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## **New Mexico Courts Have Authority to Allocate Tax Exemptions in Child Custody Cases**

One decision to be made during any divorce involving children, particularly in cases of disputed child custody, is which parent is entitled to claim the tax exemption for the children.

Many New Mexico courts will follow the basic Internal Revenue Service ("IRS") rule that, absent an agreement between the parties, the custodial parent, or the parent with whom the child lives most of the time, will be allowed to claim the exemption for that child.

However, in the 1998 case of *Macias v. Macias*, the New Mexico Court of Appeals ruled that Federal tax laws do not preempt the authority of the New Mexico district courts, which have jurisdiction over family law matters in the State, to allocate the tax exemption for a dependent child. In other words, the New Mexico district courts are not required to follow the IRS rule regarding the tax exemption for the child.

Instead, New Mexico courts may allocate those exemptions however they see fit so long as it is in the best interests of the child. The court in *Macias* noted that a dependent child tax exemption can be seen as another source of financial support for a child. As such, the court is free to allocate tax savings as a means of providing for a New Mexico child's support.

Given that claiming the dependent child tax exemption can result in substantial tax savings to the party claiming the exemption, it is important to make sure that any parenting plan or other order of child support properly addresses the tax exemption. Failure to do so could prove costly.

### **DISCLAIMER**

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