



LEGAL AID
OF NEBRASKA



United Way

2011 New U.S. Taxpayers



Introduction:

Are you new to the United States and unfamiliar with tax rules here? Are you or your spouse working and receiving a paycheck? Did your employer withhold income taxes from your paycheck? Do you think you might be eligible for Earned Income Tax Credit or some other tax benefits? Do you have questions about what to do if you don't have a Social Security Number?

Internal Revenue Service:

The part of the United States government that deals with taxes is called the Internal Revenue Service (IRS). Every year, people who work in the United States must report their income and the tax on this income to the IRS. The IRS has special forms, called tax returns, that people fill out to report their income and the tax on their income. When you complete the form and send it to the IRS, you are "filing a tax return". Generally, the tax return for an individual's income covers a calendar year, also known as the tax year. The tax return must be filed by April 15 of the year following the calendar year being reported. April 15 is also the due date for any tax owed on the tax return.

Why should I file a tax return?

- ✓ You may be legally obligated to file a tax return and, if so, the IRS can take steps to collect any tax it thinks you owe. You could also suffer criminal consequences for not filing a tax return.
- ✓ You may qualify for a cash refund if you file a tax return. This may be true even if you are not legally obligated to file a tax return.
- ✓ For many immigration applications, such as "Adjustment of Status" and "Cancellation of Removal", you need to show that you (or a relative claiming you as an exemption or dependent) filed a tax return.
- ✓ For many immigration matters, filing an income tax return is evidence of "good moral character" and "continuous presence." You must prove both of these things for many immigration benefits. Additionally, filing an income tax return with your spouse demonstrates the validity of a marriage, another factor in obtaining immigration benefits.

For the 2010 tax year, you are legally obligated to file a tax return if you fall into one of the following categories, based upon your filing status, age, and gross income. **Your obligation to file a tax return is different if somebody else is able to claim you as a dependent.**

Single

- < 65, gross income \geq \$9,500
- \geq 65, gross income \geq \$10,950

Married filing jointly

- both spouses < 65, gross income \geq \$19,000
- one spouse is \geq 65, gross income \geq \$20,150
- both spouses \geq 65, gross income \geq \$21,300

Married filing separately

- any age, gross income \geq \$3,700

Head of household

- < 65, gross income \geq \$12,200
- \geq 65, gross income \geq \$13,650

Qualifying widow(er) with dependent child

- < 65, gross income \geq \$15,300
- \geq 65, gross income \geq \$16,450

Further, for the 2010 tax year

- You **must** file a tax return if you had net earnings from self-employment of \$400 or more.
- You **must** file a tax return if you received any amount of advance earned income credit payments from your employer during the year.
- You **must** file a tax return if you owe any taxes, such as Social Security tax and Medicare tax on tips or tax on a qualified retirement plan.

What happens if I do not file a tax return?

You can always file a late return. If you are legally obligated to file a tax return and you do not do so, the IRS can take the following steps to determine your tax and make you pay it.

- First, the IRS will write to you at your last known address to request that the return be filed. This request will be repeated several times.
- If you do not send in a return, the IRS will send a proposal of the amount of tax, interest, and penalties owed, along with a letter asking for a response within 30 days.
- The IRS will issue a Statutory Notice of Deficiency and send this to you with a letter informing you of the proposed assessment and all of your appeal rights.
- If you do not contact the IRS to appeal the proposed assessment, the IRS will send you a Notice and Demand for Payment, billing you for how much the IRS thinks you owe in taxes, interest and penalties and informing you of your appeal rights.
- If you do not respond within 30 days, a statutory notice of deficiency is issued. Then the appeal is to the U.S. Tax Court (90 days if in the U.S.)
- If you do not file a timely petition with the U.S. Tax Court, the IRS will make the assessment.
- If you do not pay, the IRS can proceed to collect the bill from you by filing a lien against your property or serving a levy on your property or salary. **In other words, the IRS can, subject to the IRS collection due process procedures, garnish your wages, your bank account or even a portion of your Social Security Disability Insurance benefits. Ultimately, the IRS can take and sell your property, such as your car or your house.**

Additionally, if you willfully or intentionally do not file a tax return when you are legally obligated to, the IRS Criminal Investigation division can recommend to the U.S. Department of Justice that you be prosecuted for violating the tax laws. If you are convicted, you may be sentenced to serve time in prison.

