WELCOME TO THE VAP CLE ECHO

SESSION 3
JANUARY 30, 2025

Allocating Income Tax Benefits Between Parents in a Split-Up

Agenda

Introductions & Annoucements: Nedia Isabella (Bella) Zayani
Statewide Pro Bono Coordinator, New Mexico Legal Aid, Inc.

Topic Presentation: Allocating Income Tax Benefits Between Parents in a Split-Up

Topic Presenter: Grace Allison, Staff Attorney & Former Director, New Mexico Legal Aid, Low Income Taxpayer Clinic

Case Analysis and Q&A: Grace Allison, Staff Attorney & Former Director, New Mexico Legal Aid, Low Income Taxpayer Clinic

Closing Remarks: Volunteer Attorney Program, New Mexico Legal Aid, Inc.

Why We Are Here

Child-based income tax benefits may comprise 10-20 percent of cash flow for low or middle income families with children in New Mexico

“Qualifying Child”

The key to claiming child-based income tax benefits is having (or being *treated* as having) a “Qualifying Child”

“Qualifying Child”: I.R.C. Section 152(c)

- ❑ **Residency:** ***“more than ½ the year” test***
- ❑ **Relationship**
- ❑ **Age:** ***Either (i) under 19 or (ii) under 24 and a “student” or (iii) any age and “permanently and totally disabled”***
- ❑ **Support**
- ❑ **No Joint Return**

Allocating Certain Child-Based Income Tax Benefits Between Parents

- Under I.R.C. Section 152(e)(1), the custodial parent can elect to have one or more of their "qualifying children" treated as the "qualifying children" of the non-custodial *parent—but only for purposes of four child-based tax benefits*

Allocating Certain Child-Based Income tax Benefits Between Parents (con.)

- **For income tax purposes, the "custodial parent" is the parent who has physical custody of the child for the *greater part of the year,*** I.R.C. Section 152(e)(4)(A)

IRS Form 8332

Form **8332**
(Rev. October 2018)
Department of the Treasury
Internal Revenue Service

Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent

► Attach a separate form for each child.
► Go to *www.irs.gov/Form8332* for the latest information.

OMB No. 1545-0074
Attachment Sequence No. **115**

Name of noncustodial parent	Noncustodial parent's social security number (SSN) ►	

Note: This form also applies to some tax benefits, including the child tax credit, additional child tax credit, and credit for other dependents. It doesn't apply to other tax benefits, such as the earned income credit, dependent care credit, or head of household filing status. See the instructions and Pub. 501.

Part I **Release of Claim to Exemption for Current Year**

I agree not to claim an exemption for ______________________
Name of child

for the tax year 20 ____.

Signature of custodial parent releasing claim to exemption | Custodial parent's SSN | Date

Note: If you choose not to claim an exemption for this child for future tax years, also complete Part II.

Part II **Release of Claim to Exemption for Future Years** (If completed, see **Noncustodial Parent** on page 2.)

I agree not to claim an exemption for ______________________
Name of child

for the tax year(s) ______________________.
(Specify. See instructions.)

Signature of custodial parent releasing claim to exemption | Custodial parent's SSN | Date

Part III **Revocation of Release of Claim to Exemption for Future Year(s)**

I revoke the release of claim to an exemption for ______________________
Name of child

for the tax year(s) ______________________.
(Specify. See instructions.)

Signature of custodial parent revoking the release of claim to exemption | Custodial parent's SSN | Date

IRS Form 8332 (con.)

- The custodial parent completes & signs Form 8332

- But . . . for the election to be valid, the non-custodial parent must file the Form 8332 with their Form 1040 for each covered year

I.R.C. Section 152(e)(2)

Which Child-Based Income Tax Benefits *Can* Be Allocated Between Parents?

- ✓ Child Credit, IRC Section 24(h)
- ✓ Other Dependent Credit, IRC Section 24(h)(4)
- ✓ American Opportunity Tax Credit, IRC Section 25A
- ✓ Lifetime Learning Credit, IRC Section 25A

Which Child-Based Income Tax Benefits *Can't* Be Allocated Between Parents?

X Earned Income Tax Credit, *see* IRC Section 32(c)(3)(A)

X Head of Household Filing Status, *see* IRC Section 2(b)(1)(A)(i)

X Child and Dependent Care Credit, *see* IRC Section 21(e)(5)

Quizlet #1: A Common Mistake

Counsel for the non-custodial parent insists:

"If my client is going to pay child support, he should have the right to claim the children on his taxes for all purposes."

Practice Tips. . .

