



WORKSHOP AC.

Moving Towards Civil Gideon

*2014 Legal Assistance
Partnership Conference*

Hosted by:

The New York State Bar Association
and The Committee on Legal Aid



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NEW YORK STATE BAR ASSOCIATION 2014 PARTNERSHIP CONFERENCE

AC. TAX 101 FOR THE LEGAL SERVICES PRACTITIONER

AGENDA

September 11, 2014
4:45 p.m. – 6:15 p.m.

1.5 Transitional CLE Credits in Professional Practice.

Under New York's MCLE rule, this program has been approved for all attorneys, including newly admitted.

Panelists:

Sarah B. D'Alessandro, Esq., Staff Attorney, Low Income Taxpayer Clinic, Legal Aid Society of Northeastern New York, Inc.

Elizabeth A. Hay, Esq., Attorney-in-Charge, Harlem Community Law Office, The Legal Aid Society

Anne-Marie Malak, Esq., Managing Attorney, Legal Aid Society of Northeastern New York, Inc.

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| I. Introductions | 4:45 pm – 4:50 pm |
| II. Overview: How Tax Issues Affect Other Areas of Civil Practice | 4:50 pm – 5:05 pm |
| III. The Tax Return (Entry Point to The Tax System) | 5:05 pm – 5:20 pm |

TEN MINUTE BREAK

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|--|--------------------------|
| IV. Taxable Income | 5:30 pm – 5:45 pm |
| V. Credits | 5:45 pm – 6:00 pm |
| VI. Penalties, Enforcement Powers and Collection Alternatives | 6:00 pm – 6:15 pm |

Table of Contents

Substantive Outline.....	1
PowerPoint Presentation.....	19
Biographies.....	102

Substantive Outline

AC. TAX 101 FOR THE LEGAL SERVICES PRACTITIONER

OUTLINE

I. OVERVIEW: HOW TAX ISSUES AFFECT OTHER AREAS OF CIVIL PRACTICE

A. Government Benefits

1. The Internal Revenue Code (IRC) provides significant benefits for low and moderate income individuals and families through the Earned Income Tax Credit, the Child Tax Credit, Child and Dependent Care Credit, credits for higher education and health insurance premium credit. (*See* detailed description *infra* at III.)
 - a. New York State and New York City tax law also provide Earned Income Tax Credit, and other refundable tax credits.
2. Although the IRC mandates that returns and return information be confidential, disclosure is authorized to State tax agencies, or pursuant to court order in other circumstances such as criminal investigations, as well as to the Social Security Administration and Railroad Retirement Board, the Department of Labor and Pension Benefit Guaranty Corporation, a federal agency administering a loan program, federal, state and local child support enforcement agencies, federal state and local agencies administering certain programs under the Social Security Act, the Food and Nutrition Act, or certain housing assistance programs in Title 38 of the U.S.C. Section 6103 of the IRC.
3. Tax returns are used to verify income for a variety of government benefits and impact eligibility for and amount of benefits.
 - a. Tax related identity theft is growing problem which impacts receipt of means tested benefits, including tax credits. Tax related identity theft occurs when someone:
 - i. Uses another person's SSN to work, resulting in income being reported under that SSN, or
 - ii. Files a tax return using another person's SSN, in order to fraudulently claim refundable credits, or
 - iii. Uses another person's SSN (often a child) in order to claim a dependency exemption and/or the EITC
 - b. Tax preparer scams which encourage individuals on SSI or public assistance to file tax returns reporting self-employment income in order to fraudulently claim the EITC may impact on disability benefit claims, due to earnings record created. Tax preparer fraud frequently also deprives eligible taxpayers of refunds to which they are entitled.
 - c. The definition of income which may be considered for determination of eligibility and amount of a means tested benefit differs according to program, and may not be the same as definition of taxable income which must be reported on a tax return (and vice versa).

- i. Cancellation of debt income may cause problems for taxpayers who are applying for or recertifying for SCRIE or DRIE (and possibly other benefits).
4. Disaster Relief: Individuals who have suffered casualty losses due to a federally declared disaster may be eligible to claim them on their tax returns.

B. Consumer

1. Tax liens or warrants for outstanding tax debt are reported by consumer credit reporting agencies and affect the taxpayer's credit score.
2. Resolution of consumer or student loan debt cases may result in issuance of a 1099-C by the creditor to IRS, indicating that the debt has been cancelled. IRC §6050P. Unless the taxpayer files a return and qualifies for an exclusion of the cancelled debt from income based on insolvency, bankruptcy, or qualified principal residence, farm or real property business indebtedness, the cancelled debt may result in tax liability (as well as penalties and interest for failure to file and pay). IRC §108.
 - a. Receipt of 1099-c does not necessarily preclude further collection action if debt is sold or contingent cancellation of student loan revoked.
3. Identity theft is major consumer problem – impacting credit, tax liability, access to benefits, housing and employment.
4. Tax returns are required to verify financial eligibility for federally insured student loans.
5. Commercial tax preparation is itself a consumer issue. (See “Tax Preparers Targeting Poor With High Fees”; “Rein In Shady Tax Preparers”, NYT, April 7, 2014.) IRS requires registration of commercial tax preparers, as does NYS. However, the D.C. Court of Appeals struck down IRS regulations imposing continuing education and competency testing requirements. NYS has adopted registration, testing and continuing education requirements but these are not fully implemented yet.
 - a. New York State and New York City laws require tax preparers to disclose information about their services and fees to customers, to provide them with a copy of the return, and inform them of their rights. N.Y.S. Business Law §372; N.Y.S. Tax Law §658(g); N.Y. City Admin. Code §20-739 et seq.

C. Employment

1. Worker classification (as employee or independent contractor) determines responsibility for reporting and payment of taxes, as well as entitlement to minimum wage, worker compensation, unemployment insurance, and other rights accorded employees.
 - a. Employer must withhold income tax as well as employee's share of Social Security and Medicare (FICA) taxes (7.65% of wages) from wages paid. IRC §3402(a); §3101, §3102.
 - b. Employer also must pay portion of Social Security and Medicare taxes for employees (7.65% of wages). IRC §3111, and unemployment insurance tax (FUTA). IRC §3301, §3302.

OUTLINE:
Tax 101 For The Legal Services Practitioner

- c. Independent contractors must pay self-employment tax for Social Security and Medicare (15.3% of income if >\$400) in addition to income tax. IRC §1401.
 - d. Employers must report wages and tax withholding on W-2 for employee; payment for services of an independent contractor must be reported on 1099 if \$600 or more. IRC §6051.
2. Worker is an employee if employer for whom services are performed has right to control and direct worker performing the services both as to result required and details and means by which result is obtained. IRC §3401(c); 26 CFR §31.3401(c)-1.

Designation by the parties is not controlling.

- a. Either party may challenge designation by filing SS-8 (but only employer may appeal determination of IRS).
 - b. Employee who has been misclassified as independent contractor may use form 8919 to compute and report employee's share of Social Security and Medicare (FICA) taxes in filing tax return, and form 4852 in place of W-2.
3. Outstanding tax liability which appears on credit report may impact ability to obtain employment.

D. Family

- 1. Marital status, living arrangements, child custody, support and maintenance impact tax filing status, right to claim exemptions for dependents and refundable credits, as well as ultimate tax liability or benefit to taxpayer.
- 2. Liability for tax due on joint return survives marriage, even if allocated solely to one party in judgment of divorce.
 - a. Taxpayer may seek relief from joint liability under IRC §6015 (“Innocent Spouse Relief”).
 - i. Domestic violence is a factor considered by IRS in determining right to this relief.
- 3. Past due child or spousal support may be collected by offset of federal or state income tax refunds due obligor. Tax refunds may also be applied to past-due income tax or federal non-tax debt such as student loan.
 - a. If offset is made against refund on joint return for debt of one spouse, other spouse may claim injured spouse relief by filing form 8379 to obtain portion of refund attributable to his/her income.

E. Housing

- 1. Outstanding tax debt, for which state warrant or federal lien has been filed and reported by credit reporting agencies, may interfere with ability to obtain or retain housing – rentals, financing for purchase, or loan modifications in foreclosures.
- 2. Tax return information impacts eligibility for housing subsidies.
- 3. Low-income housing credit is nonrefundable income tax credit available on per unit basis to owner of qualified low-income building in qualified low-income projects. IRC §42. Conditions for credit restrict rents which can be charged in units for which credits claimed.

4. New York State law provides for Senior Citizen Rent Increase Exemption (SCRIE) and Disability Rent Increase Exemption (DRIE) through abatement of real estate tax for landlord of qualifying low- income tenant.
5. Verification of residence and shelter costs is required if IRS or NYS examine (audit) claim on tax return for head of household filing status, dependent exemptions, EITC, or Child Tax Credit.
6. Tenant buy-out produces taxable income which must be reported on return.

F. Immigration

1. Resident aliens are required to file and pay taxes to the same extent as citizens – on world-wide income. IRC §1. A resident alien under IRC §7701(b)(1) is someone who:
 - a. Has Legal Permanent Resident (“green card”) status, or
 - b. Meets substantial presence test for the calendar year: Physically present in U.S. on at least 31 days during current year and 183 days during 3-year period that includes the current year and 2 years immediately before that, counting:
 - i. All the days present in current year
 - ii. 1/3 of days present in year before current year
 - iii. 1/6 of days present in second year before current yr.
 - c. Makes a first year election and qualifies based on presence
2. Individual who is not eligible for SSN must obtain Individual Taxpayer Identification Number (ITIN) in order to file taxes
 - a. Used for tax administration purposes only
 - b. Apply by filing form W-7 with IRS, attached to tax return
3. Immigration reform bills which have been proposed would condition adjustment of status on filing and paying income taxes.
4. Individuals in removal proceeding or seeking to adjust status may need to demonstrate that they have complied with tax responsibilities in order to prevail or get relief sought.

II. THE TAX RETURN (ENTRY POINT TO THE TAX SYSTEM)

A. The U.S. income tax system relies on self-assessment which is accomplished through the filing of a tax return.

1. Tax return must be filed on proper form, contain sufficient information to calculate tax liability, and be executed under penalty of perjury. IRC §6065.

B. Consequences of failure to file/pay

1. Summary Assessment by IRS/NYS
2. Imposition of civil penalties and interest
3. Criminal prosecution
4. Filing of valid return tolls statute of limitations for assessment of additional tax by IRS: 3 years from due date of return or date of actual filing if later. IRC §6501.
 - a. If no return is filed, then statute does not begin to run.
 - b. If fraudulent return filed, then statute does not run.
 - c. If return contains substantial omissions (>25% of gross income shown on return) then statutory period extended to 6 years.

OUTLINE:
Tax 101 For The Legal Services Practitioner

C. Who Must File: U.S. citizen or resident alien if gross income is equal to or exceeds the applicable exemption amount and standard deduction for tax year. IRC §6012. For 2014, the amount for a single individual will be \$10,150; if 65 or older, \$11,700; with higher amounts if married filing jointly, as head of household, qualifying widow(er), 65 or over, additional dependents, and lower amount if married filing separately.

1. An individual who can be claimed as dependent on another taxpayer's return must also file return if income exceeds \$1,000 (unearned income) or \$6,200 (earned income) or combined earned/unearned exceeds larger of two thresholds.
2. Return must be filed to claim refund or refundable credit. Refund claim must be filed no later than 3 years from time return due or two years after tax paid, whichever is later. IRC §6511, §6513.
3. Return must be filed by any individual who has net self-employment earnings of at least \$400. IRC §1402.

D. Filing deadline for individual income tax is generally April 15th in year following tax year. IRC §6072. Payment is due at time of filing and penalties may be imposed if insufficient payment of estimated taxes or withholding.

1. Although automatic 6 month extension available for filing, (Form 4868), no extension is provided for payment by April 15th.

E. Filing Status determines amount of standard deduction and eligibility for certain refundable credits.

1. Single person must be unmarried or separated from spouse on December 31 of tax year by divorce or separate maintenance decree.
 - a. Eligible for credits such as EITC and can claim dependent exemption for other individuals.
2. To file as head of household taxpayer must be unmarried or "considered unmarried" on last day of year; have paid more than half the cost of maintaining the household and have had a "qualified person" living in home for more than half the year. Eligible for credits such as EITC and larger standard deduction.
 - a. To be "considered unmarried" must be either legally separated from spouse under divorce or separate maintenance decree, or
 - b. Living apart from spouse for at least last 6 months out of the year.
3. Married filing jointly may be elected by two taxpayers who are married on last day of year (regardless of whether they are living together or not. Eligible for EITC, other credits.
4. Married filing separately must be elected if married taxpayer does not file jointly with spouse and does not qualify for head of household status. Not eligible for EITC, and some other tax benefits unavailable with this filing status.
5. Qualifying widow(er) with dependent child is taxpayer whose spouse died in 2 year period preceding tax year (e.g., in 2012 or 2013 for 2014) and who has not remarried by end of tax year; who has child or stepchild claimed as dependent who lived in household all of tax year, and who provides over half cost of maintaining home.

F. Exemptions are available for taxpayer, taxpayer's spouse and dependents.

1. Taxpayer may not claim exemption for dependent if taxpayer is claimed as a dependent on another taxpayer's return.
2. Dependent must be either a qualifying child or qualifying relative. IRC §152(c),(d).
 - a. Qualifying child is a child, grandchild, sibling, descendant of sibling, stepchild, step-grandchild, stepsibling or eligible foster child, who resides with taxpayer more than 6 months of tax year and who at end of tax year was 18 or younger, 24 or younger and a full time student or totally and permanently disabled and who did not provide over of own support for tax year.
 - b. Qualifying relative is a child, sibling, stepchild or sibling, father, mother, grandparent, stepfather/mother, niece, nephew, aunt, uncle, foster child or unrelated individual who lives in taxpayer's household during tax year and who does not have gross income in excess of exemption amount and for whom taxpayer provided over half the support. Qualifying relative may not be qualifying child of taxpayer or any other taxpayer for the tax year.
3. Dependent must a U.S. citizen or resident alien or live in a country contiguous to the U.S. (Mexico or Canada) and cannot be claimed by more than one taxpayer/return.
4. Tie Breaker rule applies to married, separated, divorced or never married parents.
 - a. Custodial parent has right to claim child as dependent. (parent having custody for greater portion of calendar year: >183 days).
 - b. If child spends equal time with both parents, then parent with higher income can claim child.
 - c. Custodial parent can release dependency exemption to non- custodial parent by signing IRS form 8332 I (for one tax year or multiple tax years).

III. TAXABLE INCOME

A. Gross income includes all income from whatever source derived.

IRC §61 such income includes **but is not limited to:**

1. Compensation for service
2. Income derived from business
3. Gains from dealings in property
4. Interest
5. Rents
6. Royalties
7. Dividends
8. Alimony/maintenance
9. Annuities
10. Income from life insurance/endowment contracts
11. Pensions
12. Income from discharge of indebtedness
13. Distributive share of partnership gross income
14. Income in respect of a decedent

15. Income from an interest in an estate or trust
16. Unemployment compensation
17. Social Security benefits
18. Gambling winnings

B. Household Gross Income

1. New York State Tax Law defines household gross income for state personal income tax purposes as aggregate federal adjusted gross income of household N.Y. Tax Law §606(b)(3)9A).
2. City taxable income is defined as New York State taxable income. N.Y. Tax Law §1303.

