

Dependency exemption for child of divorced parents

We are often asked which divorced or separated parent qualifies to claim a child as a dependent.

In general, a parent is entitled to a dependency exemption for a child who was under age 19 at the close of the year, or under age 24 and a full-time student, if the child had the same principal place of abode as the parent for more than half of the year and the child didn't provide more than half of his or her own support. If more than one parent can claim a child as a dependent under these rules, the exemption goes (in case of dispute) to the parent with whom the child resided for the longest period of time during the year. If the child resided with both parents for the same amount of time, the parent with the highest adjusted gross income can claim the exemption.

However, a special rule applies to parents who are divorced, legally separated, separated under a written separation agreement, or who lived apart (in different residences) at all times during the last six months of the year. If the parents combined to provide more than half of the child's support for the year and the child was in the custody of one or both parents for more than half of the year, the custodial parent can release the exemption to the non-custodial parent. Essentially, parents in this situation can decide between themselves who will claim the exemption.

Generally, custody is determined by the terms of the divorce decree or written separation agreement. If each parent has custody for part of the year, the custodial parent is the one who has custody for the greater portion of the year.

If you aren't yet divorced or separated, you may want to make this issue part of the divorce or separation negotiations. Several options (listed below) exist, including alternating the exemption between the parents on a year-by-year basis.

The mechanics of the release. The release of the exemption by the custodial parent discussed above can be executed (a) on an annual basis, (b) for one or more future years (e.g., for alternate years), or (c) for all future years. IRS provides Form 8332 for this purpose; however a custodial parent may also grant a release by executing a document that conforms to Form 8332.

Where, as in many cases, the custodial parent is receiving child support or alimony payments from the other parent, the custodial parent might prefer granting the release only on an annual basis so he or she can refuse to do so if the other parent is delinquent. If the release is granted for future years, it may be hard to revoke if circumstances change.

Form 8332 is one of the forms that isn't completed by the tax preparer. The custodial parent grants the release by executing Form 8332 (or a conforming document) and giving the release to the non-custodial parent. The completed form must be provided to the non-custodial parent's tax preparer and attached to the non-custodial parent's return each year the non-custodial parent claims the exemption for the child.

The social security numbers of both parents should appear on the release. In addition, the social security numbers of the children whom you claim as dependents must be included on your return. Don't forget to provide me, or any other tax preparer, with the children's social security numbers. If you claim the exemptions without the social security numbers, IRS can disallow the exemptions and immediately assess the tax against you.

Instead of attaching a release on Form 8332 to your return, you can attach pages from your divorce decree or separation agreement, but only if the decree or agreement states: (1) that the custodial parent won't claim the child as a dependent; (2) that the non-custodial parent can claim the child as a dependent *without regard to any condition*, such as payment of support; and (3) the years for which the non-custodial parent can claim the child as a dependent.

To use the decree or agreement in place of a release, you must attach to your return copies of: (a) the cover page (write the other parent's social security number on the page); (b) the pages that contain the information at (1)–(3) above; and (c) the signature page with the other parent's signature and the date of the agreement.

Planning considerations. Purely from a tax standpoint, it makes sense to arrange for the parent who will save more tax from the exemption to be allowed to claim it. Then, the tax savings from the exemption can be shared. Of course, where relations are strained it may be difficult to coordinate such planning.

Please note the above rules only apply to post-'84 divorces and separations. For pre-'85 split-ups, the non-custodial parent receives the exemption if the decree or agreement says he should as long as he contributes at least \$600 in support of the child.