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Part III – Administrative, Procedural, and Miscellaneous

“Tie-breaking” Rule for Two or More Taxpayers Claiming a Child as a Qualifying Child

Notice 2006-86

PURPOSE

This notice provides interim guidance under § 152(c)(4) of the Internal Revenue Code, the rule for determining which taxpayer may claim a qualifying child when two or more taxpayers claim the same child under any of the following provisions: (1) head of household filing status under § 2(b), (2) the child and dependent care credit under § 21, (3) the child tax credit under § 24, (4) the earned income credit under § 32, (5) the exclusion for dependent care assistance under § 129 (which incorporates by reference the definition of qualifying child or other qualifying individual under § 21), and (6) the dependency deduction under § 151. This notice clarifies that, unless the special rule in § 152(e) applies, the tie-breaking rule in § 152(c)(4) applies to these provisions as a group, rather than on a section-by-section basis.

Section 152 was amended by § 201 of the Working Families Tax Relief Act of 2004 (WFTRA), Pub. L. No. 108-311, 118 Stat. 1169, effective for taxable years beginning after December 31, 2004. The Internal Revenue Service and Treasury Department intend to issue regulations consistent with the guidance contained in this notice. The guidance in this notice applies until those regulations are effective.

BACKGROUND

Definition of a qualifying child

Section 151 allows a taxpayer a deduction of the exemption amount for each individual who is a dependent (as defined in § 152) of the taxpayer for the taxable year. Under § 152(a), a dependent is a qualifying child or qualifying relative.

Section 152(c)(1) defines a qualifying child as an individual who (A) bears a certain relationship to the taxpayer (child, brother, sister, stepbrother, stepsister or descendant of any of those relatives), (B) has the same principal place of abode as the taxpayer for more than one-half of the taxable year, (C) meets certain age requirements, and (D) does not provide over one-half of the child's own support for the calendar year in which the taxable year of the taxpayer begins.

WFTRA establishes a uniform definition of a qualifying child under § 152(c) for determining whether a taxpayer qualifies for head of household filing status, the child and dependent care credit, the child tax credit, the earned income credit, and the dependency deduction. See §§ 2(b)(1)(A)(i), 21(b)(1)(A), 24(c), 32(c)(3), and 151, respectively, and H.R. Conf. Rep. No. 696, 108th Cong., 2d Sess. 55-65 (2004). The uniform definition also applies in determining whether a taxpayer qualifies for the income exclusion under § 129, which defines dependent care assistance by reference to employment-related expenses (as defined in § 21b)(2)) for the care of a qualifying child or other qualifying individual.

"Tie-breaking" rule

Section 152(c)(4) provides a tie-breaking rule for determining which taxpayer may claim a qualifying child as a qualifying child when two or more taxpayers claim the same child for a taxable year beginning in the same calendar year. The general rule of

§ 152(c)(4)(A) applies if one or no taxpayer claiming the child is the child's parent.

Under § 152(c)(4)(A), the child is treated as the qualifying child of (i) the taxpayer who is the child's parent, or (ii) if none of the taxpayers is the child's parent, the taxpayer with the highest adjusted gross income for that taxable year.

The rule of § 152(c)(4)(B) applies if both taxpayers claiming the child as a qualifying child are the child's parents who do not file a joint return together. Under § 152(c)(4)(B), the child is treated as the qualifying child of the parent with whom the child resides for the longer period of time during the taxable year. If the child resides with both parents for the same amount of time during the taxable year, the child is treated as the qualifying child of the parent with the higher adjusted gross income for that taxable year.

Special rule for certain noncustodial parents

Notwithstanding the rule of §152(c)(4)(B), a child may be treated as the qualifying child of the noncustodial parent, for certain purposes, under the special rule of § 152(e). The noncustodial parent may claim the child as a qualifying child under § 152(e), if:

(1) the child is in the custody of one or both parents for more than one-half of the calendar year;

(2) the child receives over one-half of the child's support during the calendar year from the child's parents;

(3) the parents--

(a) are divorced or separated under a decree of divorce or separate maintenance,

(b) are separated under a written separation agreement, or

(c) live apart at all times during the last 6 months of the calendar year; and

(4) the custodial parent releases the claim to the exemption to the noncustodial parent in a written declaration that the noncustodial parent attaches to the noncustodial parent's tax return.

Section 152(e)(4) defines "custodial parent" as the parent having custody of the child for the greater portion of the calendar year, and "noncustodial parent" as the parent who is not the custodial parent.

The special rule of § 152(e) allows a noncustodial parent to claim the child as a qualifying child only for purposes of the child tax credit under § 24 and the dependency deduction under § 151. Section 152(e) does not apply to determinations under §§ 2(b), 21(b) and 129 (see § 21(e)(5)), and 32(c)(3).

APPLICATION

Except to the extent that § 152(e) applies, under § 152(c)(4), when more than one taxpayer claims a child as a qualifying child, the child is treated as the qualifying child of only one taxpayer for all the provisions that employ the uniform definition of a qualifying child (head of household filing status under § 2(b), the child and dependent care credit under § 21, the child tax credit under § 24, the earned income credit under § 32, the exclusion for dependent care assistance under § 129, and the dependency deduction under § 151). This rule is applied to these provisions as a group, rather than on a section-by-section basis.

If § 152(e) applies, a child may be treated as the qualifying child of two taxpayers. A noncustodial parent may claim the child as a qualifying child under § 152(e) only for purposes of the child tax credit under § 24 and the dependency

deduction under § 151. However, the noncustodial parent may not claim the child as a qualifying child under § 152(e) in determining head of household filing status under § 2(b), the earned income credit under § 32, the child and dependent care credit under § 21, or the exclusion from income for dependent care assistance under § 129. Only the custodial parent (or other eligible taxpayer) may claim the child as a qualifying child for those purposes.

