

TAX ISSUES FOR DOMESTIC VIOLENCE SURVIVORS: WHAT ADVOCATES NEED TO KNOW

NICOLE APPLEBERRY, DIRECTOR, LOW INCOME TAXPAYER
CLINIC, UNIVERSITY OF MICHIGAN LAW SCHOOL

SUSANNA BIRDSONG, FELLOW, NATIONAL WOMEN'S LAW
CENTER

AMY MATSUI, SENIOR COUNSEL, NATIONAL WOMEN'S LAW
CENTER

KERI MORAN-KUHN, OCADSV

SPEAKERS FOR THIS SESSION



Nicole Appleberry
Director, Low Income
Taxpayer Clinic, University
of
Michigan Law School
naberry@umich.edu



Susanna Birdsong
Fellow
National Women's Law Center
sbirdsong@nwlc.org



Amy Matsui
Senior Counsel
National Women's Law Center
amatsui@nwlc.org



Keri Moran-Kuhn
Director of Programs
Oregon Coalition Against
Domestic & Sexual Violence

TOPICS WE ARE GOING TO COVER

When Survivors Need to File a Tax Return

Some Filing Status Issues

Federal and State Tax Credits

Free Tax Preparation Assistance

Tax Rights Everyone Has

When the IRS Sends A Letter

Help with IRS Controversies

- Low-Income Taxpayer Clinics
- Taxpayer Advocate Service

Options for People Who Can't Pay Their Taxes

- Reasonable Cause
- Currently Not Collectible Status
- Installment Payments
- Offers in Compromise

Exceptions to Tax Liabilities From Married Filing Jointly Returns

- Injured Spouse
- Innocent Spouse

Resources

WHEN SHOULD SURVIVORS FILE A TAX RETURN?

When they have over a certain amount of income

- Their own (wages, salary or other taxable income)
- If married, may include income of a spouse

To receive tax benefits (i.e. refund or tax credits)

To establish separate tax “existence”

- File ASAP if a spouse or ex may file a joint return!



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 spouse died during the year)

FILING STATUS OPTIONS FOR MARRIED SURVIVORS

Married Filing Jointly -- not the only option

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)

HOH applies 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

A FEW THOUGHTS ABOUT REFUNDS

Survivors may be worried their mail is not safe.

- Your state agencies or coalitions may offer an Address Confidentiality Program, which provides survivors with a safe address.
- Your program can also provide an address.
- Have the refund directly deposited to a bank account.

Survivors may not have their own bank accounts.

- Some EITC coalitions can help survivors establish bank accounts.
- Some VITA sites have options for pre-paid debit cards.
Downsides: user fees and if the card is lost or stolen, so is the refund.

IMPORTANT FEDERAL AND STATE TAX CREDITS

Domestic violence survivors should know about these federal and state tax credits:

- **The federal Earned Income Tax Credit and the Oregon EITC**
- **The federal Child Tax Credit**
- **The federal Child and Dependent Care Tax Credit, the Oregon Child and Dependent Care Credit, and the Oregon Working Family Tax Credit.**

*** Tax filers can receive all of these tax credits if they are eligible***

THESE TAX CREDITS CAN BE WORTH A LOT

Filing her 2013 taxes, an unmarried working woman with three children and child care expenses, who earned \$38,000 in 2013, could receive:

- Up to **\$6,044** from the federal EITC and up to **\$363** from the Oregon EITC
- Up to **\$3,000** from the federal Child Tax Credit
- Up to **\$2,100** from the federal Child and Dependent Care Tax, up to **\$1,800** from the Oregon Child and Dependent Care Tax Credit, and up to **40% of qualifying care expenses**, without limit, from the Working Family Child Care Tax Credit.

REFUNDABLE CREDITS

- **The federal Earned Income Tax Credit and the Oregon EITC**
- **The federal Child Tax Credit**
- **The Oregon Working Family Tax Credit**

Unfortunately, the federal and Oregon Child and Dependent Care Tax Credits are not refundable.



REFUNDS CAN HELP SURVIVORS SAVE

Refunds can be used to:

- Create an emergency fund or build up savings
- Put funds into a bank account through direct deposit or into a savings bond
- Open bank accounts and build assets. Many EITC coalitions can help survivors with this.



