

What We Know

ARTICLES & INSIGHTS

ABOUT THE AUTHOR



[John Narron](#) is a Board Certified Family Law Specialist and has been practicing law in North Carolina since 1977, with a practice concentration in all manner of civil disputes that frequently involve complex equitable distribution proceedings, alimony trials, will caveats, employment disputes, personal injury trials and negotiations, and a wide variety of commercial business disputes. John has served as a mediator in more than 200 family law disputes in Wake County, Franklin County, Johnston County, Wayne County, Guilford County, Forsyth County, and Pender County.

Children, Taxes, and Divorce

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In many family law settlements, whether they are obtained voluntarily through an agreement or the result of litigation ending in a court order, certain provisions are made for minor children, including the support of the minor children and which parent is entitled to claim the children as dependents for state and federal income tax purposes.

When a parent is called the “custodial parent” for federal income tax purposes, that parent has the right to claim that child as a dependency exemption deduction, which for the tax year 2017 can be worth as much as \$4,050 to an individual taxpayer whose annual income is below \$150,000. Also, a taxpayer may qualify for the child tax credit which has a value of \$1,000, and other higher education tax credits may apply if the taxpayer is the custodial parent. Therefore, the concept of being the custodial parent has significant tax implications.

Simply speaking, the parent who has custody of the child for the greater part of the year is considered the custodial parent for tax purposes. However, the parties can between themselves agree that the non-custodial parent may still qualify for some of the tax benefits described above and it is very common to see family law settlement agreements provide for the non-custodial parent to claim the child dependency exemption for individual children.

When the parties agree by written agreement that the noncustodial parent can claim a child as a dependency deduction, it is important that the parties also agree to execute IRS Form 8332 on a yearly basis. If this actual tax form is signed by the custodial parent granting to the non-custodial parent the right to claim a child as a dependent for tax purposes, the child will be treated as a qualifying child of a noncustodial parent provided the following criteria is also met:

1. Collectively, the two parents of the child provide at least half the financial support for that child in the tax year,
2. The parents are divorced or separated under a written agreement at the end of the year or have lived apart during the last six months of the year,
3. The child is in the actual custody of one or both of the parents for more than half of the year and
4. Form 8332 or a statement that conforms to the substance of Form 8332 is signed and

filed with the tax return.

Recently, two tax court decisions illustrated the importance of Form 8332 when it comes to divorced parents.

In *Armstrong, 139 TC NO. 18* the non-custodial parent (who was the father in this case) did not attach Form 8332 to his tax return because his ex-wife refused to sign the document. The tax court then ruled that the father could not claim a dependent exemption deduction for his son even though the father did attach to his tax return a signed court order indicating that he had the right to take the exemption. The tax court ruled that the court order did not conform to the substance of Form 8332 because it did not contain an unequivocal statement by the ex-wife that she would not claim the child's dependent exemption deduction. In essence, we have here a state court order indicating that the father was entitled to claim his son as a dependent but because Form 8332 or its equivalent was not signed by the mother, the father lost that tax benefit.

In the matter of *Rachel George, 139 TC NO. 19* the tax court ruled that the mother of the child in that case who was the primary custodial parent was not entitled to the child's dependent exemption deduction. The exemption belonged to the non-custodial father simply because the mother had signed Form 8332 releasing the exemption to the father as she was required to do by a court order. Even though the mother believed the court order was void and claimed the dependency exemption on her tax return, the court concluded that Form 8332, which had been signed by the mother, overruled any argument by the mother that the court order requiring her to sign the form was void.

The lesson here for anyone involved in this situation is to have a court order and/or a separation agreement that requires the custodial parent, if he or she is giving up the child dependency exemption, to sign a Form 8332, and as an alternative, to put language in the court order or separation agreement that substantially conforms to the same, exact language found in Form 8332.

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