

# TAX PROTECTIONS FOR DOMESTIC VIOLENCE SURVIVORS

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*Some materials adapted from the National Women's Law Center*

## STARTING THE TAX RETURN



## FILING STATUS

- Filing status choices:
    - Single
    - Married Filing Jointly
    - Married Filing Separately
    - Head of Household
    - Qualifying Widow(er) with a Dependent Child
  
  - Marital status is determined based on the last day of the taxable year (unless a spouse died during the year)
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## FILING STATUS OPTIONS FOR MARRIED SURVIVORS

- Married survivors don't necessarily have to file jointly:
    - Married Filing Separately (Less favorable tax rates)
    - MFS will disqualify for the federal EITC and Child and Dependent Care Tax Credit
  - If legally separated, can file as Single (or Head of Household if other requirements are met)
    - Can use HOH (and get more favorable rates) if survivor is either single or did not live with spouse for the last 6 months of the year AND
    - Pays half the cost of maintaining a household
    - Where a dependent child lives for over half the year
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## TAX LIABILITY FOR MARRIED SURVIVORS

- **There is generally joint and several liability for the full amount due under a married filing jointly tax return.**
- If survivor's signature was forged, the return is not valid – this is identity theft!
  - If survivor signed under duress, the return is not valid. To prove duress, must show that at the moment the return was signed, the spouse was unable to resist the demands from the other spouse to sign the return, and the spouse would not have signed the return but for the pressure from the other spouse
    - \*Narrower definition than abuse\*



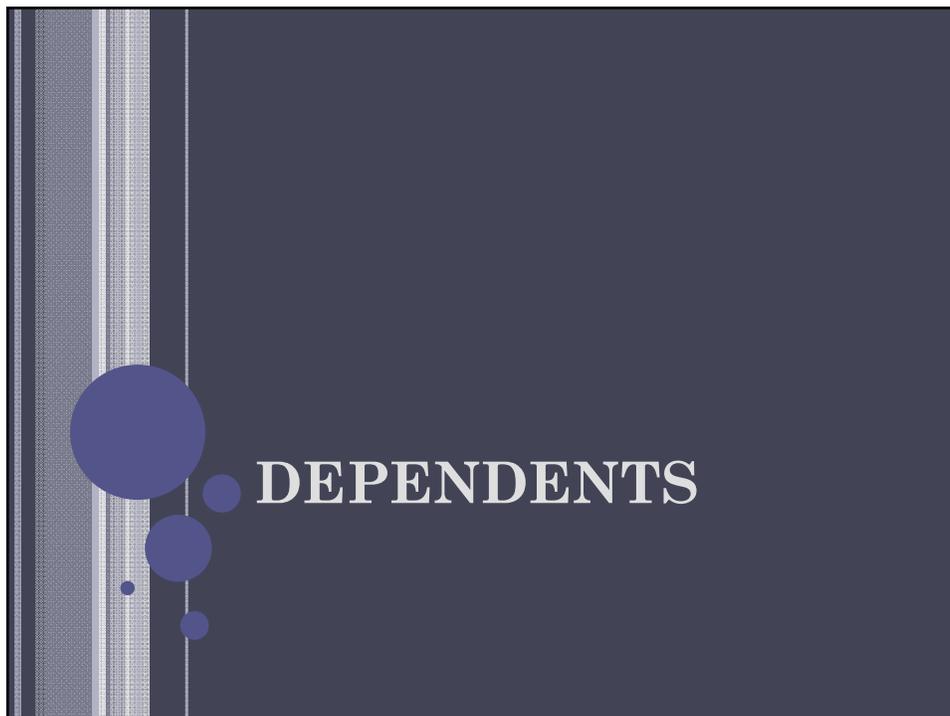
## QUESTIONS TO CONSIDER REGARDING CHOICE OF FILING STATUS

- Is spouse secretive about financial information?
- Do you have access to family bank account(s)?
- Do you know how much your spouse earns?
- Is your spouse physically or psychologically abusive?
- Is your spouse self-employed?
- If so, does s/he keep poor records?
- Does your spouse control financial decisions for the family?
- Does your spouse owe prior tax debts?
- Is your spouse current in filing his/her returns?



