

Chapter 2: Dependency Exemption Issues

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Corrections were made to this workbook through January of 2010. No subsequent modifications were made.

INTRODUCTION

In an attempt to simplify the determination of dependency, Congress and the IRS revised the definition of a qualifying child a number of times. The first change occurred with the Working Families Tax Relief Act of 2004 when Congress established a “uniform definition of a qualifying child.” According to the IRS, the current determination process is so complex that it results in numerous errors.

This chapter attempts to establish a process that can be used to determine who receives tax deductions and credits for a dependent child.

A good source of information regarding dependency is IRS Pub. 501, *Exemptions, Standard Deduction, and Filing Information*. Tax preparers should also refer to IRC §152 and the accompanying Treasury Regulations for more detailed information on the dependency requirements.

DEFINITION

The term “dependent” means:

- A qualifying child, or
- A qualifying relative.

A taxpayer can only claim an exemption for a qualifying child or a qualifying relative if these three tests are met:

1. Dependent taxpayer test
2. Joint return test
3. Citizen or resident test

2009 Workbook

If a taxpayer can claim a person as a dependent, that person **cannot** claim himself as an exemption on his own tax return.¹ This is true even if the taxpayer does not claim the dependent's exemption on his own return or if the exemption will be reduced under the phaseout of personal exemptions rule.

DEPENDENT TAXPAYER TEST

If a taxpayer could be claimed as a dependent by another person, that taxpayer cannot claim anyone else as a dependent.² Even if that taxpayer has a qualifying child or qualifying relative, he cannot claim that person as a dependent.

Example 1. Kylii is 18 years old, lives with her parents, and is a full-time student. She has a son, Les, who lives with Kylii and her parents. Kylii has a part-time job and files an income tax return in order to claim a refund of tax withholdings. Kylii's parents claim Kylii as a dependent because she meets all of the requirements. Kylii cannot claim Les as a dependent on her tax return, even though it would result in her receiving an earned income credit.

If the taxpayer is filing a joint return and her spouse could be claimed as a dependent by someone else, the taxpayer and her spouse cannot claim any dependents on their joint return.

Example 2. Assume the same facts as **Example 1**, except Kylii is married. Kylii and her husband, Jeb, live with Kylii's parents. Jeb has income and must file a tax return. If Kylii and Jeb file a joint return, they may not claim Les as a dependent because Kylii is being claimed as a dependent on her parents' income tax return.

JOINT RETURN TEST

A taxpayer generally cannot claim a married person as a dependent if that person files a joint return.

Example 3. Mom and Dad support their 18-year-old daughter, Randi, and she lived with them all year while her husband, Raoul, was in the Armed Forces. Randi and Raoul file a joint return. Even though Randi is Mom and Dad's qualifying child, they cannot take an exemption for her.

Exception

The joint return test does not apply if a joint return is filed by a dependent and her spouse merely as a claim for refund, and no tax liability would exist for either spouse on separate returns.

Example 4. Marshall's son, Tyler, and his son's wife, Amy, each had less than \$3,000 of wages and had no unearned income. Neither is required to file a tax return. Taxes were taken out of their pay, so Tyler and Amy filed a joint return to get a refund. The exception to the joint return test applies. Therefore, Marshall is not disqualified from claiming Tyler and Amy's exemptions just because they filed a joint return. Marshall can claim their exemptions if all other requirements are met.

CITIZENSHIP OR RESIDENCY TEST

A taxpayer cannot claim a person as a dependent unless that person is a U.S. citizen, U.S. resident alien, U.S. national, or a resident of Canada or Mexico for some part of the year. There is an exception for certain adopted children.

Adopted Child

If a taxpayer is a U.S. citizen or a U.S. national and has legally adopted a child who is **not** a U.S. citizen, U.S. resident alien, or U.S. national, the citizenship test is met if the child lived with the taxpayer as a member of her household all year. This also applies if the child was lawfully placed with the taxpayer for legal adoption.³

¹ IRC §151(d)(2).

² IRC §152(b)(1).

³ IRC §152(b)(3)(B).

Example 5. William, a calendar-year taxpayer and citizen of the United States is employed by the U.S. government in Brazil. In October 2008, he takes Chiquita, a Brazilian citizen, into his home for the purpose of legally adopting her. Chiquita lives with William and his family for the remainder of 2008 and all of 2009. The adoption proceedings are completed in July 2009. Assuming all other rules are met, Chiquita becomes a dependent on William's 2009 income tax return.

Child's Place of Residence

Children usually are citizens or residents of their parents' country. Any child born of a U.S. citizen meets the residency test even if he is born outside the United States and the other parent is a nonresident alien.

Foreign Students' Place of Residence

Foreign students brought to this country under a qualified international-education exchange program and placed in American homes for a temporary period generally are not U.S. residents and do not meet the residence test. A taxpayer cannot claim an exemption for these students. However, if the taxpayer provided a home for a foreign student, he may be able to take a charitable contribution deduction.

U.S. National

A U.S. national is an individual who, although not a U.S. citizen, owes his allegiance to the United States. U.S. nationals include American Samoans and Northern Mariana Islanders who chose to become U.S. nationals instead of U.S. citizens.

DEPENDENCY TESTS FOR A QUALIFYING CHILD

1. RELATIONSHIP

A qualifying child must be the:

- Son,
- Daughter,
- Stepchild,
- Foster child,
- Brother,
- Sister,
- Stepbrother,
- Stepsister, or
- A descendent of any of the above, including:
 - ♦ Grandchildren,
 - ♦ Nieces,
 - ♦ Nephews, and
 - ♦ Others.

Foster Child

A foster child is an individual who is placed with the taxpayer by an authorized placement agency or by judgment, decree, or other order of any court of competent jurisdiction.

Adopted Child

An adopted child is always treated as the taxpayer's own child. The term "adopted child" includes a child who is lawfully placed with the taxpayer for legal adoption.

2. RESIDENCY TEST

To meet the residency test, the taxpayer's child must live with the taxpayer for more than half of the year. There are exceptions for temporary absences, such as children who are born or die during the year, kidnapped children, and children of divorced or separated parents.

Temporary Absences

A dependent is considered to live with the taxpayer as a member of his household during periods of time when the taxpayer or dependent (or both) are temporarily absent due to special circumstances such as:

- Illness,
- Education,
- Business,
- Vacation, or
- Military service.

If the person is placed in a nursing home for an indefinite period to receive constant medical care, the absence may be considered temporary.

Death or Birth of a Child

A child who was born or died during the year is treated as having lived with the taxpayer all year if the taxpayer's home was the child's home the entire time he was alive during the year. The same is true if the child lived with the taxpayer all year except for any required hospital stay following birth or preceding death.

