

Filing Status, Dependents, Credits and Kiddie Tax

Filing Status	
1	<input type="checkbox"/> Single
2	<input type="checkbox"/> Married filing jointly (even if only one had income)
3	<input type="checkbox"/> Married filing separately. Enter spouse's SSN above and full name here. ▶
4	<input type="checkbox"/> Head of household (with qualifying person). (See instructions.) If the qualifying person is a child but not your dependent, enter this child's name here. ▶
5	<input type="checkbox"/> Qualifying widow(er) with dependent child

Check only one box.

Complexity of HH Filing Status

- *Walker*, TC Summary Opinion 2017-8 (2/13/17)
 - W, unmarried
 - Girlfriend and her son live with W
 - W supports them
 - W claimed HH, child credit and EITC
 - IRS disallowed
 - Court agreed but allowed HH status
 - Problem – son is not W's child
 - Only a dependent as “qualifying relative” as “member of household” (§152(d)(2)(H))

Review of §2(b)

(3) LIMITATIONS Notwithstanding paragraph (1), a taxpayer shall not be considered to be a head of a household—

- **(A)** if at any time during tax year he is a NRA; or
- **(B)** by reason of an individual who would not be a dependent for the tax year **but for—(i) subparagraph (H) of section 152(d)(2)****, or
- **(ii)** paragraph (3) of section 152(d).

**152(d)(2)(H) An individual who, for tax year, has same principal place of abode as taxpayer and is a member of taxpayer's household.

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No MFJ Without Both Signatures or POA or Consent Page 6-3

- *Moss, TC Memo 2017-30 (2/8/17)*
 - 2008 – H files MFJ
 - Reports income of both spouses
 - W refuses to sign and files MFS with errors on return including \$350K Madoff loss she thought she had
 - W hospitalized for mental illness
 - IRS accepts and fixes W's return
 - IRS then adjusted H's return to MJS
 - Leaves W's income on it!

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Why court can't accept MFJ return

- W did not sign
- No Form 2848 or other type of POA or statement signed by H that W consents, and no request for IRS permission for him to be agent.
 - Proof of hospitalization not enough.
- Even if W unable to file, is not proof that H is her duly authorized agent
- Consent theory n/a – while had filed MFJ for many years, for 2008, W refused to sign and filed own return as MFS

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Invalid MFJ Return & Text Messages

- *Edwards*, TC Summary Opinion 2017-52 (7/17/17)
 - H&W file for divorced in June, still married 12/31/13
 - H suggests file joint, but no response from W
 - H files MFJ w/o W signature or authorization
 - In past years, MFJ and W provided authorization
 - Keeps the refund; H&W had separate bank accounts
 - W texts H about filing in early April 2014
 - H – don't worry
 - W thinks H filed separately
 - 4/15 – files extension form and files MFS

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Edwards - continued

- IRS rejects MFS
 - W – you already filed!?
 - W says she did not sign
 - Files separate return AND files Form 14039, Identity Theft Affidavit, because H used her SSN without her knowledge.
- Court reviews factors to indicate MFJ
 - Key – intent to file jointly
 - Question of fact

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Court found – no joint return

- Not same as past years
 - W did not sign authorization as in past years
 - W did not sign return
 - W's actions to file return indicates she wasn't aware of MFJ return.
- Ct waived penalty for H
 - Reasonable for confusion including poor communications and H kept the refund.

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Edwards - Takeaways

1. Divorcing – pay more attention to filing status prior to final divorce.
 - Refund likely part of marital assets.
2. What did IRS do with the Form 14039, Identity Theft Affidavit?
3. Text messages might be proof of intent and conduct – for both good and bad.

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Unfairness of “Qualifying Child” Definition Page 6-7

Smyth, TC Memo 2017-29 (2/7/17)

- Grandmother supports 2 grandchildren
- Son is drug addict
- Son and wife said would not claim children, but did
- G otherwise would have qualified for HH, dependency exemption, child credit and EITC
- Son amended return, but only gave it to IRS counsel rather than to Service Center and already spent refund on drugs
- Court noted unfairness, but that it was the law.
 - Issue – definition states that child didn’t provide over ½ of own support (not that t/p provided over ½ of support).