## GETTING DIVORCED? POSSIBLE STRATEGIES:

- If the ex is filing fraudulent returns and is evading taxes, the client can file an informant report with the IRS and be eligible for a cash award of the taxes collected.
- Include a paragraph in the divorce decree or incorporated marital dissolution agreement stating
  - that the client is not aware of any omitted income or overstated deductions on the jointly filed tax returns
  - that the client believed any taxes due on a joint return would be paid by the adverse spouse
  - that the adverse spouse will be liable for any tax liabilities or balances due from jointly filed returns.



## “STEALING” TAX BENEFITS

- Abuser claims victim’s dependents
  - Dependency exemption
  - Child tax credit
  - EITC

*935,772 dependents claimed by more than one taxpayer for 2010*



## THE RACE TO FILE THE RETURN

- When one parent files claiming the child(ren) before the other parent
- Generally prevents the second parent from filing electronically; may trigger an audit of one or both taxpayers
- Parent who is unable to file electronically should file by mailing tax return to appropriate IRS campus (filing addresses are found at the “where to file” section on [www.irs.gov](http://www.irs.gov))
- Always get proof of mailing!



## WHAT IF A CHILD IS CLAIMED BY SOMEONE ELSE?

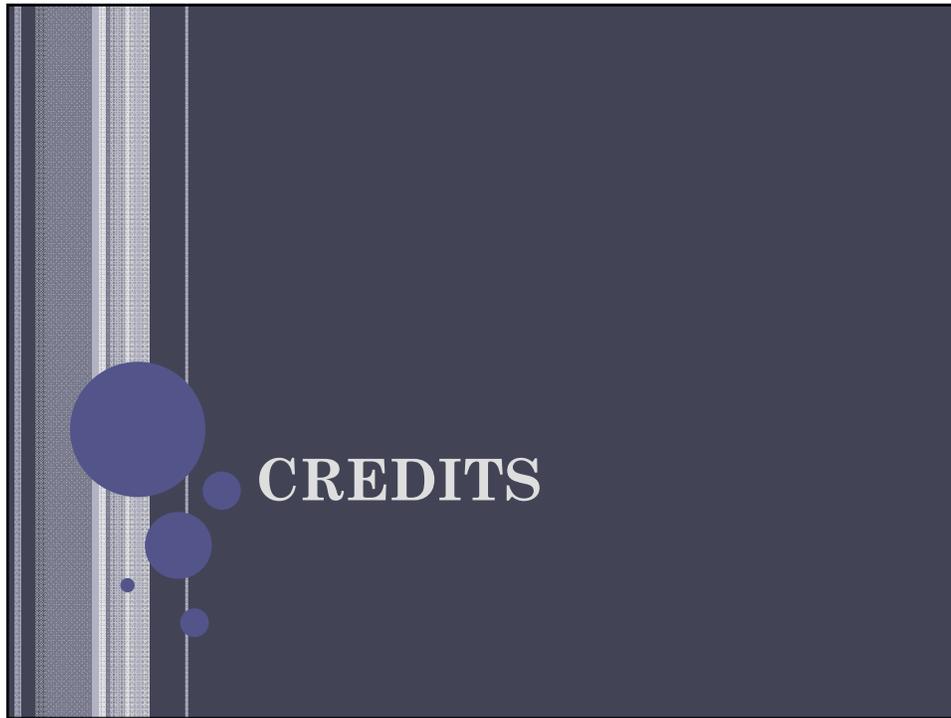
The IRS will freeze the returns (and refunds!) and apply the *tiebreaker rules*:

- If one claimant is a parent and the other is not, the parent will be able to claim
  - If both are parents, either: The parent who lived with the child longer
  - OR, if the child lived with each parent for the same amount of time, the parent with higher AGI
  - OR the existence of Form 8332
- If neither is a parent, the claimant with greater AGI



