

Pending Divorce Does Not Change Marital Status for Income Tax Filing

Q: My spouse and I are going through a divorce, but it has not been finalized. If I am still married at the end of the year, but my divorce becomes final before the tax-filing deadline, should I file my income tax return as a married person or as a single person?

A: Your marital status at the end of the tax year is what determines your filing status. If you are still married on December 31 of the tax year, then you will file as "married" whether or not your divorce has become final by tax-filing time.

Q: Can we file separately, or must we file a joint return?

A: Most people in your situation reach a decision together, or through their attorneys, on how to file their income tax return. They look at what is most beneficial to both of them and the family.

Q: If we decide to file a joint return and there is a refund, who gets the refund?

A: It depends. People generally reach a mutual decision themselves and/or with the advice of their respective attorneys on how any income tax refund will be divided. Likewise, if there is an amount due the IRS, the same principle will apply.

Q: What if we can't agree?

A: If the divorce is close to being final, the attorneys and court may suggest that you file for an extension so that the issue can be addressed in the Final Judgment Entry of Divorce. Or, if the divorce is likely to continue beyond any extension period, the court may hold a hearing on the issue and make the decision for you.

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This "Law You Can Use" legal information article was provided by the Ohio State Bar Association. It was originally prepared by Sylvania attorney Pamela Manning, and updated by Cleveland attorney Laurel G. Stein.

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