C. Prevailing litigant must generally recognize gross income when another party pays attorney's fees. *Old Colony Trust Co. v. Comm'r* 279 U.S. 716 (1929)

1. Contingent fees are includible in gross income of litigant, even if paid to attorney. *Sinyard v. Comm'r* 268 F.3d 756 (9th Cir.2001), cert.denied 536 U.S. 904 (2002). [ADEA class action].
2. In Private Letter Ruling 200906010 (October 24, 2008) IRS advised the requesting taxpayer that the attorneys' fees paid to counsel from a common fund pursuant to the settlement were not includible in the gross income of class representatives or class members.
3. Attorney fees awarded under fee shifting statutes are property (income) of the litigant. *Astrue v. Ratliff* 130 S.Ct. 2521 (2010)
4. In Private Letter Ruling 201015016 (April 16, 2010), IRS advised requesting taxpayer that attorneys' fees awarded directly to a legal aid organization weren't includible in taxpayer's gross income under Code Section 61 where taxpayer's retainer contract expressly provided that organization wouldn't charge taxpayer any fee for legal services.
 - a. Section 6110(k)(3) of the Internal Revenue Code provides that Private Letter Rulings may not be used or cited as precedent.

D. Certain items are specifically excluded from gross income. These include but not limited to:

1. Life insurance and certain other death benefits. IRC §101
2. Gifts and inheritances. IRC §102
3. Compensation for injuries or sickness. IRC §104
 - a. Worker's Compensation and other types of health/disability insurance paid for by employer, military
 - b. Damages on account of personal physical injuries or physical sickness (not punitive damages) IRC § 104(a)(2) *See* Rev. Rul. 96-65, 1996-2 CB 6 (includes a brief history of statutory changes)
 - c. Emotional distress is not treated as physical injury or sickness. Exception: may exclude amounts received for actual out-of-pocket medical costs attributable to emotional distress (if such costs not previously deducted as itemized deduction which resulted in a tax benefit) (IRC § 104(a), § 111, and § 213)
4. Medical or Health savings accounts. IRC§220, 223

5. Cafeteria plans (flexible benefit plans). IRC §125
6. Certain fringe benefits. IRC §132
7. Meals/lodging provided for convenience of employer. IRC §119
8. Reimbursement for increased living expenses due to damage or destruction of principal residence. IRC §123
9. Qualified scholarship or fellowship. IRC §117
10. Certain agricultural cost-sharing payments. IRC §126
11. Portion of gain from sale of small business stock. IRC §1202
12. Foster care payments. IRC §131
13. Discharge of debt meeting certain criteria. IRC §108
14. Certain veterans benefits, armed forces allowances, combat zone compensation and qualified military benefits. IRC §§112,134
15. Qualified disaster relief payments. IRC §139

E. Adjusted Gross Income (AGI). IRC §62

Adjusted gross income means gross income minus certain deductions (known as “above the line deductions”). These include (but are not limited to):

1. Expenses directly attributable to a trade or business carried on by taxpayer. IRC §162. (Schedule C)
2. Losses from sale or exchange of property. (Schedule C, D or E)
3. Contributions by self-employed persons to pension, profit-sharing and annuity plans. IRC §401, 404
4. Contributions by employees to retirement plans. IRC §219
5. Alimony payments (maintenance in NYS). IRC §215
6. Interest forfeited on premature withdrawals from timed savings accounts.
7. Certain repayments of supplemental unemployment compensation benefits. Otherwise may be itemized deduction. (*See also* IRC §1341 for claim-of-right doctrine applicable to computation of tax in year of repayment if over \$3,000.)
8. Moving expenses required to start work in new location. IRC §217 Must be computed on Form 3903.
9. Interest paid on qualified education loan. IRC §221. Maximum is \$2,500 but reduced when Modified Adjusted Gross Income (MAGI) reaches certain limit (\$65,000 in 2014/\$130,000 if MFJ) and eliminated completely at upper limit (\$80,000/\$160,000 if MFJ).
 - a. $MAGI = AGI + \text{certain amounts excluded under specified IRC sections. The definition of MAGI for determining the amount of education loan interest deduction differs from definition of MAGI in other Code Sections pertaining to Child Tax Credit or eligibility for health care coverage under ACA.}$
10. Qualified tuition and related expenses for accredited post- secondary institution. IRC §222 Deductible amount based on AGI with maximum deduction of \$4,000 for taxpayers with income up to \$65,000 (\$130,000 if MFJ) or \$2,000 for taxpayers with income between \$65,000 and \$80,000 (\$160,000 if MFJ)
11. Contributions to Archer medical savings account. IRC §220

OUTLINE:
Tax 101 For The Legal Services Practitioner

12. Contributions to health savings accounts. IRC §223
13. Attorney fees and court costs in actions challenging unlawful discrimination, claims against the U.S. gov't, or certain claims brought under Medicare law. IRC §62(a)(20).
14. Travel expenses of members of National Guard or reserves incurred to attend meetings and trainings.
15. Deduction for ½ of self-employment tax. IRC §164(f), calculated on Schedule SE.

F. Deductions.

- a. Taxable income = adjusted gross income minus allowable deductions. IRC §63. Allowable deductions include:
 - b. Personal exemptions for taxpayer, spouse (if MFJ) and dependents. IRC §151, 152
 - c. Standard deduction if not itemizing (amount depends on filing status and additional amount for taxpayers 65 years of age or older)
 - d. Certain expenses which are not adjustments to income are deductible as itemized deductions reported on Schedule A, if taxpayer elects to itemize rather than take standard deduction. IRC §63(d),(e).
 - e. Expenses which may be deductible include (but are not limited to):
 - i. Unreimbursed medical and dental expenses to extent they exceed 10% of AGI (7.5% if age 65 or over). IRC §215
 - ii. State and local taxes. IRC §164
 - iii. Interest paid or accrued (numerous caveats). IRC §163
 - iv. Qualified charitable contributions. IRC §170
 - v. Impairment related work expenses. IRC §67(d)
 - vi. Gambling losses (but only to extent of winnings reported as income). IRC §165(d)
 - vii. Unreimbursed casualty and theft losses. (Form 4864) IRC §165(a)
 - viii. Certain other expenses are deductible to extent they exceed 2% of taxpayer's AGI. IRC §67(a). These include:
 - a) Ordinary and necessary expenses paid or incurred for production of income. IRC §212
 - b) Unreimbursed employee expenses.
 - c) Cost of tax preparation.
 - d) Legal expenses if paid or incurred for production of income or maintenance of income-producing property.

G. Certain items are not deductible.

1. Personal, living or family expenses. IRC §262. Therefore legal fees in divorce not generally deductible.
2. Expenses allocable to production of tax exempt income (i.e., SSI and SSD to extent it is not taxable). IRC §265.
 - a. Title II Social Security benefits may be taxable income in part depending on other income in household and marital status and household composition. IRC §86.

- i. Legal fees taxpayer incurs to collect Social Security benefits are deductible only to extent attributable to taxable Social Security income or to attorney fee award itself. Rev. Ruling 87-102, 1987-2 CB 78, IRS (Oct. 12, 1987).

H. Tax Treatment of Minor's Income

1. Child or dependent generally taxed in same manner on income.
 - a. No personal exemption allowed if child can be claimed as dependent on another taxpayer's return. IRC §151(d)(2)
 - b. Standard deduction limited to greater of \$1,000 or \$350 + earned income (up to \$6,200, the standard deduction for single person in 2014). IRC §63(c)(5).
 - c. If child's tax not paid, assessment can be made against parent to extent tax attributable to earned income. IRC §6201(c).
 - d. If child unable to file return then guardian or person charged with care of person or property must file. IRC §6012(b).
2. Exception for child subject to "kiddie tax" IRC §1(g). Applies if:
 - a. Under 18
 - b. Under 19 (or 24 if full-time student) and does not have provide more than 1/2 own support with earned income
 - c. Child's investment income is more than \$2,000
 - d. Either parent alive at end of tax year
 - e. Does not file joint return
 - f. Child required to file tax return
3. If child subject to kiddie tax then net unearned income is taxed at parent's tax rate if higher or parent(s) can elect to include child's income in parent's return. Distribution from SNT treated as earned income for purpose of determining net unearned income.
 - a. If parents not married: custodial parent
 - b. If parents file MFS, then parent with higher income

I. Tax Treatment of Capital Gain

1. Up to 3 different tax rates can apply to net capital gains depending on taxpayer's income tax bracket. IRC §1(h)(1).
 - a. 20% if taxpayer in 39.6% bracket
 - b. 15% for taxpayers in 25%, 28%, 33% or 35% brackets
 - c. 0% for taxpayers in 15% bracket
2. Capital gain/loss arises from sale or exchange of any capital asset.
 - a. Capital asset means any property whether or not connected to trade or business, except:
 - i. Stock in trade, inventory and property held primarily for sale to customers in ordinary course of trade or business
 - ii. Note or account receivable acquired in trade or business
 - iii. depreciable business property
 - iv. Real property used in trade or business

- v. Copyright, literary, musical or artistic composition, letter or memorandum held by author/creator or person for whom created
 - vi. U.S. government publication held by taxpayer who received it other than by purchase at the price offered to public
 - vii. Commodities derivative financial instruments held by commodities derivatives dealers
 - viii. Hedging transactions entered into in ordinary course of business
 - ix. Supplies used in ordinary course of business
- b. “Buy-out” of residential tenant may be treated as capital gain

IV. CREDITS AVAILABLE TO LOW & MODERATE INCOME TAXPAYERS INCLUDE BUT ARE NOT LIMITED TO:

A. Earned Income Tax Credit (IRC §32)

1. Is a refundable credit which provided more than \$62 billion in refunds to taxpayers in 2011. New York State and New York City also provide EITC based on eligibility for federal EITC. (State credit is 30% of federal credit for which taxpayer qualifies, and City credit is 5% of federal credit.) To qualify for credit:

- a. Filing status cannot be MFS
- b. If no Qualifying Child(ren), must be over 25 and under 65 and have lived in U.S. for more than half tax year (not P.R. but certain military bases abroad are)
- c. Must have earned income within limits based on filing status (single, MFJ, HOH) and number of qualifying children (0 – 3).
 - i. Income limits range from \$14,590 (in 2014) for single taxpayer with no QC, to \$52,427 for MFJ taxpayers with 3 QC. However, credit begins to phase out for single or HOH with one or more QC at income of \$17,830, and at \$8,110 if no QC. Phaseout for MFJ with one or more QC begins at income of \$23,260, or \$13,540 if no QC.
 - ii. Public assistance, SSI, Social Security, unemployment benefits, pensions, worker’s compensation, etc. are not earned income for EITC purposes.
- d. Investment income cannot exceed \$3,350
- e. Cannot have foreign income
- f. Qualifying Child Requirements:
 - i. Relationship (same as for dependent exemption)
 - ii. Age (same as for dependent exemption)
 - a) Must also be younger than taxpayer
 - iii. Residency – must live with taxpayer >half the year
- g. Taxpayer, spouse (if filing jointly) and QC must have SSN valid for employment (ITIN does not qualify)
 - i. Taxpayer who obtains SSN and who otherwise qualified for EITC in previous years but for SSN may file amended returns to claim EITC.

h. EITC amount depends on number of QC, filing status and income. Maximum in 2014 ranges from \$496 for taxpayer with no qualifying children to \$6,143 for taxpayer(s) with 3 QC.

i. Tax returns claiming EITC are subject to examination, usually by correspondence. IRS (or NYS) asks for documentation of filing status (if filing as HOH), relationship, residence and age of qualifying child(ren), as well as proof of self-employment income when this is type of earned income reported on return.

a) Refund may be frozen pending exam, or if issued, may result in liability if taxpayer unable to document eligibility.

b) If unable to document eligibility, taxpayer will at minimum have to recertify by filing form 8862 with subsequent return claiming EITC and submitting to another exam with documentation of eligibility for EITC for that tax year.

c) Taxpayer may be disqualified from claiming EITC for 10 years if found to have fraudulently claimed credit, and for 2 years if taxpayer's claim was reckless or made with intentional disregard of rules. Sanction is in addition to any penalty which may also be imposed on taxpayer.

B. Child Tax Credit (IRC §24)

1. Is a partially refundable credit available to taxpayers with qualifying children. Credit = \$1,000 for each child claimed.

2. Credit begins to phase out for MFJ at \$110,000 MAGI; at \$75,000 for HOH, single or QW; and at \$55,000 for MFS. Credit is reduced by \$50 for each \$1,000 by which MAGI exceeds the relevant limit.

a. MAGI = Modified Adjusted Gross Income which is AGI increased by any income previously excluded from Puerto Rico, foreign earned income and income previously excluded for bona fide residents of American Samoa.

3. Definition of Qualifying Child same as for dependent except must be under 17 years old at end of tax year and be U.S. citizen or resident alien. Child Tax Credit goes with the dependency exemption – taxpayer must have claimed child on return as dependent in order to claim CTC.

4. Credit limited by tax liability unless eligible for additional child tax credit (ACTC). Refundable portion of CTC = lesser of unclaimed portion of nonrefundable credit amount or 15% of earned income which exceeds \$3,000. If taxpayer has 3+ children, may get refund of excess of taxpayer's share of SS taxes (including ½ of any self-employment taxes) over earned income credit for tax year.

C. Child and Dependent Care Credit (IRC §21)

1. Is a nonrefundable credit for a portion of employment related qualifying child or dependent care expenses. **Must be reported on Form 2441.**

2. In order to qualify for credit individual must be:

a. Dependent who is qualifying child under age of 13.

OUTLINE:
Tax 101 For The Legal Services Practitioner

- b. Dependent who is qualifying child or qualifying relative who is physically or mentally unable to care for self and has same principal place of residence as taxpayer for more than half the year.
- c. Taxpayer's spouse if unable to care for self and same principal place of residence for over half the year.

3. Maximum expenses for determining credit: \$3,000 (for one qualifying individual); \$6,000 for two qualifying individuals. Credit amount is determined by applicable percentage determined by AGI. Maximum credit is \$1,050 for one individual in care; \$2,100 for two.

4. Married taxpayer living with spouse must file MFJ in order to claim child and dependent care credit.

D. Credit for the Elderly or Permanently & Totally Disabled

1. Available to low-income individuals who are 65 at end of tax year or under 65 but retired and permanently and totally disabled when they retired. Married taxpayers must file jointly unless living apart entire tax year. Computed on Schedule R. Credit is percentage of amount based on filing status reduced by certain income excluded from gross income and half of excess of AGI over levels determined by filing status.

E. Credits for Higher Education Tuition (IRC §25) currently available include:

- 1. American Opportunity Credit which is 40% refundable if credit exceeds tax liability.
 - a. Must file MFJ if married.
 - b. Maximum credit \$2,500/student for first 4 years of post-secondary education.
 - c. Credit phases out when modified AGI between \$80,000 and \$90,000. (AGI + excluded foreign income)
 - d. Credit is percentage of qualified tuition and related expenses up to maximum.
- 2. Lifetime Learning Credit is percentage of qualified tuition expenses paid on first \$10,000 of tuition per taxpayer.

