

Head of Household Analysis

A Debtor may qualify as a Head of Household if they meet all the following general requirements:

- 1) Debtor is unmarried or “considered married” on the last day of the year.
- 2) Debtor paid more than half the cost of keeping up a home for the tax year. (*Costs of keeping up the home include rent, mortgage interest, real estate taxes, homeowners’ insurance, repairs, utilities, maintenance, food eaten in the home, and other household expenses*).
- 3) A qualifying person lived with the Debtor in the home for more than half the year.

“Considered married” means the Debtor meets the following tests on the last day of the tax year:

- a) Debtor and spouse file separate returns claiming married filing separately, single, or head of household;
- b) Debtor pays more than half the cost of keeping up the home for the tax year;
- c) Spouse did not live with Debtor for the last 6 months of the tax year (*Spouse is considered to live in the home even if he or she is temporarily absent due to special circumstances*);
- d) Debtor’s home was the main home for the qualifying person (*child, stepchild, foster child*); and
- e) Debtor must be able to claim the exemption for the qualifying person (*Debtors can meet this test if the parents are divorced or separated and the noncustodial parent can claim the exemption for the qualifying child*).

“Qualifying Person”

IF the person is your . . .	AND . . .	THEN that person is . . .
qualifying child (such as a son, daughter, or grandchild who lived with you more than half the year and meets certain other tests)	he or she is single	a qualifying person, whether or not you can claim an exemption for the person.
	he or she is married and you can claim an exemption for him or her	a qualifying person.
	he or she is married and you can’t claim an exemption for him or her	not a qualifying person.
qualifying relative who is your father or mother	you can claim an exemption for him or her	a qualifying person.
	you can’t claim an exemption for him or her	not a qualifying person.
qualifying relative other than your father or mother (such as a grandparent, brother, or sister who meets certain tests)	he or she lived with you more than half the year, and he or she is related to you in one of the ways listed under Relatives who don’t have to live with you in chapter 3 and you can claim an exemption for him or her	a qualifying person.
	he or she didn’t live with you more than half the year	not a qualifying person.
	he or she isn’t related to you in one of the ways listed under Relatives who don’t have to live with you in chapter 3 and is your qualifying relative only because he or she lived with you all year as a member of your household	not a qualifying person.
	you can’t claim an exemption for him or her	not a qualifying person.

“Nonresident alien spouse” Debtor is considered unmarried for head of household purposes if their spouse was a nonresident alien at any time during the year, and the Debtor did not choose to treat the nonresident spouse as a resident alien. However, the nonresident spouse is not a qualifying person for head of household purposes, and the Debtor must have another qualifying person and meet the other tests to be eligible to file as head of household. The Debtor is considered married if they chose to treat their spouse as a resident alien.

Sample Questions to ask at the 341 Meeting:

- Are the Debtors married? How long have they been married?
- Do both Debtors reside at the same address? And for how long?
- Was either Debtor absent from the home during the last half of the tax year? Why were they absent?
- Do the Debtors own their home? Are they both obligated on the debt and on the title? (*This is important because frequently debtors will file separately so one spouse can claim the EITC using HOH and the standard deduction, while the other spouse files as Single and claims the mortgage interest deduction under Itemized Deductions.*)
- Did the person filing as HOH pay more than half the cost to upkeep the home during the tax year?
- Do the Debtors have qualifying dependents/children residing with them at their residence? (parents, children, stepchildren, foster children, grandchildren)
- Did the qualifying dependents reside with the Debtor in the home for more than half the year?
- Is either Debtor a resident alien or nonresident alien?

Earned Income Tax Credit Analysis

- 1) **Debtor has earned income and adjusted gross income within certain limits** (See 2018 income limits in chart below; Payments not considered to be earned income include: SS disability insurance, SS income, military disability pensions, payments received for work as an inmate in a penal institution, interest and dividends, retirement income, unemployment benefits, alimony, and child support);

2018 Earned Income Limits				
	Qualifying Children			
Filing Status	Zero	One	Two	Three or More
Single	\$ 15,270	\$ 40,320	\$ 45,802	\$ 49,194
Head of Household	\$ 15,270	\$ 40,320	\$ 45,802	\$ 49,194
Surviving Spouse	\$ 15,270	\$ 40,320	\$ 45,802	\$ 49,194
Married Filing Jointly	\$ 20,950	\$ 46,010	\$ 51,492	\$ 54,884
Married Filing Separately	<i>Doesn't Qualify</i>	<i>Doesn't Qualify</i>	<i>Doesn't Qualify</i>	<i>Doesn't Qualify</i>

AND

- 2) **Debtor meets certain basic rules;**
- a) Must have a valid SS#;
 - b) Must file using Married filing jointly/HOH/Qualifying widow/Single filing status ;
 - c) Exception: Debtor can't claim EITC if they file using *married filing separately*;
 - d) Investment income must be less than \$3,450 for the year;
 - e) Must not have filed a Form 2555 for Foreign Earned Income;
 - f) Total EARNED income must be at least \$1

AND

- 3) **Debtor either:**
- a) **Meets the rules for those without a qualifying child** (Must meet the EITC basic Rules, reside in the USA for more than half the year, can't be claimed as a dependent or qualifying child on anyone else's return, AND be between 25 and 65 years old at the end of the tax year);
 - OR
 - b) **Have a child that meets all the qualifying child rules for you or your spouse if you file a joint return.** Qualifying Child Rules: Child must have a SS#; meet the Relationship test (*son, daughter, adopted child, stepchild, foster child, grandchild, brother, sister, half-brother, half-sister, step brother, step sister, niece, nephew*); meet the Age test (*child is younger than Debtor and under age 19 or under age 24 if a full-time student, or at the end of the filing year the child was any age and permanently and totally disabled*); meet the Residency test (*child must live with Debtor in the USA for more than half the year*); and child cannot file a joint return for the tax year unless the child and the child's spouse filed separately in order to claim a refund.

Sample Questions to ask at the 341 Meeting:

- Is the Debtors' combined adjusted gross income on Form 1040 under the income limit? Is earned income at least \$1 for the tax year?
- Do both Debtors have valid SS#s?
- Did either Debtor file their tax return using "Married Filing Separately"?
- Do the Debtors have Investment Income or Foreign Earned Income listed on their tax returns?
- Can either Debtor be claimed as a dependent by someone else?
- Are the Debtors claiming the EITC between ages 25 and 65 years of age?
- Does each qualifying child/ren meet all the qualifying child rules (SS#, Relationship Test, Age Test, Residency Test, and cannot file a joint return with another person)?