is an immigrant and doesn't qualify for SSN needs special tax-related attention.
- Improperly reported income or assets on tax returns are still used as evidence in divorce matters

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# Screening & Assessment

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# Survivors and Taxes

- Many clients have complicated feelings about taxes and have high levels of anxiety about taxes
  - These feelings can be exacerbated when abusive partners use taxes as a form of financial control
- Taxes are directly connected to government and power; this may trigger feelings of hopelessness, fear and past/current trauma in survivors
- Clients experience with taxes, financial information, and tax preparation varies widely
- Some clients come from communities where tax preparation companies are predatory and further complicate feelings about taxes

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# Questions Lawyers Should Ask To Help Identify Existing Tax Problems

How do you feel about talking about your taxes?

Do you or your spouse have tax problems?

Did you file a tax return this year? If so, did you pay any tax owed? If due a refund, did you get it? If not, what happened to it?

Did you and/or your spouse file tax returns in the past?

What filing status did you use?

Have you received IRS notices saying you owe tax?

Have you been able to claim your children since separating from your spouse?

### Assessing tax issues

Each survivor's experience is unique. Advocates assisting with tax issues must keep this in mind and respect the complexity of the survivor's experience and feelings. The assessment questions presented below can help a survivor decide whether to file a joint tax return with their spouse. However, conversations about tax should not be limited to these questions. These questions can be part of a broader assessment with the attorney/advocate regarding the survivor's needs and priorities. For a fuller description of a survivor-centered approach to economic assessment, see the *WFO* chapter in this Guidebook (pg. 11).

Advocates can help survivors assess the wisdom of filing a joint return by discussing issues raised by the following questions:

- Is your spouse accurate about financial information?
- Do you have access to the household bank account and other financial records?
- Does your spouse control the household financial decisions?
- Are you and your spouse current on filing required tax returns?
- Do you or your spouse see tax for past years? If so, do you know why?
- Have you ever received a notice of tax due from the IRS?
- Do you have a history of filing joint returns with your spouse?
- Did you participate in preparing and filing joint returns with your spouse?
- Did you have a chance to review joint tax returns filed with your spouse?
- Do you trust your spouse to report income, deductions, and other information accurately?

### Practice Tip

Survivors of abuse often conclude that filing a joint tax return with their abusive spouse is unwise. If the abusive partner has a history of not reporting, or underreporting, income, or other financial information, it may be a good idea for a survivor to file a separate return. However, some survivors, like Leah, may be in a position where it is necessary to file a joint return. Some questions to help determine the best strategy for the survivor can include: *How appropriate? What are some strategies that might make this decision safer?*

Filing status is important for several reasons. When married spouses file a joint return, both spouses are responsible for the entire amount of tax due (which is called "joint and several liability") even if only one spouse has income or their joint income isn't treated as their information on the tax return. Leah is jointly and severally liable with John for the entire amount of tax due from

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### Warning!

- Tax law is complex: even seemingly basic information like who can claim a child.
- There is rarely a quick and easy fix to a tax problem.
- Goal is to alert you to problems that survivors may face.
- The lawyer and/or the client may need to consult a tax practitioner.
- There are free clinics that help low income taxpayers with existing tax problems. You can find them at <https://taxpayeradvocate.irs.gov/about/litc>
- Good source of tax information is [www.irs.gov](http://www.irs.gov)

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### Tax Cuts and Jobs Act of 2017

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### Overview

- Newly enacted Tax Cuts and Jobs Act of 2017 made significant changes which impact almost all taxpayers.
- The changes relevant to our discussion do not take effect until 2019 meaning they did not impact 2017 returns filed in 2018. They will impact 2018 returns filed in 2019.
- But decisions made in family law cases now will still impact what parents can do on their 2017 tax returns, if they have not yet been filed, as well as future returns.

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### Changes are so new. . .

- We cannot predict with absolute certainty how language put into a divorce decree this year will be read by IRS or a court over the next few years.
- The IRS has not yet made available final version of new forms and publications
- The relevant changes in the TCJA end after tax year 2025, and we have no idea whether they will be extended.

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### Summary of Major Tax Changes Impacting Divorcing Parents

- Value of personal and dependency exemptions have been reduced to zero (from \$4050 per exemption for tax year 2017) for tax years 2018 – 2025.
  - But you still need to know who qualifies to be claimed as a dependent
- The standard deduction (based on filing status) has doubled for 2018 – 2025.
- Filing status rules have not changed.
- The Child Tax Credit has doubled to \$2,000.
- The refundable portion of the Child Tax Credit has increased from \$1000 to \$1,400.

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### Major Tax Changes, Continued

- Starting with 2018 returns, there will be a new child tax credit (\$500, non-refundable) for persons age 17 and over who could be claimed as dependents under existing law.
- Starting in 2019, alimony is not a deduction to those who pay it nor is it income to those who receive it although the prior alimony rules apply to any divorce decree signed prior to 12/31/2018, with exceptions.

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What do tax issues look like in the family law context?

