
Key Issue 2A: Dependency Tests and Claiming a Personal Exemption.

General Rules for Dependent Status and Claiming a Personal Exemption

A dependency exemption deduction is available for each person who is a dependent of the taxpayer for the year [IRC Sec. 151(c)]. A dependent is defined as either a *qualifying child* [IRC Sec. 152(a)(1)] or a *qualifying relative* [IRC Sec. 152(a)(2)]. (See further discussions of these terms later in this key issue.)

Special Rules and Key Terms There are some special rules that apply throughout the provisions for what constitutes a dependent (i.e., these rules apply to both a qualifying child or a qualifying relative): (1) a dependent of another person cannot claim a dependent on their own return [IRC Sec. 152(b)(1)], (2) an individual that files a joint return with his or her spouse in a tax year can not be a dependent of another taxpayer in that same year [IRC Sec. 152(b)(2)—see Key Issue 2B for further discussion and an exception to this rule], and (3) a dependent must be a U.S. citizen or national, or a resident of the United States, Canada, or Mexico [*Carlebach*; Reg. 1.152-2(a)(1)]. However, this nationality test will not exclude a legally adopted child who is not a U.S. citizen or resident if the taxpayer is a U.S. citizen or national and the taxpayer's home is the child's principal place of abode [IRC Sec. 152(b)(3)(B)]. Foreign exchange students generally will not meet this test and thus will not qualify as dependents. But, a charitable contribution deduction may be allowed for amounts spent for their support [IRC Sec. 170(g)]. There is also a special rule allowing a custodial parent to release the exemption to the noncustodial parent for children of divorced or separated parents (see Key Issue 2C).

Warning: An individual who is eligible to be claimed as a dependent on another taxpayer's return cannot claim an exemption for himself [IRC Sec. 151(d)(2)]. This is true even when the tax benefit of the dependency exemption claimed on the other return is eliminated or reduced by the phase-out rules. However, if the parents of a student-child are eligible to claim the

dependency exemption for the child but elect to forego claiming the exemption, the student-child may be eligible to claim certain education credits. (See Key Issue 35D for further discussion.)

A few key terms used throughout these rules are also important to note:

• *Child.* A child means a son, daughter, stepson, or stepdaughter of the taxpayer, and any foster child placed with the taxpayer by an authorized agency or court. For this purpose, a legally adopted individual and an individual placed for adoption with the taxpayer by an authorized agency but not legally adopted by the end of the tax year will be treated as a child of the taxpayer [IRC Sec. 152(f)(1)]. For a discussion of the adoption credit, see Key Issue 35B.

• *Student.* A student is defined as an individual who is attending an educational institution as a full-time student for some part of each of five calendar months during the year [IRC Sec. 152(f)(2)]. The IRS has privately ruled that full-time student status includes any part of a month that the individual is registered in school for the number of hours considered to be full-time attendance, regardless of whether classes are actually attended in that month (Ltr. Rul. 9838027).

• *Brother or Sister.* A brother or sister for purposes of the definition of a dependent includes a brother or sister by half blood [IRC Sec. 152(f)(4)].

Social Security Numbers Required for Dependents. The social security number of each dependent claimed must be listed on the tax return, regardless of when the dependent was born. This requirement has been strictly enforced by the courts, despite religious objections (*John Miller*; *Davis*) and constitutional objections (*Burns*). If the SSN is not shown on the return, the exemption will be disallowed [IRC Sec. 151(e)]. Parents adopting a child and eligible to claim an exemption for such child can obtain a temporary identification number (adoption taxpayer identification number or ATIN) if they are unable to obtain the child's SSN before the parents file their tax return (Reg. 301.6109-3). An ATIN is obtained by filing Form W-7A (Application for Taxpayer Identification Number for Pending U.S. Adoptions) with the IRS. For individuals claimed as dependents and who are unable to obtain a SSN (not a U.S. citizen or resident alien), an IRS ITIN must be obtained and reported on the tax return to claim the exemption (*Vega*). An ITIN is obtained by filing Form W-7 (Application for IRS Individual Taxpayer Identification Number) with the IRS.

Note: The IRS has announced that beginning in 2016, ITINs unused on at least one tax return in the past five years will be deactivated (IR-2014-76).

Qualifying Child

In order to be a qualifying child of a taxpayer, an individual must satisfy five tests [IRC Sec. 152 (c)(1)]:

1. *Relationship*— Be a child of the taxpayer or a descendant of such child (see earlier discussion in this key issue for the definition of a child) or a brother, sister, stepbrother, or stepsister of the taxpayer or a descendant of any such relative. Thus, a qualifying child must be the taxpayer's son, daughter, stepson, stepdaughter, brother, sister, stepbrother, stepsister, or a descendant of any such individual.