Child Born Alive. The taxpayer may be able to claim an exemption for a child who was born alive during the year, even if the child lived only for a moment. State or local law must treat the child as having been born alive. There must be proof of a live birth shown by an official document, such as a birth certificate. The child must be the taxpayer's qualifying child or qualifying relative, and all the other tests to claim an exemption for a dependent must be met.

Stillborn Child. The taxpayer cannot claim an exemption for a stillborn child.

Child Who Dies. A child who died during the year, but lived with the taxpayer as a member of his household until death, meets this test.

Kidnapped Child

The taxpayer can treat a child as meeting the residency test even if the child was kidnapped, provided both of the following statements are true:

1. The child is presumed by law enforcement authorities to be kidnapped by someone who is not a member of the taxpayer's family or the child's family, and
2. In the year the kidnapping occurred, the child lived with the taxpayer for more than half of the part of the year before the date of the kidnapping.

Example 6. Julie lived with her mother from January 1, 2008, until January 15, 2008, when she moved in with her grandmother. Julie was kidnapped on February 15, 2008, and was not returned until 2009. Assuming the grandmother meets all other requirements, she can claim Julie as a qualifying child because Julie lived with her for more than one-half of the time before the kidnapping.

This treatment applies for all of the years the child is missing until he is returned. However, the last year this treatment can apply is the earlier of:

- The year there is a determination that the child is dead, or
- The year the child would have reached age 18.

3. AGE

In addition to meeting the relationship test, the child must also meet the age test. The child must be:

- Under the age of 19 at the end of the tax year,
- Under the age of 24 and a full-time student, or
- Any age if he is totally and permanently disabled.

Example 7. Kerrie turned age 19 on December 10, 2009. Unless she is permanently and totally disabled or a full-time student, she does **not** meet the age test.

Caution. The Emergency Stabilization Act of 2008 (ESA) added another facet to the age requirement. To qualify as a dependent, the qualifying child must be younger than the taxpayer. This means a taxpayer may not claim an older sibling unless the sibling is totally and permanently disabled.⁴ This is effective for tax years beginning after December 31, 2008.

Full-Time Student

A full-time student is one who is enrolled for the number of hours or courses that the school considers to be full-time attendance.

Student. For some part of each of any five calendar months of the year, in order for the child to qualify as a student, he must be one of the following:⁵

- A full-time student at a school that has a regular teaching staff, course of study, and a regularly enrolled student body at the school
- A student taking a full-time, on-farm training course given by a school described above or by a state, county, or governmental agency

The five calendar months do not have to be consecutive.

Note. Special rules may apply for people who had to relocate because of the Midwestern storms, tornadoes, or flooding.

⁴ IRC §152(c)(3)(A), as amended by Section 501(a) of the Fostering Connections to Success and Increasing Adoptions Act of 2008.

⁵ IRC §152(f)(2)(B).

School.⁶ A school can be an elementary school; junior or senior high school; college; university; or technical, trade, or mechanical school. However, an on-the-job training course, correspondence school, or school offering courses only through the Internet does not qualify as a school.

Vocational High School Students. Students who participate in “co-op” jobs in private industry as a part of the school’s regular course of classroom and practical training are considered full-time students.

Totally and Permanently Disabled

To qualify as totally and permanently disabled, an individual must meet two conditions:

1. She cannot engage in any substantial gainful activity because of a physical or mental condition, and
2. A doctor must determine the condition has lasted or can be expected to last continuously for at least a year or can lead to death.

4. SUPPORT

In order to meet the support test, a child cannot provide over one-half of his own support for the tax year. The support test is different from the support test to be a qualifying relative. To determine whether the child provides more than one-half of his total support, the taxpayer must compare the amount of support provided compared to the support provided from all other sources. This includes support the child provided from his own funds.

Note. A child’s personal funds are not support unless the funds are actually spent for support.

Scholarships received by a full-time student are not taken into account when determining whether the child provided more than one-half of her own support.

Survivors’ and Dependents’ Educational Assistance payments used for the support of the child are not included as a part of the child’s gross income. Any government or charitable assistance received because of temporary relocation due to storms, tornadoes, or flooding in a Midwestern disaster area is not included in total support. Such assistance is disregarded in determining who provided a person’s support.

A parent cannot claim as support any **wages** received by the child and used for support **even if the parent paid the wages**. Items are included in the support computation in the year the support is paid even if it is paid with borrowed money and repaid in a later year.

In calculating a person’s total support, include tax-exempt income, savings, and borrowed amounts used to support that person. Tax-exempt income includes certain social security benefits, welfare benefits, nontaxable life insurance proceeds, Armed Forces family allotment, nontaxable pensions, and tax-exempt interest.

Prior to making the support determination, the taxpayer must know the total support cost of the child. Total support includes amounts spent to provide food, lodging, clothing, education, medical and dental care, recreation, transportation, and similar necessities. Generally, the amount of an item of support is the amount of the expense incurred in providing that item; however, the amount of support for lodging is the fair rental value of the lodging. Expenses that are not directly related to any one member of a household, such as the cost of food for the household, must be divided among the members of a household.

Note. Taxpayers reporting their income on a fiscal year must provide more than half of the dependent support for the calendar year in which the fiscal year begins.

⁶ IRS Pub. 501, *Exemptions, Standard Deduction, and Filing Information*, p. 12 (Dec. 11, 2008).