F. Retirement Savings Contribution Credit

- 1. Available to low-income taxpayers for maximum credit of \$1,000, calculated on Form 8880 as percentage of qualified retirement savings contribution (maximum of \$2,000 per tax year). IRC §25B
- 2. Taxpayer must be at least 18 years old, not a full time student and not claimed as dependent on another taxpayer's return.

G. Mortgage Interest Credit

- 1. Available to low-income homeowners who have mortgage credit certificates issued by state or local governments applicable to tax year. Credit is determined by certificate credit rate (10% - 50%) and amount of interest paid or accrued in tax year on remaining principal. Generally \$2,000 limit. IRC §25
- 2. Recapture provision applies if home transferred or is no longer principal place of residence within 9 years of date of federally subsidized liability.

H. Health Insurance Premium Assistance Credit

- 1. A new refundable credit created as part of the Affordable Care Act and available for tax year 2014 to assist individuals and families in paying for health insurance. IRC §36B

Credit may be claimed by eligible taxpayers who purchase qualified health insurance through New York State of Health (or federal or state health benefit exchange in state of residence).

2. Eligibility for credit requires:

- a. Household income between 100% and 400% of federal poverty line (FPL)
 - i. Income eligibility based on modified adjusted gross income (MAGI) which is AGI + excluded foreign income, foreign housing allowance expenses, tax exempt interest and Social Security and tier I Railroad Retirement benefits
- b. Filing joint return if married
- c. Not claimed as dependent on another taxpayer's return
- d. U.S. citizen or lawful resident alien
- e. Not incarcerated

3. Taxpayer may wait to claim credit on tax return, after paying full premiums for health insurance or claim advance premium credit when enrolling for insurance through NYS of Health. Premium will be based on projected income for tax year, and credit must be reconciled on tax return with additional credit available if income was less than projected, or deficit resulting if income more than projected. Changes in income or household composition must therefore be reported to NYS of Health to avoid liability based on overpayment of advance premium credit.

4. Amount of premium credit calculated based on number of coverage months, taxpayer's MAGI, and premiums for second lowest "Silver" plan available in area.

Amount taxpayer will be required to pay if receiving advance credit:

- a. 3-4% of MAGI between 133% and 150% FPL
- b. 4-6.3% of MAGI between 150% and 200% FPL
- c. 6.3-8.05% of MAGI between 200% and 250% FPL
- d. 8.05 – 9.5% of MAGI between 250% and 400% FPL

I. New York State Tax Credits which benefit low-income taxpayers include:

1. New York State household credit provides \$20 to \$75 for single filers with income up to \$28,000; higher amounts for HOH, MFJ, depending on number of dependents.

2. Empire State Child Credit for taxpayers eligible for federal Child Tax Credit equal to lesser of 33% of federal CTC or \$100 per qualifying child. Claimed on IT-213.

3. Child and Dependent Care Credit for taxpayers who qualify for federal CDCC in amount ranging from 20% to 110% of federal CDCC depending on AGI. Claim on IT-216

- a. Residents of NYC who have AGI less than \$30,000 and a QC under 4 years of age can also receive NYC CDCC in amount up to 75% of NYS CDCC

4. Earned Income Credit based on eligibility for federal EITC in amount equal to 30% of federal EITC. Claim on IT-215

- a. NYC residents who qualify for federal EITC eligible for credit of 5% of federal amount.

OUTLINE:
Tax 101 For The Legal Services Practitioner

- b. Enhanced EIC for certain noncustodial parents who have minor child with whom they do not reside but for whom they pay child support pursuant to court order. Amount of credit = greater of 20% of federal EITC for 1 QC or 2.5 x EITC for taxpayer without QC.
- 5. Real property tax credit is available in amount ranging from \$75 to \$375 depending on income for homeowners or renters whose gross income is less than \$18,000. For renters, rent must be less than \$450/month; homeowners must have paid real estate tax, not own real estate worth more than \$85,000 and not receive more than 20% of rent for property for nonresidential use. Claim credit on IT-214.
- 6. College tuition credit (if not claiming expense as itemized deduction). Claim on IT-272.
- 7. NYC School Tax Credit of \$63 or \$125 depending on filing status for residents of NYC with income less than \$250,000.
- 8. NYC household credit of \$15 to \$30 (or more if additional dependents) for households with income less than \$12,500 (single filers) or \$22,500 (MFJ, HOH, QW)
- 9. Family Tax Relief Credit effective tax year 2014. NYS Tax Law §606(vv) provides credit up to \$350 for taxpayers with NY AGI between \$40,000 (minimum) and \$300,000 and at least one dependent child under 17 years of age
- 10. Enhanced Real Property Circuit Breaker tax credit effective tax year 2014 enacted in Part K of Chapter 59 of Laws of 2014. Gives homeowners and renters in New York City with household gross income under \$200,000 credit based on excess real property tax above certain percentage of household gross income. For renters real property tax equivalent is set at 15.75% of adjusted rent paid in tax year. Maximum credit \$500.

V. PENALTIES MAY BE IMPOSED BY IRS

If Taxpayer Fails to Comply with Filing or Paying Taxes or Other Obligations Imposed under the Internal Revenue Code (e.g., shared responsibility provisions of Affordable Care Act). These include but are not limited to:

A. Failure to file returns within time prescribed

- 1. May result in 5% addition to tax for one month, with additional 5% for each month failure continues, up to 25%. IRC §6651(b)
 - a. If taxpayer can show reasonable cause penalty will not be imposed.

B. Failure to pay tax when due, unless reasonable cause is shown,

- 1. May result in penalty up to .5% of tax not paid for each month remaining unpaid, up to 25%.
 - a. Penalty increases to 1% on 10th day after notice of levy given or date notice of jeopardy of assessment given.
 - b. If taxpayer enters into installment payment agreement penalty reduced to .25% of tax not paid. IRC §6651(a)

C. Frivolous return penalty of \$5,000

- 1. May be imposed if return omits information necessary to compute tax, shows substantially incorrect tax or is based on a frivolous position.

D. Accuracy related penalty

1. May be imposed of 20% of tax underpaid that is attributable to negligence or disregard of rules, substantial understatement of tax or other similar misstatements. IRC §6662

E. Underpayment

1. Fraud in underpayment may result in 75% penalty.
2. Underpayment of estimated tax is basis for penalty equal to interest that would accrue on underpayment for period of underpayment. IRC §6654(a)

F. Erroneous tax refund or credit claims

1. Made for “excessive amount” may result in penalty of 20% of excessive amount. IRC §6676

G. Criminal penalties

1. May be imposed for willful failure to file return, supply necessary information, pay tax, keep records or evade tax. IRC §7201 - §7212. Such penalties are in addition to civil penalties.

H. Failure to comply with individual health care coverage mandate

1. May result in imposition of a “shared responsibility payment” – or penalty – for failure to maintain minimum essential coverage. IRC §5000A.
2. Exceptions to individual mandate include:
 - a. Undocumented immigrants
 - b. Incarcerated individuals
 - c. Native Americans
 - d. Those without coverage less than 3 months
 - e. Those who cannot afford because cheapest available plan costs more than 8% of household income
 - f. Purchase of plan would cause a hardship
 - g. No filing requirement (income below filing thresholds)
3. Taxpayer who qualifies to claim dependent on return responsible for shared responsibility payment regardless of whether exemption taken for dependent.
4. For 2014, penalty is \$95/adult and \$47.50 per child under 18 or 1% of AGI, whichever is greater. In 2015, penalty increases to \$325/adult; \$162.50/child under 18, or 2% of AGI, whichever is greater. For 2016, penalties increase to \$695/\$347.50 or 2.5% of AGI, whichever greater, and for 2017 rates adjusted for cost of living increases or 2.5% of AGI, whichever greater.
5. IRS may not collect shared responsibility payment by lien or levy, but may offset against other refundable credits.

VI. ENFORCEMENT POWERS AND COLLECTION ALTERNATIVES

A. IRS is empowered to collect tax through lien and levy on all taxpayer’s property which is not specifically exempt. IRC §6321. Exempt property includes:

1. Clothing, school books
2. Fuel, food, furniture and personal effects up to \$8,940 in value
3. Unemployment benefits

OUTLINE:
Tax 101 For The Legal Services Practitioner

4. Books and tools of trade, business or profession up to \$4,470
5. Undelivered mail
6. Certain annuity and pension payments
7. Worker's compensation
8. Judgments for support of minor children
9. Public assistance, SSI
10. Certain amounts of wages/income (pursuant to national collection standards)
11. Service connected disability payments

B. IRS generally has 10 years after assessment to collect tax liability by levy or court proceeding.

1. although period can be extended by agreement with taxpayer, filing of bankruptcy petition or certain other circumstances.

C. Non-collectible status

1. Taxpayer whose income is insufficient to pay for shelter, food, etc. and also pay tax liability may be placed in currently non-collectible status but will continue to owe tax until period for collection runs, and may be subject to further enforcement action if income or assets change/increase.

D. IRS may compromise tax liability based on:

1. doubt as to collectability,
2. doubt as to liability,
3. or to promote effective tax administration.

E. IRS may also agree to accept installment payment agreement, or partial payment agreement to resolve outstanding tax liability.

F. NYS Collection Powers

1. New York State has similar collection powers, but may not levy on federally exempt income/benefits such as Social Security, Veterans benefits. However, collection may be made for 20 years after date warrant for tax liability may be issued.
2. New York has similar collection alternatives, but no written guidance regarding non-collectible status.

PowerPoint Presentation

TAX 101 FOR THE LEGAL SERVICES PRACTITIONER

NEW YORK STATE PARTNERSHIP CONFERENCE - SEPTEMBER 11, 2014

1

Agenda:

- Overview: How Tax Issues Affect Other Areas of Civil Practice
- The Tax Return (Entry Point to the Tax System)
- ~ Break ~
- Taxable Income
- Credits
- Penalties, Enforcement Powers and Collection Alternatives

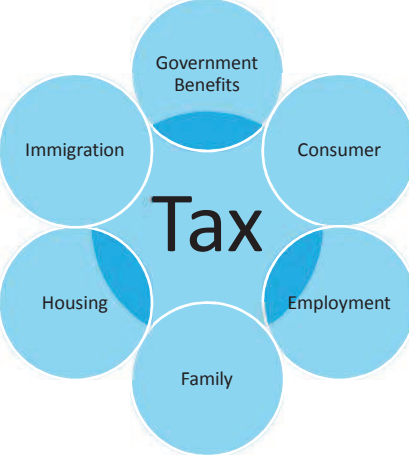
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Overview

HOW TAX ISSUES AFFECT OTHER AREAS OF CIVIL PRACTICE

Overview:

How Tax Issues Affect Other Areas of Civil Practice



Government Benefits

How Tax Issues Affect Government Benefits

Tax laws provide monetary benefits for low & moderate income individuals

Internal Revenue Code	New York State and New York City Tax Laws
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Earned Income Tax Credit	<input type="checkbox"/> Earned Income Tax Credits
<input type="checkbox"/> Child Tax Credit	<input type="checkbox"/> Other refundable tax credits
<input type="checkbox"/> Child and Dependent Care Credit	
<input type="checkbox"/> Higher education credits	
<input type="checkbox"/> Health insurance premium credits	

How Tax Issues Affect Government Benefits

Tax laws provide for disclosure

The diagram illustrates the IRS's role in disclosing information to various government agencies. At the center is a blue circle labeled "IRS". Eight arrows radiate from this central circle to surrounding blue circles, each representing a different agency or entity:

- State tax agencies
- Per court order
- Social Security Administration
- Railroad Retirement Board
- Department of Labor and Pension Benefit Guaranty Corporation
- Child support enforcement agencies
- Agencies administering certain Social Security Act programs
- Agencies administering certain Food and Nutrition Act programs
- Agencies administering certain housing assistance programs

7

How Tax Issues Affect Government Benefits

Tax returns are used to verify income for a variety of benefit programs

Tax returns information impacts eligibility for and amount of certain benefits

8

How Tax Issues Affect Government Benefits

Tax returns are used to verify income for a variety of benefit programs
Tax returns information impacts eligibility for and amount of certain benefits

Be aware of the differences in the definition of income for determining benefits eligibility and amount and for determining taxable income

- Cancellation of debt income may cause problems for SCRIE or DRIE recertification

9

How Tax Issues Affect Government Benefits

Tax returns are used to verify income for a variety of benefit programs
Tax returns information impacts eligibility for and amount of certain benefits

Watch out for tax related identity theft which can affect eligibility for and amount of benefits!

- Using another person's SSN to work causing them to have income erroneously reported under that SSN
- Filing a tax return using someone else's SSN to fraudulently claim credits
- Using another person's SSN to claim a dependency exemption and/or the EITC

10

How Tax Issues Affect Government Benefits

Tax returns are used to verify income for a variety of benefit programs
Tax returns information impacts eligibility for and amount of certain benefits

Watch out for tax preparer scams which can impact disability benefit claims or deprive eligible taxpayers of their refunds!

- Encouraging SSI or public assistance recipients to report self-employment income on a tax return to fraudulent claim the EITC

How Tax Issues Affect Government Benefits

The image shows a portion of IRS Form 4684, 'Casualties and Thefts'. It includes a table with columns for 'Property', 'Description of the property', and 'Amount of loss'. The table is currently empty, with only the headers visible. The form also contains various instructions and sections for reporting losses.