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### Tax in family law

**We'll Cover**

- Filing status
  - Whether divorcing spouses should file joint returns
- Validity of a tax return
- Interplay of Divorce Decree with the IRS
- Claiming the kids
  - Earned income tax credit and other kid-related benefits
- Representing Survivors
  - Audits
  - Innocent Spouse Relief
  - Collection Alternatives

**To Help Us...**

- Case Scenarios
- What can YOU do? (lawyer, advocate, program director, etc)

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Filing Status: Why It Matters

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### Filing Status: Why It Matters

- Divorcing spouses may be required to file tax returns while divorce is pending
  - Judge in the divorce case may try to dictate filing status or charge one party with marital waste.
- There may also be prior years when tax returns were not filed.
- Selected filing status has implications for which child-related tax benefits are available, how much tax is owed, and/or how much of a refund is due.
- Choosing the wrong filing status may result in an audit, liability for increased tax, or a smaller refund.

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### Filing Status Choices

- Married filing jointly
- Married filing separately
- Head of household
- Single (not available if you were still legally married on December 31 of the year for which you are filing the return.)
- Qualifying widow or widower with dependent child

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### Filing Status Determines Amount of Standard Deduction

- Standard deduction lowers amount of income subject to tax. Taxpayers can choose to use it or itemize deductions.
- Standard Deduction Amounts have increased substantially under Tax Cuts and Jobs Act for 2018 - 2025:
  - Single: From \$6,350 (2017) to \$12,000 (2018)
  - Married Filing Jointly: From \$12,700 (2017) to \$24,000 (2018)
  - Married Filing Separately: From \$6,350 (2017) to \$12,000 (2018)
  - Head of Household: From \$9,350 (2017) to \$18,000 (2018)
- Indexed for inflation for 2019 through 2025.

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### Married Taxpayers Do Not Have To File Joint Returns!

- Married taxpayers can choose one of 3 filing statuses:
  - Married Filing Jointly (MFJ)
  - Married Filing Separately (MFS)
  - Head of Household (but must meet specific legal requirements to choose HOH)
- MFJ & MFS do not depend on living arrangements but HOH does
- Marital status is determined as of 12/31 of the tax year
  - Filing a 2017 tax return in 2018? Marital status at end of 12/31/17 is what matters.
- Elizabeth and Jane cannot be forced to file joint returns with their spouses but may choose to do so after considering the pros and cons

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### Case Scenario

Elizabeth

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### Elizabeth's Story

- Getting divorced from Fiona. They have two children together.
- Children live with Elizabeth but stay with Fiona on weekends.
- Custody, child support, alimony, and division of bank accounts in dispute.
- Elizabeth does not have immigration status or a valid SSN; Elizabeth speaks English with a very strong accent
- Since separating from Fiona, Elizabeth has started working but hasn't filed a tax return. She has no idea what returns were filed in the past by Fiona.
- Fiona intends to claim the children on her tax returns from now on.

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**What are key aspect to Elizabeth's case?**

- How can Elizabeth file a tax return without a valid SSN?
- Should Elizabeth file a tax return? What are the benefits to Elizabeth from claiming the children, and will those change when she has obtained immigration status?
- What should Elizabeth consider when deciding whether to let Fiona claim the children?
- If Elizabeth agrees that Fiona can claim the children now, will Elizabeth be able to claim them in the future.

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**Can Elizabeth File a Tax Return?  
Yes, if . . . .**

- Immigrants must either obtain a SSN, or if they do not qualify for a SSN, an Individual Taxpayer Identification Number (ITIN).
- ITIN is issued by IRS to individuals to help them comply with tax laws. Issued regardless of immigration status as individuals without status may still have a tax filing requirement.
- Available for dependents and spouses
- ITIN doesn't authorize immigrant to work.
- Apply for ITIN by attaching IRS Form W-7, tax return, proof of identity, and foreign status documents and sending to IRS ITIN operation.
- Can also apply in person with IRS-authorized Certifying Acceptance Agent or at some IRS offices. Won't have to mail in documents.

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**Filing Options: Married Filing Jointly, Separately & Head of Household**

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### Advantages to Married Filing Jointly

- Higher standard deduction (reduces income subject to tax)
- Certain benefits are not available using MFS
  - Earned income tax credit (reduces tax owed and is refundable)
  - Student loan interest and other deductions and credits related to education
  - Child and dependent care credit
  - Premium tax credit (except for some victims of domestic abuse & abandonment)
- If you lived with your spouse at any time during tax year, MFJ allows you to exclude more Social Security income from taxation
- Usually pay less tax/due bigger refund than using other filing statuses

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### Risks to Married Filing Jointly

- Spouses filing MFJ are jointly and severally liable for info on the return. Even if only one spouse had income or made errors, both are liable for any resulting tax due whether shown on the return or added from a later audit.
- IRS may pursue either one or both spouses to collect the tax.
- IRS may offset (take) entire joint refund to apply to one spouse's sole debt (such as spouse's tax, student loan, child support debt.)
  - Can be fixed using request for Injured Spouse Relief using IRS Form 8379
- Some survivors may be able to obtain Innocent Spouse Relief from joint and several liability but it is not automatic and is best sought with an experienced tax advisor.