Support can be determined using the following worksheet.⁷

Worksheet 1. **Worksheet for Determining Support**

Keep for Your Records



Funds Belonging to the Person You Supported	
1. Enter the total funds belonging to the person you supported, including income received (taxable and nontaxable) and amounts borrowed during the year, plus the amount in savings and other accounts at the beginning of the year	1.
2. Enter the amount on line 1 that was used for the person's support	2.
3. Enter the amount on line 1 that was used for other purposes	3.
4. Enter the total amount in the person's savings and other accounts at the end of the year	4.
5. Add lines 2 through 4. (This amount should equal line 1.)	5.
Expenses for Entire Household (where the person you supported lived)	
6. Lodging (complete line 6a or 6b):	
6a. Enter the total rent paid	6a.
6b. Enter the fair rental value of the home. If the person you supported owned the home, also include this amount in line 21.	6b.
7. Enter the total food expenses	7.
8. Enter the total amount of utilities (heat, light, water, etc. not included in line 6a or 6b)	8.
9. Enter the total amount of repairs (not included in line 6a or 6b)	9.
10. Enter the total of other expenses. Do not include expenses of maintaining the home, such as mortgage interest, real estate taxes, and insurance.	10.
11. Add lines 6a through 10. These are the total household expenses	11.
12. Enter total number of persons who lived in the household	12.
Expenses for the Person You Supported	
13. Divide line 11 by line 12. This is the person's share of the household expenses	13.
14. Enter the person's total clothing expenses	14.
15. Enter the person's total education expenses	15.
16. Enter the person's total medical and dental expenses not paid for or reimbursed by insurance	16.
17. Enter the person's total travel and recreation expenses	17.
18. Enter the total of the person's other expenses	18.
19. Add lines 13 through 18. This is the total cost of the person's support for the year	19.
Did the Person Provide More Than Half of His or Her Own Support?	
20. Multiply line 19 by 50% (.50)	20.
21. Enter the amount from line 2, plus the amount from line 6b if the person you supported owned the home. This is the amount the person provided for his or her own support	21.
22. Is line 21 more than line 20?	
<input type="checkbox"/> No. You meet the support test for this person to be your qualifying child. If this person also meets the other tests to be a qualifying child, stop here; do not complete lines 23–26. Otherwise, go to line 23 and fill out the rest of the worksheet to determine if this person is your qualifying relative.	
<input type="checkbox"/> Yes. You do not meet the support test for this person to be either your qualifying child or your qualifying relative. Stop here.	
Did You Provide More Than Half?	
23. Enter the amount others provided for the person's support. Include amounts provided by state, local, and other welfare societies or agencies. Do not include any amounts included on line 1.	23.
24. Add lines 21 and 23	24.
25. Subtract line 24 from line 19. This is the amount you provided for the person's support	25.
26. Is line 25 more than line 20?	
<input type="checkbox"/> Yes. You meet the support test for this person to be your qualifying relative.	
<input type="checkbox"/> No. You do not meet the support test for this person to be your qualifying relative. You cannot claim an exemption for this person unless you can do so under a multiple support agreement, the support test for children of divorced or separated parents, or the special rule for kidnapped children. See <u>Multiple Support Agreement</u> , <u>Support Test for Children of Divorced or Separated Parents</u> , or <u>Kidnapped child</u> under <u>Qualifying Relative</u> .	

⁷ IRS Pub. 501, *Exemptions, Standard Deduction, and Filing Information*, p. 20 (Dec. 11, 2008).

CHILDREN OF DIVORCED OR SEPARATED PARENTS

The tax laws are somewhat different for children of divorced or separated parents because several special rules apply.

Custodial Parent and Noncustodial Parent

In most cases, because of the residency test, a child of divorced or separated parents is the qualifying child of the custodial parent. The “custodial parent” is a parent with whom the child resides for the greater number of nights during a calendar year. The “noncustodial parent” is the parent who is not the custodial parent. A child is treated as residing with neither parent if the child is emancipated under state law. A child is considered residing with the parent for a night if the child sleeps:

- At the residence of that parent (whether or not the parent is present); or
- In the company of the parent when the child does not sleep at a parent’s residence (for example, the parent and child are on vacation together).

A night that extends over two taxable years is allocated to the taxable year in which the night begins. A child who does not reside with a parent for a night is treated as residing with the parent that the child would have resided with for the night but for the absence. If it cannot be determined which parent the child would have resided with or if the child would not have resided with either parent for the night, the child is treated as not residing with either parent.

If a child is in the custody of one or both parents for more than one-half of the calendar year and the child resides with each parent for an equal number of nights during the year, the parent with the higher adjusted gross income for the calendar year is treated as the custodial parent.

An exception exists for a parent who works nights. If, in a calendar year, due to a parent’s nighttime work schedule, a child resides for a greater number of days but not nights with the parent who works at night, that parent is treated as the custodial parent. On a school day, the child is treated as residing at the primary residence registered with the school.

However, the child is treated as the qualifying child of the noncustodial parent if **all four** of the following statements are true:

1. The parents:
 - a. Are divorced or legally separated under a decree of divorce or separate maintenance,
 - b. Are separated under a written separation agreement, or
 - c. Lived apart at all times during the last six months of the year, whether or not they are married.
2. The child received over half of her support for the year from the parents.
3. The child is in the custody of one or both parents for more than half of the year.
4. The custodial parent signed a written declaration (discussed later) that indicates the custodial parent will not claim the child as a dependent for the year, and the noncustodial parent attaches this written declaration to his return.

Written Declaration

The custodial parent may use Form 8332, *Release of Claim to Exemption for Child of Divorced or Separated Parents*, or a similar statement (containing the same information required by the form) to make the written declaration to **unconditionally** release the exemption to the noncustodial parent. The noncustodial parent must attach the form or statement to his tax return. The release is **not** unconditional if it contains any conditions (e.g., being current on all child support payments).

The exemption can be released for one year, for a number of specified years (for example, alternate years), or for all future years, as specified in the declaration. If the exemption is released for more than one year, the original release must be attached to the return of the noncustodial parent for the first year, and a copy must be attached for each later year.

A written declaration may be made on Form 8332 or a successor form designated by the IRS. If the declaration is not on an IRS designated form, it must conform to the substance of the IRS form and must be a document executed for the sole purpose of serving as a written declaration. For calendar-year taxpayers, a court order or decree, or a separation agreement may **not** serve as a written declaration if issued after December 31, 2008.

The written declaration must be attached to the noncustodial parent's return for each taxable year in which the child is claimed as a dependent. If the taxpayer is filing electronically, the written declaration must be attached to Form 8453 and **mailed** to the IRS.

A 2008 court case upheld the requirement that Form 8332 rather than the divorce decree be used to release the claim for dependency. William N. Ward, a Virginia resident, was divorced December 2004. The divorce decree stated William could claim the two minor children as dependents as long as the child support payments were current. When William filed his 2004 income tax return, he claimed the two children, even though they resided with their mother. While the divorce decree awarded the dependency to William and the child support payments were current, his ex-spouse claimed the children as dependents on her return. William did not attach a signed Form 8332 to his return.

The IRS assessed William with a tax deficiency of \$2,426. They ruled the divorce decree was not an acceptable replacement for Form 8332 because of the child support requirement. The court agreed with the IRS. William's only consolation was that a Virginia court awarded him \$2,426 because the ex-spouse violated the terms of the divorce decree.⁸

Divorce Decrees

Divorce decrees can be used in lieu of Form 8332 if:⁹

1. The right to claim the child is unconditional, **and**
2. The written declaration was executed prior to December 31, 2008 for calendar-year taxpayers (for fiscal-year taxpayers, the document must be issued in any taxable year beginning before July 2, 2008).