EXAMPLES

In the examples below, each individual is a citizen of the United States and uses a calendar taxable year, and the child is a qualifying child (as defined in § 152(c)) of each taxpayer. Unless otherwise indicated, these examples assume that each individual meets the other requirements for claiming a benefit described in the example.

Example 1. (i) A child, mother, and grandmother share the same principal place of abode. The mother is not married and is not the qualifying child of the grandmother, and the grandmother is not the mother's dependent.

(ii) The mother claims the child as a qualifying child for purposes of the earned income credit under § 32.

(iii) The child is treated as the qualifying child of the mother for purposes of the earned income credit. Because the mother claims the child as a qualifying child for purposes of the earned income credit, under § 152(c)(4)(A), the child may not be treated as the qualifying child of the grandmother for any purpose.

(iv) If, however, the mother does not claim the child as a qualifying child for any purpose, the child may be treated as the qualifying child of the grandmother for purposes of the earned income credit under § 32 as well as head of household filing

status under § 2(b), the dependency deduction under § 151, the child tax credit under § 24, the child and dependent care credit under § 21, and the exclusion from income for dependent care assistance under § 129, if applicable, assuming that no other taxpayer claims the child as a qualifying child.

Example 2. (i) The facts are the same as in *Example 1*, except that the mother and father of the child are divorced, the father is the noncustodial parent, the mother has released the claim to the exemption to the father in a written declaration under § 152(e), and the father attaches the written declaration to his return and claims the child as a qualifying child for purposes of the dependency deduction and the child tax credit.

(ii) Under § 152(e), the child is treated as the qualifying child of the father for purposes of the dependency deduction and the child tax credit. The child is treated as the qualifying child of the mother for purposes of the earned income credit and, if applicable, head of household filing status, the child and dependent care credit, and the exclusion from income for dependent care assistance. The child may not be treated as the qualifying child of the grandmother for any purpose.

Example 3. (i) The father and mother of a child are married to each other. The father, mother, and child share the same principal place of abode for the first 8 months of the year. For the last 4 months of the year, the parents live apart from each other, and the mother and child share the same principal place of abode. The parents file separate tax returns for the taxable year. Consequently, neither parent may claim head of household filing status, an earned income credit, or a child and dependent care credit, because in general § 2(b) applies only to unmarried individuals, while §§ 32(d)

and 21(e)(2), respectively, require married individuals to file a joint return.

(ii) The father claims the child as a qualifying child for purposes of the dependency deduction under § 151 and the exclusion for dependent care assistance under § 129. The mother claims the child as a qualifying child for purposes of the dependency deduction under § 151, the child tax credit under § 24, and the exclusion for dependent care assistance under § 129.

(iii) Under the tie-breaking rule of § 152(c)(4)(B), the child is treated as the qualifying child of the mother because the child resided with the mother for the longer period of time during the taxable year. Therefore, the child is the qualifying child of the mother for purposes of the dependency deduction, the child tax credit, and the exclusion for dependent care assistance. Section 152(e) does not apply because the mother and father are not divorced or separated under a decree of separate maintenance or written separation agreement at the end of the taxable year and did not live apart for the last 6 months of the calendar year. Therefore, the child may not be treated as the qualifying child of the father for any purpose.

(iv) If, however, the mother does not claim the child as a qualifying child for any purpose, the child is treated as the qualifying child of the father for purposes of the dependency deduction under § 151 and the exclusion for dependent care assistance under § 129.

Example 4. (i) The facts are the same as in *Example 3*, except that the mother and father are separated under a written separation agreement at the end of the taxable year, the mother is the custodial parent and has released the claim to the exemption to the father in a written declaration under § 152(e), and the father attaches the Form 8332

to his return and claims the child as a qualifying child for purposes of the dependency deduction, the child tax credit, and the exclusion for dependent care assistance under § 129.

(ii) Because § 152(e) applies, the child is treated as the qualifying child of the father for purposes of the dependency deduction and the child tax credit. The child is not treated as the qualifying child of the father for purposes of the exclusion for dependent care assistance because the father is the noncustodial parent and, under § 21(e)(5), only the custodial parent may claim the child as a qualifying child for purposes of the exclusion for dependent care assistance. Therefore, the tie-breaking rule of § 152(c)(4)(B) applies, and the child is treated as the qualifying child of the mother for purposes of the exclusion for dependent care assistance.

Example 5. (i) The father and mother of two children are married to each other. The father, mother, and both children share the same principal place of abode for the entire year. The father and mother file separate tax returns for the taxable year. Consequently, neither parent may claim head of household filing status, an earned income credit, or a child and dependent care credit, because in general § 2(b) applies only to unmarried individuals, while §§ 32(d) and 21(e)(2), respectively, require married individuals to file a joint return.

(ii) The father claims the older child as a qualifying child for purposes of the child tax credit, dependency deduction, and exclusion for dependent care assistance. The mother claims the younger child as a qualifying child for purposes of the child tax credit, dependency deduction, and exclusion for dependent care assistance.

(iii) The older child is treated as the qualifying child of the father and the younger

child is treated as the qualifying child of the mother. The tie-breaking rule of § 152(c)(4)(B) does not apply because no two taxpayers are claiming the same child as a qualifying child for any of the benefits.

EFFECTIVE DATE

This notice applies to taxable years beginning after December 31, 2004.

DRAFTING INFORMATION

The principal author of this notice is Victoria Driscoll of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this notice, contact Ms. Driscoll at (202) 622-4920.