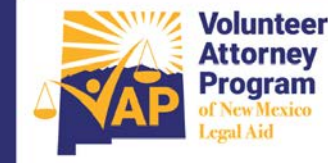


WELCOME TO THE VAP PRO BONO COLLABORATIVE ECHO

SESSION 3
MARCH 28, 2024

Empowering Your
Clients: Allocating
Child-Based Income
Tax Benefits

Agenda



Introductions - Zac Addison, Esq., VAP Director, New Mexico Legal Aid, Inc.



Announcements for Session: Marissa Gonzalez, VAP Paralegal, New Mexico Legal Aid, Inc.



Topic Presentation: Empowering Your Clients: Allocating Child-Based Income Tax Benefits



Topic Presenter: Grace Allison, Staff Attorney and Former Director, NMLA Low Income Taxpayer Clinic



Case Analysis and Q&A: Grace Allison, Staff Attorney and Former Director, NMLA Low Income Taxpayer Clinic



Overview & Closing Remarks: Volunteer Attorney Program of New Mexico Legal Aid

Why We Are Here

Child-based income tax benefits comprise 10 to 20 percent of a low- or middle-income family's cash flow

“Qualifying Child”

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

“Qualifying Child”: The Basics

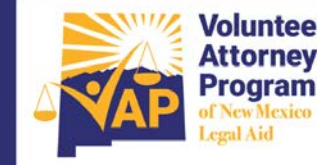
- Residency: “**more than 1/2 the year**” test
- Relationship
- Age: *Either (i) under 19 or (ii) under 24 and a “student” or (iii) any age and “permanently and totally disabled”*
- Support
- No Joint Return

Allocating Certain Child-Based Income Tax Benefits Between Parents

- ❑ Under IRC Section 152(e), 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 certain 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*



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

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 or 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 **certain child-based income tax benefits** to the non-custodial parent

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

Quizlet #3: IRS Form 8332

Jillian lives with her mother. The mother gives the 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:

- ✓ **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

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, IRC Sections 24(d)(1) and (h)

Quizlet #4: Child Tax Credit

In 2024, Jill earns \$20,000 as a housekeeper. She has two “qualifying children.”

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, who will never work outside the home, is asking for more child support.

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**

- **Is available if taxpayer has:**
 - “qualifying child” 17 or older *or***
 - “qualifying child” who does not have a Social Security number but who is a resident of the U.S.**

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

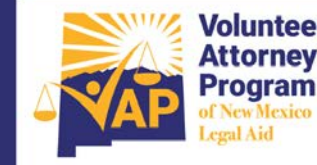
- **Maximum \$2,500 tax credit for “qualified tuition & expenses,” paid by taxpayer for a “qualifying child,” IRC Section 25A(b)**
- **40 percent refundable, IRC Section 25A(i)**
- **Available for first four years of post-secondary only, 25A(b)(2)(C).**

Lifetime Learning Credit

- **Maximum \$2,000 non-refundable tax credit for “qualified tuition and related expenses” paid by taxpayer for a “qualifying child,” IRC Section 25A(c)(1)**
- **Includes expenses incurred to acquire or improve job skills, IRC Section 25A(c)(2)(B)**

Quizlet #7: Form 8332

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



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Date

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Date

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I revoke the release of claim to an exemption for _____
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(Specify. See instructions.)

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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.)

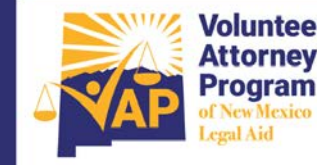
In a single year, can a child be the “qualifying child” of both parents in a joint custody situation?

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.



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Name of child
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Custodial parent's SSN

Date

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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

IRC 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: IRC 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”

Tie-breaker Rule #3: IRC Section 152(c)(4)(A)

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 credit—which relies on modified version of “qualifying child” definition, NMSA Section 7.2-18.15 (1978)**

New Mexico Income Tax & “Qualifying Children”

- ✓ **NM Dependent Child Day 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” feature 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**

Innocent Spouse Relief

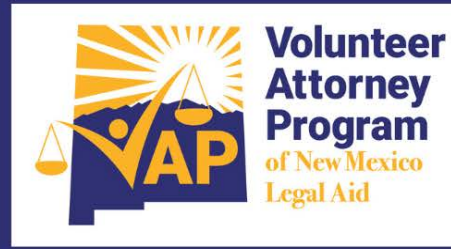
Relief from income tax liability if spouse is “innocent” and there is

- **Physical abuse; and/or**
- **Emotional abuse; and/or**
- **Financial abuse, IRC Sections 6015(b) or (f)**

OR

Allocation of income tax liability between spouses based on to whom the income is “allocable”; available to those who are divorced, separated or living apart from spouse, IRC Section 6015(c)

Case Presentation



LEGAL ISSUE: Allocating Child-Based Income Tax Benefits

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 2023 taxes online, she learns that "someone else" has already claimed them. She confronts Jack who responds, "They're my children too."**



Question of Practice

- Ideally, when and how should this problem have been addressed? + ●
- Jack is not abusive and makes substantially more money than Jill. ○
- Can Jill still receive the child-based income tax benefits to which she is entitled?
- Might a Form 8332 be helpful? For which tax years?

Next Sessions

Adult Guardianship 101 - Part 4/4: *Post-Adjudication Issues*

Tuesday, April 9, 2024

3:30 P.M. – 5:00 P.M.

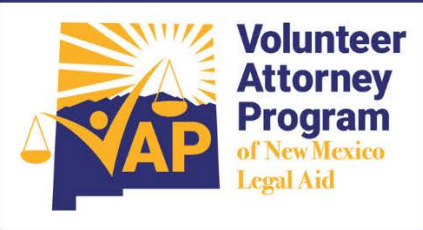
Navigating Foreclosure & Learning Alternatives for Your Clients

Thursday, June 6, 2024

11:30 A.M. – 1:00 P.M.

Bonus: Adult Guardianship 101 – Mentoring Opportunities – TBA in Conjunction with Office of Guardianship

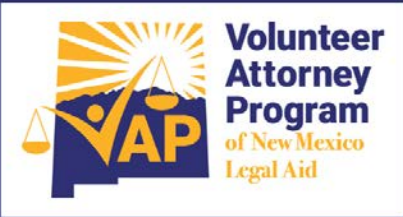
Presenter Needed: Judgment Collections



Upcoming Pro Bono Opportunities

- **Peter Johnstone Day Legal Fair in Albuquerque:**
Saturday, April 13
- **Legal Fair in Hernandez:**
Saturday, April 27
- **McKinley County Teleclinic:**
Friday, May 3
- **Statewide Teleclinic:**
Thursday, May 16

If you are interested in volunteering at an upcoming legal fair or teleclinic, please sign-up [here](#).



THANK YOU FOR JOINING TODAY'S VAP PRO BONO COLLABORATIVE ECHO SESSION!

SESSION 3
MARCH 28, 2024

Topic and Case Presenter:

Grace Allison, Staff Attorney & Former Director,
NMLA Low Income Taxpayer Clinic, 505-768-
6134, gracea@nmlegalaid.org

Facilitated By:

Zac Addison, Esq., VAP Director, NM Legal Aid

Marissa Gonzalez, VAP Paralegal, NM Legal Aid

vapecho@nmlegalaid.org