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### Consider Before Filing Jointly

- MFS advantage – taxpayer is responsible only for own tax debt and will not have refunds taken to apply to debts that are solely spouse's
- Can you change your mind?
  - Switch from MFJ to MFS – only have until tax return due date (usually 4/15) to switch from MFJ to MFS
  - Married taxpayers who file separately generally have 3 years from return's due date to switch to MJF
- There are other rules and considerations not addressed here.

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### Issue Spotting



- Is spouse secretive about finances?
- Does client have access to household bank and financial records?
- Does client know how much spouse earns?
- Is spouse abusive?
- Is spouse self-employed? Do you know your spouse's income?
- If so, does spouse keep good records?
- Does spouse control household financial decisions?
- Does spouse owe tax or have unfiled returns?

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### Head of Household Has Benefits

- Unlike MFJ, avoids problem of joint and several liability
- Has higher standard deduction (which reduces taxable income) than MFS
- Permits otherwise eligible taxpayer to claim Earned Income Tax Credit (EITC) – a significant monetary benefit for low to moderate income working taxpayers with children.

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### Can You Satisfy HOH Requirements?

- Must provide principal place of abode for at least 1 dependent, and
- Provide more than half the annual support for the household (e.g. rent, utilities, insurance, food) and
- Be "unmarried" – includes a taxpayer who lived apart from their spouse for at least the last 6 months of the tax year.
- Definition of HOH is at IRC §2(b)
- For detailed information see IRS Publications 17, 501, 504
- IRS forms and publications are on [www.irs.gov](http://www.irs.gov)

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### Head of Household is Not Available When...

- The taxpayer was married to and living with a spouse at any time during the last six months of the year; or
- The taxpayer did not provide the main home of a qualifying person for more than half the year; or
- The taxpayer did not pay more than half the cost of keeping up the home for the tax year.

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### Valid Returns

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### Is A Tax Return A Valid Return?

- A return signed under duress is not a valid return.
- A forged signature or PIN # (electronic filing) does not give rise to a valid election to file a return.
- Regardless, a return is considered valid evidence in a divorce unless the IRS finds it invalid
- Even if forged, IRS will determine whether there's "tacit consent"
  - Lack of reason to refuse to file jointly
  - Past history of filing jointly
  - Absence of objections
  - Delivery of tax information to spouse
  - Financial advantage to MFJ

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### Valid Return? (continued)

- Indications of coercion:
  - Physical, sexual, or emotional abuse
  - Threatened harm to children
  - Threats related to immigration status
  - Isolation
  - Surveillance
  - Shaming
  - Control of access to necessities
  - Other financial control, exploitation

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### What If MFJ Return Is Not Valid?

- Abuse survivor has right to and often should file their own return although may need help from Taxpayer Advocate Service to get it processed.
- Can use IRS Identity Theft procedure to remove tax debt arising from invalid return
  - ID Theft Affidavit - IRS Form 14039
- IRS's Innocent Spouse unit will work duress and forged signature issues even though innocent spouse relief is only available for returns legitimately using MFJ status
- When validity of past joint returns filed is in question, consider this if tax is due on any past returns.

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### Case Scenario

Rebecca

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### Rebecca's Story

- Has two children with Maxim; not married
- Has a restraining order against Maxim because of domestic violence. The RO lists the children.
- Has physical custody of the children, but there is no custody order. Maxim rarely sees the children.
- Rebecca works. Tried to file 2017 return electronically, but IRS rejected it, so filed by mail.
- Instead of receiving her expected refund, Rebecca receives a notice from IRS that most of her refund has been frozen and that she has 30 days to send IRS proof of her relationship to, and 2017 residence of, her children.

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### Rebecca's Questions

- Why is this happening?
- What does Rebecca need to do?
- Where can Rebecca get help?
- How long will it take for this problem to get resolved?
- Will Maxim have access to any information that Rebecca provides to IRS?
- Is there anything Rebecca can do to prevent this from happening in the future?

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### Claiming the Kids

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### Claiming The Kids

- Caveats:
  - Rules are lengthy and complex
  - Terms don't mean what it sounds like they should mean
  - These slides barely touch the issue
- We will sketch out issues that are most common when parents separate or divorce
- These relate primarily, but not entirely, to children the parents have in common.

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### Main Tax Benefits Related to Kids

- Dependent ("Dependency") Exemption (reduces taxable income on 2017 returns but not on returns filed for 2018-2025)
- Child Tax Credit (reduces tax)
- Additional Child Tax Credit (reduces tax and is refundable)
- Earned Income Tax Credit (reduces tax and is refundable)
- Dependent Care Credit (reduces tax)
- Premium Tax Credit (reduces tax and is refundable)

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### Exemptions (2017 and Earlier Returns)

- Exemptions reduce your taxable income.
- You can deduct \$4050 from your income for each exemption you claim on your 2017 tax return.
- Taxpayer can claim a "personal exemption" for self and 2 personal exemptions (self and spouse) if MFJ.
- There is an exemption for each person who qualifies as dependent as "qualifying child" or "qualifying relative."
- IRS Publication 501 explains the rules in detail.

