



New Jersey Tax Guide

Divorcing Your Spouse



Tax problems during and following a divorce are common, but they can be minimized with a little planning and knowledge about tax law. This guide provides important Income Tax information to consider regarding divorce/separation and filing your New Jersey Income Tax return.

Filing Your Tax Return

Filing Status

If your divorce is finalized by December 31 of the tax year, you will select the filing status Single or Head of Household.

Couples who are separated but not yet divorced before the end of the year, have the option of filing a joint return. If you choose to file jointly, you will receive one Income Tax refund or one bill for tax due, depending on your circumstances. The alternative is to file as married filing separately. It is the year your divorce becomes final that you lose the joint return option.

Use the same filing status you use on your Federal 1040. New Jersey typically follows federal guidelines when selecting your [filing status](#).

*If divorcing from a Civil Union, which is not recognized federally, select the same filing status on the NJ-1040 that other divorcing spouses can opt for under New Jersey Gross Income Tax Law.

Married Filing Jointly. If you were still married on December 31, you and your spouse can file a joint return. If you file jointly, you both must include all your income, exemptions, deductions, and credits on that return. You can file a joint return even if one of you had no income or deductions.

*Note: The mailing address on the jointly filed tax return will be the address any and all correspondence is mailed to, including refund checks.

See [Tax Responsibilities for Divorced Taxpayers](#) for more information.

Married Filing Separate. You can file a separate return, even if only one of you had income. If you and your spouse file separate returns, you:

- Will each report only your own income, exemptions, deductions, and credits on your individual return;
- Both are responsible only for the tax due on your own return;
- Can find information on exemptions you can claim on your separate return [here](#).

Head of Household. If you meet the [requirements](#) to file as head of household for federal purposes, you may file as head of household for New Jersey.

Exemptions

You may claim a personal exemption for yourself on the tax return. You can only claim an exemption for your spouse if your filing status is married filing jointly. You cannot ever claim your spouse/ex-spouse as a dependent.

You may claim an exemption for each dependent child who qualifies as your dependent for federal tax purposes. In general, the parent who has custody more than half of the year may claim the child (children) as an exemption on the NJ-1040. The other parent may claim the exemption if it is designated in the divorce decree. Parents also can agree to take the exemption in alternate years. See [IRS Publication 504](#).

Alimony

- **Alimony Received.*** If you receive alimony from your spouse or former spouse, it is taxable in the year you receive it. Alimony is not subject to tax withholding, so you may need to increase the tax you pay to New Jersey during the year to avoid a penalty. To do this, you can make [estimated tax](#) payments or increase the amount of state tax withheld from your wages by completing the [NJ-W-4 form](#) with your employer. **Do not** include payments for child support;
- **Alimony Paid.** You can deduct alimony paid to or for a spouse or former spouse under a divorce or separation decree. Voluntary payments made outside a divorce or separation decree are not deductible. **Do not** include payments for child support.

* Alimony paid to a spouse could be considered nontaxable if the divorce decree stipulates that the other spouse who is paying the alimony agrees not to claim it as a deduction. Alimony is taxable to the recipient under State law [N.J.S.A. 54A:5-1\(n\)](#). However, the Division would consider the terms of a divorce decree when deciding whether such a stipulation is allowable. You may be asked to submit a copy of the divorce decree so it can be reviewed by Division personnel.

Child Support

- **Child Support Received.** If you received child support, it is not taxable. Do not report this income on the NJ-1040;
- **Child Support Paid.** If you pay child support, we do not allow a deduction for these payments. Therefore, do not report this on the NJ-1040.

Sale of Your Home - Capital Gains

The decision to sell your home as part of a divorce may have capital gains tax implications. New Jersey follows federal guidelines for reporting capital gain. Normally, the law allows married couples filing jointly to exclude up to \$500,000 of gain on the sale of their principal residence, if either one has owned the home for at least two years and both have lived there at least two out of the last five years.

For sales after a divorce, if those two-year ownership-and-use tests are met, you and your ex-spouse can each exclude up to \$250,000 of gain on your individual returns. Sales after a divorce can qualify for a reduced exclusion if the two-year tests have not been met. The amount of the reduced exclusion depends on the portion of the two-year period the home was owned and used. If, for example, it was one year instead of two, you can each exclude \$125,000 of gain.

What happens if you receive the house in the divorce settlement and sell it several years later? Then, you can exclude a maximum \$250,000 gain. The time your spouse owned the home is added to your period of ownership for purposes of the two-year test. See [IRS Publication 523](#).

Property Tax Deduction/Credit

After your divorce, if you both maintain ownership of the property, your ownership is now 50/50.* On your tax return, you can only claim 50% of the property taxes due and paid on the home as your property tax deduction. Alternatively, you can claim the \$50 property tax credit if that is more beneficial.

If the divorce/separation is not finalized and you choose to file the return as married, filing separately, you can only claim 50% of the property taxes due and paid (\$7,500 if the total paid exceeds \$15,000). If you claim the property tax credit, you are only entitled to \$25 (half of the credit).

Note: If you and your spouse are not the sole owners of the property, you must take the percentage of what you, the married couple, own and divide the amount in half to come up with the correct property tax figure to report.

Part-year residents, see [NJ-1040 Instructions](#) for prorating instructions.

*For exceptions, see [Homeownership](#).

Tax Withholding and Estimated Tax Payments

When you become divorced or separated, you will usually have to file a new [NJ-W-4 form](#) with your employer to claim your proper withholding allowances. You also can file this form to increase New Jersey withholdings, in lieu of estimated tax payments, if you receive alimony payments.

If making [estimated payments](#), be sure to make all payments under the primary (your) Social Security number. If payments or credits that belong to you exist under your ex-spouse's Social Security number, be sure to claim your share on your New Jersey tax return and include a separate statement of explanation in writing. We may require proof of payment in order to have the payment(s) properly applied. [Contact us](#) with any questions.

Address Changes

If you move from or sell your principal residence, [contact us](#) with your updated mailing information. Be sure to file your next tax return with your most up-to-date address to ensure timely receipt of all New Jersey tax correspondence or refunds.

Name Changes

A name mismatch can cause problems in the processing of your return and may delay your refund. Be prepared to submit supporting documentation upon request for verification and security purposes.

Tax Responsibilities for Divorced Taxpayers

You will be held responsible for any tax, interest, and/or penalties due on a jointly filed tax return filed in or for a period of time in which you were still married. This responsibility applies, even if all the income was earned by the other spouse.

We do not recognize certain relief of liability that the federal government offers joint filers, such as "innocent spouse" or "injured spouse." Should all or part of your State refund be offset to pay a debt on behalf of your spouse/ex-spouse, you must contact the agency directly for information on their policy.

Homeownership

For property tax relief program and Income Tax purposes, we consider married couples that own a home to be one owner. After your divorce, if you both maintain ownership of the home, we consider you to be 50/50 owners, unless:

- Your deed states otherwise; or
- Your divorce decree includes a provision transferring ownership of the home. In these cases, the divorce decree will override the deed effective the date the decree is signed, unless the decree specifies some other date.

If your divorce decree does not transfer ownership of the property to one spouse, you will need to change your deed in order to be eligible to claim 100% ownership of your home for property tax relief program and/or Income Tax purposes.

Property Tax Relief Programs

If, after a divorce or separation, you maintain ownership of a home and occupy it as your principal residence, you may still be or newly entitled to [property tax relief benefits](#). You must meet all eligibility requirements for each program and be sure to claim the benefit for your percentage of ownership only.