Caution. CCA 200925041 ruled that only declarations executed prior to **July 3, 2008** may be used in lieu of Form 8332. The position of the authors is that because the Treasury Regulations are effective for tax years beginning after July 2, 2008, the requirements for a calendar-year taxpayer did not change until the 2009 tax year. Therefore, **unconditional decrees** meeting all of the requirements for Form 8332 executed on or before **December 31, 2008** may be used as a substitute for Form 8332.

A summary of CCA 200925041 is presented in the Divorce Issues section of Chapter 13, Rulings and Cases.

Revocation

To revoke the written declaration, the parent must give a written notice of the revocation to the other parent. The person revoking the declaration must make a reasonable effort to provide actual notice to the other parent. **The effective date of the revocation is the first calendar year following the year the written notice is provided.**

Example 8. Melissa is the custodial parent of her child. She signed a written declaration giving the child's father the dependency exemption for all future years. Melissa remarried in 2009 and wants to claim the child as her dependent. Therefore, she must revoke her Form 8332. Melissa will not be able to claim the child as a dependent until 2010, even if she gives written notice to the child's father in 2009.

⁸ *William N. Ward v. Comm'r*, TC Summ. Op. 2008-54 (May 19, 2008).

⁹ Treas. Reg. §1.152-4(e)(5).

The revocation notice may be made on Form 8332 or successor form designated by the IRS. If that form is not used, the submitted form must conform to the substance of the Form 8332 and must be executed for the sole purpose of serving as a revocation. The revocation must show a specific year or years for which the revocation is effective.

The parent revoking the Form 8332 must attach a copy of the revocation to her return for each taxable year in which she claims the child as a dependent because of the revocation. She must also keep a copy of the revocation, notice of delivery to the other person, and a record of any reasonable efforts to provide actual notice.

The revocation requirements apply to any written declaration, even those issued after July 2, 2008.

Parents Who Never Married

The written declaration rule mentioned above also applies to divorced or separated parents as well as to parents who were never married.

Exemption Release Examples

The following examples are based upon examples found in Treas. Reg. §1.152-4 and are effective for tax years beginning after July 2, 2008.

Example 9. Bart and Clarice are the divorced parents of Tammy. In 2009, Tammy resides with Bart for 210 nights and with Clarice for 155 nights. Bart executes a Form 8332 for 2009 releasing his claim to Tammy as a dependent for that year, which Clarice attaches to her 2009 return.

Bart is a custodial parent of Tammy for 2009 because he is the parent with whom Tammy resides for the greater number of nights in 2009. Because all other requirements are met, and Bart signed the Form 8332, Clarice may claim Tammy as a dependent.

Example 10. Use the same facts as **Example 9**, except Bart does not execute a Form 8332 or similar declaration in 2009. Whether Tammy is the qualifying child or qualifying relative of Bart or Clarice is determined using the custody and custodial parent rules.¹⁰

Example 11. David and Emily are the divorced parents of Roberta. Under a custody decree, Grandmother Jones has the right under state law to physical custody of Roberta from January 1 to July 31, 2009. Because David and Emily do not have the right under state law to physical custody of Roberta for over one-half of the 2009 calendar year, Roberta is not in the custody of one or both parents for over one-half of the calendar year. The qualifying-child or qualifying-relative rules determine who can claim the exemption.

Example 12. The facts are the same as in **Example 11**, except Grandmother Jones has the right to physical custody of Roberta from January 1 to March 31, 2009, and, as a result, Roberta resides with Grandmother during this period. David and Emily jointly have the right to physical custody of Roberta from April 1 to December 31, 2009. During this time, Roberta resides with David for 180 nights and with Emily for 95 nights. David executes a Form 8332 for 2009 releasing his right to claim Roberta as a dependent for that year, which Emily attaches to her 2009 return.

Roberta is in the custody of David and Emily for over one-half of the calendar year, because they have the right under state law to physical custody of her for over one-half of the calendar year. The nights that Roberta resides with Grandmother Jones are not allocated to either parent. Roberta resides with David for a greater number of nights than with Emily during the calendar year, and he is the custodial parent. Because all requirements are met and David signed Form 8332, Emily may claim Roberta as a dependent.

¹⁰ IRC §§152(c) and 152(d).

Example 13. The facts are the same as in **Example 12**, except David is away on military service from April 10 to June 15, 2009, and September 6 to October 20, 2009. During these periods, Roberta resides with Grandmother Jones. Roberta would have resided with David if he had not been away on military service. Grandmother Jones claims Roberta as a dependent on her 2009 return.

Roberta is treated as residing with David for the nights that he is away on military service. Because David signed a Form 8332 and the support, custody, parental status, and release of claims rules are met, Emily — not Grandmother Jones — may claim Roberta as a dependent.

Example 14. Fernando and Giselle are the divorced parents of Ramona. In May 2009, Ramona turns age 18 and is emancipated under the law of the state where she resides. Therefore, in 2009 and later years, Fernando and Giselle do not have the right under state law to physical custody of Ramona for over one-half of the calendar year, and Ramona is not in the custody of Fernando and Giselle for over one-half of the calendar year. Whether Ramona can be claimed by Fernando or Giselle is determined by the qualifying-child or qualifying-relative rules.

Example 15. The facts are the same as in **Example 14**, except Ramona turns age 18 and is emancipated under state law on August 1, 2009. She resides with Fernando from January 1, 2009, to May 31, 2009, and resides with Giselle from June 1, 2009, through December 31, 2009. Fernando signed a Form 8332 releasing his right to claim Ramona as a dependent for 2009, which Giselle attaches to her 2009 return.

Under the custody rules, Ramona is in the custody of Fernando and Giselle for over one-half of the calendar year. Under the custodial parent rules, Ramona is treated as not residing with either parent after her emancipation. Therefore, Ramona resides with Fernando for 151 nights and with Giselle for 61 nights. Because the support, custody, parental status, and release of claim rules are met, Giselle may claim Ramona as a dependent.

Example 16. Tom and Judy are the divorced parents of Trudy. Trudy generally resides with Tom during the week and with Judy every other weekend. Trudy resides with Judy in Tom's residence for 10 consecutive nights while Tom is hospitalized. Under the custodial parent rules, Trudy is considered to reside with Tom for the 10 nights because she is in Tom's residence.

Example 17. Ken and Linda, who are separated under a written separation agreement, are the parents of Boris. In August 2009, Ken and Boris spend 10 nights together in a hotel while on vacation. Under the "in the company of a parent" rule, Boris resides with Ken for the 10 nights they are on vacation.