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**Exemptions for Tax Years 2018 - 2025**

- TCJA reduces exemption amount to zero for tax years 2018 – 2025.
- Don't know whether this will be extended for future years or whether an actual deduction for exemption will return after 2025.
- Whether child qualifies as a dependent impacts whether the child can be claimed for the child tax credit, even once the dependency exemption amount is zero so you need to know the dependency exemption rules going forward.
- Uncertainty about post-2025 tax rules complicates divorce proceedings that will result in decrees that govern child tax benefits both before and starting in 2026.

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**Dependency Exemption Tests**

- Qualifying child (QC) must meet 5 tests to be claimed:
  - Relationship – taxpayer's biological, step, adoptive, foster child OR sibling OR taxpayer's child's or sibling's descendant.
  - Age – At end of tax year, must be under 19, or under 24 if full time student, or any age if permanently and totally disabled. Must be younger than taxpayer (unless disabled).
  - Residence – must live with taxpayer for more than half the year (doesn't have to be consecutive.)
  - Support – can't have provided more than half of own support.
  - Joint tax return – can't have filed a joint return except to get a refund.

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**Warning Re: Dependent Rules Related to Age**

- A person who qualifies for the dependency exemption and who is age 17 or over will qualify for a smaller maximum child tax credit than a person under age 17. Applies 2018 – 2025.
- The smaller child tax credit for dependents age 17 and over is also not refundable, which means that it can be used to reduce tax owed (assuming there is tax owed to be reduced) but it is not refundable, meaning that the left over portion, after tax is reduced to zero, cannot be paid to the taxpayer as part of the refund.

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**Dependency Exemption (continued)**

- For divorced or separated parents, custodial parent generally claims exemption. Later slide has exceptions.
- IRS defines custodial parent as one with whom child has spent most number of nights during tax year.
  - If equal, it's parent with highest Adjusted Gross Income (AGI)
  - Parent must be able to document (which is not always easy) where child was if IRS audits
- Court can decide which parent gets dependent exemption, but IRS is not bound by that decision. IRS goes by its own rules.

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**Dependency Exemption (continued)**

- Individual Shared Responsibility Payment (ISRP penalty): Parent who claims the child is responsible for ensuring the child has minimum essential health coverage under ACA or will incur the ISRP penalty.
  - Medicaid is a qualifying coverage.
  - There are exemptions to MEC requirement.
- Parent who claims the child has the benefit of including the child in household size calculations for determining available Premium Tax Credit (to help pay for coverage) for Marketplace health plans.
- Taxpayer who got Advance Premium Tax Credit will have to reconcile eligibility on that year's tax return.
- Individual Shared Responsibility Payment repealed by Tax Cuts and Jobs Act of 2017 after 12/31/18.

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**Dependency Exemption (continued)**

- Exception to custodial parent claiming exemption: if custodial parent releases claim to the exemption (usually as a result of divorce decree.)
- Release entitles non-custodial parent (NCP) to also claim Child Tax Credit and educational credit and puts child in NCP's household for ACA.
- Custodial parent, if otherwise eligible, gets to claim Earned Income Tax Credit and Dependent Care Credit – can't be given to non-custodial parent.
- Release: for divorces finalized after 2008, non-custodial parent (NCP) must file IRS Form 8332 signed by custodial parent with NCP's tax return.

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### Dependency Exemption (continued)

- For divorces or separations after 1984 and before 2009, non-custodial parent (NCP) can attach to tax return the relevant pages from court order (including signature page) granting NCP the exemption.
- Release of exemption must be unequivocal. IRS will not, for example, figure out if non-custodial parent has paid enough support, if that's what decree requires.
- Custodial parent (CP) can revoke grant of exemption using IRS Form 8332 which should be sent to non-custodial parent and attached to CP's tax return.
- If divorce orders one parent to take the exemption, and other parent takes it, divorce can credit the party who was wrongfully taken it.

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### Practice Tips Re: Claiming Kids



- Try to avoid custody orders that split physical custody 50-50.
- Precise 50-50 splits cause neither parent to have child greater than half the year and will disqualify both parents from claiming Earned Income Tax Credit (which can be worth a lot.)
- Encourage your client to keep track of nights children are there.
- If your client is custodial parent, as defined by IRS, client should make sure documents (leases) and records of institutions (schools, FSSA, medical offices) reflect that children live with the client.
- Condition the NCP claiming the child on payment in full of all child related expenses.

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### Case Scenario

Jane

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### Jane's Story

- Married to Edward and separated in May 2017. They have 2 children who live with Jane in the marital residence. Edward pays their expenses.
- Filed joint returns in past years, but Jane was not permitted to see them before they were filed.
- Edward is secretive and Jane has no information about household finances. Jane has no income other than an allowance from Edward, no access to financial records, and no debit or credit card.
- Edward is demanding that Jane file a joint 2017 return with him and states he will keep any refund they are due. If she refuses, he will file on his own and claim the children on his return.