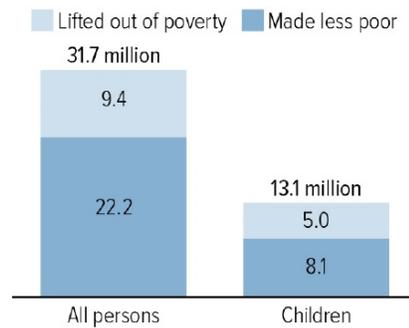
<p><b>8332</b> Form 8332 (Rev. January 2015) Department of the Treasury Internal Revenue Service</p>	<p><b>Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent</b></p> <p>▶ Attach a separate form for each child</p>	<p>CMBI No. 1148-0018 Attachment Form No. 115</p>
<p>Signature of noncustodial parent _____ Noncustodial parent's social security number (SSN) _____</p>		
<p><b>Part I Release of Claim to Exemption for Current Year</b></p> <p>I agree not to claim an exemption for _____ Name of child _____ for the tax year 20____.</p> <p>Signature of custodial parent releasing claim to exemption _____ Custodial parent's SSN _____ Date _____</p>		
<p><b>Note.</b> If you choose not to claim an exemption for this child for future tax years, also complete Part II.</p>		
<p><b>Part II Release of Claim to Exemption for Future Years (If completed, see Noncustodial Parent on page 2.)</b></p> <p>I agree not to claim an exemption for _____ Name of child _____ for the tax year(s) _____ (Specify, see instructions)</p> <p>Signature of custodial parent releasing claim to exemption _____ Custodial parent's SSN _____ Date _____</p>		
<p><b>Part III Revocation of Release of Claim to Exemption for Future Year(s)</b></p> <p>I revoke the release of claim to an exemption for _____ Name of child _____ for the tax year(s) _____ (Specify, see instructions)</p> <p>Signature of custodial parent revoking the release of claim to exemption _____ Custodial parent's SSN _____ Date _____</p>		
<p><b>General Instructions</b></p> <p><b>What's New</b></p> <p><b>Post-2008 decree or agreement.</b> If the divorce decree or separation agreement went into effect after 2008, the noncustodial parent cannot attach certain pages from the decree or agreement instead of Form 8332. See Release of claim to exemption below.</p> <p><b>Definition of custodial parent.</b> New rules apply to determine who is the custodial parent and the noncustodial parent. See Custodial Parent and Noncustodial Parent on this page.</p> <p><b>Purpose of Form</b></p> <p>If you are the custodial parent, you can use this form to do the following:</p> <ul style="list-style-type: none"> <li>• Release a claim to exemption for your child so that the noncustodial parent can claim an exemption for the child.</li> <li>• Revoke a previous release of claim to exemption for your child.</li> </ul> <p><b>Release of claim to exemption.</b> This release of the exemption will also allow the noncustodial parent to claim the child tax credit and the additional child tax credit (if other applies). Complete this form or sign a similar statement containing the same information required by this form and give it to the noncustodial parent. The noncustodial parent must attach this form or similar statement to his or her tax return each year the exemption is claimed. Use Part II to release a claim to the exemption for the current year. Use Part III if you choose to release a claim to exemption for any future year(s).</p> <p><b>Note.</b> If the decree or agreement went into effect after 1984 and before 2009, you can attach certain pages from the decree or agreement instead of Form 8332, provided that these pages are substantially similar to Form 8332. See Pub. 1168 and pre-2009 decree or agreement on page 2.</p> <p><b>Revocation of release of claim to exemption.</b> Use Part III to revoke a previous release of claim to an exemption. The revocation will be effective no earlier than the tax year following the year in which you provide the noncustodial parent with a copy of the revocation. Therefore, if you received a release on Form 8332 and provided a copy of the form to the noncustodial parent in 2015, the earliest tax year the revocation can be effective is 2017. You must attach a copy of the revocation to your tax return each year the exemption is claimed as a result of the revocation. You must also keep your records a copy of the revocation and evidence of delivery of the notice to the noncustodial parent, or of reasonable efforts to provide actual notice.</p>		
<p><b>Custodial Parent and Noncustodial Parent</b></p> <p>The custodial parent is generally the parent with whom the child lived for the greater number of nights during the year. The noncustodial parent is the other parent. If the child was with each parent for an equal number of nights, the custodial parent is the parent with the higher adjusted gross income. For details and an exception for a parent who works at night, see Pub. 501.</p> <p><b>Exemption for a Dependent Child</b></p> <p>A dependent is either a qualifying child or a qualifying relative. See your tax return instruction booklet for the definition of these terms. Generally, a child of divorced or separated parents will be a qualifying child of the custodial parent. However, if the special rule on page 2 applies, then the child will be treated as the qualifying child or qualifying relative of the noncustodial parent for purposes of the dependency exemption, the child tax credit, and the additional child tax credit.</p>		
<p>For Paperwork Reduction Act Notice, see back of form. <span style="float: right;">OMB No. 1545-0047 Form 8332 (Rev. 1/2015)</span></p>		





### Earned Income Tax Credit and Child Tax Credit Have Powerful Antipoverty Impact

Millions of persons lifted out of poverty or made less poor (using Supplemental Poverty Measure) by EITC and CTC, 2013



Note: Unlike the Census Bureau's official poverty measure, the SPM counts the effect of government benefit programs and tax credits. Figures may not add due to rounding.