What income do I have to report to the IRS?

If you are an employee, you must report all compensation you have received for services you performed during the tax year. Generally, this includes wages, salaries, bonuses, commissions and tips.

Your employer will usually withhold your federal income tax, Social Security tax and Medicare tax from your paychecks, based upon a Form W-4 that you fill out when you begin your employment. Your employer will then report what has been withheld using Form W-2. You should receive Form W-2 from your employer in the January immediately following the tax year. You will use the Form W-2 to complete your income tax return and will attach it to your income tax return.

If you are an independent contractor or self-employed, you must still report all compensation you have received for services you performed during the tax year.

-You do not receive a Form W-2 for work you have done as an independent contractor or self-employed person. Someone who compensated you as an independent contractor should send you a Form 1099-MISC showing the amount of money they paid you for your services.

-In an independent contractor situation, no federal income tax, Social Security tax or Medicare tax will have been withheld from the payments made to you. You will have to pay those taxes yourself and may be required to pay estimated tax payments.

Who can get a tax refund?

You apply for a tax refund by filing a tax return. You may get a refund even if you do not have legal permission to live and work in the U.S.

You do not need a valid Social Security Number (SSN) to file a tax return or to get a refund. However, if you do not have a SSN, you must have an Individual Taxpayer Identification Number (ITIN) in order to file a tax return.

What kind of tax refunds and tax benefits can I get?

You will be eligible for a tax refund of overpaid taxes if the income tax withheld by your employer from your paychecks is greater than the tax you actually owe. Other tax benefits that you may be eligible for include Earned Income Tax Credit and Child Tax Credit. Your filing status and exemptions, including dependency exemptions, can also create a tax benefit for you.

Your eligibility for these tax benefits depends on your legal status. The Internal Revenue Service (IRS) rules about legal status are different from the rules used by the Citizenship and Immigration Services (CIS), formerly known as the Immigration and Naturalization Service (INS). Under IRS rules, people who are not U.S. citizens are called aliens. There are two kinds of aliens – resident and nonresident.

Resident aliens may get the child tax credit, child care credit, education credit, elderly credit, foreign tax credit and adoption credit, in addition to a refund of overpaid taxes. Resident aliens with Social Security Numbers valid for employment may also get the earned income tax credit (EITC).

Nonresident aliens may get a refund of their overpaid taxes. Nonresident aliens may get some tax credits, but special rules apply.

What is the difference between a resident alien and a nonresident alien?

You are a resident alien if you have a green card or you were in the U.S. for a certain period of time (substantial presence).

Green card: You are a resident alien if you are a lawful *permanent* resident of the U.S. at *any time* during the year. You generally have this status if the INS has issued you a "green card."

Substantial presence: You are a resident alien (for U.S. federal income tax purposes only) if you have lived in the U.S. for 31 days during the current year *and* 183 days during a three-year period. The three-year period includes the current year and the two years prior to it. You count all the days you were present in the current year, 1/3 of the days present in the year before the current year, and 1/6 of the days present in the second year before the current year.

You are a nonresident alien if you are not a resident alien.

In other words, you are a nonresident alien if you do not have a green card or you are not substantially present in the U.S.

What is the Earned Income Tax Credit?

Earned Income Tax Credit (EITC) is a tax benefit for working people who earn low or moderate incomes. EITC can be both a credit against tax you owe and a cash refund. Any person who worked full-time or part-time during the year and meets certain guidelines could get EITC, even if they did not earn enough to be required to file a tax return.

