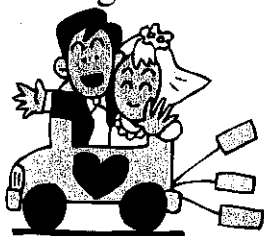




## 2010 Filing Status



### How can my marital status affect my income tax?

Your marital status determines your filing status on your individual income tax return. Your filing status is based upon whether you are *considered married* or *considered unmarried* on December 31, 2010.

-Your filing status affects your standard deduction and the number of exemptions you get, which in turn affect how much of your income gets taxed and, ultimately, your tax.

-Your filing status is also an important consideration in determining what *credits* you have available to you to offset your tax or as a refund, including the Earned Income Tax Credit, the Child Tax Credit, and the Child and Dependent Care Credit.

### What is my filing status?

There are five different filing statuses. Although you may be in a situation where you can choose between several filing statuses, you can only choose one on your tax return.

- Single,
- Married Filing Jointly,
- Married Filing Separately,
- Head of Household, and
- Qualified Widow(er) With Dependent Child

### Are you considered married?

You are *considered married* for the entire 2010 tax year if, on December 31, 2010, you and your spouse of the opposite sex fall into one of the following categories:

- a) You are married and living together as husband and wife.
- b) You are living together in a common law marriage that is recognized in the state where you now live or in the state where the common law marriage began.
- c) You are married and living apart, but not legally separated under a decree of divorce or separate maintenance.
- d) You are separated under an interlocutory (not final) decree of divorce. In Nebraska, a divorce decree is not final until 30 days have passed from the date the Judge signed the decree.

• You are also *considered married* for the entire 2010 tax year if your spouse died during 2010 and you did not remarry before the end of 2010.

• You are *considered married* if you are a U.S. citizen or resident alien and your spouse, who you were still married to on December 31, 2010, was a nonresident alien at any time during 2010 and you choose to treat your spouse as a resident alien by filing a joint return for 2010.

• If you are married but living apart from your spouse it may be possible for you to be *considered unmarried* and file as Head of Household.

### Are you considered unmarried?

You are *considered unmarried* for the entire 2010 tax year if you are not *considered married* on December 31, 2010.

- Divorced persons: If you are divorced under a final decree by December 31, 2010, you are *considered unmarried* for all of 2010. In Nebraska, a divorce decree is not final until 30 days have passed from the date the Judge signed the decree.

You can choose to be *considered unmarried* (basically, for purposes of filing using the status "head of household") if you were married to a U.S. citizen or resident alien on December 31, 2010, but you pass all of the following 5 tests:

- 1) You file a separate 2010 tax return from your spouse (You do not file using the filing status "married filing jointly");
- 2) You paid more than half the cost of keeping up your home for 2010;
- 3) Your spouse did not live in your home during the last 6 months of 2010;
- 4) Your home was the main home of your child, stepchild or adopted child for more than half the year or was the main home of your foster child for the entire year;
- 5) You are able to claim an exemption for the child in the 4<sup>th</sup> test or would have been able to claim the exemption for that child had you not made a written agreement with the child's other parent that they could claim the child as a dependent in 2010.

You are *considered unmarried* (for purposes of filing "head of household") if your spouse, who you were still married to on December 31, 2010, was a nonresident alien at any time during 2010 and you choose not to treat your nonresident spouse as a resident by not filing a joint return for 2010.

-However, in this situation, you are **not** also *considered unmarried* for purposes of claiming EITC unless you pass the five tests listed in the section immediately prior to this one.

### When do I choose the filing status "Single"?

If you are *considered unmarried*, you may file as "Single".

-If you fall into this definition and do not qualify for another filing status (either Head of Household or Qualifying Widow(er) with Dependent Child), you **must** file as "single".

A person using the filing status "Single" may be able to claim Earned Income Tax Credit, Child Tax Credit and Child and Dependent Care Credit, if they are otherwise eligible for those credits.

-The amount of Earned Income Tax Credit you receive when you file "Single" may be less than what you would have received if you filed "Married Filing Jointly."

### When do I choose the filing status "Married Filing Jointly"?

If you are *considered married*, and you and your spouse agree to file a joint return, you may file as "Married Filing Jointly".

-If you are *considered married* and you are not able to choose to be *considered unmarried*, then you **must** file as "Married Filing Jointly" in order to get Earned Income Tax Credit and/or Child and Dependent Care Credit.

Generally, in order for a return to be considered a joint return, both spouses must sign the return, with the following exceptions:

- Your spouse died during 2010,
- Your spouse died before signing the return,
- Injury or disease prevents your spouse from signing,
- Your spouse is mentally incompetent and you are your spouse's guardian,
- Your spouse is serving in a combat zone or a qualified hazardous duty area and you do not have a power of attorney for your spouse,
- You have power of attorney for your spouse.

A person using the filing status "Married Filing Jointly" may be able to claim Earned Income Tax Credit, Child Tax Credit and Child and Dependent Care Credit, if they are otherwise eligible for those credits.

## When do I choose the filing status "Married Filing Separately"?

If you are *considered married*, you may file as "Married Filing Separately". If your spouse refuses to file a joint return, you may have to choose this filing status.