2. *Residency*— Have the same principal residence as the taxpayer for more than half the tax year. It is intended that an individual will not fail this test because of temporary absences due to illness, education, business, vacation, military service and other special circumstances. Practitioners should watch for further guidance concerning such temporary absences. There is a special exception for certain kidnapped children [IRC Sec. 152(f)(6)]. Also, see Key Issue 2C for a discussion of the special rule for children of divorced or separated parents.

3. *Age*— Be under age 19 at the end of the tax year, a student (see definition earlier in this key issue) under age 24 at the end of the tax year, or permanently and totally disabled at any time during the tax year. Also, the qualifying child must be younger than the taxpayer claiming him or her as a dependent if the disability criteria is *not* used (age is irrelevant if the child is disabled) [IRC Sec. 152(c)(3)(A)].

4. *Support*— Did not provide more than one-half of such individual's own support for the tax year. A student who is a child of the taxpayer does not take into account scholarship payments received for purposes of this support test [IRC Sec. 152(f)(5)]. There is no distinction between taxable or nontaxable scholarships for this purpose.

5. *Married Child*— The individual, if married, cannot file a joint return with his or her spouse except as a claim for refund—see Key Issue 2B for further discussion [IRC Sec. 152(c)(1)(E)].

Example 2A-1: Special support test for students.

Bob, a single parent, contributes $8,500 to his son Tim's support for the tax year. Tim is 23 years old, lives with Bob for the entire year, and is a full-time student at Baylor University receiving a $10,000 scholarship for the year. Tim makes no further contribution toward his own support. Tim is Bob's qualifying child. The $10,000 scholarship is not counted for purposes of calculating whether Tim provided more than one-half his own support.

Example 2A-2: Regular support test for qualifying child.

Russell is 18 and lives with his mother Sally. He receives one-third of his support from Sally, one-third from his uncle Bob, and provides one-third of his own support. Russell is a qualifying child of Sally and thus is Sally's (his mother's) dependent, since he does not provide more than one-half his own support.

Special Rule When Two or More Claim a Qualifying Child. If a child would be a qualifying child with respect to more than one individual and those individuals do not otherwise agree on who will claim the dependency exemption for the child, the child is treated as the qualifying child of his or her parent. If both parents claim the child as a qualifying child and the parents do not file jointly, the child is treated as the qualifying child of the parent with whom the child resided for the longest time during the year, or if the time was equal, the parent with the higher AGI. If no taxpayer is the child's parent, the child is treated as the qualifying child of the taxpayer with the highest AGI for the year. However, if an individual's parents may claim the individual as a qualifying child and neither parent chooses to do so, no other taxpayer may claim the individual as a qualifying child unless that taxpayer's AGI is higher than the highest AGI of any parent of the individual [IRC Sec. 152(c)(4)]. These rules do not apply if an otherwise qualifying taxpayer does not actually claim the child.

Note: There are other provisions that use this so-called “uniform definition of a qualifying child” [i.e., head of household filing status under IRC Sec. 2(b) (see Key Issue 1E), the child and dependent care credit under IRC Sec. 21 (see Key Issue 35A), the child tax credit under IRC Sec. 24 (see Key Issue 35C), and the earned income credit under IRC Sec. 32 (see Key Issue 35F)]. When this tie breaker rule comes into play (i.e., 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 these provisions. The rule is applied to these provisions as a group, not on a section-by-section basis (Notice 2006-86).

Example 2A-3: Tie breaking rule for a qualifying child.

Tim is 13, does not provide any of his own support, and lives with his mother Sally and his grandmother Martha in the same house for all of 2015. Tim can be claimed as a qualifying child by both Sally and Martha for 2015. He meets the relationship test for Sally because he is her son. He meets the relationship test for Martha because he is Martha's grandson (i.e., he is a descendant of Martha's daughter). He meets the age, residency, and support tests for both Sally and Martha. However, for purposes of the dependency rules, Tim is treated as the qualifying child of Sally, his parent, if both Sally and Martha attempt to claim him. If this occurs, Tim cannot be treated as the qualifying child of Martha for any purpose, according to the principles of Notice 2006-86. There is no problem if both Sally and Martha agree on who claims Tim as a dependent.

Planning Tip: The rules defining a qualifying child for the dependency exemption and the resulting tie breaking rules provide an opportunity for taxpayers and practitioners to plan for the most beneficial use of the dependency exemption (and in most cases, the child tax credit and possibly the earned income credit—see Key Issues 35C and 35F).