Disaster Relief: Claiming losses on a tax return



Consumer Law

13

How Tax Issues Affect Consumer Law Practice

Tax Liens or Warrants for Outstanding Tax Debt

- Reported by consumer credit reporting agencies
- Affect the taxpayer's credit score

14

How Tax Issues Affect Consumer Law Practice

Cancellation of Debt

- Resolution of consumer or student loan debt may result in 1099-C reporting cancellation of debt
- May result in tax liability if cancellation of debt is considered taxable income
 - ↳ Filing a tax return and qualifying for exclusion is necessary to avoid taxation
- Further collection action may occur even after a 1099-C is issued

15

How Tax Issues Affect Consumer Law Practice

Tax related Identity Theft = a Major Problem

- Credit
- Tax liability
- Access to benefits
- Housing
- Employment

16

How Tax Issues Affect Consumer Law Practice

Tax returns may be used to verify financial eligibility for student loans

Tax refunds may be applied to past-due federal student loan debt

17

How Tax Issues Affect Consumer Law Practice

Commercial Tax Preparation

- Continuing education or competency testing?
- Disclosure requirements
 - ↳ NYS Business Law §372; NYS Tax Law §658(g); NY City Admin Code §20-739 et seq
- “Tax Preparers Targeting Poor With High Fees” (Campbell Robertson, NYT 4/7/14)
- “Rein in Shady Tax Preparers” (Alex H. Levy, NYT 4/7/14)

18

Employment Law

How Tax Issues Affect Employment Law Practice

Worker Classification

Employee

Income tax and FICA withheld from wages

FICA and FUTA paid by employer

Wages and withholding reported on W-2

Independent Contractor

No withholding by payee

Independent contractor pays FICA in addition to income tax

Payment reported on 1099

- mandatory if payment \$600 or more

How Tax Issues Affect Employment Law Practice

Worker Classification

- Worker is an employee if employer can control and direct worker
- Designation by parties is not controlling
- Misclassified employee can compute and report his or her share of FICA

21

How Tax Issues Affect Employment Law Practice

Worker Classification Affects:

- Who is responsible for reporting payments of taxes
- Whether worker entitled to minimum wage, worker compensation, unemployment insurance and other employee rights

22

How Tax Issues Affect Employment Law Practice

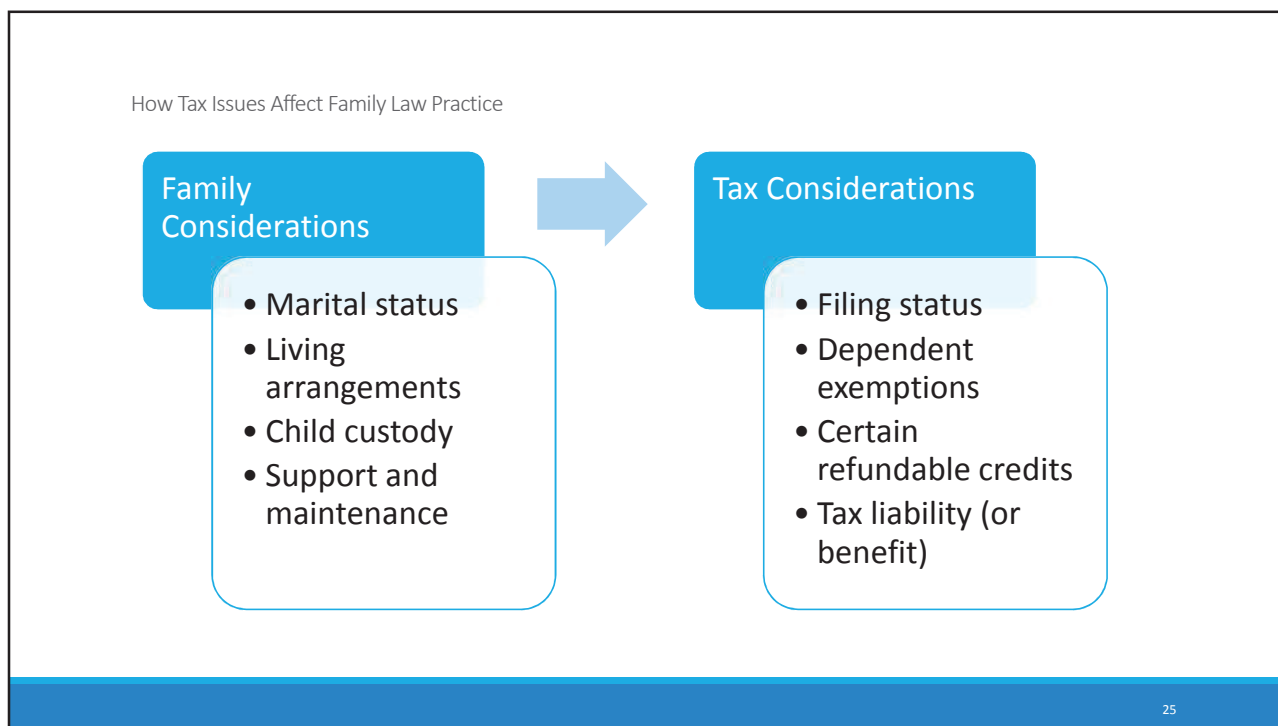
Obtaining Employment

Impacted by outstanding tax liabilities
appearing on credit report

23

Family Law

24



How Tax Issues Affect Family Law Practice

Tax Liability on Joint Tax Return = Joint and Several Liability

- Survives marriage regardless of allocation in judgment of divorce
- Innocent spouse relief available
 - ↳ Domestic Violence may be a factor

26

How Tax Issues Affect Family Law Practice

Past due support may be collected from
income tax refunds

27

How Tax Issues Affect Family Law Practice

Debts of one spouse
may be collected from joint income
tax refunds due to both spouses
- Injured spouse relief is available

28

Housing

29

How Tax Issues Affect Housing

Obtaining & maintaining housing

```
graph LR; A((Outstanding tax liability)) --> B((State tax warrant or federal tax lien filing)); B --> C((Encumbrance reported by credit reporting agencies)); C --> D((Interference));
```

- Rentals
- Purchase financing
- Loan modification in foreclosures

30

How Tax Issues Affect Housing

Information obtained from tax return

- Impacts eligibility for housing subsidies

31

How Tax Issues Affect Housing

Low-income housing credit

- Claimed by owner of certain buildings
- Restricts the rents that are charged

IRC §42

32

How Tax Issues Affect Housing

Senior Citizen Rent Increase Exemption (SCRIE)

- State tax exemptions
- Abates real estate taxes for landlord of low-income tenant
- Available in all of NYC
- Available in some areas of Nassau and Westchester Counties

Nassau County

- Glen Cove
- Great Neck Plaza
- Town of North Hempstead
- Village of Hempstead
- Village of Thomaston

Westchester County

- Village of Dobbs Ferry
- Town of Greenburgh
- Village of Hastings on Hudson
- Village of Irvington
- Village of Larchmont
- Town of Mamaroneck
- City of Mount Vernon
- City of Rye
- City of New Rochelle
- Village of Pleasantville
- Village of Tarrytown
- Village of Sleepy Hollow
- City of White Plains
- City of Yonkers

33

How Tax Issues Affect Housing

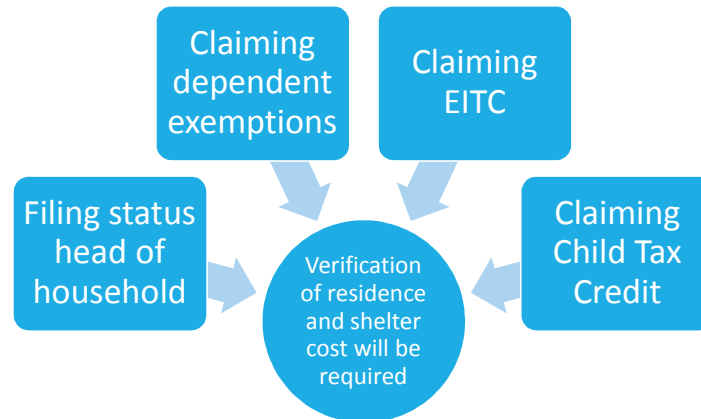
Disability Rent Increase Exemption (DRIE)

- State tax exemptions
- Abates real estate taxes for landlord of low-income tenant
- Available in all of NYC
- Available in parts of Westchester County: Dobbs Ferry, Greenburgh, Hastings on Hudson, New Rochelle, Yonkers, and the City of Rye

34

How Tax Issues Affect Housing

IRS or NYS Audit



35

How Tax Issues Affect Housing

Tenant buy-outs produce taxable income

- Must report on return

36

Immigration Law

37

How Tax Issues Affect Immigration Law Practice

Resident Aliens

- Same filing and payment requirements as citizens for world-wide income

38

How Tax Issues Affect Immigration Law Practice

Resident Aliens Defined

- Legal permanent resident status (“green card”),
or
- Meets substantial presence test
- Makes a first year election and qualifies based
on presence

IRC § 7701(b)(1)

39

How Tax Issues Affect Immigration Law Practice

If not eligible for an SSN then obtain an ITIN to file returns

- Individual Tax Identification Number
- For tax administration purposes only
- Apply by filing W-7 with return

40

How Tax Issues Affect Immigration Law Practice

Proposed Immigration Reform Bills

- Condition adjustment of status on filing and paying income tax

41

How Tax Issues Affect Immigration Law Practice

Individuals in removal proceedings or seeking to adjust status

- May need to demonstrate compliance with tax laws to prevail or get relief

42

The Tax Return

ENTRY POINT TO THE TAX SYSTEM

43

The Tax Return

Income Tax Return

Gross Income
- Less Adjustment to Income
Adjusted Gross Income (AGI)
- Less Exemptions and Deductions
Taxable Income
X % Tax Rate
Tax
- Less Non-Refundable Credits
- Less Refundable Credits and Payments
Liability or Refund

44

The Tax Return

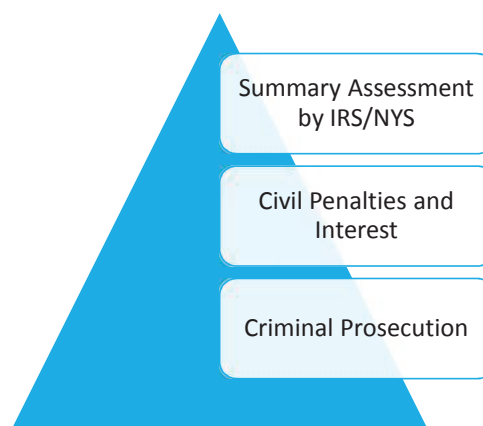
- Tool of the Self-Assessment tax system
- Must be filed on proper form
- Must contain sufficient information to calculate tax liability
- Must be executed under penalty of perjury

IRC §6065

45

The Tax Return

Consequences of Failure to File/Pay



46

The Tax Return

Statute of Limitations on Assessment of Additional Tax

- Period runs 3 years from due date of return or actual filing date of return, whichever is later
- Period runs 6 years if returns contains substantial omissions (more than 25% of reported gross income)
- Statute does not begin to run if no return is filed
- Statute does not begin to run if fraudulent return was filed

47

The Tax Return

Who Must File?

U.S. citizens and resident aliens if gross income is equal to or exceeds the applicable exemption and standard deduction amounts

2014 single individual threshold \$10,150

- * Thresholds increase if married filing joint, head of household, qualifying widow(er), 65 or over, additional dependents
- * Thresholds decrease if married filing separately
- *Note: no ageing out of filing requirements

IRC §6012

48

The Tax Return

Who Must File?

If you can be claimed as a dependent but your unearned income exceeds \$1,000 or earned income or combination of both exceeds \$6,200

If you have net self-employment earnings of at least \$400

IRC §1402

49

The Tax Return

Who Must File?

If you want to claim a refund or refundable credits

Deadline to claim a refund is 3 years from return due date or 2 years after tax paid, whichever is later

IRC §6511, §6513

50

The Tax Return

Filing Deadline

April 15th

- Payment due by filing deadline
- Penalties for insufficient estimated payments or withholding
- 6 month extension available for filing requirement but NOT payment requirement

IRC §6072

51

The Tax Return

Filing Status

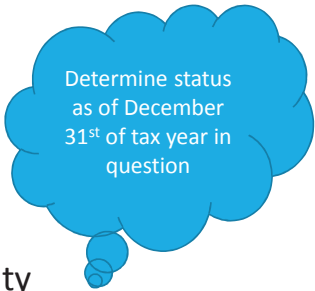
Affects amount of standard deduction and eligibility for certain refundable credits

		(return) <input type="checkbox"/> You <input type="checkbox"/> Spouse	
Filing Status Check only one box.	1 <input type="checkbox"/> Single	4 <input type="checkbox"/> Head of household (with qualifying person). (See instructions.) If the qualifying person is a child but not your dependent, enter this child's name here. ▶	
	2 <input type="checkbox"/> Married filing jointly (even if only one had income)	5 <input type="checkbox"/> Qualifying widow(er) with dependent child	
	3 <input type="checkbox"/> Married filing separately. Enter spouse's SSN above and full name here. ▶		
	6 <input type="checkbox"/> Yourself. If someone can claim you as dependent, do not check box 6.		
			Boxes checked

52

The Tax Return

Filing Status

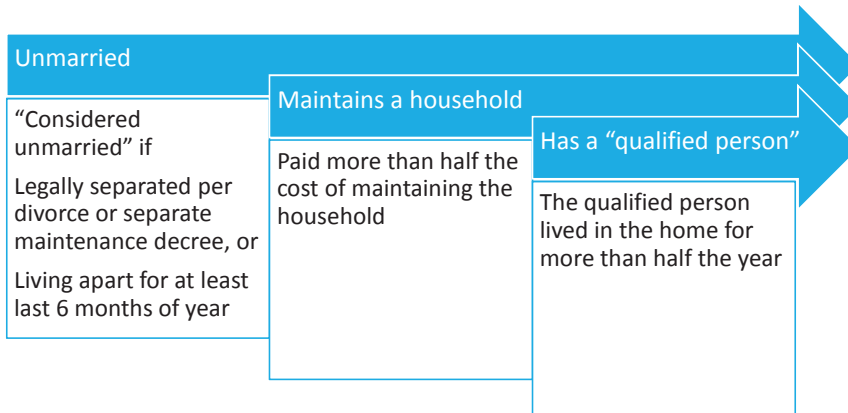


Affects amount of standard deduction and eligibility for certain refundable credits