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### Jane's Questions

- What are the pros and cons for Jane of filing a joint return with Edward?
- Are there any remedies for people in Jane's situation who end up owing tax because they have filed a joint return with a spouse who is secretive, and possibly untruthful, about his income?
- If Jane refuses to file a joint return with Edward, can Edward claim the children when he files his own return?
- Even though Jane does not have any income of her own, is there any reason for her to file her own tax return?
- Jane believes that she and Edward have been receiving notices from IRS that Edward has hidden. How can she find out if tax is owed? If she owes tax, what can she do?

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### Which of our Clients Can Claim Kids?

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### Which of our Clients Can Claim Kids?

- Possibly Elizabeth, if the children spent more nights with her during tax year.
  - Children may have spent same number of nights with both parents if Fiona and Elizabeth did not separate until after tax year ended. If so, tie-breaker rules apply.
- Rebecca (considered custodial parent based on children having spent more nights with her.)
- Possibly Jane, if the children spent more nights with her during tax year, but there is likely no financial benefit to her for that year as she had no income.

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### Tax Credits

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### Child Tax Credit

#### About

- Reduces tax that would otherwise be owed.
- Worth up to \$1,000 for 2017 and \$2,000 for 2018 – 2025 for each dependent under age 17 and up to \$500 for older dependents
- IRS Publication 972.
- Changes from Tax Cuts and Jobs Act of 2017

#### Practice Tips

- May be claimed by custodial parent (even if filing MFS) unless they have released dependency exemption. **Child Tax Credit goes with dependency exemption.**
- Taxpayer who earns \$3,000+ in 2017 and \$2,500+ starting in 2018 may qualify for refundable Additional Child tax credit. Refundable means taxpayer receives money (up to amount of unused CTC) even if taxpayer has no tax liability to reduce.

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## Earned Income Tax Credit (EITC)

### About

- A refundable tax credit (produces a refund, doesn't just reduce income to zero).
- The largest cash anti-poverty program in U.S. for working people with children.
- Maximum EITC for 2017 is \$6,318 for household with at least 3 qualifying kids; \$5,616 for 2; \$3,400 for 1; \$510 with no qualifying kids.
- Refund based on income, filing status, # of dependents.

### To Qualify

- Must be US citizen, permanent resident, or nonresident filing jointly with citizen/resident.
- Must have earned income.
- Must have SSN and qualifying child (QC) must have SSN
- QC must satisfy relationship, age, residence, and joint filing test.
- If no children, must be age 25-64 at end of tax year.
- Cannot qualify if spouse has ITIN, unless filing HOH
- Investment income has to be below \$3,450 (2017)

See Tax Advocacy Brief for more

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## Questions

- Who gets to claim kids when both parents appear to qualify?
- Which of our clients qualify for the Child Tax credit? The Earned Income Tax Credit?
- What happens when one parent files a return claiming children (and credits) before the other? (known as: the race to file)

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## EITC continued

- Must file a tax return to get it.
- Unlike dependency exemption and CTC, cannot be transferred to NCP.
- Only person who qualifies may claim it.
- Parent who qualifies can claim it even if other parent is granted dependency exemption for that year.
- Not available to taxpayer filing MFS (Elizabeth, Jane)
- Not available to taxpayer with ITIN (Elizabeth)
- Not available to taxpayers filing MFJ if one spouse has ITIN
- Is available to taxpayers filing MFJ, HOH, Single

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### EITC: Who Gets To Claim Kids When Both Parents Appear To Qualify?

- Tiebreaker rules apply if both parents want to claim children for EITC.
- Credit is allowed to parent with whom child resided the longest during the tax year.
- If child resided equal time with both parents, EITC goes to parent with highest adjusted gross income (for 2017, AGI is on Form 1040, line 37.)

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### EITC Audits

- Around 1/3 of all IRS audits are of taxpayers claiming EITC. (Rebecca)
- Error rate is high because:
  - EITC rules are very complicated.
  - EITC is subject to abuse by tax preparers and taxpayers
- IRS usually require taxpayer to prove:
  - Relationship to claimed children.
  - Proving children lived with taxpayer for more than 6 months of the year.
  - Proving taxpayer had cash income reported on the return.
- IRS requires documentation which is often hard to get.

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### Tips For Clients Who Might Face Kid-Related Audit



- Keep a contemporaneous calendar noting when you had kids.
- Make sure lease lists children if they live with you.
- Correct school, day care, medical records to reflect where kids live.
- Don't let kids who live with you receive benefits elsewhere.
- Save copies of FSSA notices that list members of household.
- Keep birth certificates, paternity orders, and other documents which document relationship
- Make sure your client knows how to get legal help to deal with an audit!

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### Race To File To Claim The Kids

- What happens when one parent files a return claiming children the other parent intended to claim?
- Filing first prevents second parent from filing electronically.
- Second parent can and should file a return by mail and keep proof of mailing. It takes IRS around 6-8 weeks to process a paper return.
- IRS may review both before processing, process one or the other, or audit one or both.
- If client fears one parent has filed first, client should still try to file electronically.
- This is what led to Rebecca's audit.