- Have each parent agree in writing to claim only those child-based income tax benefits to which they are entitled for federal and state income tax purposes

- If the custodial parent agrees to allocate child-based income tax benefits, have them sign and deliver Form(s) 8332 to the non-custodial parent

Quizlet #2: IRS Form 8332

The parenting agreement says: Jack may “claim” his child Jillian on his taxes. Jillian lives with her mother for more than half the year. There is no Form 8332.

What result?

Bottom Line . . . .

The custodial parent can use IRS Form 8332 to allocate *four child-based income tax benefits* to the non-custodial parent

Without a signed IRS Form 8332, a non-custodial parent *cannot lawfully claim* <u>any</u> child-based income tax benefits

Quizlet #3: IRS Form 8332

Jillian lives with her mother, is under 17 and is a U.S. citizen. Her mother gives Jillian's father a signed Form 8332

The father, Jack, claims the earned income tax credit and the child tax credit for one "qualifying child," Jillian

What result?

IRS Form 8332 (con.)

With a signed Form 8332 attached to their federal income tax return, the non-custodial parent can claim (assuming all other requirements are met):

- ✓ Child Tax Credit
- ✓ Other Dependent Credit
- ✓ American Opportunity Tax Credit
- ✓ Lifetime Learning Credit

Refresher: Child Tax Credit

Maximum available: $2,000 per "qualifying child" under age 17 who is a U.S. citizen

First applied to reduce tax owed, if any

Excess ("additional child tax credit") *may* be refunded to taxpayer, but only up to *$1,700* and only if *earnings requirement* is satisfied.*

* In 2024, ACTC for two children is limited to the lesser of $1700 or 15% of the excess of earned income over $2,500; further limitations if 3 or more children, I.R.C. Sections 24(d)(1) and (h)

Quizlet #4: Child Tax Credit

In 2024, Jill, whose filing status is "head of household," earns $20,000 as a housekeeper. She has two "qualifying children" under 17 who are U.S. citizens.

Thanks to the standard deduction, Jill has no income tax liability. What is the maximum child tax credit she can claim for 2024?

Quizlet #5: Child Tax Credit

Jack and Jill, the parents of six minor children, are splitting up. Jill will be the custodial parent and is asking for more child support. Assume Jill will never work outside the home.

Jack says: "You get to claim the children on your taxes! Why should I give you more child support?"

Which Child-Based Income Tax Benefits Can Be Allocated Between Parents?

- ✓ Child Credit, IRC Section 24(h)
- ✓ Other Dependent Credit, IRC Section 24(h)(4)
- ✓ American Opportunity Tax Credit, IRC Section 25A
- ✓ Lifetime Learning Credit, IRC Section 25A

Other Dependent Tax Credit

- **$500 non-refundable tax credit: can only be used to offset tax otherwise due**

- **Available if taxpayer has *or is treated as having:***
  - **"qualifying child" 17 or older *or***
  - **"qualifying child" who is not a U.S. citizen**

Quizlet #6: Other Dependent Tax Credit

Jillian is 17. Jack is retired, with investment earnings of $150,000 and a signed Form 8332 that allows him to treat Jillian as his "qualifying child" for certain income tax purposes.

Can Jack claim the child tax credit for Jillian? The other dependent tax credit?

American Opportunity Tax Credit

- Maximum $2,500 tax credit for "qualified tuition & expenses," paid by taxpayer for a "qualifying child," I.R.C. Section 25A(b)

- 40 percent refundable, I.R.C. Section 25A(i)

- Available for first four years of post-secondary only, I.R.C. Section 25A(b)(2)(C).

Lifetime Learning Credit

- Maximum $2,000 non-refundable tax credit for "qualified tuition and related expenses" paid by taxpayer for a "qualifying child," I.R.C. Section 25A(c)(1)

- Includes expenses incurred to acquire or improve job skills, I.R.C. Section 25A(c)(2)(B)

Quizlet #7: Form 8332

Can Form 8332 be limited to the years a child is in college or trade school?

IRS Form 8332

Form **8332**
(Rev. October 2018)
Department of the Treasury
Internal Revenue Service

Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent

► Attach a separate form for each child.
► Go to *www.irs.gov/Form8332* for the latest information.

OMB No. 1545-0074
Attachment Sequence No. **115**

Name of noncustodial parent

Noncustodial parent's social security number (SSN) ►

Note: This form also applies to some tax benefits, including the child tax credit, additional child tax credit, and credit for other dependents. It doesn't apply to other tax benefits, such as the earned income credit, dependent care credit, or head of household filing status. See the instructions and Pub. 501.