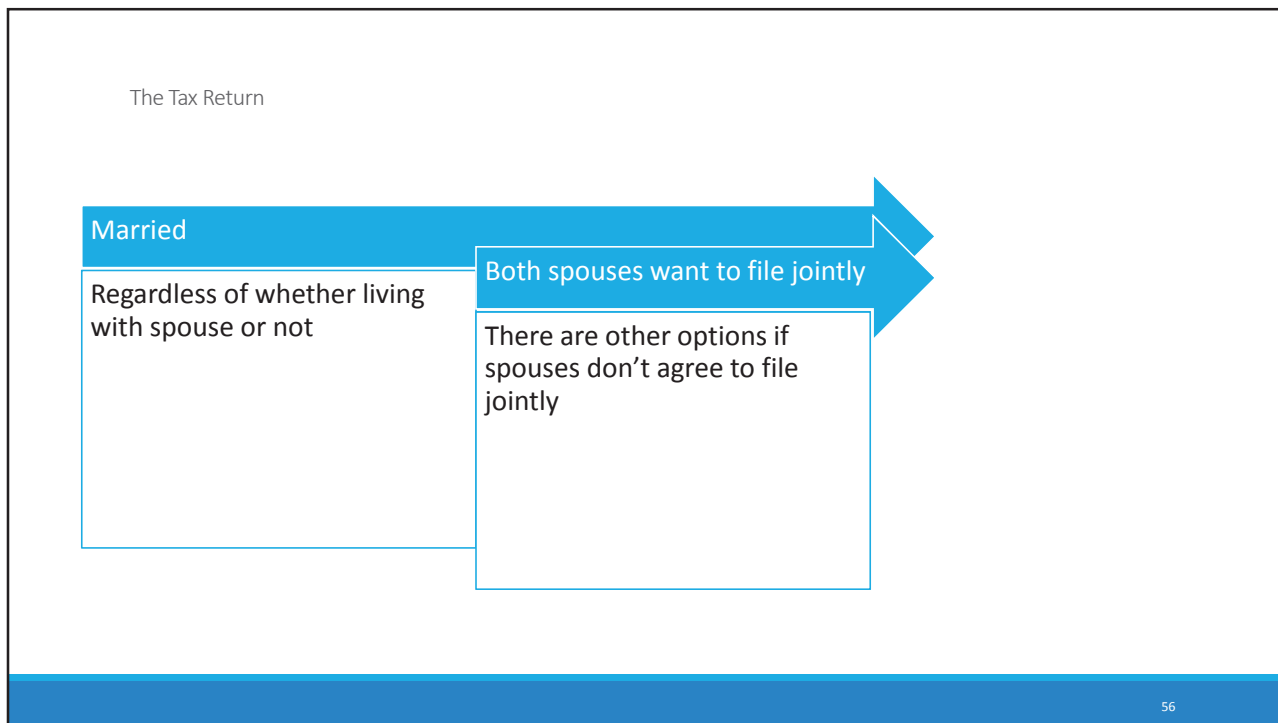
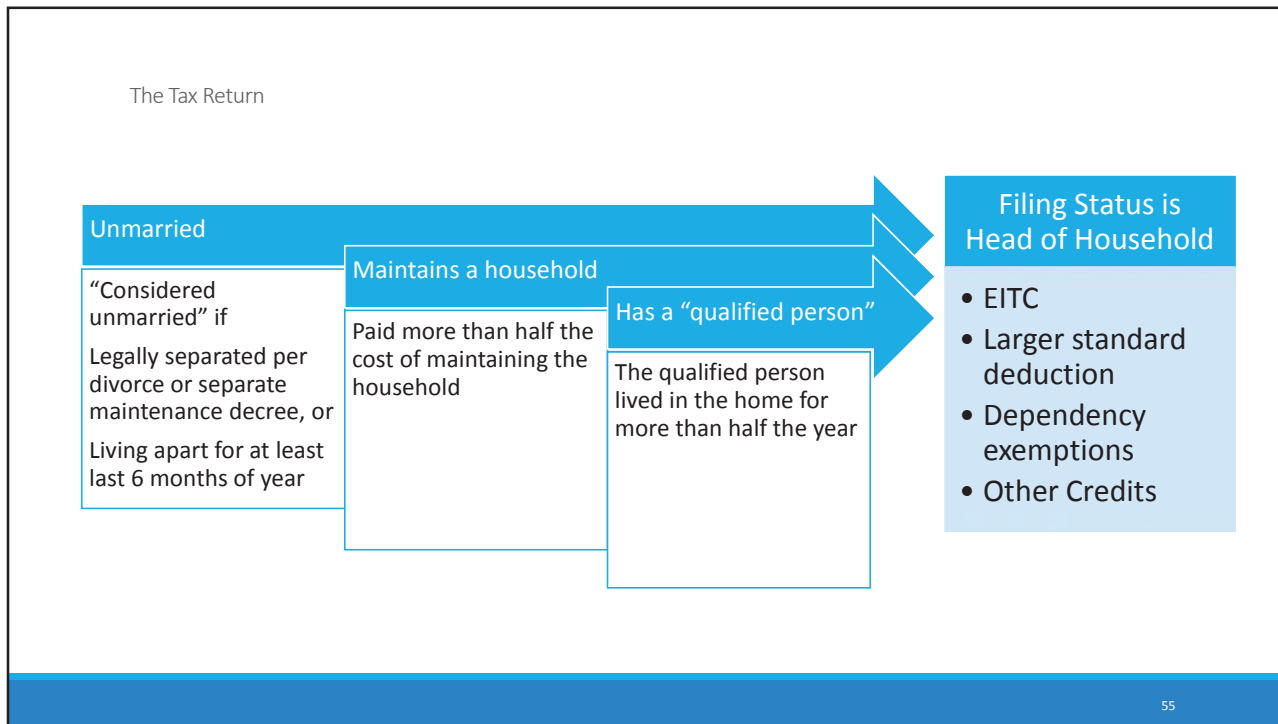
- Head of Household
- Married Filing Jointly
- Married Filing Separately
- Qualifying Widow(er) with Dependent Child
- Single

53

The Tax Return



54



The Tax Return

Married
Regardless of whether living with spouse or not

Both spouses want to file jointly
There are other options if spouses don't agree to file jointly

Filing Status is Married Filing Jointly

- EITC
- Effective tax rate may be lower for certain couples
- Dependency exemptions
- Other Credits

57

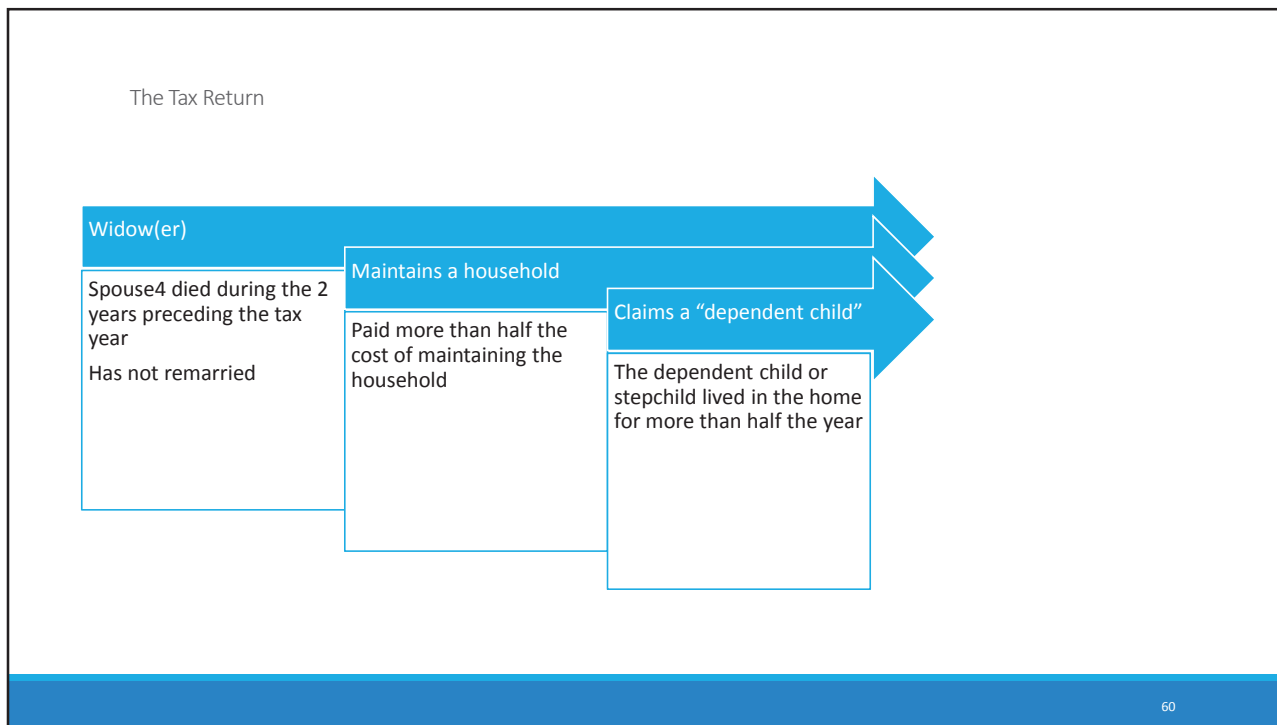
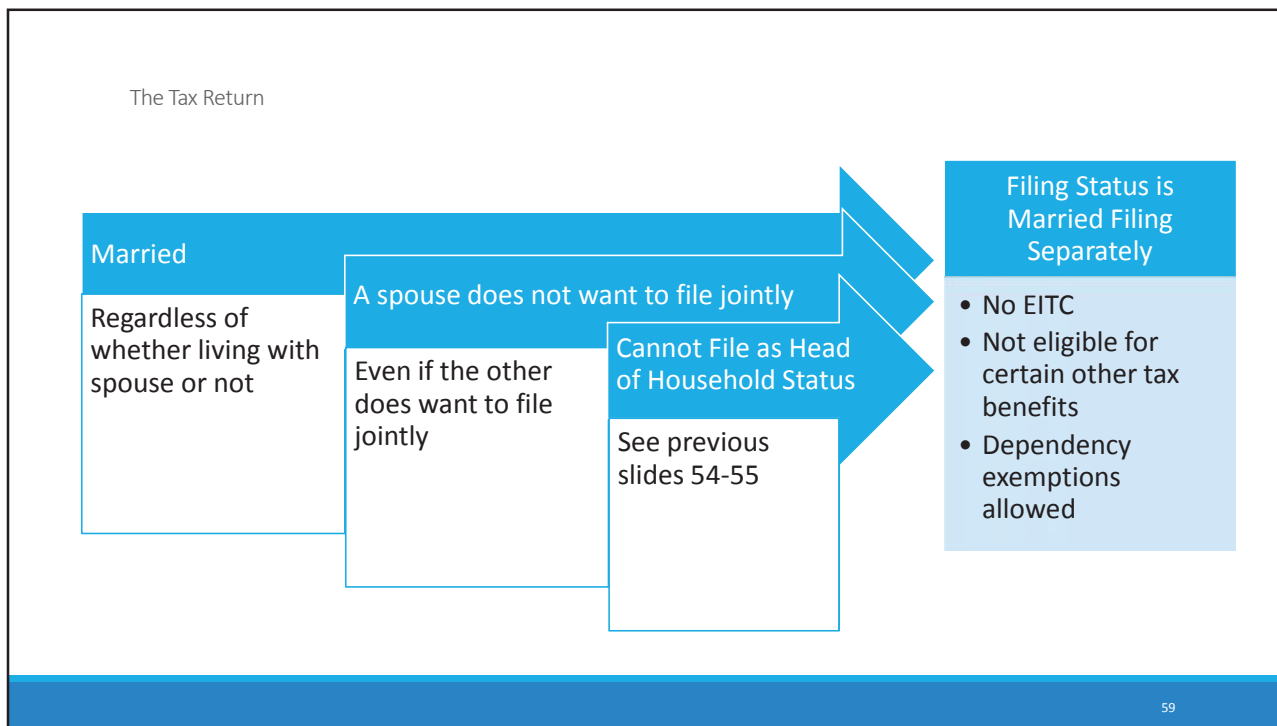
The Tax Return

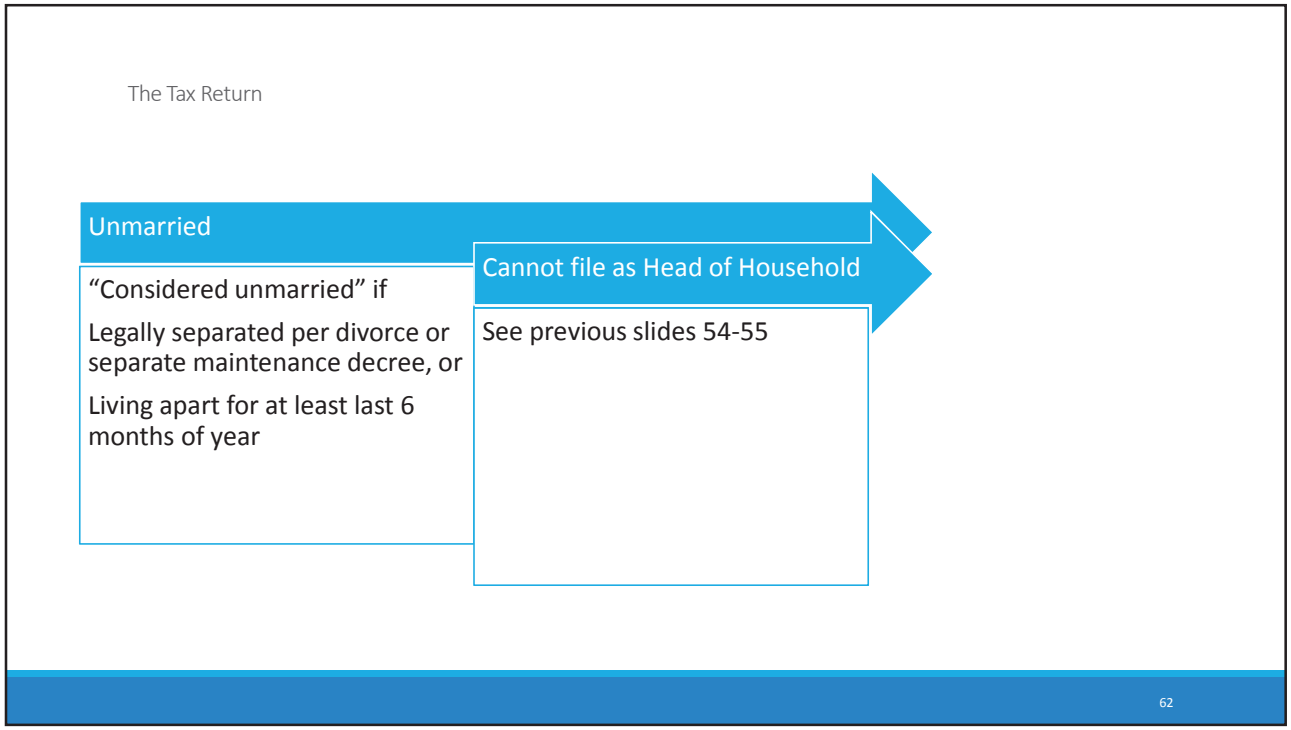
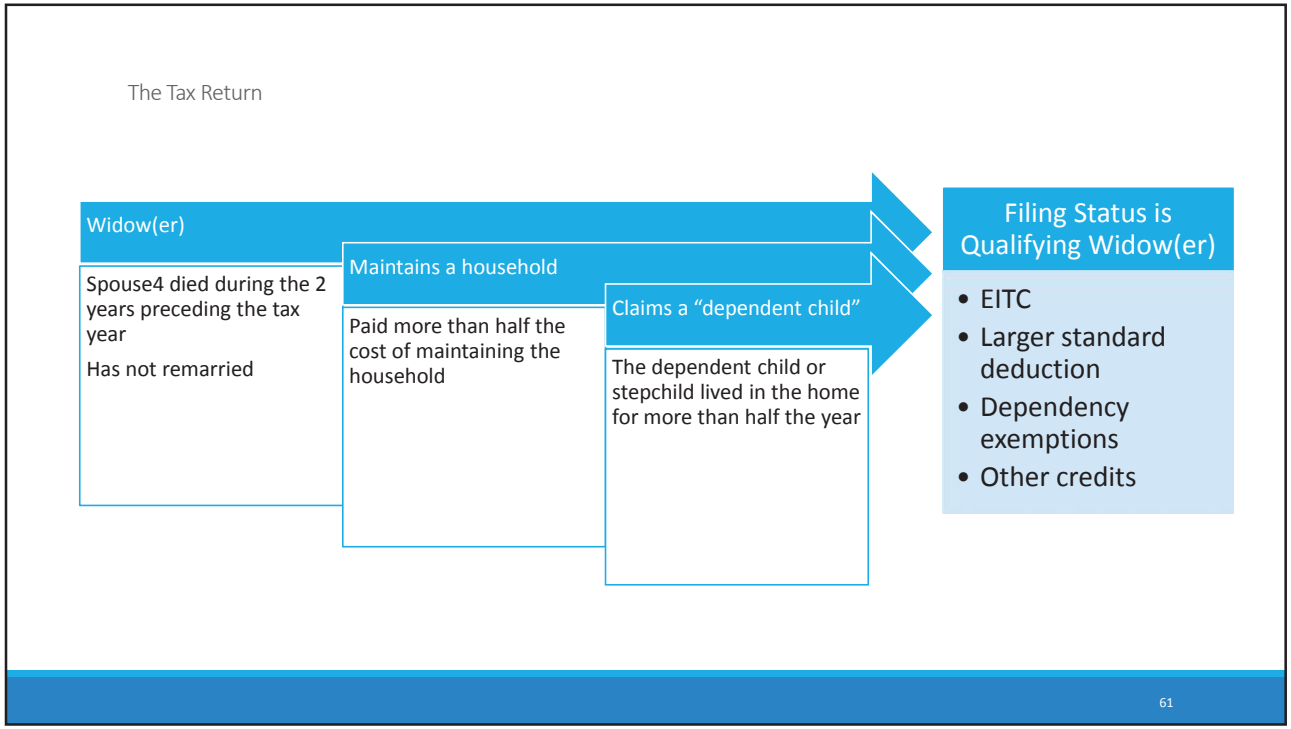
Married
Regardless of whether living with spouse or not

