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## New York Divorce and Family Law Blog

### [Divorce and Taxes: Joint or Separate Returns, Children as Dependents](#)

Posted on February 24, 2010 by [Daniel Clement](#)

The deadline for filing tax returns is approaching. For those going through divorce, questions abound; should I file as married or single? a joint or separate return? Can I take the children as dependents?

[Carley F. Mealey](#), an accountant at the [Brisbane Consulting Group](#) prepared an informative newsletter, [Tax Tips for the Divorcing Couple](#), which addresses some of the most common divorce and tax issues. I share some of her insights here:

- **Who can file a joint tax return?**

Unless you have been legally separated before December 31, you may still elect to file a joint return.

- **Should I file a joint return?**

By filing a joint return, you and your spouse are agreeing to be jointly and separately liable for any errors, omissions or deficiencies on the tax return. If you are concerned that your spouse might be under-reporting income or over-reporting deductions, it may be wise to consider an alternative filing status

- **When can I file as single person?**

You would be required to file as Single if you are unmarried as of December 31, or if you are legally separated as of the end of the year and you do not qualify for another filing status.

- **Who gets to claim the children?**

Generally, the right to the dependency exemption for the children goes to the custodial parent. . . . However, beginning with tax year 2009, it is no longer required that the custodial parent provide more than half of the child's support. Instead, the only requirement is that the child cannot provide more than half of his own support

- **Can we agree to alternate who gets to claims the children?**

Yes. If you and your spouse have agreed to share or transfer tax rights for the children, a copy of Form 8332 must be signed by the custodial parent and attached to the tax return of the noncustodial parent. This election can be for the current year or for future years.

Given the complexity of the tax code, prior to preparing your return, you should consult with your tax preparer and your divorce attorney before filing your return.