

Dependency Exemption Doesn't Have To Be Complex

By former Principal Bibi Berry

The Internal Revenue Code [IRC] allows taxpayers to take personal exemptions for themselves—and their dependents. In order to be legally eligible for an exemption, a dependent must be a “qualifying” child who meets the following criteria:

- **Age:** The child must be under the age of 19 at the end of the calendar year and younger than the taxpayer, or a student under the age of 24 at year end and younger than the taxpayer, or permanently and totally disabled at any time during the year, regardless of age.
- **Relationship:** The child must be the taxpayer's son, daughter, adopted child, stepchild, foster child (placed with the taxpayer by an authorized placement agency or by court order) or a descendant of any of them (e.g., grandchild of taxpayer). It is important to note that “Qualifying relatives” under I.R.C. §152 may also include a parent, step-parent, brother, sister, half brother, half sister, stepbrother, stepsister, in-laws or other members of the household residing with the taxpayer for the taxable year.
- **Support:** The child must not have provided more than half of his or her own support and must not have filed a joint return (other than only for a claim of refund) with that individual's spouse.
- **Citizenship:** The child must be a U.S. citizen, U.S. national or U.S. resident alien or a resident of Canada or Mexico, countries contiguous with the United States. There is an exception for an adopted child if, for the taxable year, he or she has maintained the same principal place of abode as the taxpayer and is a member of the taxpayer's household, and if that taxpayer is a citizen or national of the United States.
- **Residence:** The child must have lived with the taxpayer for more than half of the year, except in the case of temporary absences, children who were born or died during the year, kidnapped children and, as discussed below, children of divorced or separated parents.

The IRC provides that the dependency exemption generally belongs to the parent who has primary residential custody of the child unless that parent executes a release, which must be signed by the custodial parent and attached to the non-custodial parent's tax return for any year in which the non-custodial parent claims an exemption deduction. In cases where parents share custody evenly, the IRC grants the exemption to the parent with the highest adjusted gross income.

In Maryland, the court may order a custodial parent to execute the necessary waiver of the exemption in favor of a non-custodial parent who pays child support. This might be done every year, in alternate years or for any number of years during which the child may be claimed as a dependent. If the Court intends, however, to allow the non-custodial parent to secure the dependency exemption, it may not be sufficient to simply order that the non-custodial parent may take the exemption. The Court must require the custodial parent to execute a waiver of the exemption to ensure he or she complies with the Order.

The last thing a non-custodial parent entitled to the exemption wants is for both parents to claim the same child. It may be very difficult to convince the IRS to fix the problem, and more time consuming and expensive than it is worth to litigate the issue. It is important that a non-custodial parent who has the right to claim a child - by agreement or court order - secure the custodial parent's signature on Form 8332 (“Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent”) as early as possible, and certainly well before the time to file tax returns in order to avoid a dispute should the other parent wrongfully claim the child.