Source: CBPP analysis of Census Bureau's March 2014 Current Population Survey and 2013 SPM public use file.

## MAIN CREDITS



- **Earned Income Tax Credit** (refundable)
- **Child Tax Credit** (refundable)
- **Child and Dependent Care Tax Credit**  
(not refundable)
- **Premium Tax Credit** (refundable)

*\* May receive all of these tax credits if they are eligible\**

## HOW DO TAX CREDITS WORK?

- **A tax credit can lower the amount of taxes owed or provide a refund:**
  - If the tax credit is nonrefundable, it will lower a tax filer's tax bill – at most, down to zero. Ex: \$500 tax bill and \$700 NRF credit = 0
  - If the tax credit is refundable, a survivor can receive a refund, if she doesn't owe taxes Ex: \$500 tax bill and \$700 RF credit = \$200 refund

## EARNED INCOME TAX CREDIT

- The federal **Earned Income Tax Credit (EITC)** is a wage supplement for low- and moderate-income workers.



*The IRS estimates that 1/5 of eligible taxpayers fail to claim this credit!*



## FILING STATUS FOR CLAIMING THE EITC

- A survivor can claim the EITC if she files as:
  - Married Filing Jointly
  - Single
  - Head of Household
- But ***not*** Married Filing Separately



## 2015 FEDERAL RETURN EITC LIMITS

- \$47,747 (\$53,267 married filing jointly) with three or more qualifying children: up to \$6,242
- \$44,454 (\$49,974 married filing jointly) with two qualifying children: up to \$5,548
- \$39,131 (\$44,651 married filing jointly) with one qualifying child: up to \$3,359
- \$14,820 (\$20,330 married filing jointly) with no qualifying children: up to \$503

## REQUIREMENTS FOR THE EITC

### A survivor must:

- Have some earned income
  - This can include combat pay
- The filer can have unemployment or other benefits, but needs at least some earnings
- Be a citizen, legal resident, or married to one
- Have a valid SSN

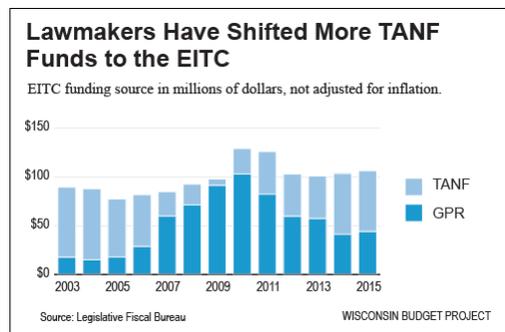
## CLAIMING CHILDREN FOR THE EITC

- o **Child must:**

- Be related to the survivor, adopted, or a foster child
- Live with the survivor for over half the year
- Be under 19 (24 if a student, no age limit if the child is disabled)



## WISCONSIN EITC



Number of Qualifying Children	Percentage of Federal Credit for 2015
0	No credit available
1	4% of federal credit (max \$134)
2	11% of federal credit (max \$610)
3 or more	34% of federal credit (max \$2,122)



## WISCONSIN EITC

- To qualify for Wisconsin earned income credit for 2015, you must meet all of the following requirements:
  - Qualify for the federal earned income credit.
  - Have at least one qualifying child. The federal definition of a "qualifying child" applies for Wisconsin purposes.
  - Be a full-year Wisconsin resident.
  - File a joint return if you are married.
  
- **Exception:** You may claim the credit on a separate return if:
  - You paid more than half the cost of keeping up a home for the year,
  - Your spouse did not live in that home during the last six months of the year, and
  - The home was, for more than half of the year, the principal home of your child for whom you are entitled to claim an exemption for federal income tax purposes.

## THE CHILD TAX CREDIT

The federal Child Tax Credit is intended to help offset some of the costs of raising children.



## CHILD TAX CREDIT

- A survivor can claim up to **\$1,000 per child, no matter how many children she has.**
  
- Example: Jane is a single mom with 2 children who earned \$8,500 in 2013. She can claim a \$2,000 Child Tax Credit.
  