Example 2A-4: Flexibility of tie breaking rule for qualifying child.

Assume the same facts as in Example 2A-3. Further assume that Sally and Martha provide 75% and 25% of the household expenses, respectively, so that Sally qualifies to file as head of household (HOH—see Key Issue 1E). Also, Sally and Martha have AGI consisting of $13,250 and $25,000 wages respectively, and both use the standard deduction for 2015. Because Sally qualifies for HOH, her taxable income would be zero ($13,250 − $9,250 standard deduction − $4,000 personal exemption) without claiming Tim; thus, she would not benefit from claiming Tim as a qualifying child. If Sally does not claim Tim as a qualifying child, the tie breaking rules do not apply and Martha can claim Tim as a qualifying child on her return and benefit from the dependency exemption, the child tax credit, and the earned income credit. (See Key Issues 35C and 35F for discussion of the credits.)

Qualifying Relative

Individuals who do not meet the tests for being a qualifying child of the taxpayer may still qualify as a dependent of the taxpayer as a *qualifying relative*. A qualifying relative is an individual [IRC Sec. 152(d)]:

1. Who is a specified relative of the taxpayer (see “Qualifying Relationships” later in this key issue), or if unrelated, has as his or her principal residence the taxpayer's home and is

a member of the taxpayer's household [IRC Sec. 152(d)(2)(H)]. This individual cannot be the taxpayer's spouse. Also, an individual is not treated as a member of the taxpayer's household if at any time during the tax year, the relationship between the individual and the taxpayer violates local law [IRC Sec. 152(f)(3)];

2. Whose gross income for the year is less than the exemption amount ($4,000 for 2015). This test disregards tax-exempt income (e.g., certain scholarships and the nontaxable portion of social security payments) and certain income earned by handicapped dependents for services performed at sheltered workshops [IRC Sec. 152(d)(4)];

3. With respect to whom the taxpayer provides over one-half of the individual's support for the tax year. A supported person's nontaxable income (e.g., nontaxable social security benefits) is not considered when computing that person's income for the gross income test (see previous item 2) but is considered when determining the amount of support the person provides under this support test, to the extent such income is actually used for support [Reg. 1.152-1(a)(2); Rev. Rul. 71-468]. Also, a student who is a child of the taxpayer does not take into account scholarship payments received for purposes of this support test [IRC Sec. 152(f)(5)] (Worksheet W302 can be used to calculate this support test and Practice Aid O201 lists items constituting support); and

Note: Transfers to education savings accounts (see Key Issue 6H) and qualified tuition programs (see Key Issue 6I) are treated as completed gifts from the person contributing the funds to the student [IRC Secs. 529(c)(2)(A)(i) and 530(d)(3)]. These funds, therefore, are the student's own funds. When the funds are withdrawn and actually spent for support, the amount of funds withdrawn should be counted as funds provided by the student's own funds for his own support (and not provided by the original contributor of the funds).

4. Who is not a qualifying child of the taxpayer or of *any other taxpayer* for the year. Note that the individual is not considered to be a qualifying child of any other taxpayer if the individual's parent (or any other person with respect to whom the individual is otherwise defined as a qualifying child) is not required to file an income tax return and (a) does not file one, or (b) files a return solely to obtain a refund of withheld income tax (IRS Notice 2008-5). See Examples 2A-7 and 2A-8 for an illustration of this point.

Qualifying Relationships. The following relationships of an individual to the taxpayer meet the specified relative requirement in item 1 for a qualifying relative:

Child		Stepbrother		Father-in-law		If related by blood:
Grandchild		Stepsister		Brother-in-law		Uncle
Stepchild		Stepmother		Sister-in-law		Aunt
Parent		Stepfather		Son-in-law		Nephew
Grandparent		Mother-in-law		Daughter-in-law		Niece
Brother (including half brother)						
Sister (including half sister)						

Note: These relationships do not include cousins (*Jibril*). See Examples 2A-7 and 2A-8 for relationships involving domestic partners. See Key Issue 1G for further discussion regarding filing status of domestic partners.

Even though a child of the taxpayer does not meet the definition of a qualifying child, the child may still qualify as a dependent of the taxpayer as a qualifying relative. In *Cowan*, a foster child was no longer considered a qualifying child for tax purposes when he turned 18, and the state removed him from foster guardianship. Since the former foster child continued to meet the requirements as a qualifying relative, the taxpayer correctly treated him as a dependent. However, since he was not a “relative by affinity” (and therefore not a qualifying child of the taxpayer), the taxpayer was unable to claim HOH tax filing status although she was supporting him and his child. The Tax Court stated that “a person is a relative by affinity to any blood or adopted relative of his or her spouse and to any spouse of his or her blood and adopted relatives.” The Court further stated that if the taxpayer had adopted the former foster son, he would have been a “real” relative (a qualifying child) and his daughter would have also been a qualifying child for the taxpayer.