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Common Law Marriage and Exemptions

- *Woolsey*, TC Summary Opinion 2017-62 (8/10/17)
 - W claimed exemptions for D and her 3 children
 - All lived with W to Sept 2012
 - D filed MFJ with boyfriend
 - Common law marriage existed
 - Court:
 - W can't claim D as qualifying relative because of MFJ return
 - W can't claim 3 children due to tiebreaker rule
 - Waive penalty for reasonable cause

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No Child Benefits If Not Dependent and No Form 8332

- *Seeliger*, TC Memo 2017-175 (11/11/17)
 - S, divorced father, claims dependency exemption for daughter and CTC and HH status
 - S and W had agreed to alternate years of claiming
 - 2013
 - D lives over ½ of year with W
 - S pays all child support, but doesn't get Form 8332
 - Court – sorry!
 - D is not qualifying child (did not live with S over ½ year)
 - 152(e) doesn't help – doesn't have 8332

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AOTC Reminders

- *Martin*, TC Summary Opinion 2017-73 (9/7/17)
 - M failed to report Social Security
 - Later claimed AOTC for tuition of daughter
 - 1098-T of \$613 + \$11 books
 - 1098-T indicates not ½ time student
 - No proof that M paid the tuition and fees
 - D also attended dog training trade school
 - Could not show was eligible educational institution

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§25D Energy Credit Reminder

§25D, Residential Energy Efficient Property

- Portion expired at end of 2016.
- But, credit for
 - qualified solar electric property, and
 - qualified solar water heating property
- Phases out through 2021.
- Note: See draft 2017 Form 5695 -----→
 - Does IRS think items that expired 12/31/16 will be renewed?

<http://21stcenturytaxation.blogspot.com/2016/01/path-and-many-tax-changes-pl-114-113.html>

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Form 5695		Residential Energy Credit		OMB No. 1545-0074	
Department of the Treasury Internal Revenue Service		▶ Go to www.irs.gov/Form5695 for instructions and the latest information.		2017	
Name(s) shown on return		▶ Attach to Form 1040 or Form 1040NR.		Attachment Sequence No. 158	
				Your social security number	
Part I Residential Energy Efficient Property Credit (See instructions before completing this part.)					
Note: Skip lines 1 through 11 if you only have a credit carryforward from 2016.					
1	Qualified solar electric property costs			1	
2	Qualified solar water heating property costs			2	
3	Reserved for future use			3	
4	Reserved for future use			4	
5	Add lines 1 and 2			5	
6	Multiply line 5 by 30% (0.30)			6	
7a	Reserved for future use			7a	
	b Reserved for future use				
8	Reserved for future use	8			
9	Reserved for future use	9			
10	Reserved for future use	10			
11	Reserved for future use			11	
12	Credit carryforward from 2016. Enter the amount, if any, from your 2016 Form 5695, line 16			12	

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H.R. 1 and §25D

SEC. 3503. EXTENSION AND PHASEOUT OF RESIDENTIAL ENERGY EFFICIENT PROPERTY.

(a) **EXTENSION.**—[Section 25D\(h\)](#) is amended by striking “December 31, 2016 (December 31, 2021, in the case of any qualified solar electric property expenditures and qualified solar water heating property expenditures)” and inserting “December 31, 2021”.

(b) **PHASEOUT.**—

(1) **IN GENERAL.**—Paragraphs (3), (4), and (5) of section 25D(a) are amended by striking “30 percent” each place it appears and inserting “the applicable percentage”.

(2) **CONFORMING AMENDMENT.**—Section 25D(g) of such Code is amended by striking “paragraphs (1) and (2) of”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to property placed in service after December 31, 2016.

- (3) qualified fuel cell property expenditures,
- (4) qualified small wind energy property expenditures,
- (5) qualified geothermal heat pump property expenditures

EITC and Schedule C

- *Lopez*, TC Summary Opinion 2017-16 (3/16/17)
 - L claims EITC based on 1099-MISC of \$2K and about \$16K of cosmetology income
 - No recorks, but statements form 12 regular customers
 - Court – right for IRS to be suspicious
 - But L's testimony ok although weak
 - Agreed that had \$10K in each of two years.
 - IRS noted 43(k) could apply to disallow EITC for 2 years following year with reckless or intentional disregards of rules.
 - Court ignored.
- **Query:** What should preparer have done for 6695(g) and Form 8867 due diligence?

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Kiddie Tax and Gaming Revenue of Minors

- CCA 201729001 (9/21/17)
 - Tribal gaming revenue distributed by Tribe per capital
 - IRS – unearned income
 - Not rec'd for personal services rendered
 - Rec'd per status as member of Tribe
 - Sections 1(g) and 911 and regulations.

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