- Survivor's income is taken into account. Amount of credit decreases as the survivor's income rises:
  - Married filing jointly – \$110,000.
  - Single, head of household, or qualifying widow(er) – \$75,000.
  - Married filing separately – \$55,000.

## REQUIREMENTS FOR CLAIMING

- Child who is claimed must meet relationship and residency requirements *and*
  - Age limit is 17 *and*
  
  - Child must be claimed as a dependent (affects tiebreaker)
  
- Married survivors can file jointly or separately. Can also claim if filing as single or as head of household.

## THE CHILD TAX CREDIT -- REFUND

- If a survivor does not owe enough taxes to use all of her **Child Tax Credit**, she may be eligible for a refund
  - The survivor will receive either 15% of her income above **\$3,000** or
  - the amount of the Child Tax Credit that exceeds her tax liability, whichever is less
- Example: Jane has two kids and earned \$8,500 in 2013, had no income tax liability. She will receive a refund of \$825 from the Child Tax Credit.

## CHILD AND DEPENDENT CARE TAX CREDIT

- The **Child and Dependent Care Tax Credit** can help survivors meet their child and dependent care expenses
- The care must be employment-related – that is, the survivor must use the child or dependent care so that she can work or look for work

## CHILD AND DEPENDENT CARE TAX CREDIT

- Survivors get a percentage of eligible expenses, based on income
- “Eligible expenses” includes any kind of paid child care and care for disabled dependents who live with the survivor. Can also include before- and after-school care and summer day camp, etc.
- Expenses capped at **\$6,000 for two or more children or dependents and \$3,000 for one child or dependent**

*The credit is not refundable.*



## HOW TO CLAIM THESE BENEFITS

- **A survivor must:**
  - File a federal and state tax return Filers with children must file using IRS form 1040 or 1040A, but **not the 1040 EZ**
  - File a separate form for each tax credit

*Survivors may also be able to file or correct returns for tax years prior to 2015*



## PREMIUM TAX CREDIT – AFFORDABLE CARE ACT

- You are eligible for the premium tax credit if you meet all of the following requirements:
  - Have household income that falls within a certain range:

Federal Poverty Line for 2015 Returns			
	100% of FPL		400% of FPL
One Individual	\$11,670	up to	\$46,680
Family of two	\$15,730	up to	\$62,920
Family of four	\$23,850	up to	\$95,400

## PREMIUM TAX CREDIT REQUIREMENTS

- Cannot file a Married Filing Separately tax return
  - Unless you meet the criteria in the [regulations](#), which allows certain victims of domestic abuse and spousal abandonment to claim the premium tax credit using Married Filing Separately:
    - (i) is living apart from the individual's spouse at the time the taxpayer files his or her tax return,
    - (ii) is unable to file a joint return because the taxpayer is a victim of domestic abuse, and
    - (iii) indicates such status on his or her income tax return
- Cannot be claimed as a dependent by another person.
- In the same month – a coverage month – you, or a family member:
  - Enroll in coverage through a Health Insurance Marketplace
  - Are not able to get affordable coverage through an eligible employer-sponsored plan that provides minimum value.
  - Are not eligible for coverage through a government program, like Medicaid, Medicare, CHIP or TRICARE.
  - Pay the share of premiums not covered by advance credit payments

## PREMIUM TAX CREDIT – AFFORDABLE CARE ACT

- If you purchased insurance through the Marketplace in 2015 and received an advance payment of the Premium Tax Credit, you must file a tax return for 2015.
- If you need help paying for health insurance in 2016, you can get the Premium Tax Credit as soon as you sign up through the Marketplace.
- Most people need to sign up by February 2016—so go to [healthcare.gov](http://healthcare.gov) or call (800) 318-2596 today for more information.
  - The IRS also has an interactive tool to calculate your credit! Check out <https://www.irs.gov/Affordable-Care-Act/Individuals-and-Families/The-Premium-Tax-Credit> to learn more

## SAME-SEX MARRIAGES

- Couples with valid marriages will be treated as married for federal and state tax purposes. This applies to:
  - **filing status**,
  - claiming personal and dependency exemptions,
  - taking the standard deduction,
  - employee benefits,
  - contributing to an IRA and
  - claiming **the earned income tax credit** or **child tax credit**.
- Registered domestic partnerships, civil unions or similar formal relationships recognized under state law will not qualify for this recognition.



