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Who is a Dependent?

The IRS issued proposed regulations **26 CFR Parts 1 and 301** in January 2017 regarding the definition of a dependent. These proposed regulations provide guidance and clarification for the current definitions under Internal Revenue Code (IRC) **IRC Section 152** plus other conditions introduced by the Working Families Tax Relief Act of 2004 (WFTERA) and by the Fostering Connections to Success and Increasing Adoptions Act of 2008 (FCSIAA).

At first glance, it seems this is a change to the definition of dependents, however, after a careful read, it becomes clear that these are proposed regulations. Regulations that follow, clarify, and detail how to interpret and apply the regulations to the various applicable IRC code sections. Thus, IRC code section 152 stays the same.

Although the IRS did not change the code sections, we'll step through an abbreviated definition of "Qualifying Child" and "Qualifying Relative" and then highlight some of the changes applied to the existing regulations.

There are 5 tests for a Qualifying Child (QC):

The Relationship test requires the QC to be a child of the taxpayer or descendant of such a child; or

> A brother, sister, stepbrother, or stepsister of the taxpayer, or a descendant of any of these relatives.

The Residency test requires the QC to have the same principal place of residence as the taxpayer for more than one-half of the taxable year. There are additional rules relating to principal residence and temporary absence explained later in this article.

The Age test requires the QC to be younger than the taxpayer and not to have attained age 19, or, if a student, age 24.

> The age requirement is treated as satisfied if the individual is permanently and totally disabled at any time during the calendar year.

The Support test prohibits the QC from providing more than one half of their own support

The Joint return test prohibits the QC from filing a joint return, other than solely to claim a refund of estimated or withheld taxes, with the individual's spouse.

There are updated **"Tiebreaker rules"** when more than one taxpayer claims the same child that satisfies the definition of a qualifying child. These rules are explained later in this article.

There are 4 tests and an exception for a Qualifying Relative (QR):

The Relationship test requires the QR to bear a specific relationship to the taxpayer, including requiring the same principal place of abode as the taxpayer and to be a member of the taxpayer's household for the taxable year of the taxpayer.

The Gross Income test requires the QR to have Gross income that is less than the exemption amount. However, the income of disabled or handicapped individuals is not counted for services at a sheltered workshop that has availability of medical care and the income is incident to the medical care.

The Support test requires the QR to receive over one-half of their support from the taxpayer, with certain exceptions, noted below.

The QR cannot be a qualifying child of the taxpayer or of any other taxpayer for any taxable year beginning in the calendar year in which such taxable year begins.

Additional conditions apply to both descriptions of a qualifying child or a qualifying relative.

Exceptions

- If an individual is a dependent of a taxpayer for a taxable year, the individual is treated as having no dependents for purposes of section 152 beginning in the calendar year in which the taxpayer's taxable year begins.
- If the individual is married and files a joint return, other than solely to claim a refund of estimated or withheld taxes, that individual is not treated as a dependent.
- An individual who is not a citizen or national of the United States is not treated as a dependent of a taxpayer unless the individual is a resident of the United States or of a country, Canada or Mexico, contiguous to the United States.

  The limitation does not apply to an adopted child if the child has the same principal abode as the taxpayer if the taxpayer is a citizen or national of the United States.

Highlighted Changes

The new proposed regulations reflect current law by amending the previous regulations relating to the surviving spouse and head of household filing statuses, the tax tables for individuals, the child and dependent care credit, the earned income credit, the standard deduction, joint tax returns, and taxpayer identification numbers for children placed for adoption.

The proposed regulations also change the IRS' position regarding:

- The category of taxpayers permitted to claim the childless earned income credit and
- The adjusted gross income of a taxpayer filing a joint return for purposes of the tiebreaker rules.

In general, for purposes of five different provisions, the tiebreaker rules for determining which taxpayer may claim a child as a qualifying child apply as a group, rather than on a section-by-section basis.

The new regulations change the emphasis for determining whether a person is a dependent from looking at who provided a qualifying child's support to looking at the qualifying child's principal place of residence. In addition, there is an important distinction in support between a qualifying child and a qualifying relative. While the qualifying child may not **provide** more than half of their own support, a qualifying relative **must receive** over half their support from the taxpayer.

A child is considered to have the same principal place of residence as a taxpayer even during a taxpayer's temporary absence. The definition of "temporary absence" is described as a failure to occupy a common residence because of illness, education, business, vacation, military service, and other special circumstances. Added to the new regulations is a requirement that it is reasonable to assume that the absent person will return to the household.

The new regulations also expand on the method for determining a taxpayer's adjusted gross income under the "tiebreaker" rules. This rule is employed when a child can be claimed by more than one taxpayer. If the qualifying child meets the definition for two or more taxpayers, the eligible taxpayer who is a parent may claim the individual as a qualifying child. If there is no eligible parent, then the qualifying child may be claimed by the eligible taxpayer with the highest adjusted gross income.

For instance, two sisters live together and take custody of their niece. Both may be eligible to claim the child as a qualifying child, but the sister with the highest adjusted gross income would be the only taxpayer to claim the child as a qualifying child for tax purposes. Plus other rules may apply under different circumstances.

Governmental payments to a parent that aid a family with dependent children by providing food stamps and housing has been confirmed that such aid was provided by the government and does not count as support provided by the parent.

For the Earned Income Credit, if an individual meets the definition of a qualifying child for more than one taxpayer and the individual is not treated as the qualifying child of one of the taxpayers under the tiebreaker rules, then that taxpayer may be an eligible individual and may claim the childless EIC if he or she meets the other requirements.

The proposed regulation will apply to taxable years beginning after final regulations are published, but can be relied upon now.