BUT TAX REFUNDS CAN BE WITHHELD

If a survivor owes taxes from a prior year

- This may include a spouse's or ex-spouse's tax debt
- Unless the filer qualifies as an “injured spouse” or an “innocent spouse”

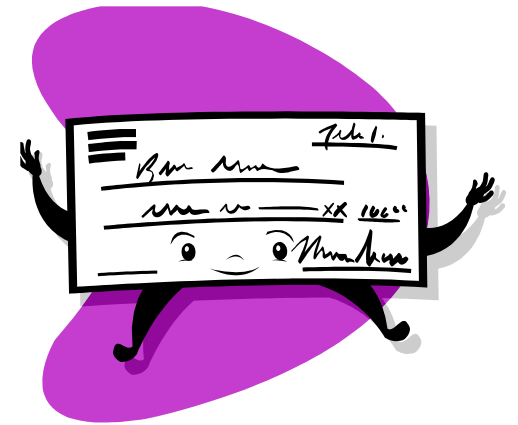
If a survivor owes child support

If a survivor is in default on a student loan



EARNED INCOME TAX CREDIT

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



EARNED INCOME TAX CREDIT (EITC)

For 2013, the federal EITC is worth:

- Up to \$6,044 for a survivor with three or more children who earned less than \$46,227 (\$51,567 if married filing jointly).
- Up to \$5,372 for a survivor with two children who earned less than \$43,038 (\$48,378 if married filing jointly).
- Up to \$3,250 for a survivor with one child who earned less than \$37,870 (\$43,210 if married filing jointly).
- Up to \$487 for a survivor without qualifying children who earned less than \$14,340 (\$19,680 if married filing jointly).

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

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)

OREGON EITC

- **The Oregon EITC is calculated as a percentage of the federal EITC and is refundable!**



THE CHILD TAX CREDIT

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



CHILD TAX CREDIT (CTC)

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 2012. She can claim a \$2,000 Child Tax Credit.

Amount of credit decreases as the survivor's income rises

If a survivor does not owe enough taxes to use all of her Child Tax Credit, she may be eligible for a refund

CLAIMING CHILDREN FOR THE CTC

A child who is claimed must meet EITC's relationship and residency requirements and:

- Age limit is 17 AND
- Child must be claimed as a dependent

In addition, a child also must be:

- A U.S. citizen, or
- A U.S. national, or
- A resident alien

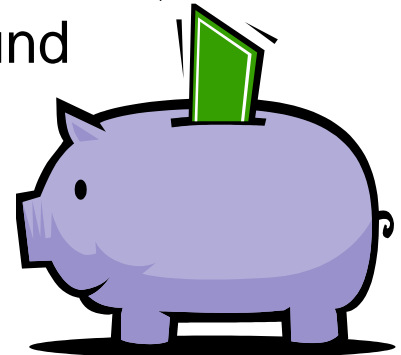
THE CTC -- REFUND

A 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, who has two kids and earned \$8,500 in 2012, had no income tax liability. She will receive a refund of \$825 from the Child Tax Credit.



CHILD AND DEPENDENT CARE TAX CREDIT

- This credit can help meet the cost of care for dependent children under age 13 OR disabled dependents and/or spouses who live with the survivor.
- Any kind of paid child care, including before- and after-school care, summer day camp, center, family day care, or in-home care, can be claimed.
- 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.

HOW MUCH IS THE CHILD AND DEPENDENT CARE TAX CREDIT WORTH?

- Survivors get a percentage of eligible expenses, based on income.
 - Example: Maria has \$15,000 in income, and paid \$1,500 in child care expenses in 2013. Her Child and Dependent Care Tax Credit is \$525.
- Worth a maximum of \$2,100 for two children or dependents and \$1,050 for one child or dependent
- This credit is not refundable, but it reduces tax liability and can increase refund from other credits.

OREGON CHILD AND DEPENDENT CARE TAX CREDIT

- **The Oregon CADC is based on the federal credit and is worth up to \$1,800.**
- **The value of the credit decreases as income rises, with a cut off of \$45,000.**
- **This credit is nonrefundable but can be carried forward for up to 5 years.**

OREGON WORKING FAMILY TAX CREDIT

- **Worth up to 40% of child care expenses, without limit.**
- **Available to families earning between 200% and 250% of the Federal poverty level.**
- **Refundable!**

ELIGIBILITY FOR OTHER BENEFITS

- **Will refunds from the federal credits affect a survivor's eligibility for other benefits?**
 - **NO!**
- **Refunds received by low-income filers will not count as income for eligibility determinations for federally funded public benefits programs (like TANF, SNAP, SSI).**
- **Any savings contributions from refunds will also be excluded from determining benefit eligibility for 12 months following the receipt of the refund**