Part I **Release of Claim to Exemption for Current Year**

I agree not to claim an exemption for ______________________
Name of child

for the tax year 20 ______.

Signature of custodial parent releasing claim to exemption | Custodial parent's SSN | Date

Note: If you choose not to claim an exemption for this child for future tax years, also complete Part II.

Part II **Release of Claim to Exemption for Future Years** (If completed, see **Noncustodial Parent** on page 2.)

I agree not to claim an exemption for ______________________
Name of child

for the tax year(s) ______________________.
(Specify. See instructions.)

Signature of custodial parent releasing claim to exemption | Custodial parent's SSN | Date

Part III **Revocation of Release of Claim to Exemption for Future Year(s)**

I revoke the release of claim to an exemption for ______________________
Name of child

for the tax year(s) ______________________.
(Specify. See instructions.)

Signature of custodial parent revoking the release of claim to exemption | Custodial parent's SSN | Date

Joint Custody: "Qualifying Child"

- A year has 365/366 days
- A "qualifying child" must live with the taxpayer for more than half the year

PHYSICAL CUSTODY IS WHAT COUNTS FOR INCOME TAX PURPOSES

Joint Custody: "Qualifying Child" (con.)

Without a Form 8332, can a child be the "qualifying child" of both parents in a joint custody situation?

And the answer is . . . . . NO!

Quizlet #8

Assume that Y and Z are the children of A and B. A is the custodial parent for tax purposes. B is the non-custodial parent and will pay the college tuition. Will this language work?

The parties agree that Y and Z shall be treated as the "qualifying children" of B in alternate years, beginning in ____ and ending in_____, to the extent allowed for federal and state income tax purposes.

IRS Form 8332

Form **8332** (Rev. October 2018) Department of the Treasury Internal Revenue Service

Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent

► Attach a separate form for each child.
► Go to *www.irs.gov/Form8332* for the latest information.

OMB No. 1545-0074
Attachment Sequence No. **115**

Name of noncustodial parent | **Noncustodial parent's social security number (SSN)** ►

Note: This form also applies to some tax benefits, including the child tax credit, additional child tax credit, and credit for other dependents. It doesn't apply to other tax benefits, such as the earned income credit, dependent care credit, or head of household filing status. See the instructions and Pub. 501.

Part I **Release of Claim to Exemption for Current Year**

I agree not to claim an exemption for ______________________
Name of child

for the tax year 20 ______.

Signature of custodial parent releasing claim to exemption | Custodial parent's SSN | Date

Note: If you choose not to claim an exemption for this child for future tax years, also complete Part II.

Part II **Release of Claim to Exemption for Future Years** (If completed, see **Noncustodial Parent** on page 2.)

I agree not to claim an exemption for ______________________
Name of child

for the tax year(s) ______________________.
(Specify. See instructions.)

Signature of custodial parent releasing claim to exemption | Custodial parent's SSN | Date

Part III **Revocation of Release of Claim to Exemption for Future Year(s)**

I revoke the release of claim to an exemption for ______________________
Name of child

for the tax year(s) ______________________.
(Specify. See instructions.)

Signature of custodial parent revoking the release of claim to exemption | Custodial parent's SSN | Date

Multigenerational Households I.R.C. Section 152(c)(4)(C)

If . . . . . parents may claim a child as their "qualifying child" but don't,

And the child is also the "qualifying child" of another taxpayer,

Then that taxpayer may claim the child, but only if the taxpayer's adjusted gross income is higher than the adjusted gross income of either parent

Both Parents Claim Child: I.R.C. Section 152(c)(4)(B)

Assume the parents do not file a joint return together. There is no Form 8332. If both claim the same child or children, each child is treated as the "qualifying child" of:

> **"The parent with whom that child resided for the longest period of time"; or**
>
> **If that child "resides with both parents for the same amount of time, the parent with the highest adjusted gross income"**

Default rule
I.R.C. Section 152(c)(4)(A)

Except as provided in I.R.C. Sections 152(e)(4)(B) and (C),

if a child may be claimed as a "qualifying child" by two or more taxpayers, one of whom is a parent of the child, the child shall be treated as the qualifying child of the parent

If neither taxpayer is the parent, the child is treated as the qualifying child of the taxpayer with the highest adjusted gross income for that year

New Mexico Income Tax & "Qualifying Children"

- ✓ NM Child Income Tax Credit: only available to taxpayers with "qualifying children," NMSA Section 7-2-18.34J(2)(1978)

- ✓ NM Working Families Tax Credit: 25 percent of federal earned income tax, NMSA Section 7.2-18.15 (1978)

New Mexico Income Tax & "Qualifying Children"

- ✓ NM Dependent Child Cay Care Credit: available to children under 15 who are "dependents" as defined in IRC Section 152(c), NMSA Section 7-2-18.1A(3) (1978)
- ✓ NM Low-Income Comprehensive Tax Rebate: includes in the household any minor child or stepchild of the taxpayer who "would be a dependent for federal income tax purposes," NMSA Section 7-2-14C (1978)

Anything else?