A spouse does not want to file jointly
Even if the other does want to file jointly

Cannot File as Head of Household Status
See previous slides 54-55

58





The Tax Return

Unmarried

“Considered unmarried” if

- Legally separated per divorce or separate maintenance decree, or
- Living apart for at least last 6 months of year

Cannot file as:

- Head of Household: See previous slides 54-55
- Qualifying Widow(er): See previous slides 60-61

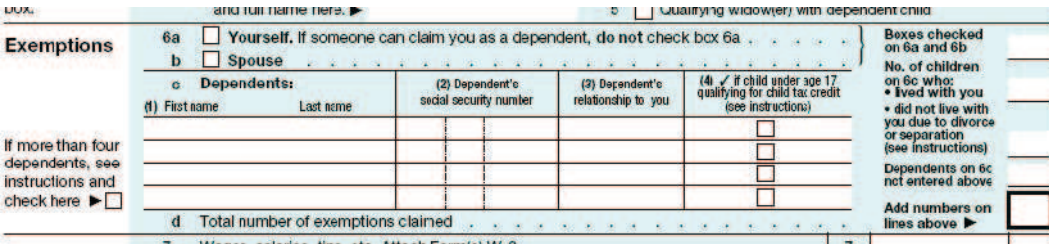
Filing Status is Single

- EITC
- Dependency exemptions
- Other Credits

63

The Tax Return

Exemptions



The screenshot shows the Exemptions section of a tax form. It includes a table for listing dependents with columns for first name, last name, social security number, relationship to you, and a checkbox for child tax credit eligibility. To the right, there are summary boxes for 'Boxes checked on 6a and 6b', 'No. of children on 6c who lived with you', and 'Total number of exemptions claimed'.

- Reduce taxable income
- Available for taxpayer, spouse and dependents

64

The Tax Return

Dependent exemptions

- Not available for taxpayers who are themselves claimed as someone's dependent
- Dependent may only be claimed by ONE taxpayer
- Dependent must be U.S. citizen, resident alien, or live in a country contiguous to the U.S. (Mexico or Canada)

65

The Tax Return

Dependent must be a qualifying child or qualifying relative



The Tax Return

Dependent must be a qualifying child or qualifying relative

Qualifying Relative

Child, sibling, stepchild, step-sibling, parent, grandparent, step-parent, niece, nephew, aunt, uncle, foster child, or other unrelated individual who lives in taxpayer's household during the tax year

Does not have income in excess of exemption amount

Taxpayer provided over half the support

May not be qualifying child of taxpayer or any other taxpayer for the tax year

IRC §152(c), (d)

67

The Tax Return

Tie Breaker Rule

- ❖ Applies to married, separated, divorced and never married parents or any other qualifying relative
- ❖ If a qualifying parent and another qualifying relative claim the child the parent has the right to claim the child
- ❖

~ Break ~

<p>Please return in 10 minutes</p>	<p><u>Coming Up:</u> Taxable Income Credits Penalties, Enforcement Powers and Collection Alternatives</p>
------------------------------------	---

69

Taxable Income

70

Taxable Income

Income Tax Return

- Gross Income
- Less Adjustment to Income
- Adjusted Gross Income (AGI)
- Less Deductions
- Taxable Income
- X % Tax Rate
- Tax
- Less Non-Refundable Credits
- Less Refundable Credits and Payments
- Liability or Refund

71

Taxable Income

Income Tax Return

- Gross Income
- Less Adjustment to income
- Adjusted Gross Income (AGI)
- Less Deductions
- Taxable Income
- X % Tax Rate
- Tax
- Less Non-Refundable Credits
- Less Refundable Credits and Payments
- Liability or Refund

72

Taxable Income

Gross income = all income from whatever source derived

Income		Total number of exemptions claimed	
	7	Wages, salaries, tips, etc. Attach Form(s) W-2	
	8a	Taxable interest. Attach Schedule B if required	
	b	Tax-exempt interest. Do not include on line 8a	
	9a	Ordinary dividends. Attach Schedule B if required	
	b	Qualified dividends	
	10	Taxable refunds, credits, or offsets of state and local income taxes	
	11	Alimony received	
	12	Business income or (loss). Attach Schedule C or F	
	13	Capital gain or (loss). Attach Schedule D if required. If not required,	
	14	Other gains or (losses). Attach Form 4797	
	15a	IRA distributions	b Taxabl
	16a	Pensions and annuities	b Taxabl
	17	Rental real estate, royalties, partnerships, S corporations, trusts, etc.	
	18	Farm income or (loss). Attach Schedule F	
	19	Unemployment compensation	
	20a	Social security benefits	b Taxabl
	21	Other income. List type and amount	
	22	Combine the amounts in the far right column for lines 7 through 21. This is	

Attach Form(s) W-2 here. Also attach Forms W-2G and 1099-R if tax was withheld.

If you did not get a W-2, see instructions.

73

Taxable Income

Gross income = all income from whatever source derived

Other income

- Income from life insurance/endowment contracts
- Income from discharge of indebtedness
- Income in respect of a decedent
- Gambling winnings
- Many more

74

Taxable Income

Gross income for New York State and New York City

- Aggregate federal adjusted gross income of household
- N.Y. Tax Law §606(b)(3)(A)

Household gross income for state personal income tax

- New York State taxable income
- N.Y. Tax Law §1303

City taxable income

75

Taxable Income

Are attorney fees gross income?

- Generally, when another party pays the prevailing party's attorney fees (Old Colony Trust Co. v. Comm'r, 279 U.S. 716 (1929))
- Attorney fees paid to class counsel from a common fund pursuant to settlement (Private Letter Ruling 200906010, (10/24/08))
- Attorney fees awarded under fee shifting statutes are income (Astrue v. Ratcliff, 130 S.Ct. 2521 (2010))
- Contingent fees are includable in gross income of litigant, even if paid to attorney (Sinyard v. Comm'r 268 F.3d 756 (9th Cir. 2001))
- Attorney fees awarded to legal aid organization were not income where retainer specifically stated no charge for legal services (Private Letter Ruling 201015016 (4/16/10))

Private Letter Rulings may not be used or cited as precedent. IRC §6110(k)(3)

76

Taxable Income

Exclusions from gross income

Income Tax Return

Gross Income
 - Less Adjustment to Income
 Adjusted Gross Income (AGI)
 - Less Deductions
 Taxable Income
X % Tax Rate
 Tax
 - Less Non-Refundable Credits
 - Less Refundable Credits and Payments
 Liability or Refund

77

Taxable Income

Exclusions from gross income (including but not limited to):

- Life insurance and certain other death benefits
- Gifts and inheritances
- Compensation for injuries or sickness
 - Worker's compensation
 - Health/disability insurance provided by employer/military
 - Damages on account of personal physical injuries/sickness (not emotional distress or punitive damages)
 - Compensation for out-of-pocket medical expenses related to emotional distress
- Medical or Health Savings Accounts
- Cafeteria plans (flexible benefit plans)
- Certain fringe benefits

78

Taxable Income

Exclusions continued:

- Meals/lodging provided for benefit of employer
- Reimbursement for increased living expenses due to damage/destruction of principal residence
- Qualified scholarships or fellowship
- Certain agricultural cost-sharing payments
-



Taxable Income

Adjustments to income are also called “Above the Line” Deductions

	22	Combine the amounts in the far right column for lines 7 through 21. This is your total income.	22		
Adjusted Gross Income	23	Educator expenses	23		
	24	Certain business expenses of reservists, performing artists, and fee-basis government officials. Attach Form 2106 or 2106-EZ.	24		
	25	Health savings account deduction. Attach Form 8889.	25		
	26	Moving expenses. Attach Form 3903.	26		
	27	Deductible part of self-employment tax. Attach Schedule SE.	27		
	28	Self-employed SEP, SIMPLE, and qualified plans.	28		
	29	Self-employed health insurance deduction.	29		
	30	Penalty on early withdrawal of savings.	30		
	31a	IRA deduction	31a		
	32	Student loan interest deduction	32		
33	Tuition and fees. Attach Form 8817.	33			
34	Domestic production or activities deduction. Attach Form 8881.	34			
35	Add lines 23 through 35.	35			
			36		
	Subtract line 36 from line 22. This is your adjusted gross income.		37		

81

Taxable Income

Adjustments to Income (including but not limited to):

- Taxpayer’s trade or business expenses. IRC §162 (Schedule C)
- Losses from sale or exchange of property (Schedules C, D or E)
- Contributions by self-employed persons to pension, profit-sharing and annuity plans. IRC §401, 404
- Contributions by employees to retirement plans. IRC §219
- Alimony payments (maintenance in NYS). IRC §215
- Interest forfeited on premature withdrawals from timed savings accounts.
- Certain repayments of supplemental unemployment compensation benefits. Otherwise may be itemized deduction. (See also IRC §1341 for claim-of-right doctrine applicable to computation of tax in year of repayment if over \$3,000)
- Moving expenses required to start work in new location. IRC §217 (Must be computed on Form 3903)

82

Taxable Income

Adjustments to Income (including but not limited to):

- Interest paid on qualified education loan. IRC §221.
 - Maximum is \$2,500 but reduced when Modified Adjusted Gross Income (MAGI) reaches certain limit (\$65,000 in 2014/\$130,000 if MFJ) and eliminated completely at upper limit (\$80,000/\$160,000 if MFJ).
 - MAGI = AGI + certain amounts excluded under specified IRC sections.
- Qualified tuition and related expenses for accredited post-secondary institution. IRC §222
 - Deductible amount based on AGI with maximum deduction of \$4,000 for taxpayers with income up to \$65,000 (\$130,000 if MFJ) or \$2,000 for taxpayers with income between \$65,000 and \$80,000 (\$160,000 if MFJ).

83

Taxable Income

Adjustments to Income (including but not limited to):

- Contributions to Archer medical savings account. IRC §220
- Contributions to health savings accounts. IRC §223
- Attorney fees and court costs in actions challenging unlawful discrimination, claims against the U.S. government, or certain claims brought under Medicare law. IRC §62(a)(20).
- Travel expenses of members of National Guard or reserves incurred to attend meetings and trainings.
- Deduction for ½ of self-employment tax. IRC §164(f) (calculated on Schedule SE)

84

Taxable Income

Income Tax Return

Gross Income

- Less Adjustment to Income

Adjusted Gross Income (AGI)

- Less Deductions

Taxable Income

X % Tax Rate

Tax

- Less Non-Refundable Credits

- Less Refundable Credits and Payments

Liability or Refund

85

Taxable Income

Deductions include exemptions and the standard deduction or itemized deduction

Form 1040 (2013)

Tax and Credits	38	Amount from line 37 (adjusted gross income)	38
	39a	Check <input type="checkbox"/> You were born before January 2, 1949, <input type="checkbox"/> Blind, Total boxes checked <input type="checkbox"/> 39a	
		if: <input type="checkbox"/> Spouse was born before January 2, 1949, <input type="checkbox"/> Blind, checked <input type="checkbox"/> 39b	
	b	If your spouse itemizes on a separate return or you were a dual-status alien, check here <input type="checkbox"/> 39b	
Standard Deduction for—	40	Itemized deductions (from Schedule A) or your standard deduction (see left margin)	40
• People who check any box on line 39a or 39b or who can be	41	Subtract line 40 from line 38	41
	42	Exemptions. If line 38 is \$150,000 or less, multiply \$3,900 by the number on line 6d. Otherwise, see instructions	42
	43	Taxable income. Subtract line 42 from line 41. If line 42 is more than line 41, enter -0-	43

86

Taxable Income

Form 1040 (2013)		
Tax and Credits	38	Amount from line 37 (adjusted gross income) 38
Standard Deduction	39a	Check <input type="checkbox"/> You were born before January 2, 1949, <input type="checkbox"/> Blind. Total boxes checked <input type="checkbox"/> 39a
		if: <input type="checkbox"/> Spouse was born before January 2, 1949, <input type="checkbox"/> Blind. checked <input type="checkbox"/> 39a
	b	If your spouse itemizes on a separate return or you were a dual-status alien, check here <input type="checkbox"/> 39b
	40	Itemized deductions (from Schedule A) or your standard deduction (see left margin) 40
	41	Subtract line 40 from line 38 41
	42	Exemptions. If line 38 is \$120,000 or less, multiply \$2,000 by the number on line 42. Otherwise, see instructions 42
	43	Taxable income. Subtract line 42 from line 41. If line 42 is more than line 41, enter 0 43
	44	Tax (see instructions) (Check flow from a 1 Form 9914-B Form 4872) 44
	45	Alternative minimum tax 45
	46	Add lines 44 and 45 46
	47	Foreign tax credit. Attach Form 789 47
	48	Credit for child and dependent care expenses 48
	49	Educational credits from Form 8863, line 19 49
	50	Research and development credit 50
	51	Other tax credits 51
	52	Has mental energy credits. Attach Form 5885 52
	53	Other credits from Form 8880, 8881, 8882, 8883, 8884, 8885, 8886, 8887, 8888, 8889, 8890, 8891, 8892, 8893, 8894, 8895, 8896, 8897, 8898, 8899, 8900, 8901, 8902, 8903, 8904, 8905, 8906, 8907, 8908, 8909, 8910, 8911, 8912, 8913, 8914, 8915, 8916, 8917, 8918, 8919, 8920, 8921, 8922, 8923, 8924, 8925, 8926, 8927, 8928, 8929, 8930, 8931, 8932, 8933, 8934, 8935, 8936, 8937, 8938, 8939, 8940, 8941, 8942, 8943, 8944, 8945, 8946, 8947, 8948, 8949, 8950, 8951, 8952, 8953, 8954, 8955, 8956, 8957, 8958, 8959, 8960, 8961, 8962, 8963, 8964, 8965, 8966, 8967, 8968, 8969, 8970, 8971, 8972, 8973, 8974, 8975, 8976, 8977, 8978, 8979, 8980, 8981, 8982, 8983, 8984, 8985, 8986, 8987, 8988, 8989, 8990, 8991, 8992, 8993, 8994, 8995, 8996, 8997, 8998, 8999, 9000 53
	54	Add lines 47 through 53. These are your total credits 54
	55	Subtract line 54 from line 46. If line 54 is more than line 46, enter 0 55

Amount of standard deduction depends on age and filing status.