## PROTECTIONS – INJURED SPOUSE

- When a taxpayer's spouse owes individual liabilities (such as child or spousal support, federal student loan debt, or old tax debts from non-Married Filing Jointly years), and a MFJ return is filed, the IRS will ordinarily take a refund attributable to the taxpayer's withheld income to satisfy the spouse's previous individual liabilities
- Taxpayer can file a Form 8379 to stop this or get a refund of previously taken refunds (attach to Form 1040 or file separately)
- There's a special Statute of Limitations for refund claims: 3 years from when the return is filed or 2 years from the time the tax is paid (if later)

## PROTECTIONS – INNOCENT SPOUSE

**There are three main categories of innocent spouse relief:**

1. The joint tax return understated the tax due, but the survivor had no knowledge or reason to know about the erroneous items
  - Example: side income the spouse had or the factual circumstances that made an item not allowable as a deduction/credit, and it wouldn't be fair to hold her liable, taking into account all the facts and circumstances
2. The joint tax return understated the tax due, the survivor had no actual knowledge, and the parties haven't been living together for at least a year
  - The IRS will allocate the liability for a deficiency in approximately the same manner as if the spouses had filed separately
  - No refunds will be made

3. The joint tax return understated the tax due *or the amount the tax return showed as due wasn't paid, and it wouldn't be fair to hold the survivor responsible*

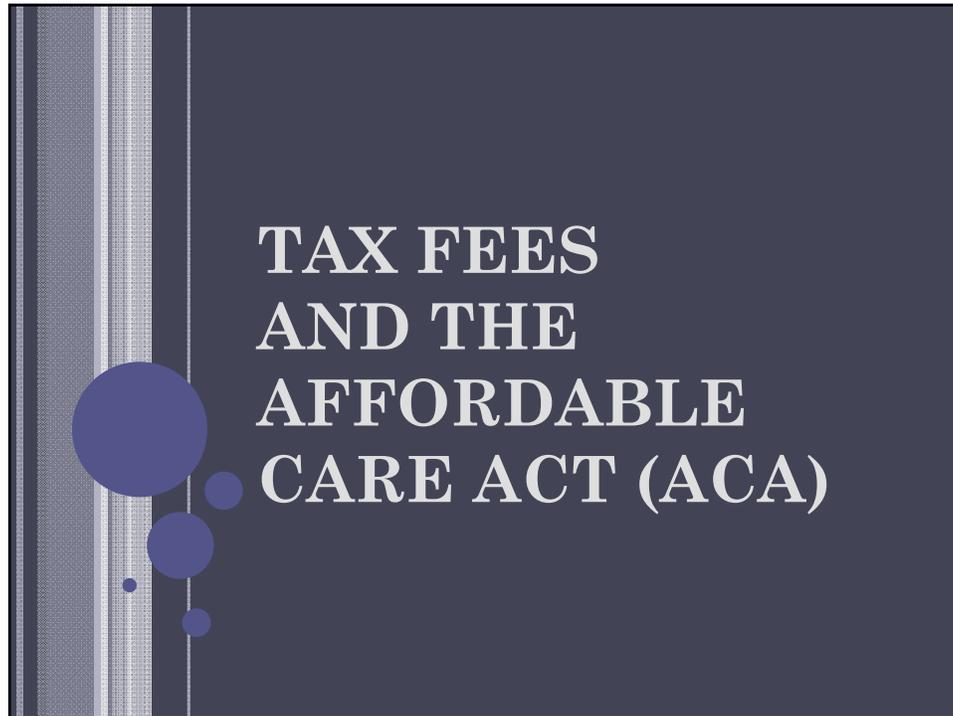
- Some factors include:
  - Marital status
  - Knowledge or reason to know of item (for deficiency) or that liability would not be paid (for underpayment)
  - Significant benefit to requesting spouse from the understatement or underpayment
  - Compliance with income tax laws
  - Domestic violence
  - Mental/physical health
  - Economic hardship

## INNOCENT SPOUSE RELIEF PROCEDURES & CAUTIONS

- The survivors must file for innocent spouse relief within two years of first collection activity against the requesting spouse.
- The non-requesting spouse will be notified of innocent spouse claim and have a right to intervene in the requesting spouse's case. In a Tax Court case, either spouse may file a motion for a protective order to keep her/his address from the other spouse.