- ❑ Check federal and state personal income taxes for outstanding liability and unfiled returns
  - ➢"Get transcript" on IRS.gov, https://www.irs.gov/individuals/get-transcript
  - ➢NM Taxpayer Access Point or NMTRD Call Center, 1-866-285-2996
- ❑ If there is a business, confirm all gross receipts and payroll taxes are up to date
- ❑ If there is outstanding liability or missing returns, assign responsibility at both family court and, if appropriate, tax agency levels

❑ Innocent Spouse Relief (Federal)

I.R.C. Section 6015(b):

Relief from joint and several income tax liability created by understatement due to erroneous item(s) of one spouse if the other spouse "did not know and had *no reason to* know" of the understatement

OR

I.R.C. Section 6015(c):

Allocation of income tax liability between spouses based on to whom the income is "allocable"

OR

I.R.C. Section 6015(f) and IRS Rev. Proc. 2013-34:

Equitable relief

❑ Innocent Spouse Relief (New Mexico)

Volunteer Attorney Program of New Mexico Legal Aid

Project ECHO

NMSA Section 7-1-17.1 A-J (1978)

NOT the mirror image of I.R.C. Section 6015

BUT:

NMTRD will grant relief to spouse who has received relief under I.R.C. Section 6015

Getting Innocent Spouse Relief

- ❑ Elect relief under I.R.C. Section 6015 by filing IRS Form 8857 or by pleading in U.S. Tax Court petition.

  NOTE DEADLINES

- ❑ File NMTRD Form RPD-41337 for relief under NMSA Section 7-1-17.1 (1978)

Case Presentation

LEGAL ISSUE: Allocating Income Tax Benefits Between Parents in a Split-Up

Factual Summary

- Jill is happy to have escaped from her relationship with Jack, a hard-working bank executive. Although the relationship was not abusive, Jack never seemed to have any time for her or their children, Jillian and Jacques.
- Now Jill works full-time selling clothes at Chico's and has full custody of the children. However, when she attempts to file her 2024 taxes online, she learns that "someone else" has already claimed them. She confronts Jack who responds, "They're my children too."

Questions of Practice

- Ideally, when and how should this problem have been addressed?
- Jack is not abusive and makes substantially more money than Jill. Suggest some alternatives for resolving this situation.
- Might a Form 8332 be helpful? For which tax years?
- What about IRS IR 2024-294?
- What about New Mexico?

Volunteer Attorney Program of New Mexico Legal Aid

Project ECHO®

We will notify you of additional training opportunities tied to special pro bono projects later in the year.

Available Resources

You can access CLE recordings, presentation, and resource materials through our resource site.

Your iECHO account also houses the presentation materials and sends you automated reminder emails ahead of scheduled CLE sessions.

https://vapnm.org/volunteer-resources/

Password: VAP2024

https://iecho.org/public/program/PRGM16921178184840PRGIS6GZR

First Quarter Volunteer Opportunities

Telephonic Consultations:

- 2/20, Statewide Teleclinic

In-Person Consultations:

- 3/15, Chaparral Legal Fair
- 2/27, Grants Legal Fair
- 3/28, Albuquerque Law-La-Palooza

Email bellaz@nmlegalaid.org for additional information or

Scan the QR code to express interest in volunteering for one or more of these events!

To receive CLE credit for this session, you must submit the post-session survey no later than 7 days following the CLE.

****Credits will not be filed for submissions after this deadline.***

THANK YOU FOR JOINING TODAY'S
VAP CLE ECHO SESSION!

SESSION 3
JANUARY 30, 2025

Topic & Case Presenter:

Grace Allison, J.D.

Staff Attorney & Former Director
New Mexico Legal Aid Low Income Taxpayer Clinic

Facilitated By:

Nedia Isabella (Bella) Zayani, Esq

Statewide Pro Bono Coordinator,
New Mexico Legal Aid Volunteer Attorney Program

Marissa Gonzalez
Paralegal,
New Mexico Legal Aid Volunteer Attorney Program

vapecho@nmlegalaid.org