87

Taxable Income

If the taxpayer decides to itemize deductions, the following expenses may be claimed on using Schedule A (including but not limited to):

- Unreimbursed medical and dental expenses to extent they exceed 10% of AGI (7.5% if age 65 or over). IRC §215
- State and local taxes. IRC §164
- Interest paid or accrued (numerous caveats). IRC §163
- Qualified charitable contributions. IRC §170
- Impairment related work expenses. IRC §67(d)
- Gambling losses (but only to extent of winnings reported as income). IRC §165(d)
- Unreimbursed casualty and theft losses. (Form 4864) IRC §165(a)

88

Taxable Income

Miscellaneous deductible expenses (including but not limited to):

Certain other expenses are deductible
. IRC §67(a)

- Ordinary and necessary expenses paid or incurred for production of income. IRC §212
- Unreimbursed employee expenses.
- Cost of tax preparation.
- Legal expenses if paid or incurred for production of income or maintenance of income-producing property.

89

Taxable Income

Non-deductible expenses:

- Personal, living or family expenses. IRC §262.
 - Therefore legal fees in divorce not generally deductible.
- Expenses allocable to production of tax exempt income (i.e., SSI and SSD to extent it is not taxable). IRC §265.
 - BUT Title II Social Security benefits may be taxable income in part depending on other income in household and marital status and household composition. IRC §86.
 - Legal fees taxpayer incurs to collect Social Security benefits are deductible only to extent attributable to taxable Social Security income or to attorney fee award itself. Rev. Ruling 87-102, 1987-2 CB 78, IRS (Oct. 12, 1987).

90

Taxable Income

The Income of a Minor Child

- Child or other dependent generally taxed in same manner on income, BUT:
- Personal Exemption: Not allowed if person can be claimed as dependent on another taxpayer's return. IRC §151(d)(2)
- Standard deduction: Limited to greater of \$1,000 or \$350 + earned income (up to \$6,200, the standard deduction for single person in 2014). IRC §63(c)(5).



91

Taxable Income

The Income of a Minor Child

- If child's tax not paid, assessment can be made against parent to extent tax attributable to earned income. IRC §6201(c)
- If person unable to file return then guardian or person charged with his or her care or care of his or her property must file. IRC §6012(b).



92

Taxable Income

The Kiddie Tax Rule

Net unearned income of a child is either taxed at same rate as his or her parents or the child's unearned income is included on the parent's return if:

- Parents' tax rate is higher,
- Child is
 - under 18, or
 - under 19 (or 24 if full-time student) and does not have provide more than 1/2 own support with earned income,
- Child's investment income is more than \$2,000,
- Either parent alive at end of tax year,
- Child does not file joint return, AND
- Child required to file tax return



IRC §1(g)

93

Taxable Income

The Kiddie Tax Rule

- Distributions from a special needs trust are treated as earned income
- If parents are not married then use custodial parent's tax rate or include child's income on custodial parent's tax return
- If parents filing status is married filing separately, then use tax rate or tax return of the parent with the higher tax rate

Why does this rule exist? So that parents can't reduce their taxes by putting investments in a child's name to be taxed at a lower rate



IRC §1(g)

94

Taxable Income

Capital Gains

Profit from sale or exchange of any property or investment whether or not connected to a trade or business

Different tax rates apply to net capital gains depending on tax bracket.

If taxpayer in:	Then net capital gains are taxed at:
39.6% tax bracket	20%
35% tax bracket	15%
33% tax bracket	15%
28% tax bracket	15%
25% tax bracket	15%
15% tax bracket	0%

IRC §1(h)(1)

95

Taxable Income

Capital Gains

Capital assets are any property or investment whether or not connected to a trade or business

Except for:

- Stock in trade, inventory and property held primarily for sale to customers in ordinary course of trade or business
- Note or account receivable acquired in trade or business
- Depreciable business property
- Real property used in trade or business
- Copyright, literary, musical or artistic composition, letter or memorandum held by author/creator or person for whom created

96

Taxable Income

Capital Gains

Capital assets are any property or investment whether or not connected to a trade or business

Except for (continued):

- U.S. government publication held by taxpayer who received it other than by purchase at the price offered to public
- Commodities derivative financial instruments held by commodities derivatives dealers
- Hedging transactions entered into in ordinary course of business
- Supplies used in ordinary course of business

“Buy-out” of residential tenant may be treated as capital gain

97

Taxable Income

Capital Gains

Net Capital Gains = Net Long Term Capital Gain - Short Term Capital Loss

Net Long Term Capital Gains = Long Term Capital Gains - Long Term Capital Loss

Long Term Capital Gains and Losses are from property that has been held for over one year.

Short Term Capital Gains are subject to the ordinary tax rate

98

Credits

Credits

Focus on credits available to low income and moderate income taxpayers

Income Tax Return

Gross Income	
- Less <u>Adjustment to Income</u>	
Adjusted Gross Income (AGI)	
- Less <u>Deductions</u>	
Taxable Income	
X % <u>Tax Rate</u>	
Tax	
- Less <u>Non-Refundable Credits</u>	
- Less <u>Refundable Credits and Payments</u>	
Liability or Refund	

Credits

Credits help pay the tax assessment.

Non-refundable credits are limited by the amount of tax so that no portion of the credit can be refunded.

Refundable credits may exceed the tax so that the excess may be refunded to the taxpayer.

101

Credits

Earned Income Tax Credit – EITC [IRC §32]

Nationwide in 2013, over 27 million received over \$63 billion in EITC for the 2012 tax year
(<http://www.eitc.irs.gov/EITC-Central/eitcstats>)

Refundable credit

NYS EITC is 30% of federal EITC

NYC EITC is 5% of federal EITC

102

Credits

Earned Income Tax Credit – EITC

Requirements to qualify for EITC:

- Cannot use filing status Married Filing Separately
- If no qualifying children, taxpayer must be between 25 and 65 years old and have lived in the U.S. for more than half the tax year
 - ❖ Puerto Rico does not count but certain military bases abroad do
- Investment income cannot exceed \$3,350
- Cannot have any foreign income

103

Credits

Earned Income Tax Credit – EITC

Requirements to qualify for EITC:

Must have earned income



Credits

Earned Income Tax Credit – EITC

Requirements to qualify for EITC:

Must have earned income

- ❖ Amount of earned income dependent on filing status and number of qualifying children
- ❖ Married filing jointly taxpayers have higher income thresholds
- ❖ Households with more qualifying children have higher income thresholds

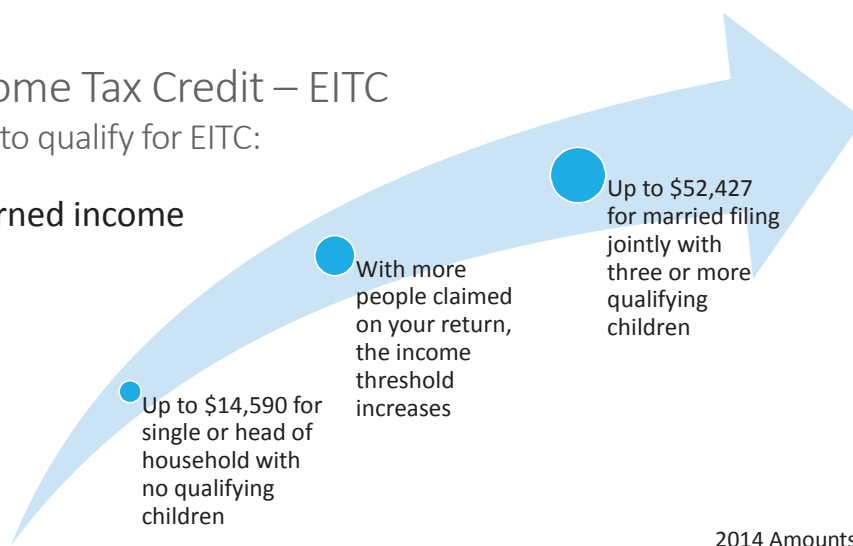
105

Credits

Earned Income Tax Credit – EITC

Requirements to qualify for EITC:

Must have earned income



106

Credits

Earned Income Tax Credit – EITC

Requirements to qualify for EITC:

If claiming a Qualifying Child for EITC

Relationship must be: Child, grandchild, sibling, descendant of sibling, stepchild, step-grandchild, step-sibling, eligible foster child

Resides with taxpayer more than 6 months of the tax year

Younger than the taxpayer and

- 18 or younger OR
- 24 or younger and full time student OR
- 24 or younger and totally and permanently disabled

Did not provide over half of own support for tax year

107

Credits

Earned Income Tax Credit – EITC

Requirements to qualify for EITC:

Must have social security number valid for employment

- ❖ Requirement applies to taxpayer, spouse (if filing jointly) and qualifying child (if claiming any)
- ❖ ITIN individual taxpayer identification number) does not qualify
- ❖ If social security number acquired later, an amended return may be filed to claim the EITC (assuming all other requirements are met)

108

Credits

Earned Income Tax Credit – EITC

Amount depends on filing status, income, and number of qualifying children

- Up to \$496 for households with no qualifying children
- With more people claimed on your return, the amount of credit increases
- Up to \$6,143 for households with three or more qualifying children

* As income increases the credit begins to phase out

2014 Amounts

109

Credits

Earned Income Tax Credit – EITC

IRS or NYS Examination

The tax authority may ask for documentation to prove:

- ❖ Filing status
- ❖ Relationship, residence and age of qualifying children
- ❖ Self-employment income if reported on return

110

Credits

Earned Income Tax Credit – EITC

IRS or NYS Examination

May freeze refund pending exam

If unable to document eligibility:

- Liability may result
- Recertification and exam if claiming EITC for another year
- Disqualification from claiming EITC
 - For 10 years if credit claimed fraudulently
 - For 2 years if credit claimed was reckless or made with intentional disregard of rules
- Penalties

111

Credits

Child Tax Credit

Partially refundable credit

Available to taxpayers with qualifying children

Credit = \$1,000 for each child claimed



IRC §24

112

Credits

Child Tax Credit

Phase out begins at \$110,000 MAGI for married filing jointly

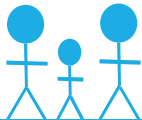
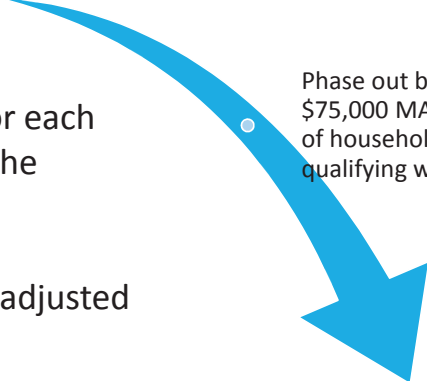
Credit is reduced by \$50 for each \$1,000 of MAGI exceeds the relevant limit

MAGI stands for modified adjusted gross income

Phase out begins at \$75,000 MAGI for head of household, single or qualifying widow

Phase out begins at \$55,000 MAGI for married filing separately

2014 Amounts

113

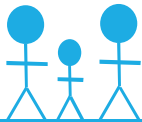
Credits

Child Tax Credit

Note: Taxpayer must claim the child as a dependent in order to claim the Child Tax Credit

If claiming a Qualifying Child for Child Tax Credit

- Relationship must be: Child, grandchild, sibling, descendant of sibling, stepchild, step-grandchild, step-sibling, eligible foster child
- Resides with taxpayer more than 6 months of the tax year
- Under 17 years old at end of tax year
- Resident alien or U.S. citizen
- Did not provide over half of own support for tax year



114

Credits

Child Tax Credit

How much is refundable?

- Unless a taxpayer is eligible for the Additional Child Tax Credit (ACTC) the Child Tax Credit is limited by the tax liability
- If eligible for ACTC, the refundable portion is the lesser of the amount the credit exceeds tax liability or 15% of earned income which exceeds \$,3000
- If the taxpayer has 3 or more children, he or she may be further eligible for further refund



115

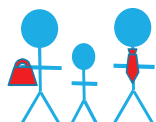
Credits

Child and Dependent Care Credit

Nonrefundable credit

Available to compensate for employment related qualifying child or dependent care expenses

If married and living together, spouses must file married filing jointly to claim this credit.



IRC §21

116

Credits

Child and Dependent Care Credit

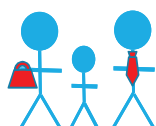
If claiming a dependent for Child and Dependent Care Credit

Must reside with taxpayer more than 6 months of tax year

If dependent is a child, then must be a qualifying child under age 13

If dependent is a qualifying relative then must be physically or mentally unable to care for self

May also be taxpayer's spouse if physically or mentally unable to care for self

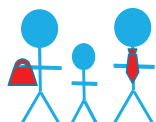


117

Credits

Child and Dependent Care Credit

- Credit is calculated as the applicable percentage of expenses incurred (percentage determined by AGI)
- Expenses are capped at \$3,000 for one qualifying individual and \$6,000 for two or more qualifying individuals
- Maximum credit is \$1,050 for one individual in care and \$2,100 for two.

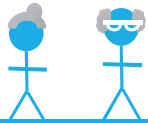


118

Credits

Credit for the Elderly or Permanently & Totally Disabled

- Available to low income individuals at least 65 years old or retired and permanently and totally disabled when they retired
- Unless living apart the entire tax year, married persons must file married filing jointly to claim this credit
- Credit is based on filing status, certain income exclusions and AGI



119

Credits

Credits for Higher Education Tuition

Two available credits:

1. Lifetime Learning Credit
2. American Opportunity Credit



IRC §25

120

Credits

Credits for Higher Education Tuition

Lifetime Learning Credit

Credit is calculated as a percentage of qualified tuition expenses paid on the first \$10,000 of tuition per taxpayer



121

Credits

Credits for Higher Education Tuition American Opportunity Credit

Partially refundable – 40% if credit exceeds tax liability

May not file married filing separately

Maximum credit is \$2,500 per student for the first four years of post-secondary education

Credit begins to phase out when MAGI between \$80,000 and \$90,000

Calculated as percentage of qualified tuition and related expenses up to allowable maximum

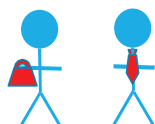


122

Credits

Retirement Savings Contribution Credit Savers Credit

- ❖ Available to low income individuals
- ❖ Maximum credit is \$1,000
- ❖ Credit calculated as percentage of qualified retirement savings contribution
- ❖ Higher percentage for lower income persons



IRC §25B

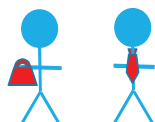
123

Credits

Retirement Savings Contribution Credit Savers Credit

Requirements

- ❖ Must be at least 18 years old
- ❖ Must not be a full time student
- ❖ May not be claimed as a dependent on another's tax return

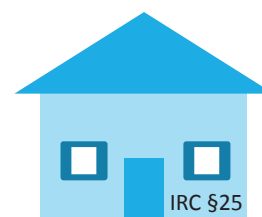


124

Credits

Mortgage Interest Credit

- Available to low income homeowners who were issued mortgage credit certificates issued by state or local governments
- Credit based on certificate credit rate and amount of interest paid or accrued in tax year on remaining principal
- Usually \$2,000 limit to credit
- Recapture provision applies if home transferred or no longer a principal residence within nine years of date of liability



125

Credits

Health Insurance Premium Assistance Credit

- Refundable credit
- Part of the Affordable Care Act
- Assists individuals and families in paying for health insurance

126

Credits

Health Insurance Premium Assistance Credit

Eligibility Requires

- Purchase qualified health insurance federal or state health benefit exchange (ie New York State of Health)
- Household income between 100% and 400% of federal poverty line (income based on MAGI)
- If married, status is married filing jointly
- Not claimed as someone else's dependent
- U.S. citizen or lawful resident alien
- Not incarcerated

127

Credits

Health Insurance Premium Assistance Credit

Claim now or claim later?