Example 2A-5: Son of taxpayer is qualifying relative instead of qualifying child.

Jane's son Peter is 22 years old and is not a full time student or disabled. Peter's gross income is $2,500 and Jane provides 75% of his support; Peter's grandmother also contributes to his support. Peter is not a qualifying child of Jane or his grandmother because he fails the age test. However, Peter is Jane's dependent because he meets the definition of a qualifying relative [i.e., he meets the relationship test because he is Jane's son, he meets the gross income test

because his income is under the exemption amount ($4,000 for 2015), and he meets the support test because Jane provides over one-half of his support].

If the claimed dependent is related to the taxpayer, it does not matter where he or she resides for the year, as long as the gross income and support tests are both met.

Example 2A-6: Grandparent claims dependency exemption for grandchild.

Tim is 20 years old and not a full-time student or disabled. He lives with his best friend Jim for the entire year and his grandmother Betty provides more than 50% of his support (he has no gross income). Betty can claim Tim as her dependent because Tim is a qualifying relative. Tim does not have to live with Betty during the year.

Example 2A-7: Nonfiling same-sex partner and same-sex partner's young child.

Jan (age 35) lives with and completely supports her domestic partner (unrelated and unmarried) Nan (age 25) and her son Jim (age 4). Nan has no income, is not required to file an income tax return, and does not file an income tax return for the year. Jan can claim Nan as a qualifying relative because she is not Jan's spouse, she has the same principal place of abode as Jan, and is a member of Jan's household [IRC Sec. 152(d)(2)(H)]. And, since Nan does not have a filing requirement and did not file an income tax return, Jim is not treated as a qualifying child of Nan, which therefore allows Jan to also claim Jim as a qualifying relative.

Note: While Jan can claim Nan and Jim as dependents, she cannot file as head of household because neither Nan nor Jim is a dependent relative (see Key Issue 1E). Also, see Key Issue 1G for discussion regarding filing status of same-sex couples.

Example 2A-8: Same-sex partner with a young child and files a return.

Assume the same facts as in Example 2A-7, except that Nan has earned income of $2,000 for the year and had income tax withheld from her wages (she is still not required to file an income tax return). Nan may claim an earned income credit (EIC—see Key Issue 35F) for the tax year. She files an income tax return solely to

obtain a refund of the income taxes that were withheld from her wages and does not claim the EIC. Therefore, Jim is not a qualifying child of Nan, and Jan may claim both Nan and Jim as her qualifying relatives.

Variation: Assume the same facts except that in addition, Nan does claim the EIC on the income tax return she files. Accordingly, because Nan filed a return to obtain the EIC and not solely to obtain a refund of withheld income taxes, Jim is a qualifying child of another taxpayer, Nan, and Jan can not claim Jim as a qualifying relative.

Lodging and the Support Test. In determining the amount of support provided to an individual, the value of lodging (whether provided by the taxpayer or the claimed dependent) is included in the support test. If the lodging is either the taxpayer's residence or other property, the fair rental value of the lodging is included in calculating the claimed dependent's support provided by the taxpayer. If the claimed dependent owns the residence, its fair rental value is considered support such individual provides on his or her own behalf. (*Fair rental value* is the amount one could reasonably expect to receive from an unrelated individual for the same kind of lodging.)

Example 2A-9: Meeting the support test for claiming a parent as a dependent.

Frank and Rose Miller help support Rose's widowed mother, Norma, who is 68 years old. Norma lives rent free in one side of a duplex the Millers own. The fair rental value of the dwelling (unfurnished) is $8,400 a year. Norma provides her own furniture, but the Millers pay the utilities, which were $1,200 in the current year. Norma's income consists of $8,000 of social security benefits and $300 of interest income, all of which she spends toward her own support. The annual fair rental value of Norma's household furnishings is $1,200.

The Millers provide more than half of Norma's support for the current year. Their support is $9,600 ($8,400 value of dwelling plus $1,200 utilities) while the support Norma provides for herself is $9,500 (income of $8,300 plus $1,200 value of furnishings). Norma also meets the other tests for dependency as a qualifying relative (i.e., relationship and gross income). Thus, the Millers can claim Norma as a dependent on their Form 1040 and take an exemption deduction for her.

Note: Norma's social security benefits are included in determining the amount of support she provides for herself, but are excluded for the gross income test since they are not taxable income to her.

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