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Qualifying child tie-breaker rule applies uniformly unless noncustodial parent rule applies (09/28/2006)

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Qualifying child tie-breaker rule applies uniformly unless noncustodial parent rule applies

Notice 2006-86, 2006-41 IRB

In a new notice, IRS says that the tie-breaker rule that goes into effect when two or more taxpayers claim a child as a qualifying child must be applied uniformly to all tax provisions that rely on the same definition of a qualifying child. The only exception is where the Code Sec. 152(e) rule for noncustodial parents applies, in which case a child may be the noncustodial parent's qualifying child for child tax credit and dependency deduction purposes and may be the custodial parent's qualifying child for other provisions. IRS says it intends to publish regs consistent with the guidance in the notice, which is effective for tax years beginning after 2004.

Uniform definition of qualifying child. For tax years beginning after 2004, the same definition of "qualifying child" applies, with some exceptions, for each of the following tax benefits:

- ... Dependency exemption. (Code Sec. 152(c))
- ... Head of household filing status. (Code Sec. 2(b)(1)(A)(i))
- ... Earned income credit (EIC). (Code Sec. 32(c)(3)(A))
- ... Child tax credit. (Code Sec. 24(c)(1))
- ... Credit for child and dependent care expenses. (Code Sec. 21(b)(1)(A))



RIA observation: The definition of qualifying child is contained in Code Sec. 152(c) (as part of the dependency exemption rules), which the other four tax breaks incorporate by reference in the provisions noted above.

The uniform definition also applies in determining whether a taxpayer qualifies for the dependent care assistance income exclusion under Code Sec. 129 (which references employment-related expenses as defined in Code Sec. 21(b)(2) for the care of a qualifying child or other qualifying individual).

Tests for claiming someone as a qualifying child. In general, under Code Sec. 152(c)(1) , all four of the following tests must be met to claim someone as a qualifying child:

- (1) The child must be the taxpayer's child (including an adopted child, stepchild or eligible foster child), brother, sister, stepbrother, stepsister, or a descendant of one of these relatives. (Code Sec. 152(c)(2))
- (2) The child generally must live with the taxpayer for more than half the year. (Code Sec. 152(c)(1)(B))
- (3) The child must be under a certain age to be a taxpayer's qualifying child. The age test varies for the different tax breaks.
- (4) The child cannot have provided over half of his or her own support during the year. (Code Sec. 152(c)(1)(D)) For purposes of the EIC only, the support test does not apply. (Code Sec. 32(c)(3))

Tie-breaker rule. The following tie-breaker rule applies when two or more taxpayers claim the same child for a tax year beginning in the same calendar year:

- ... If only one of the taxpayers claiming the individual as a qualifying child is the individual's parent (e.g., where a child lives with his or her mother and grandmother in the same residence) the individual is treated as the qualifying child of his or her parent. (Code Sec. 152(c)(4)(A)(i))
- ... If more than one parent claims the child as a qualifying child and the parents don't file a joint return together, the child is treated as the qualifying child of: (a) the parent with whom the child resided for the longer

period of time during the tax year, or (b) if the child resides with both parents for the same amount of time during the tax year, the parent with the higher adjusted gross income. (Code Sec. 152(c)(4)(B))

... If an individual isn't claimed by either parent, the individual is treated as the qualifying child of the taxpayer with the higher adjusted gross income for the tax year. (Code Sec. 152(c)(4)(A)(ii))

Special rule for noncustodial parents. The noncustodial parent may claim the child as a qualifying child under Code Sec. 152(e) (notwithstanding the rule of Code Sec. 152(c)(4)(B)), 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:

... are divorced or separated under a decree of divorce or separate maintenance,
... are separated under a written separation agreement, or
... live apart at all times during the last 6 months of the calendar year; and

- (4) the custodial parent (i.e., the one having custody of the child for the greater portion of the calendar year) 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.

The special rule allows a noncustodial parent to claim the child as a qualifying child *only* for purposes of the Code Sec. 24 child tax credit and the Code Sec. 151 dependency deduction.

Tie-breaker rule applies uniformly. Under Notice 2006-86 , except to the extent that the special rule for noncustodial parents applies, the tie-breaker rule applies uniformly. In other words, 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 Code Sec. 2(b) , the Code Sec. 21 child and dependent care credit, the Code Sec. 24 child tax credit, the Code Sec. 32 earned income credit, the Code Sec. 129 exclusion for dependent care assistance, and the Code Sec. 151 dependency deduction). IRS says the tie-breaker rule is applied to these provisions as a group, rather on a section-by-section basis.

Illustration: A child, mother, and grandmother share the same home. The mother isn't married and isn't the qualifying child of the grandmother, and the grandmother is not the mother's dependent. If the mother claims the child as a qualifying child for purposes of the earned income credit, the child can't be treated as the qualifying child of the grandmother for any purpose. 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, head of household filing status, the dependency deduction, the child tax credit, the child and dependent care credit, and the dependent care assistance exclusion, if applicable, assuming that no other taxpayer claims the child as a qualifying child. (Notice 2006-86 , Ex. 1)

However, Notice 2006-86 provides that if the Code Sec. 152(e) rule for noncustodial parents applies, a child may be treated as the qualifying child of two taxpayers. A noncustodial parent may claim the child as a qualifying child only for child tax credit and dependency deduction purposes. He can't claim the child as a qualifying child under Code Sec. 152(e) in determining head of household filing status, the earned income credit, the child and dependent care credit, or the dependent care assistance exclusion. Only the custodial parent (or other eligible taxpayer) may claim the child as a qualifying child for those purposes.

References: For tie-breaking rules for qualifying child, see FTC 2d/FIN ¶ A-3605.5 ; TaxDesk ¶ 562,411 ; United States Tax Reporter ¶ 1524 ; TG ¶ 1227 .

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