Example 18. Popeye and Olive Oyl, who never married, are the parents of Sydney. In 2009, Sydney spends alternate weeks residing with her mother and father. During a week that Sydney resides with Olive Oyl, Olive Oyl gives Sydney permission to spend a night at the home of a friend. The night Sydney spends at the friend's home is treated as a night that Sydney resides with Olive Oyl.

Example 19. The facts are the same as **Example 18**, except Sydney also resides at summer camp for six weeks. Because Sydney resides with each parent on alternate weeks, if she was not at summer camp, she would have resided with her mother for three weeks and with her father for the three weeks she is at camp. Therefore, Sydney is treated as residing with her mother for three weeks and with her father for three weeks.

Example 20. The facts are the same as **Example 19**, except Sydney does not spend alternate weeks residing with her mother and her father, and it cannot be determined whether Sydney would reside with her mother or her father for the period that she is at camp. Therefore, Sydney is treated as residing with neither parent for the six weeks.

Example 21. Sanjay and Violet are the divorced parents of Udell. Udell resides with Sanjay more nights than with Violet in 2009 through 2011. In 2009, Sanjay signs a written declaration allowing Violet to claim Udell as a dependent. However, this statement does not specify the year or years it is effective. Violet attaches the statement to her returns for 2009 through 2011. Because the statement does not specify the year or years, it is not considered a written declaration that conforms to the substance of Form 8332 and, therefore, has no effect on which parent can claim the exemption.

Example 22. Wendell and Sandy, parents of Mariah, were divorced in 2009. During 2009, Mariah resides solely with Wendell. The divorce decree requires Sandy to pay child support to Wendell and requires Wendell to execute a Form 8332 releasing Wendell's right to claim Mariah as a dependent. Wendell fails to sign a Form 8332 for 2009, and Sandy attaches an unsigned Form 8332 to her return for 2009.

The order in the divorce decree requiring Wendell to execute the Form 8332 is ineffective to allocate the right to claim Mariah as a dependent of Sandy. Furthermore, the unsigned Form 8332 does not conform to the substance of Form 8332, and therefore has no effect. Whether Mariah can be claimed by Wendell or Sandy is determined by using the custody and custodial-parent rule.

If, however, Wendell executes a Form 8332 for 2009, and Sandy attaches the form to her return, she may claim Mariah as a dependent in 2009.

Example 23. Yolanda and Zach are the divorced parents of McAuley. In 2003, Yolanda and Zach enter into a separation agreement, which is incorporated into a divorce decree. In the decree, Yolanda, the custodial parent, releases her right to claim McAuley as a dependent for all future years. Because the separation agreement was unconditional and, as calendar-year taxpayers, the agreement was executed before December 31, 2008, it satisfies the requirements for the form of a written declaration in effect at the time the agreement was executed. Zach attaches a copy of the separation agreement to his returns for 2003 through 2009.

Yolanda and Zach's separation agreement is treated as a valid written declaration because it:

1. Was executed in a taxable year beginning on or before July 2, 2008,
2. Is unconditional, and
3. Satisfies the requirements in effect at the time.

Zach may attach the divorce decree to his returns for 2009 and later years.

Example 24. The facts are the same as in **Example 23**, except in 2009 Yolanda executes a Form 8332 revoking the release of her right to claim McAuley as a dependent for 2010. Yolanda complies with all the requirements.

Although Yolanda entered into the separation agreement releasing her right to claim McAuley as a dependent, her execution of Form 8332 in 2009 is effective in revoking the release. Therefore, whether McAuley can be claimed by Yolanda or Zach is determined by the qualifying-child or qualifying-relative rules.

TEST FOR QUALIFYING CHILD OF MORE THAN ONE PERSON

Note. If a child is treated as a qualifying child of the noncustodial parent under the rules for children of divorced or separated parents as described earlier, see the section titled "Applying this Special Test to Divorced or Separated Parents" later in the chapter.

Sometimes a child meets the relationship, age, residency, and support tests to be a qualifying child of more than one person. Although the child is a qualifying child of each of these persons, only one person can actually treat the child as a qualifying child. To meet this test, the taxpayer must be the person who can treat the child as a qualifying child.

Old Law

Prior to 2009, if the taxpayer and another person had the same qualifying child, the taxpayer and the other person(s) could decide who would treat the child as a qualifying child. That person could take all the following tax benefits (provided the person was eligible for each benefit) based on the qualifying child:

- The exemption for the child
- The child tax credit
- Head of household filing status
- The credit for child and dependent care expenses
- The exclusion from income for dependent care benefits
- The earned income credit

The other person could not take any of these benefits for this qualifying child. In this regard, the taxpayer and the other person could not divide these tax benefits between themselves as they choose.¹¹

New Tie-Breaker Rule¹²

If an individual is claimed as a qualifying child by two or more taxpayers, the tie-breaker rule applies. **The tie-breaker rule is mandatory if the parties cannot agree.**

IF more than one person is eligible to claim the same qualifying child and . . .	THEN the child will be treated as the qualifying child of the . . .
Only one of the persons is the child's parent,	Parent.
Two or more persons are parents of the child and they do not file a joint return together,	Parent with whom the child lived for the longer period of time during the year.
Two of the persons are parents of the child, they do not file a joint return together, and the child lived with each parent the same amount of time during the year,	Parent with the highest AGI.
None of the persons are the child's parents,	Person with the highest AGI.

Applying This Special Test to Divorced or Separated Parents

If a child is treated as a **qualifying child of the noncustodial parent** under the rules for children of divorced or separated parents described earlier, the noncustodial parent can only claim an **exemption** and the **child tax credit** for the child. The noncustodial parent **cannot** claim the child as a qualifying child for head of household filing status, the credit for child and dependent care expenses, the exclusion for dependent care benefits, and the earned income credit. Only the custodial parent or another eligible taxpayer can claim the child as a qualifying child for these four tax benefits. When the custodial parent and another eligible taxpayer both claim the child as a qualifying child for any of these four tax benefits, the IRS disallows all but one of the claims using the tie-breaker rule shown in the above table.¹³

¹¹ IRS Pub. 501, *Exemptions, Standard Deduction, and Filing Information*, p. 14, (Dec. 11, 2008).

¹² IRC §152(c)(4).

¹³ IRS Pub. 504, *Divorced and Separated Individuals*, p. 10, (Feb. 13, 2009).

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Example 25. Mom and her 5-year-old son, Greg, lived all year with Grandma, who paid the entire cost of keeping up the home. Mom is required to file a tax return. Under the rules for children of divorced or separated parents, Greg is treated as a qualifying child of his father, who can claim an exemption and the child tax credit for Greg if he meets all the requirements to do so. Consequently, Mom cannot claim an exemption or the child tax credit for Greg.