EITC for 2011

If you have no children may get **up to \$464** if

- You or your spouse is at least age 25 but under age 65; and
- Your family income is less than \$13,660.

If you have one child, you may get **up to \$3,094** if

- Your family income is less than \$36,052;

If you have two children, you may get **up to \$5,112** if

- Your family income is less than \$40,964.

If you have three or more children, you may get **up to \$5,751** if

- Your family income is less than \$43,998.

Income limits for married workers filing jointly are \$5,080 higher.

In order to claim EITC, both you and your spouse (if you are married) *must* have Social Security Number(s) *valid for employment*. Any child you claim for EITC (qualifying child) must also have Social Security Number(s) *valid for employment*.

-You cannot get EITC if, instead of a Social Security Number, you or your spouse has an Individual Taxpayer Identification Number (ITIN).

-If you receive a Social Security Number *valid for employment* after you file your tax return and you qualify for the EITC, you may go back three years and amend your tax return(s) to claim the EITC. If you have a Social Security Number valid for employment and you did not file a return and claim the EITC, you may still go back three years to file a tax return and claim EITC. This is true even if you have never filed a tax return or even if you used to have an Individual Taxpayer Identification Number (ITIN) or you used an invalid Social Security Number.

What is the Child Tax Credit?

Child Tax Credit is a tax benefit for people with low or moderate incomes. You may get the Child Tax Credit for any person you claim as a dependent who is under age 17 on December 31, 2011. The Child Tax Credit reduces your tax and can also be a cash refund.

In order for you to claim Child Tax Credit, you must have a valid Social Security Number or an ITIN. Your child can have a valid Social Security number, an Individual Taxpayer Identification

Number (ITIN) or an Adoption Taxpayer Identification Number (ATIN).

What is an Individual Taxpayer Identification Number (ITIN)?

The ITIN is a nine-digit number starting with 9 that is used by individuals who do not have a Social Security Number to file an income tax return. It is an identification number for income tax purposes, and for those purposes only.

-The ITIN will not authorize you to work in the U.S., it will not change your immigration status, it will not make you eligible for Social Security benefits and it will not make you eligible for the Earned Income Tax Credit.

-ITINs were formerly printed on cards, but now ITINs are mailed to the applicant in a letter, so that they cannot be mistaken for an identification card.

Who needs an ITIN?

If you are required to file a federal income tax return because of significant income during the tax year or if you want to file a federal income tax return to claim a refund, you must have either a SSN or an ITIN.

You can only apply for an ITIN if you do not have a Social Security Number (SSN).

Your spouse and dependents must also have either a SSN or an ITIN.

What do I do if the information on my Form W-2 does not match my ITIN?

It may be that you or your spouse is working under another person's identity and Social Security Number. The proper way to file a tax return in this situation is to file a tax return under your real identity using an ITIN that belongs to you and to attach the W-2 showing your earnings, even though the identity information on the W-2 will not match your name or ITIN. You should not alter the W-2 in any way.

-If you don't have an ITIN, you should apply for one. You should enclose your ITIN application with your income tax return and the W-2, with your application for an ITIN. You will have to file a paper return because your ITIN will not match your W-2.

-If you were to file an income tax return using another person's identity and Social Security number, you could become liable for tax on income earned by that other person. Also, any refund that you claim might be intercepted or offset for debts belonging to another person using that identity and Social Security number.

-If you have used another person's identity and Social Security number to work and you do not file an income tax return, another person using that identity and Social Security number (maybe even the person to whom that identity belongs) might be held liable for tax on your income. It could take a long time for that person to show the IRS that they did not earn the money that you earned. You make that person's life simpler if you file a tax return on the money you earned by using an ITIN.

Can I file a joint tax return with my nonresident spouse?

If at the end of the tax year you are married and you are a U.S. citizen or resident alien and your spouse is a nonresident alien (see definition earlier in this worksheet), you and your spouse can choose to file a joint tax return and treat your nonresident spouse as a resident alien (for tax purposes only).