THE CHEAT SHEET

The credit	To be eligible, a family needs	Age of qualifying children	Maximum credit value
EITC	Earned income, but not more than \$50,270 for married couple with 3 kids	Under 19, or under 24 if a full-time student	\$6,044
OR EITC	Same	Same	\$363
CTC	\$3,000 in earned income for refund	Under 17	\$1,000 per child
CDCTC	Work-related child care expenses	Under 13	\$2,100
OR CADC	Income of \$45,000 or less plus work-related child care expenses	Same	\$1,800
OR WFTC	Income under 250% of FPL plus work-related child care expenses	Same	40% of qualified expenses

NEW FOR 2014

- **Survivors can apply for new, affordable health insurance coverage under Obamacare through the health insurance marketplace NOW.**
- **Open Enrollment period runs through March 31, 2014.**
- **Enrollment for those facing special circumstances (job loss, marriage, birth of a child) is available year-round.**

Potentially eligible survivors should visit www.healthcare.gov or call (800) 318-2596.



THE PREMIUM TAX CREDIT

The Premium Tax Credit provides financial assistance for paying monthly costs of health insurance obtained through the marketplace.

- Available as soon as survivors start paying for insurance
- Credit is paid directly to insurer every month
- Amount based on family size and income
- “Settle up” with 2014 tax return but report changes in family size and income throughout year.

EXAMPLE: THE SMITH FAMILY

Maria and her 5- year-old twins have a household income of \$25,975 (133% FPL).

- At this income level, Maria will contribute a total of no more than 3% of her annual income—\$779, or \$65/month—toward her family's health insurance premium.
- The total annual premium cost is \$7,024. Therefore their annual Premium Tax Credit is \$6,244 (\$7,024-family's contribution of \$779), or \$520 a month.
- Every month, the insurer will be paid the \$520 Premium Tax Credit directly, and Maria will be responsible for paying the insurer the remaining \$65 a month.

HOW TO CLAIM THESE TAX 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 2013**

FILING TAX RETURNS – HELP FOR SURVIVORS




OCTOBER 2012
www.nwlc.org/toweryourtaxes



What to Bring to a VITA/ TCE/Tax-Aide Site

Items you need to bring to have your tax returns prepared:

- ☐ Proof of identification – Picture ID
- ☐ Social Security Cards for you, your spouse and dependents or a Social Security Number verification letter issued by the Social Security Administration
OR: Individual Taxpayer Identification Number (ITIN) assignment letter for you, your spouse and dependents
- ☐ Proof of foreign status, if applying for an ITIN
- ☐ Birth dates for you, your spouse and dependents on the tax return
- ☐ Wage and earning statement(s) Form W-2, W-2G, 1099-R, 1099-Misc from all employers
- ☐ Interest and dividend statements from banks (Forms 1099)
- ☐ A copy of last year's federal and state returns if available
- ☐ Proof of bank account routing numbers and account numbers for Direct Deposit, such as a blank check
- ☐ Total paid for daycare provider and the daycare provider's tax identifying number (the provider's Social Security Number or the provider's business Employer Identification Number) if appropriate
- ☐ To file taxes electronically on a married-filing-joint tax return, both spouses must be present to sign the required forms.



NATIONAL WOMEN'S LAW CENTER
EXPANDING THE POSSIBILITIES

FREE TAX PREPARATION ASSISTANCE

- The IRS-sponsored VITA Program offers free tax help to low- to moderate-income (generally, \$48,000 and below) people. Call the United Way's statewide info line at 211 to locate a VITA site near you. You can also visit CASH Oregon's website to locate one of the 140 tax sites statewide at: <http://www.cashoregon.org>
- The IRS also coordinates with AARP to offer tax help to people of low-to-middle income, with special attention to those age 60 and older, through a program called Tax-Aide. Call 1-888-227-7669 or visit <http://www.aarp.org/money/taxaide/> to locate an AARP-sponsored Tax-Aide site near you.
- If there isn't a VITA site near you, you can contact your local IRS representative, Angela Baldwin at 503-415-7067 or Maggie Starr at CASH Oregon at 503-243-7765 or maggie@cashoregon.org to consider creating a site in your community.
- Individuals with income below \$57,000 can use the Free File Program to e-file using free tax prep software. Visit <http://www.freefilealliance.org/> for more information.