However, the child's father cannot claim Greg as a qualifying child for head of household filing status, the credit for child and dependent care expenses, the exclusion for dependent care benefits, or the earned income credit. Greg meets the relationship, age, residency, and support tests for both Mom and Grandma. Mom and Grandma did not have any childcare expenses or dependent care benefits, but Greg is a qualifying child of both Mom and Grandma for head of household filing status and the earned income credit. Mom can no longer agree to let Grandma claim head of household filing status or the earned income credit using Greg. Mom cannot claim head of household filing status because Grandma paid the entire cost of maintaining the home.

Note. The support test does not apply for the earned income credit.

In the following situations, both parents can exclude the following fringe benefits from gross income if they relate to the child:

- Contributions to an accident or health plan;
- No-additional-cost services;
- Qualified employee discounts;
- Deduction of child's medical expenses;
- Distributions from an Archer medical savings account (MSA); and
- Distributions from a health savings account (HSA).

These exclusions from gross income are effective as of August 18, 2008, but may be applied for any year in which the statute of limitations is open.

DEPENDENCY TESTS FOR A QUALIFYING RELATIVE

If the person does not meet the rules to be a qualifying child, the taxpayer should determine whether the person meets the requirements to be a qualifying relative. There are four tests that must be met for a person to be a qualifying relative. The four tests are:¹⁴

1. Not-a-qualifying-child test,
2. Member-of-household or relationship test,
3. Gross-income test, and
4. Support test.

Unlike a qualifying child, a qualifying relative can be any age. The test for a kidnapped child is the same as for a qualifying child as previously discussed.

Caution. The "qualifying relative" status is not interchangeable with the "qualifying child" status.¹⁵

¹⁴ IRS Pub. 501, *Exemptions, Standard Deduction, and Filing Information*, p. 15 (Dec. 11, 2008).

¹⁵ Ltr. Rul. 200812024 (Feb. 8, 2008).

NOT-A-QUALIFYING-CHILD TEST

Qualifying Child of Taxpayer

A child is not the taxpayer's qualifying relative if the child is the taxpayer's qualifying child or the qualifying child of any other taxpayer.

Example 26. The taxpayer's 22-year-old daughter is a full-time student, lives with the taxpayer, and meets all of the tests to be the taxpayer's qualifying child. She is not the taxpayer's qualifying relative.

Example 27. The taxpayer's 2-year-old son lives with the taxpayer's parents and meets all of the tests to be their qualifying child. He is not the taxpayer's qualifying relative.

Example 28. The taxpayer's son lives with the taxpayer but he is not the taxpayer's qualifying child because he is 30 years old and does not meet the age test. He may be the taxpayer's qualifying relative if the gross-income test and the support test are met.

Example 29. The taxpayer's 13-year-old grandson lived with his mother for three months, with his uncle for four months, and with the taxpayer for five months during the year. He is not the taxpayer's qualifying child because he does not meet the residency test. He may be the taxpayer's qualifying relative if the gross-income test and the support test are met.

Child of a Person Not Required to File a Return

A child is **not** a qualifying child of any other taxpayer and may qualify as the taxpayer's qualifying relative if the child's parents (or other person for whom the child is defined as a qualifying child) are **not** required to file an income tax return and either:

1. Do not file an income tax return, or
2. File a return only to get a refund of income tax withheld.

Example 30. Return not required. The taxpayer supports an unrelated friend and her 3-year-old child, who lives with the taxpayer all year in the taxpayer's home. The friend has no gross income, is not required to file a 2009 tax return, and does not file a 2009 tax return. Both the taxpayer's friend and her child are qualifying relatives if the member-of-household or relationship test, gross-income test, and support test are met.

Example 31. Return filed to claim refund. The facts are the same as in **Example 30**, except the taxpayer's friend had wages of \$1,500 during the year and had income tax withheld from her wages. She files a return only to get a refund of the income tax withheld and does not claim the earned income credit or any other tax credits or deductions. Both the friend and her child are the taxpayer's qualifying relatives if the member-of-household or relationship test, gross-income test, and support test are met.

Example 32. Earned income credit claimed. The facts are the same as in **Example 31**, except the friend had wages of \$8,000 during the year and claimed the earned income credit on her return using the 3-year-old child as a qualifying child. Therefore, the friend's child is the qualifying child of another taxpayer (the friend), so the taxpayer cannot claim the friend's child as a qualifying relative.

Citizenship/Residency

A child who lives in Canada or Mexico may be the taxpayer's qualifying relative, and the taxpayer may be able to claim the child as a dependent. If the child does not live with the taxpayer, the child does not meet the residency test to be the taxpayer's qualifying child. If the person the child lives with is not a U.S. citizen and has no U.S. gross income, that person is not a "taxpayer." Therefore, the child is not the qualifying child of any other taxpayer. If the child is not the taxpayer's qualifying child or a qualifying child of any other taxpayer, the child is the taxpayer's qualifying relative if the gross-income test, relationship test, and the support test are met.

A taxpayer cannot claim as a dependent a child who lives in a foreign country other than Canada or Mexico, unless the child is a U.S. citizen, U.S. resident alien, or U.S. national for some part of the year. There is an exception for certain adopted children who lived with the taxpayer all year.

Example 33. Peter provided all of the support for his children, ages 6, 8, and 12, who lived in Mexico with Peter's mother, who has no income. Peter is single and lives in the United States. Peter's mother is not a U.S. citizen and has no U.S. income, so she is not a "taxpayer." Peter's children are not his qualifying children because they do not meet the residency test. In addition, they are not the qualifying children of any other taxpayer. Therefore, they are Peter's qualifying relatives and he can claim them as dependents if all the tests are met. Peter may also be able to claim his mother as a dependent if all the tests are met, including the gross-income test and the support test.

MEMBER-OF-HOUSEHOLD OR RELATIONSHIP TEST

To meet the member-of-household or relationship test, a person must either:

1. Live with the taxpayer all year as a member of the taxpayer's household, or
2. Be related to the taxpayer in one of the following ways even if he did not live with the taxpayer:
 - a. Child, stepchild, foster child, or a descendent of any of them such as the taxpayer's grandchild (A legally adopted child is considered the taxpayer's child.)
 - b. Brother, sister, half-brother, half-sister, stepbrother, or stepsister
 - c. Mother, father, grandparent, or other direct ancestor, but not foster parent
 - d. Stepfather or stepmother
 - e. Nephew or niece
 - f. Aunt or uncle
 - g. Son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law

The relationships established by marriage are **not** ended by death or divorce. If at any time during the year a person was the taxpayer's spouse, that person cannot be the taxpayer's qualifying relative.