-However, if you are *considered married* but are able to choose to be *considered unmarried*, you can choose between filing as "Head of Household" and "Married Filing Separately."

You **cannot** claim Earned Income Tax Credit or Child and Dependent Care Credit if you file "Married Filing Separately". You can claim Child Tax Credit even if you do file "Married Filing Separately".

## When do I choose the filing status "Head of Household"?

If you are *considered unmarried* or you are considered married but able to choose to be *considered unmarried*, you may be able to file as "Head of Household" if you meet the following two tests:

- 1) You paid more than half the cost of keeping up a home for 2010, and
- 2) A "qualifying person" lived with you in the home for more than half of 2010. (Unless they are your mother or father, see below)

Costs of keeping up a home: include rent, mortgage interest, real estate taxes, insurance on the home, repairs, utilities and food eaten in the home. They do not include clothing, education, medical treatment, vacations, life insurance or transportation.

### Qualifying person

There are three basic categories of qualifying persons for the "Head of Household" filing status:

- (1) Qualifying Child such as a son or daughter or grandchild that lived with you for more than 1/2 of the year and is single or if married you can claim the exemption for him or her (or the only reason you can't claim the exemption is that you could be claimed as a dependant on someone else's return).
- (2) Qualifying Relative that is your mother or father, if you can claim the exemption for them.
- (3) Qualifying Relative (other than mother or father). If they have lived with you for more than 1/2 of the year and you can claim the exemption for them.

- A "qualifying person" for the filing status "Head of Household" cannot be the "qualifying person" of more than one taxpayer.
- If you are a non-custodial parent only for exemption purposes as described under the rules for divorced/separated parents you cannot claim the child for purposes of Head of Household status. Generally, the child is the qualifying child for Head of Household purposes of the custodial parent when these rules apply, even if they cannot claim the exemption due to judicial decree.
- The amount of Earned Income Tax Credit you receive when you file "Head of Household" may be less than what you would have received if you filed "Married Filing Jointly."

For more information on Qualifying Children and Qualifying Relatives see IRS Publication 501.

## When do I choose the filing status "Qualifying Widow(er) with Dependent Child"?

You are eligible to use "Qualifying widow(er) with dependent child" as your filing status in 2010 if your spouse died in 2008 or 2009 and you meet the following 4 tests:

- (1) You were entitled to file a joint return with your spouse for the year your spouse died. (It doesn't matter if you did not actually file a joint return for that year);

- (2) You did not remarry before the end of 2010;
- (3) You have a child or stepchild for whom you can claim an exemption (this does not include a foster child);
- (4) You paid more than half of the cost of keeping up a home that is the main home for you and that child for the entire year, except for temporary absences.

· You may be eligible to use this filing status for 2 years following the year of the death of your spouse; after that, you may be able to file as head of household.

-This status entitles you to use joint return tax rates and the highest standard deduction amount (if you do not itemize deductions).

A person using the filing status "Qualifying Widow(er) with Dependent Child" may be able to claim Earned Income Tax Credit, Child Tax Credit and Child and Dependent Care Credit, if they are otherwise eligible for those credits.

-The amount of Earned Income Tax Credit you receive when you file "Qualifying Widow(er) with Dependent Child" may be less than what you would have received if you could have filed "Married Filing Jointly."

## If I got married in 2010, which filing status do I choose?

If you got married in 2010 you are probably *considered married*. If you are *considered married* on December 31, 2010, you must file either "Married filing Jointly" or "Married Filing Separately."

-If you were separated from your spouse for the last 6 months and meet several other requirements, then you may be able to file "Head of Household".

## If I got divorced in 2010, which filing status do I choose?

If you got divorced in 2010, you will probably be *considered unmarried*. If you are *considered unmarried* on December 31, 2010, you must file "Single" or "Head of Household."

-In Nebraska, a divorce decree is not final until 30 days after the date it was signed by the judge. So, you must be divorced before November 30, 2010, (and nobody can have appealed the divorce decree) in order for you to be *considered unmarried* in 2010.

## If my spouse died in 2010, which filing status do I choose?

If your spouse died in 2010, you will probably be *considered married*. You will probably choose to file "Married Filing Jointly", although you could file "Married Filing Separately".

-If you did not remarry before December 31, 2010, you will be considered married to your spouse who passed away.

## If I am married to someone who is not a U.S. citizen, which filing status do I choose?

If you are *considered married* on December 31, 2010, you may file "Married Filing Jointly" with your spouse, even if your spouse is not a U.S. citizen.

-Your spouse must have a Social Security Number valid for employment or an Individual Taxpayer Identification Number (ITIN).

If your spouse is a nonresident alien and you choose not to file a joint return, you are *considered unmarried* and you cannot file "Married Filing Separately".

-You will have to file "Single" unless you meet the 5 special requirements of filing as "Head of Household" for married people choosing to be *considered unmarried*.

*This worksheet was prepared by the Low-Income Tax Clinic of Legal Aid of Nebraska on 2/28/11. Call (402)348-1069 or 1-877-250-2016 for more copies or go to the website at [www.legalaidofnebraska.com](http://www.legalaidofnebraska.com). For legal assistance with an income tax or other civil legal matter, call the AccessLine for Legal Aid of Nebraska at 1-877-250-2016.*