VOLUNTEER VS. PAID TAX PREP

- Volunteer tax preparers are trained by the IRS and have IRS support
- If there is a problem with a tax return, some private tax preparers close up shop after tax season and can't be contacted
- Free tax preparers don't charge exorbitant Refund Anticipation Loans (RALs) or fees
- Sometimes free tax preparers can connect families with other services or 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**

IRS LETTERS SENT TO SURVIVORS

The IRS sends letters if they:

- Think the survivor (and/or her spouse or former spouse) should have filed a tax return
- Think the survivor (and/or her spouse or former spouse) owes taxes
- Want more information about something the survivor (and/or her spouse or former spouse) put on a tax return



LOW-INCOME TAXPAYER CLINICS (LITC) CAN HELP

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

TAXPAYER ADVOCATE SERVICE (TAS)

The Taxpayer Advocate Service can act as an internal ombudsman to help survivors when they:

- Are experiencing economic harm or are about to suffer economic harm
- Have experienced an unreasonable delay at the IRS when they've tried to resolve a tax account problem
- IRS system or procedure has either failed to operate as intended, or failed to resolve the problem
- The way the tax laws are being administered is unfair or has or will impair the survivor's rights

REASONABLE CAUSE RELIEF

- **Available for relief from Failure to File and Failure to Pay penalties (but not interest) when there is a reasonable excuse for failure to file or pay taxes due**
- **Facts and circumstances test**
- **Generally speaking, ignorance of the law, mistakes, or forgetfulness, by themselves, are not sufficient**

INABILITY TO PAY: SOME OPTIONS

If a taxpayer owes money to the IRS, they will try to collect it using liens and levies

There are collections alternatives available (get directly from IRS Collections, or get help from an LITC)

- **Currently Not Collectible Status** (the IRS will stop trying to collect the money)
- **Installment Agreements** (the IRS will take payments over time)
- **Offer In Compromise** (the IRS will accept less than the full amount due)

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 than abuse

EXCEPTIONS TO JOINT LIABILITY

There are times when the survivor can avoid joint liability stemming from a jointly filed return:

- Injured Spouse
- Innocent Spouse



INJURED SPOUSE ALLOCATION

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 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)

INNOCENT SPOUSE RELIEF BASICS

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**

For 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

INNOCENT SPOUSE RELIEF BASICS, CONT'D

- 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

MORE INNOCENT SPOUSE RELIEF BASICS

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

Time Frames

- For 1 and 2, the survivors must file for innocent spouse relief within two years of first collection activity against the requesting spouse. Collection activity includes an offset of the taxpayer's income tax refund, the filing of a claim by the IRS in a court proceeding where the taxpayer is a party, and the issuance of a Notice of Intent to Levy.

Notice

- 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.

Assistance

- Obtaining innocent spouse relief for a survivor can be difficult – get assistance!

RESOURCES FOR YOU

- On filing requirements, filing status, and tax credits, visit www.cashoregon.org or www.irs.gov
- To locate a VITA site near you, call the IRS' hotline at 1-800-906-9887 or visit <http://irs.treasury.gov/freetaxprep/>
- For fliers and outreach materials, visit www.nwlc.org/loweryourtaxes
- If you would like additional in-person training on tax credits, financial empowerment, or assistance in setting a local IRS tax site, the Oregon Coalition at 503-230-1951 ext. 301

RESOURCES FOR SURVIVORS WITH IRS CONTROVERSIES

- **Three Low-Income Taxpayer Clinics in Oregon.** For more info, visit <http://www.irs.gov/uac/Contact-a-Low-Income-Taxpayer-Clinic>
 - Legal Aid Services (statewide) 1-888-610-8764
 - Catholic Charities (Portland Metro) 503-489-6828
 - Lewis & Clarke Legal Clinic (only IRS controversies) 503-768-6500
- **To locate the Taxpayer Advocate Service office nearest you, call 1-877-777-4778 or call Angela Baldwin at 503-415-7067.**
- **Low-income filers may qualify for free or low-cost legal assistance:**
 - For a directory of Oregon's legal aid programs, go to www.oregonlawhelp.org
 - Lawyer Referral Service and Modest Means Program operated by Oregon State Bar: 800-452-7636

EITC COALITIONS IN OREGON

- **CASH Jackson County (Medford)**
 - Jan Sanderson Taylor, United Way --
jan@unitedwayofjacksoncounty.org
- **Financial Stability Partnership (Eugene)**
 - Janas R. Durkee, United Way --
jdurkee@unitedwaylane.org - 541.741.6000 x 159