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### Race To Claim Kids continued

- Remember – IRS considers the custodial parent (CP) to be the one with whom the child spent the most nights (regardless of what decree says.) But IRS usually doesn't "know" where child is.
- Often CP in decree is also the one who has child most nights.
- NCP can't claim child unless CP releases exemption by signing a form (8332) covering the specific year. (Remember, can't release right to claim EITC.)
- Solution for CP when NCP has wrongfully claimed CP's child is for CP to file a paper tax return claiming the child and let IRS figure it out.

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### Questions?

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What you can do to address tax issues in family law cases with survivors?

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### Tips For Representing Abuse Survivors

- Talk about upcoming and past due tax returns:
  - Filing status
  - Claiming kids
  - Filing a return, even if no filing obligation, is a way to protect survivor from involuntary or fraudulent joint return filed by spouse.
- If spouse is using abuse survivor's SSN and other ID without consent, file a police report and an ID theft report with IRS using IRS Form 14039, ID Theft Affidavit.
  - How does the survivor feel about this?
  - What are potential risks? Are there alternatives to police reports?
- File IRS Form 8822 listing reliable mailing address for your client, so client will get notices of IRS audit, collection activity, etc.

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### More Tips For Representing Abuse Survivors

- Injured Spouse Relief – IRS Form 8379
  - Useful if survivor has filed a joint return and had their share of refund taken to pay toward spouse's individual debt (child support, student loan, etc.)
  - Not useful if refund was applied to a joint debt of survivor and spouse.
  - Not applicable if tax return did not generate a refund.
  - Form 8379 can be filed with the joint return or by itself.
  - And, can go back and get survivor's share of refunds for last 3 years using Form 8379.

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### Even More Tips For Survivors



- The mechanics of splitting the refund from a joint return are tricky and not always satisfactory.
- Filers can designate up to 3 accounts into which portions of a refund will be deposited. No way to do this on a joint return without revealing information about survivor's bank account.
- A portion of the refund can be issued in the form of a paper check.
- Divorce decree can designate who is responsible for paying tax debts, but IRS is not bound by what the decree says. Will pursue both spouses if tax arises from joint return.

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### FAQs

- Who's considered the "custodial parent?"
  - For IRS purposes: custodial parent is one with whom child spent most nights.
  - Custodial parent can claim child or release dependency exemption.
  - Only custodial parent can claim EITC (even if released exemption.)
- Does it ever make sense to give up exemption?
  - Yes. When a survivor only has SSI income and won't benefit from exemption.
  - If the other parent works and gets the exemption, it can improve chances that survivor will actually receive child support.
  - Can use giving up exemption to negotiate for better settlement.

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### The Divorce Decree/Settlement Document

- Language in the document can allocate certain child tax benefits. It can state which parent can claim a specific child as a dependent (which governs claiming the child tax credit and additional child tax credit.)
- Document can address future years in different ways, such as alternating claiming the kids, and can address each child differently.
- Document can, for example, condition the NCP claiming the child on the NCP being current on support or having paid a certain % of ordered support.
- IRS is not bound by the family court decree. IRS has its own rules. So if decree permits the NCP to claim the child, the decree should order the CP to release exemption using form 8332.

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### Untested Tip For Decrees Following TCJA

- Even though the the exemption for a dependent will be \$0 for 2018 – 2025, it may have value after 2025, so specify which parent can claim the child “as a dependent and for the child tax credits.”
- TCJA creates a new child tax credit (up to \$500 non-refundable) for persons who eligible to be claimed as dependents who are age 17 and over, which is another reason to specify who can claim the child as a dependent and for the child tax credit.
- Remember: Custodial parent who releases the exemption can still claim the child for the dependent care credit, the EITC, and HOH filing status.

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### Other Tips For Court Decree

- Decree/settlement document can also include language that:
  - Survivor was not aware of any omitted income or over-stated deductions on jointly filed return.
  - Survivor believed any taxes due from joint return would be paid by spouse.
  - Spouse will be liable for any tax liabilities or balance due from joint return.
- IRS is not bound by language in court document. But IRS may be persuaded to grant survivor relief from joint liability based, in part, on language in decree or settlement document.

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### Child Support and Alimony

- Child support is not taxable to recipient and it is not a deduction for payer.
- For 2017 and 2018 returns, alimony is still taxable income for the person who receives it and must be reported on the recipient's tax return. It is also a tax deduction for person paying it. IRS has its own definition of alimony.
- Under the TCJA, for divorce decrees signed after 12/31/2018, alimony is neither a deduction for the payer or income for the recipient.
- Divorcing spouses with decrees signed prior to 1/1/2019 can elect to use the new alimony rules.
- Modifications of decrees signed prior to 1/1/2019 are governed by new rules.

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### Collection Alternatives

- IRS has many tools to collect tax including levying wages, bank accounts, and Social Security benefits.
- IRS offers alternatives to collection:
  - Currently not collectible status: Based on demonstrated hardship (financial analysis of income, assets, and allowable expenses), IRS will agree to take no action to collect tax other than keeping future refunds.
  - Installment agreement: IRS will accept proposal for monthly payments that will fully or partially pay tax.
  - Offer in Compromise – IRS will settle the tax debt for less than full amount due based on what taxpayer can afford.
- Consult a tax professional to help a client facing collection.