You must attach a statement declaring that one spouse was a U.S. citizen or resident alien and the other spouse was a nonresident alien. The statement must include the name, address, and SSN or ITIN of each spouse. In other words, your spouse must have an SSN or ITIN.

You and your nonresident alien spouse do not have to file a joint tax return. You cannot file married filing separately, but you may be able to file using the head of household filing status. If you have a SSN and your spouse does not have a SSN, this might be what you need to do in order to qualify for EITC.

-If your spouse is a nonresident alien and you file as Head of Household, you will not qualify for EITC unless you have lived separately from your spouse for at least the last 6 months of the tax year and you meet all the other requirements for EITC.

Can I claim my spouse as a dependent?

Your spouse is never considered your dependent. You may be able to take one exemption for your spouse because you are married. Your spouse must have a SSN or an ITIN.

Married filing jointly: On a joint return, you can claim one exemption for yourself and one for your spouse.

Married filing separately: If you file a separate return, you can claim the exemption for your spouse only if your spouse had no gross income, is not filing a tax return, and was not the dependent of another taxpayer. You cannot file married filing separately if your spouse is a nonresident alien, but you may be able to file using the filing status Head of Household.

Head of Household: If you qualify for Head of Household status because you are "considered unmarried", you can claim an exemption for your spouse if your spouse had no gross income, is not filing a return, and was not the dependent of another taxpayer. If your spouse was a nonresident alien at any time during the tax year, you may choose to be "considered unmarried" in order to use Head of Household filing status, regardless of where your spouse lived during the last 6 months of the tax year. Your spouse, in this case, cannot be your qualifying person for Head of Household filing status. You must meet the other rules of Head of Household filing status.

When can I claim my relatives as dependents?

If your relative is a citizen of the U.S., a resident alien or a resident of Canada or Mexico, you may be able to claim them as a dependent, even if they have not lived with you during the tax year.

-Generally you have to show that the person earned less than \$3,650 during the year and that you have provided more than half of the person's total support during the year. The rules are different if the person you are seeking to claim as a dependent is your child and is under the age of 19.

-In order to claim the dependency exemption for a person, you have to meet five complicated tests. See IRS Publication 501 for more information.

Any person that you list as a dependent must have either a SSN or an ITIN.

How do I know if I am an employee or an independent contractor?

You may have thought that you were an employee and that your employer was withholding tax from your pay. This is usually the case if you fill out a Form W-4 for the person or business that you think is your employer. Form W-4 or no Form W-4, you later may have been shocked to find out that the person or business you thought was your employer was treating you as an independent contractor and did not withhold any tax from your pay. This could create a large tax liability for you that you are unprepared to pay. Whether you are an employee or an independent contractor depends on the amount of control you have over the work

you are doing and the relationship you have with the person or business you are performing the work for.

Generally, the more control you retain over what work you do and how you do it in order to get the job done, the more you look like an independent contractor.

If you think you are an employee and not an independent contractor, you can ask the IRS to make a determination as to whether an employer-employee relationship exists.

-You do this by filing Form SS-8, "Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding".

-If the IRS finds that an employer incorrectly treated you as an independent contractor, the employer will be liable for the Social Security and Medicare tax withholding that he or she failed to withhold and pay. You will still be liable for the employee share of Social Security and Medicare taxes. You will report and pay those taxes using IRS Form 4137, "Social Security and Medicare Tax on Unreported Tip Income".

What is a Form W-4?

The Form W-4 tells your employer how much tax to withhold from your pay. Your employer later reports how much tax was actually withheld from your pay by reporting it on Form W-2.

-People are usually required to fill out a Form W-4 for their employer when they start working for them. It is a standard practice to update your Form W-4 each year, especially if your tax situation changes because of a change in your marital status or the number of dependents you can claim.

-If your tax is withheld from your paychecks by your employer, it gets paid to the IRS a little at a time throughout the year.