## EXCEPTIONS TO THE NON- DISCLOSURE RULE

- Individuals or entities specifically designated by the taxpayer
- State tax departments
- State and local law enforcement agencies
- Death of taxpayer
- Co-signatory on the tax return
- To a guardian of the taxpayer if the taxpayer is legally incompetent
- Bankruptcy trustee
- Congressional committees
- The President



## AFFORDABLE CARE ACT – FEE EXEMPTIONS

### Hardship exemptions

- You were homeless.
- You were evicted in the past 6 months or were facing eviction or foreclosure.
- You received a shut-off notice from a utility company.
- You recently experienced domestic violence.
- You recently experienced the death of a close family member.
- You experienced a fire, flood, or other natural or human-caused disaster that caused substantial damage to your property.
- You filed for bankruptcy in the last 6 months.
- You had medical expenses you couldn't pay in the last 24 months.
- You experienced unexpected increases in necessary expenses due to caring for an ill, disabled, or aging family member.
- You expect to claim a child as a tax dependent who's been denied coverage in Medicaid and CHIP, and another person is required by court order to give medical support to the child. In this case, you do not have to pay the penalty for the child.
- As a result of an eligibility appeals decision, you're eligible for enrollment in a qualified health plan (QHP) through the Marketplace, lower costs on your monthly premiums, or cost-sharing reductions for a time period when you weren't enrolled in a QHP through the Marketplace.
- You were determined ineligible for Medicaid because your state didn't expand eligibility for Medicaid under the Affordable Care Act.
- Your individual insurance plan was cancelled and you believe other Marketplace plans are unaffordable.

## ACA, CONT'D

**If your income will be low enough that you will not be required to file taxes:**

- You don't need to apply for an exemption. This is true even if you file a return in order to get a refund of money withheld from your paycheck. You won't have to make the shared responsibility payment.

A dark blue rectangular graphic occupies the bottom half of the page. It features a vertical decorative strip on the left side with a fine grid pattern. To the right of this strip, several overlapping circles of varying sizes in shades of blue are arranged in a vertical line. The word "RESOURCES" is written in a white, serif, all-caps font, centered horizontally and partially overlaid by the circles.

RESOURCES

## EVERYONE HAS TAX RIGHTS

- To see and understand the entire return (including supporting documents) before signing a joint return
- To refuse to sign a joint return (married people do not have to file jointly!)
- To request an automatic 4-month extension of time to file (Form 4868)
- To get copies of prior year returns from the IRS

## TAX PREPARATION ASSISTANCE

- The IRS-sponsored **VITA Program offers free tax help to low- to moderate-income (generally, \$48,000 and below) people**
- The IRS also coordinates with AARP to offer tax help to low- to moderate-income people, with special attention to those age 60 and older, through a program called **Tax-Aide**
- Individuals with income below \$57,000 can use the **Free File Program to e-file using free tax prep software**

## FREE TAX PREPARATION RESOURCES

- To locate a VITA site near you, call the IRS' hotline at 1-800-906-9887 or visit <http://irs.treasury.gov/freetaxprep/>
- To locate an AARP-sponsored Tax-Aide site near you, call 1-888-227-7669 or visit <http://www.aarp.org/applications/VMISLocator/searchTaxAideLocations.action>
- For information about Free File, visit <https://www.irs.gov/uac/Free-File-Do-Your-Federal-Taxes-for-Free>



## PEOPLE WITH IRS CONTROVERSIES LOW INCOME

- **Taxpayer Clinics can help low income individuals (250% poverty guidelines) with direct representation when the IRS:**
  - Says something more is owed than the survivor thinks they owe, or
  - Is trying to collect, and the survivor can't pay any or all of what is owed

*<https://www.irs.gov/Advocate/Low-Income-Taxpayer-Clinics>*



## RESOURCES

- On filing requirements, filing status, and tax credits, visit **[www.irs.gov](http://www.irs.gov)**
- On tax credits and tax credits outreach, visit **[www.nwlc.org/loweryourtaxes](http://www.nwlc.org/loweryourtaxes)**



## INTAKE QUESTIONS FOR DOMESTIC VIOLENCE ADVOCATES

- Did you file a tax return this year? If so, did you receive your refund?
- What filing status did you use (single, married filing joint, married filing separate, head of household)?
- Did you file for the earned income tax credit?
- Has the IRS ever frozen or kept your tax refund?
- Have you received any notices from the IRS that you or your spouse owe money?