- 1) When enrolling claim advanced credit
 - Premium based on projected income
 - Must reconcile on tax return
 - Deviations from projected income or household makeup may result in extra credit or liability
 - Deviations from projected income or household makeup must be reported to the health benefit exchange
- 2) Pay full premiums and claim on return when filing the next year

128

Credits

Health Insurance Premium Assistance Credit

Credit calculated based on number of months of coverage, MAGI, and premiums for second lowest "Silver" plan available in the area

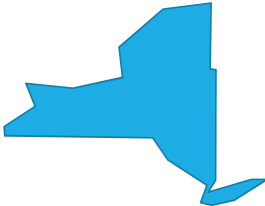
Income Level	Amount of Premium with Advanced Credit
MAGI between 133% and 150% of Federal Poverty Line	3-4% of MAGI
MAGI between 150% and 200% of Federal Poverty Line	4-6.3% of MAGI
MAGI between 200% and 250% of Federal Poverty Line	6.3-8.05% of MAGI
MAGI between 250% and 400% of Federal Poverty Line	8.05-9.5% of MAGI

129

Credits

New York State Tax Credits

- ✓ **Household Credit**
- ✓ Empire State Child Credit
- ✓ **Child and Dependent Care Credit**
- ✓ **Earned Income Credit**
- ✓ Real Property Tax Credit
- ✓ College Tuition Credit
- ✓ NYC School Tax Credit
- ✓ Family Tax Relief Credit
- ✓ Enhanced Real Property Circuit Breaker Tax Credit



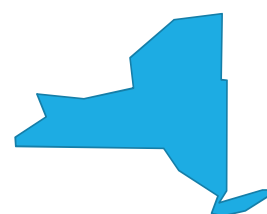
130

Credits

New York State Tax Credits

- New York State Household Credit
 - Starts at \$20 - \$75 for single filers with income up to \$28,000
 - Increased amount available for head of household, married filing joint or for dependents

- New York City Household Credit
 - Up to \$15 for single filers with income up to \$12,500
 - Increased amounts available for head of household, married filing jointly, qualified widow(er) or for dependents

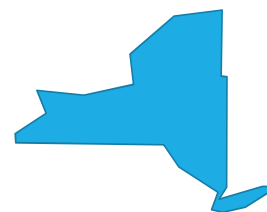


131

Credits

New York State Tax Credits

- Empire State Child Credit
 - Based on federal Child Tax Credit
 - 33% of federal credit or \$100 per qualifying child, whichever is less

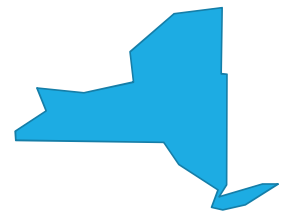


132

Credits

New York State Tax Credits

- New York State Child and Dependent Care Credit
 - Based on federal Child and Dependent Care Credit
 - 20% to 110% of federal credit, depending on AGI
- New York City Child and Dependent Care Credit
 - Based on state Child and Dependent Care Credit
 - Up to 75% of state credit
 - Must have AGI under \$30,000 and a qualifying child under 4 years old

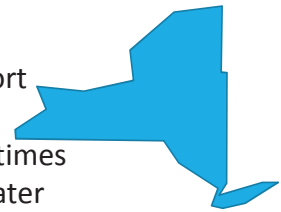


133

Credits

New York State Tax Credits

- New York State Earned Income Credit
 - Based on federal Earned Income Tax Credit
 - 30% of federal credit
- New York City Earned Income Credit
 - Based on federal Earned Income Tax Credit
 - 5% of federal credit
- Enhanced Earned Income Credit
 - Available to certain noncustodial parents who pay child support for their minor children pursuant to a court order
 - 20% of federal credit for person with 1 qualifying child or 2.5 times the EITC for a taxpayer without dependents, whichever is greater



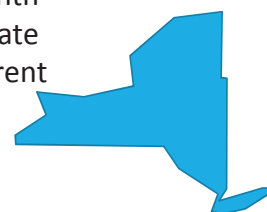
134

Credits

New York State Tax Credits

Real Property Tax Credit

- Available to certain homeowners and renters
- \$75 to \$375, depending on income
- Gross income must be less than \$18,000
- If renting, rent paid by household must be less than \$450/month
- If homeowner, must have paid real estate tax, own no real estate worth more than \$85,000 and received no more than 20% of rent from nonresidential use property



135

Credits

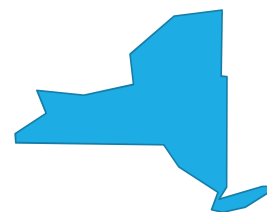
New York State Tax Credits

College Tuition Credit

- Based on qualified tuition expenses
- Cannot claim expense as an itemized deduction
- Up to \$400 per student

New York City School Tax Credit

- \$63 - \$125 depending on filing status
- Income must be less than \$250,000



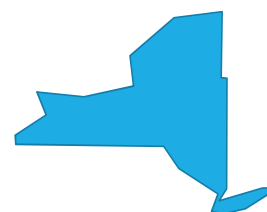
136

Credits

New York State Tax Credits

Family Tax Relief Credit

- Up to \$350 depending on NY AGI
- NY AGI must be between \$40,000 and \$300,000
- Must have at least one dependent child under 17 years old
- New for the 2014 tax year



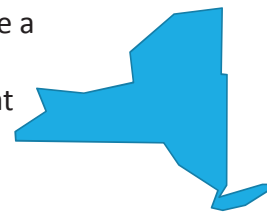
137

Credits

New York State Tax Credits

Enhanced Real Property Circuit Breaker Credit

- Up to \$500 depending on income and real property taxes (or rent)
- Household gross income must be below \$200,000
- Credit determined by amount of real property tax paid above a certain percentage of household gross income
- If rental household, then real property tax equivalent is set at 15.75% of adjusted rent paid



138

Penalties, Enforcement Powers and Collection Alternatives

139

Penalties

140

Penalties

When may penalties be imposed?

Taxpayers fails to comply with filing or paying taxes or other obligations imposed under the tax code.

141

Penalties

What types of penalties may be imposed?

Failure to File Penalty

- ↳ Return is filed late
- ↳ 5% of unpaid tax each month, up to 25%
- ↳ Showing of reasonable cause may basis for abatement

APRIL						
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12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		


IRC §6651(b)

142

Penalties

What types of penalties may be imposed?

Failure to Pay Penalty

- ↳ Payment is late
 - ↳ .5% of unpaid tax each month, up to 25%
 - ↳ Penalty increases to 1% of unpaid tax each month after levy notice issued and 10 days have passed and tax remains unpaid
 - ↳ Showing of
- 

Penalties

What types of penalties may be imposed?

Accuracy Related Penalty

Return is not

- ↳ 20% of underpaid tax attributable to the inaccuracy
- ↳ Inaccuracy attributable to negligence or disregard of rules, substantial understatement (the greater of 10% or \$5000) of tax or other similar misstatements

IRC §6662

145

Penalties

What types of penalties may be imposed?

Fraud in Underpayment

- ↳ 75% penalty

Underpayment of Estimated Tax IRC §6654(a)

- ↳ Penalty is equal to interest that would have accrued

146

Penalties

What types of penalties may be imposed?

Erroneous Refunds or Credits

Made for amounts

↳ 20% of amount

IRC §6676

147

Penalties

What types of penalties may be imposed?

Criminal Penalties

Imposed for failure to file return, provide necessary information, pay tax, keep records or evade tax

↳ In addition to any civil penalties

IRC §7201-7212

148

Penalties

What types of penalties may be imposed?

Shared Responsibility Payment

- ↳ Imposed for failure to maintain minimal essential health care coverage
- ↳ Taxpayers are responsible for the eligible qualified dependents, even if they are not claiming them for an exemption
- ↳ Penalty may not be collected through lien or levy, but may be collected by offset against refundable credits

IRC §5000A

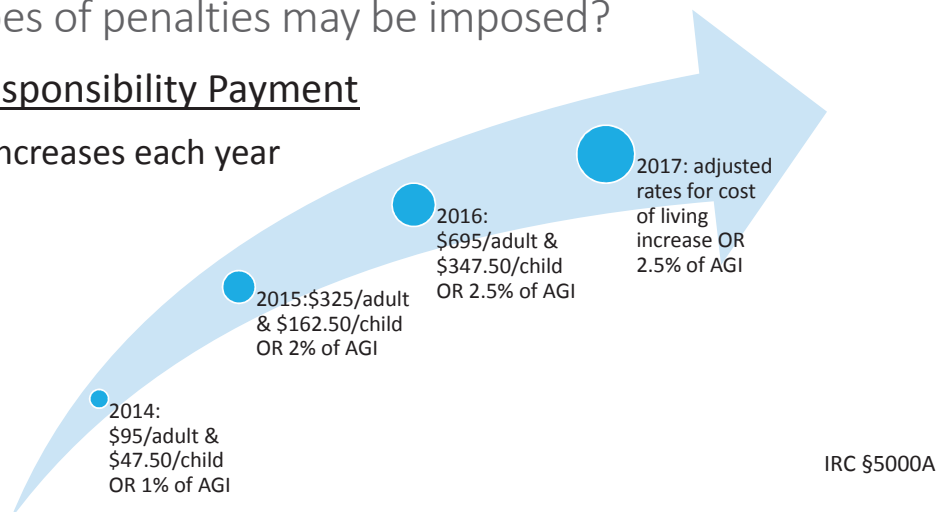
149

Penalties

What types of penalties may be imposed?

Shared Responsibility Payment

↳ Penalty increases each year



151

Penalties

What types of penalties may be imposed?

Shared Responsibility Payment

Exceptions to individual mandate include

- Those who cannot afford coverage because cheapest available plan costs more than 8% of household income
 - Undocumented immigrants
 - Incarcerated individuals
 - Native Americans
 - Those lacking coverage for less than three months
 - Purchase of plan would cause a hardship
 - No filing requirement (income below filing thresholds)
- IRC §5000A

152

Enforcement Powers

153

Enforcement Powers

What actions can the IRS take to collect taxes and returns?

- File a Notice of Federal Tax Lien attaching to real and personal property
- Levy income sources, other federal payments and financial accounts
- Seize property and refunds
- Summons third parties for information used to find payment sources or to prepare an unfiled return for the taxpayer
- Judgment against taxpayer or other (certain transferees of taxpayer's property)
- Sale of property

154

Enforcement Powers

Property exempt from lien or levy:

- Clothing, school books
- Fuel, food, furniture and personal effects up to \$8,940 in value
- Unemployment benefits
- Books and tools of trade, business or profession up to \$4,470
- Undelivered mail
- Certain annuity and pension payments
- Worker's compensation
- Judgments for support of minor children
- Public assistance, SSI
- Certain amounts of wages/income (pursuant to national collection standards)
- Service connected disability payments

IRC §6321

155

Enforcement Powers

Suspend, Limit or Stop Collection Actions

Statute of Limitations on IRS collection: generally 10 years after assessment date to collect taxes

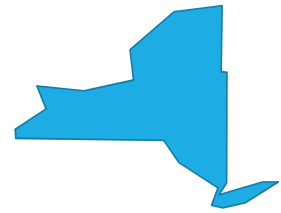
- ⌚ May be extended by agreement, bankruptcy petition filing or other circumstances
- ⌚ Reducing assessment to a judgment effectively extends statute of limitations to that of collecting a federal judgment

156

Enforcement Powers

New York State Department of Taxation and Finance

- Has similar collection powers as IRS
- May not levy federally exempt income/benefits such as Social Security or Veterans benefits
- Collection may continue up to 20 years after date warrant of tax liability is issued



157

Collection Alternatives

158

Collection Alternatives

Suspend, Limit or Stop Collection Actions

IRS can put an account into Currently Not Collectible status

- ⌚ Assists taxpayers whose income is insufficient to meet basic living expenses tax liability
- ⌚ Tax liability is not removed
- ⌚ Penalties and interest accrue
- ⌚ If financial circumstances change, collection action may commence again
- ⌚ Collection Statute runs

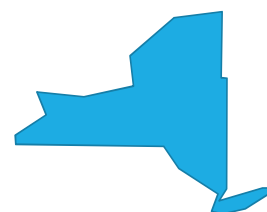
159

Collection Alternatives

Suspend, Limit or Stop Collection Actions

New York State Department of Taxation and Finance

- Has similar collection alternatives as IRS
- Installment Payment Agreement
- Offer in Compromise
- No written guidance regarding non-collectible status



161

For More Information

Internal Revenue Service

www.irs.gov

New York State Department of Taxation and Finance

www.ny.tax.gov

162

Conclusion

Elizabeth Hay

EAHay@legal-aid.org

Anne Malak

AMalak@Lasnny.org

Sarah D'Alessandro

SDalessandro@Lasnny.org

163

Biographies

Sarah B. D'Alessandro is a Staff Attorney for the Low Income Taxpayer Clinic at the Legal Aid Society of Northeastern New York, Inc. Sarah's clients are low income individuals experiencing tax related issues and she provides counseling, advice and representation in tax matters throughout several upstate New York counties. Sarah is a member of the American Bar Association's section on Taxation and is a previous recipient of VITA and TCE certifications. Sarah has a demonstrated commitment to public service and meeting the needs of the underserved. While attending Fordham University School of Law, Sarah worked at the Tax and Consumer Litigation Clinic and volunteered at the Manhattan Civil Legal Advice and Referral Office. Sarah received a B.S. from the R.H. Smith School of Business at the University of Maryland in College Park and a J.D. from the Fordham University School of Law. Prior to law school, Sarah served as a Revenue Officer with the Internal Revenue Service's Small Business Self-Employed division in Manhattan.

Elizabeth A. Hay is Attorney in Charge of the Harlem Community Law Office (HCLO) of The Legal Aid Society, and project director for the HIV/AIDS Representation Project (H/ARP) and the Elderlaw Project, as well as the Low-Income Taxpayer Clinic. Member of the Association of the Bar of the City of New York AIDS Committee, and City Bar Chorus. Member of the American Bar Association Tax Section Low Income Taxpayer Committee.

Responsible for overall administration of HCLO and supervision of legal practice in State and federal courts and administrative agencies. Received J.D. from New York University School of Law Admitted to practice in New York State, California, federal courts (E.D.N.Y., S.D.N.Y., 2d Circuit Court of Appeals) and U.S. Tax Court. Received B.A. in History from University of Rochester.

Anne-Marie Malak is a Managing Attorney at the Legal Aid Society of Northeastern New York (LASNNY) and Clinic Director of LASNNY's Low Income Tax Payer Clinic. She is a graduate of Albany Law School and the Massachusetts Institute of Technology. She became the staff attorney for LASNNY's Senior Legal Services Program in 1997 and currently supervises that program along with the Children's Law Project, HIV/AIDS Legal Consortium, Nutrition Outreach and Education Program, and Consumer Law Clinic.