A foster child is an individual who is placed with the taxpayer by an authorized placement agency or by judgment, decree, or other order of any court of competent jurisdiction.

Note. A cousin is not included in the above list.

Example 34. Trevor and his wife Renee began supporting her father, a widower, in 2002. Renee died in 2007. In spite of Renee's death, Trevor's father-in-law continues to meet the relationship test, even if he does not live with the taxpayer. The taxpayer can claim him as a dependent if all of other tests are met, including the gross income-test and the support test.

Joint Return

If the taxpayer files a joint return, the qualifying relative can be related to either the taxpayer or the taxpayer's spouse. In addition, the qualifying relative does not need to be related to the spouse who provides support.

Example 35. Wanda provides more than 50% of the support for her husband's Uncle Fred. Uncle Fred may be a qualifying relative, even though he does not live with Wanda. However, if Wanda and her husband file separate returns, Uncle Fred can be Wanda's qualifying relative only if he lives with Wanda all year as a member of her household.

Temporary Absences

A person is considered to live with the taxpayer as a member of her household during periods of time when the taxpayer, other person, or both, are temporarily absent due to special circumstances such as:

- Illness,
- Education,
- Business,
- Vacation, or
- Military service.

If the person is placed in a nursing home for an indefinite period to receive constant medical care, the absence may be considered temporary.

Death or Birth

A person who died during the year, but lived with the taxpayer as a member of her household until death, meets the test. The same is true for a child who was born during the year and lived with the taxpayer as a member of her household. The test is also met if a child lived with the taxpayer as a member of the household except for any required hospital stay following birth.

If the taxpayer's dependent died during the year and the taxpayer otherwise qualified to claim an exemption for the dependent, the taxpayer can still claim the exemption.

Example 36. Butch's mother qualified as his dependent. She died on January 15. She meets the test to be a qualifying relative. Butch can claim an exemption for her on his tax return.

Adopted Child

An adopted child is always treated as the taxpayer's own child. The term "adopted child" includes a child who was lawfully placed with the taxpayer for legal adoption.

Cousin

The taxpayer's cousin meets this test only if the cousin lives with the taxpayer all year as a member of the taxpayer's household. A cousin is a descendent of a brother or sister of the taxpayer's mother or father.

Cohabitation

A person does not meet this test if at any time during the year the relationship between the taxpayer and that person violates local law.¹⁶

Example 37. Vince's girlfriend lived with him as a member of his household in Florida all year. Because his relationship with her violated the laws of the state where he lived, she does not meet this test and the taxpayer cannot claim her as a dependent.

¹⁶ IRC §152(f)(3).

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An individual is not a qualifying child of any other taxpayer if the individual's parent (or other person for whom the individual is defined as a qualifying child) is not required by IRC §6012 to file an income tax return and does not file an income tax return or files an income tax return solely to obtain a refund of withheld income taxes. In the case of a mother and her child who live with the mother's boyfriend, if the mother is not required to file an income tax return, the child is not a qualifying child of the mother. **The child is a qualifying relative of the boyfriend for dependency rules only provided all other dependency requirements are met.** The mother cannot claim any other benefit since she chooses not to file a return, and the boyfriend cannot claim any other benefits because the child is not his qualifying child. This is effective for tax years beginning after 2004.¹⁷

Example 38. In 2009, Juliet and her 4-year-old son, Buster, lived in the Ohio home of an unrelated friend, Romeo, who furnished all of their support. Juliet is not required to file an income tax return, because she has no gross income. Consequently, she does not have a filing requirement and she does not file a return. This means Buster is **not** treated as the qualifying child of Juliet. Buster is not the qualifying child of any other taxpayer. Therefore, Romeo can claim both Juliet and Buster as qualifying relatives. However, he must meet all of the requirements of IRC §§151 and 152.

Example 39. The facts are the same as **Example 38**, except Juliet receives a 2008 Form W-2 for \$1,000 reporting income she earned as a server. The employer withheld income tax from Juliet's wages. As a single taxpayer with one child, Juliet qualifies for \$349 of EIC. However, Juliet files solely to obtain a refund of the withheld income tax and does not claim the EIC. Romeo may claim both Juliet and Buster as qualifying relatives because Juliet only files a return to claim the withheld tax.

Example 40. Use the same facts as **Example 39**, except Juliet claims the EIC. Romeo can no longer claim Buster or Juliet as a qualifying relative. Buster is the qualifying child of Juliet.

GROSS-INCOME TEST

To meet the gross-income test, a person's 2009 gross income must be less than \$3,650. Gross income is defined as all income in the form of money, property, and services that is not exempt from tax. For certain other situations, gross income is determined as follows:

- In a manufacturing, merchandising, or mining business, gross income is the total net sales minus the cost of goods sold, plus any miscellaneous income from the business.
- For rental property, gross income equals gross receipts. Taxes, repairs, and other expenses are not deducted to determine gross income from rental property.
- For partners in a partnership, partner gross income is a partner's share of the gross (not a share of the net) partnership income.
- For individuals, gross income also includes all unemployment compensation and certain scholarship and fellowship grants. Scholarships received by degree candidates that are used for tuition, fees, supplies, books, and equipment required for particular courses may **not** be included in gross income.

Tax-exempt income, such as certain social security benefits, is **not** included in gross income.

¹⁷ IRS Notice 2008-5 (Dec. 18, 2007).

Disabled Dependent Working at a Sheltered Workshop

For purposes of the gross-income test, the gross income of an individual who is permanently and totally disabled at any time during the year does not include income for services the individual performs at a sheltered workshop. The availability of medical care at the workshop must be the main reason for the individual's presence there. In addition, the income must come solely from activities at the workshop that are incidental to this medical care.

A "sheltered workshop" is a school that:

- Provides special instruction or training designed to alleviate the disability of the individual; and
- Is operated by certain tax-exempt organizations or by a state, a U.S. possession, a political subdivision of a state or possession, the United States, or the District of Columbia.

SUPPORT TEST

To meet the support test, the taxpayer generally must provide more than half of a person's total support during the calendar year.

Situations in which two or more persons provide support, but no one person provides more than half of a person's total support, are discussed in "Multiple Support Agreements" later in this chapter.

To determine whether a taxpayer provided more than half of a person's total support, a comparison is made between the amount the taxpayer contributed to that person's support and the entire amount of support that person received from all sources. This includes support the person provided from his own funds.

A worksheet is provided earlier in this chapter to help determine whether the support test is met.