The withholding is based upon your personal allowances, which take into consideration your filing status, the number of exemptions you claim, and some tax credits such as child tax credit and child or dependent care expenses credit.

-Generally, the more exemptions you claim in calculating your personal allowances, the less money is withheld. This is because when you later claim those exemptions on your tax return, they each reduce the amount of your income that is taxed.

-However, if you claim too few exemptions on your Form W-4, you may owe tax when you file your tax return.

Sometimes people claim exemption from withholding.

-This is something completely different than what exemptions you can claim on a tax return. If you claim exemption from withholding then no tax is withheld from your paycheck. This means you get more money in your paychecks, but may have to pay more tax when you file your tax return.

-You cannot claim exemption from withholding if:

(a) your income exceeds \$950 and includes more than \$300 of unearned income (like interest and dividends) and

(b) another person can claim you as a dependent on their tax return.

Where can I go for free assistance in filing my individual income tax return?

During the tax season, the IRS sets up VITA sites within the community. VITA stands for Volunteer Income Tax Assistance. These sites are set up in a variety of places at a variety of times. They provide free tax preparation, including free e-file, to people who meet their income eligibility requirements. The VITA sites can assist you with prior year returns and amended returns from prior years, also, as well as Injured Spouse claims. Many VITA sites have translation services. **The VITA will not assist people in applying for ITINs.**

Information about the VITA sites is available during the tax season from the IRS and also from Legal Aid of Nebraska. One of the

easiest places to look is on the Legal Aid of Nebraska website at www.legalaidofnebraska.com.

During the tax season and also after the tax season has come and gone, you can get free tax preparation assistance through the Taxpayer Assistance Center at your local IRS office if you fall within their income guidelines. This free assistance includes free e-file, as well as assistance with prior year and amended returns and Injured Spouse claims. The Taxpayer Assistance Centers will assist people in applying for ITINs.

If you get assistance from your local IRS office in applying for an ITIN, that office cannot also prepare your income tax return. However, they can submit an income tax return that has already been prepared along with your ITIN application.

Free information and advice is also available to you if you choose to prepare your tax return yourself.

If you have questions as you prepare your return, you can call the IRS Individual Tax Help Line at 1-800-829-1040 or visit the IRS website at www.irs.gov. Spanish-speaking taxpayers can receive assistance by calling the Individual Tax Help Line number and also on the IRS website. Several IRS forms and publications are available in Spanish.

What if the IRS sends me a notice that there is a problem with my tax return?

You have rights as a taxpayer that the IRS must protect. One of these rights is to receive written notices from the IRS of problems with your tax return. You should read all notices from the IRS very carefully, paying close attention to any deadlines to respond. The IRS provides many opportunities for you to submit additional information, appeal, mediate, negotiate and go to court over problems with your tax return. It is your responsibility to respond to notices from the IRS to further assert your rights.

Where can I get help with problems that I have with the IRS?

If you have an ongoing issue with the IRS that has not been resolved through normal processes, or you have suffered, or are about to suffer a significant hardship because of the way tax laws are being carried out (tax liens, levies, property seizures, etc.) you may seek help from the **IRS Taxpayer Advocate Service** by calling toll-free 1-877-777-4778 or by calling the **Local Taxpayer Advocate office** at 402-221-4181.

Individuals with questions about federal individual income tax matters can complete an application for assistance from **Legal Aid of Nebraska** by calling the AccessLine at 1-877-250-2016. Applications of eligible individuals will be forwarded to the Low-Income Tax Clinic so the individual can speak with an attorney. The Low-Income Tax Clinic assists individuals with questions about income tax return preparation, IRS audits, collection actions by the IRS and their taxpayer rights and responsibilities generally.

This worksheet was prepared by the Low-Income Tax Clinic of Legal Aid of Nebraska on 1/5/12. Call (402) 348-1069 or 1-877-250-2016 for more copies or go to the website at 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.