

## Q& A: Non-Traditional Families

EIC and CTC eligibility rules give a parent who lives with his or her child more than half of the year priority in claiming the EIC, even if other family members who live with the child could also claim the credit. This is a “custodial parent” under IRS rules.

### What are the rules about filing status?

To get the EIC, workers can file as: “single,” “head of household” or “married filing jointly.” But the EIC is not available to taxpayers who file as “married filing separately.” This requirement that married workers file a joint tax return does not apply to claims for the CTC — they may file separately.

### What if married parents are separated but not divorced?

Parents who are separated but not divorced can file as “married filing separately.” But if they file this way, neither parent can claim the EIC. (As noted above, a claim for the CTC could be made by one spouse filing separately.) Separated parents have the option of filing as “married filing jointly.” If they do so, they can claim the EIC.

In addition, there is *one* situation in which a separated parent can claim the EIC without having to file jointly with the other parent — the parents must have lived apart for the last six months of the year *and* their child must have lived with one of them for more than half of the year. *Also*, the parent now living with the child must have paid more than half the cost of maintaining the household for the year and be able to claim the child as a dependent. Under these circumstances, that parent is considered unmarried for tax purposes and can file as “head of household.” That parent may claim the EIC. This option can be important, for example, to workers who are victims of domestic violence or whose separated spouse is not cooperative.

### What if the parents in a family are divorced?

If parents are divorced, the parent with whom the child lived for more than half the year is entitled to file for the EIC, regardless of which parent claims the child as a dependent. If both parents lived with the child for more than six months, either parent could claim the EIC, and the parents should decide which one will.

**Note:** A parent not living with his or her child for more than half the year may be eligible for the smaller EIC for workers without qualifying children. That parent may also claim the CTC if he or she *is permitted to claim the child as a dependent by a divorce or separate maintenance agreement*. (In these cases, the custodial parent must sign [IRS Form 8332, “Release/ Revocation of Release of Claim to Exemption for Child by Custodial Parent,”](#) and the form must be attached to the tax return of the *non-custodial* parent.) Note that even though the non-custodial parent claims the CTC, an eligible parent who lives with the child more than six months of the year remains entitled to claim that child for the EIC.

### **What if both parents and their child live together, but the parents are not married?**

If the parents are not married, and each lived with the child for more than six months, they may choose which parent claims the EIC and CTC, if both are otherwise eligible. Since they are unmarried, they do not file a joint return.

### **What about a three-generation household: a grandparent, parent and child?**

In a three-generation household, only one person can claim the EIC and CTC, even if more than one family member works and is otherwise eligible. For both the EIC and CTC, a working parent living for more than six months of the year with his or her child has the priority to claim the EIC. If the parent chooses not to claim the EIC or CTC, or was not working, an eligible grandparent may claim these credits.

### **What about child support?**

Child support payments a parent receives do not count as income when determining eligibility for the EIC or CTC or the amount of either credit.

### **What about foster families?**

For purposes of the EIC and CTC, a foster child must be placed with the worker by an authorized placement agency, such as a licensed foster care agency, state agency or court. Such children must live with the worker for more than half of the tax year and meet the other requirements for a qualifying child.

Foster care payments generally do not count as income when determining eligibility for the EIC or the CTC.