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### IRS Disclosure Rules

- IRC §6103 – all tax return info is kept confidential from anyone who did not sign the tax return. Exceptions include:
  - Individuals/entities specifically designated by taxpayer
  - State tax departments
  - State/local law enforcement agencies
  - Personal representative of deceased taxpayer
  - Guardian of legally incapacitated taxpayer
  - Bankruptcy trustee
  - Congressional committee
- Tax returns must be exchanged by the parties in a divorce

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### IRS Disclosure Rules continued

- Taxpayer authorizes disclosure verbally (as on a 3 party phone call with IRS) or by signing IRS Form 2848 or 8821 or 4506 (request for transcript of tax return.)
- Innocent Spouse Relief – by law IRS must contact non requesting spouse and allow NRS to participate in process. Information is available to public on Tax Court website although protective orders are available.
- Disclosure can be revoked.
- Penalties exist for unauthorized disclosure.

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### Practice Tip



- Taxpayers can get information about their own tax situation from IRS including:
  - Account Transcripts for all years showing tax return activity, audits, refunds, liabilities, payments, etc.
  - Wage and Income Transcript showing income reported to IRS on W2, 1099s, etc. for taxpayer (last 6-8 years.)
  - Tax Return Transcripts for last 3 years (Form 4506-T)
  - Actual copy of tax return for \$50 per return (Form 4506)
  - Freedom of Information Act request can provide much more detail and is particularly useful when there's been an audit, collection activity, IS relief request.

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### Tax Resources & Partnership Building

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### Getting Free Tax Help

- Low Income Taxpayer Clinics provide free legal representation to low income taxpayers with federal tax problems
  - May include help with audits, collection, innocent spouse relief, appeals, and much more.
  - LITCs also provides education and outreach to taxpayers, agencies, and other advocates with particular emphasis on outreach and education for survivors and for taxpayers who first language is not English.

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### What Low Income Taxpayer Clinics Can Do For You

- We can answer your client's tax questions.
- We can resolve your client's tax problems.
- We can answer your questions.
- When you're in the middle of a pro bono divorce case, if you can provide sufficient financial information, we can compute how much your client and your client's spouse would each benefit from being able to claim the kids.
- We can speak to groups that you work with about issues related to tax.

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### Another Source of Free Tax Help

- Taxpayer Advocate Service
  - Independent organization within IRS providing free help to resolve problems with IRS.
  - TAS can help if
    - Tax problem is causing financial difficulties for taxpayer
    - Taxpayer has tried repeatedly to contact IRS but can't get a response by date promised
    - Taxpayer faces immediate threat of adverse action (such as IRS levy on wages)
  - Each state and some localities have a local TAS office. There is a locator on the Taxpayer Advocate Service website.

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### More Free Tax Help

- VITA (Volunteer Income Tax Assistance) provides free tax preparation help for people earning under \$54,000/year.
- TCE (Tax Counseling For Elderly) also offers free tax help and specializes in income issues for older taxpayers.
- Types "VITA locator" into search function on [www.irs.gov](http://www.irs.gov). You'll see a blue tab which provides the site location based on distance from a zip code you've typed in.
- Use "Free File" on IRS website to e-file your own tax return using free software, for taxpayers with income below \$62,000.

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## Case Scenarios & Discussion

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## Rebecca's Questions

- Why is this happening?
- What does Rebecca need to do?
- Where can Rebecca get help?
- How long will it take for this problem to get resolved?
- Will Maxim have access to any information that Rebecca provides to IRS?
- Is there anything Rebecca can do to prevent this from happening in the future?

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## Answers to Rebecca's Questions

- Couldn't file her return electronically because Maxim filed first and claimed the kids. Her return (and probably his) is being audited because IRS wants to make sure that child-related benefits are awarded to correct taxpayer.
- Must send IRS documents it requested. Examples: birth certificates or court records showing she is related to them; leases, school, court, medical records to establish that children lived with her for more than 6 months of the year.
- Get help from LITC or TAS or tax attorney or CPA
- Could take many months before IRS makes a decision
- Maxim won't have access to any information she submits to IRS
- Hard to prevent recurrence. Make sure kids' documents reflect her address!

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### Elizabeth's Questions

- How can Elizabeth file a tax return without a valid SSN?
- Should Elizabeth file a tax return? What are the benefits to Elizabeth from claiming the children, and will those change when she has obtained immigration status?
- What should Elizabeth consider when deciding whether to let Fiona claim the children?
- If Elizabeth agrees that Fiona can claim the children now, will Elizabeth be able to claim them in the future.

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### Answers to Elizabeth's Questions

- Can file ITIN application along with tax return and required documents
- Filing a tax return may be required if her income is high enough. Compliance with tax laws important to improve immigration status. Even though ITIN filers not eligible for EITC, claiming kids may reduce tax owed and can still qualify for refundable CTC.
- Letting spouse claim kids may be negotiating tool. May improve spouse's ability to pay child support, marital debts, alimony. If she doesn't benefit from claiming them now (because insufficient income), may make sense for other spouse to benefit.
- Court decree can specify, for example, that she can claim once she earns certain amount, after certain number of years, in alternating years, etc.

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### Jane's Questions

- What are the pros and cons for Jane of filing a joint return with Edward?
- Are there any remedies for people in Jane's situation who end up owing tax because they have file a joint return with a spouse who is secretive, and possibly untruthful, about his income?
- If Jane refuses to file a joint return with Edward, can Edward claim the children when he files his own return?
- Even though Jane does not have any income of her own, is there any reason for her to file her own tax return?
- Jane believes that she and Edward have been receiving notices from IRS that Edward has hidden. How can she find out if tax is owed? If she owes tax, what can she do?

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## Answers to Jane's Questions

- Filing MFJ means that she is jointly and severally liable for any resulting tax. Spouse is secretive and may be providing erroneous information on return. Filing jointly will likely result in lower tax bill or bigger refund for them as a couple. Court may award her entire refund or a portion of it.
- Seeking innocent spouse relief may result in her owing none or only a portion of tax arising from joint returns. IRS may also settle a tax debt for less than the amount owed, based on taxpayer's ability to pay.
- Edward cannot claim children if they haven't lived with him more than half the tax year unless Jane signs form 8332 permitting the exemption.
- Filing her own return can protect Jane from Edward filing with her name
- She can contact IRS to find out if she owes tax. If she owes tax, she can contact an LTC or other tax practitioner for help.

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## Questions?

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## Part 2 next week! October 17

- Don't forget Part 2 next week!
- Format:
  - Hear from Taxpayer Opportunity Network & Kentucky Coalition Against Domestic Violence
  - Have deep conversations with faculty about strategies: needs, partnership building, systems change
- Come with questions and ready to talk!

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## Tax & Family Law Resources

[Tax Advocacy Brief \(2016\)](#)

[Guidebook Chapters](#)

- Chapter 9: Tax advocacy
- Chapter 10: Financial Issues in Family Law

[CSAJ's Pilot Site Report](#)

Indiana Legal Services, Low Income Taxpayer Clinic

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## Additional Resources

### Assessment Tools

[Download](#)

### Advocacy Tools

- ▣ [Past Webinar & Training](#)
- ▣ [Resource Library](#)
  - ▣ Federal Taxes
  - ▣ Coerced Debt
  - ▣ Eviction & Foreclosure
  - ▣ Credit Reporting & Repair
  - ▣ Banking & financial services
  - ▣ Consumer and Criminal Record Barriers
  - ▣ Employment & Housing Access
  - ▣ ...and more

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## Spotlights on Innovative Consumer Justice Initiatives

- ▣ **Purpose:** Spotlights are a Peer Exchange opportunity to share best-practices in consumer and economic advocacy with the field.
- ▣ Interested? **Complete this form** <https://goo.gl/forms/jDpmAlQKDzapoG3i2>
- ▣ We'll follow-up!

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## CSAJ's Guidebook

**Guidebook on Consumer & Economic Civil Legal Advocacy for Survivors**

A comprehensive and survivor-centered guide for domestic violence advocates and attorneys

**Chapters include:**

- Credit reporting and repair
- Debt collections and defense
- Bankruptcy and foreclosure
- Federal tax advocacy
- Economic relief in civil protection orders
- Economic issues in family law
- Barriers in civil court
- Rights and protections: housing and employment

<https://csaj.org/Guidebook>

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## Accounting for Economic Security

An Atlas for Direct Service Providers

**Mapping the Terrain**

1. Economic hardship and poverty constrain survivors' options for safety
2. The economic impact of violence ripples throughout survivors' lives
3. Systemic barriers impede survivors' access to economic stability
4. Social inequality restricts survivors' options for economic security and safety

[Download](#)

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## Listening Sessions & Report

*Purpose is to dialogue-back with Listening Session conversations in order to aid self-reflection, challenge dominant narratives, support improved data collection and analysis, and to begin, continue, or advance conversations and work toward racial equity for domestic and sexual violence survivors and for all of us.*

[DOWNLOAD](#)

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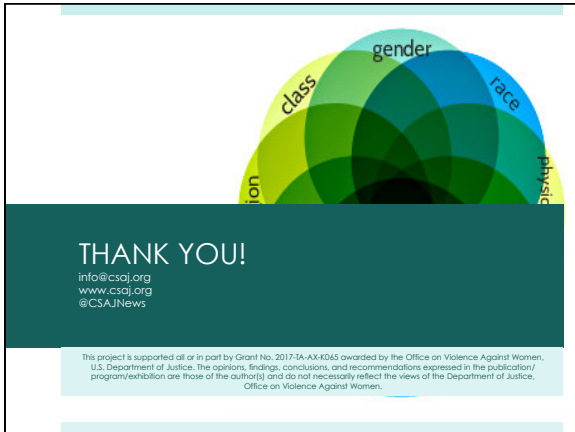
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