Person's Own Funds

A person's own funds are not considered "support" unless they are actually spent for support.

Example 41. The taxpayer's mother received \$2,400 in social security benefits and \$300 in interest. She paid \$2,000 for lodging and \$400 for recreation. She put \$300 in a savings account. Even though the taxpayer's mother received a total of \$2,700 (\$2,400 plus \$300), she spent only \$2,400 (\$2,000 plus \$400) for her own support. If the taxpayer spent more than \$2,400 for her support and no other support was received, the taxpayer has provided more than half of the mother's support.

Child's Wages

A taxpayer cannot include in his contribution to the child's support any amount that is paid by the child with the child's own wages even if the taxpayer paid the wages.

Year Support Provided

Money spent for support is considered support in the year it is paid even if it is paid with borrowed money that is repaid in a later year.

Taxpayers using a fiscal year to report income must provide more than half of the dependent support for the calendar year in which the taxpayer's fiscal year begins.

Armed Forces and Dependency Allotments

Armed Forces dependency allotments provided by the government and the portion taken out of the taxpayer's military pay are both considered provided by the taxpayer in calculating whether they provided more than one-half of the support. If the allotment is used to support persons other than those named by the government, the payments can be used to qualify them as dependents as long as they meet all other qualifications.

Example 42. Tonya is in the Armed Forces. She authorizes an allotment for her widowed mother, who uses the money to support herself and Tonya's sister. If the allotment provides more than half of each person's support, Tonya can take an exemption for both her mother and her sister if they otherwise qualify, even though Tonya authorized the allotment only for her mother.

Tax-Exempt Military Quarters' Allowances

Tax-exempt military quarters' allowances are treated the same way as dependency allotments in determining support. The allotment of pay and the tax-exempt basic allowance for quarters are both considered as provided by the taxpayer for support.

Tax-Exempt Income

In calculating a person's **total support**, tax-exempt income, savings, and borrowed amounts used to support that person are included. Tax-exempt income includes certain social security benefits, welfare benefits, nontaxable life-insurance proceeds, Armed Forces family allotments, nontaxable pensions, and tax-exempt interest.

Example 43. The taxpayer provides \$4,000 towards his mother's support during the year. Mother has earned income of \$600, nontaxable social security benefits of \$4,800, and tax-exempt interest of \$200. She uses all of these for her support. The taxpayer cannot claim an exemption for his mother because the \$4,000 he provides is not more than half of her total support of \$9,600.

Example 44. The taxpayer's niece takes out a student loan for \$2,500 and uses it to pay her college tuition. She is personally responsible for the loan. The taxpayer provides \$2,000 towards her total support. The taxpayer cannot claim an exemption for her because he provides less than half of the niece's support.

Government Benefits

If a husband and wife each receive benefits that are paid by one check made out to both of them, half of the total paid is considered to be for the support of each spouse, unless they can show otherwise.

If a child receives social security benefits and uses them towards her own support, the benefits are considered as being provided by the child.

State-Provided Support (Welfare or Food Stamps)

Benefits provided to a needy person by the state generally are considered support provided by the state. However, payments based on the needs of the recipient are not considered as used entirely for that person's support if it is shown that part of the payments were not used for that purpose.

Foster Care Payments and Expenses

Payments a taxpayer receives from a child-placement agency for the support of a foster child are considered support provided by the agency. Similarly, payments the taxpayer received from a state or county for the support of a foster child are considered support provided by the state or county.

If the taxpayer is not in the trade or business of providing foster care and the taxpayer's unreimbursed out-of-pocket expenses in caring for a foster child were mainly to benefit an organization qualified to receive deductible charitable contributions, the expenses are deductible as charitable contributions and are not considered support provided by the taxpayer.

If the taxpayer is in the trade or business of providing foster care, the taxpayer's unreimbursed expenses are not considered support provided by the taxpayer.

Example 45. Lauren, a foster child, lived with Mr. and Mrs. Smith for the last three months of the year. The Smiths cared for Lauren because they wanted to adopt her (although she had not been placed with them for adoption). The Smiths are not in the trade or business of caring for foster children. They do not provide a benefit to the agency that placed Lauren in their home. The Smiths unreimbursed expenses are not deductible as charitable contributions. The unreimbursed expenses are considered support they provided for Lauren.

Home for the Aged

If a taxpayer makes a lump-sum advance payment to a home for the aged for the purpose of taking care of his relative for life and the payment is based on that person's life expectancy as determined by the home for the aged, the amount of support the taxpayer provides each year is the lump-sum payment divided by the relative's life expectancy. The amount of support the taxpayer provides also includes any other amounts the taxpayer provides during the year.

Example 46. Deon and Britney paid Jackson Senior Manor \$150,000 to care for Deon's 65-year-old mother for the remainder of her life. Mother has a life expectancy of 19.5 years. Deon can use \$7,692 ($\$150,000 \div 19.5$) per year in calculating the amount of support he furnished his mother.

Total Support

To calculate whether a taxpayer provided more than half of the person's support, the total support provided for that person must be determined. Total support includes amounts spent for food, lodging, clothing, education, medical and dental care, recreation, transportation, and similar necessities.

Generally, the amount of each item of support is the amount incurred in providing that item. For lodging, the amount of support is the fair rental value of the lodging.

Expenses that are not directly related to any one member of the household, such as the cost of food for the household, must be divided among the members of the household.

Example 47. Grace Brown, mother of Mary Miller, lives with Frank and Mary Miller and their two children. Grace gets social security benefits of \$2,400, which she spends for clothing, transportation, and recreation. Grace has no other income. Frank and Mary's total food expense for the household is \$5,200. They pay Grace's \$1,200 medical and drug expenses. The fair rental value of the lodging provided for Grace is \$1,800 per year, based on the cost of similar rooming facilities. Grace's total support is calculated as follows:

Support Provided	Total Spent	Frank and Mary Paid
Fair rental value of lodging	\$1,800	\$1,800
Clothing, transportation, and recreation	2,400	
Share of food (1/5 of \$5,200)	1,040	1,040
Medical and drug expense	1,200	1,200
Total support	\$6,440	\$4,040

The total support Frank and Mary provide (\$1,800 lodging + \$1,200 medical and drug expense + \$1,040 food = \$4,040) is more than half of Grace's total support of \$6,440.

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Example 48. Bob's parents live with Bob and his wife, Helen, and their two children in the house that Bob owns. The fair rental value of Bob's parents' share of the lodging is \$2,000 per year (\$1,000 each), which includes furnishings and utilities. Bob's father receives a nontaxable pension of \$4,200, which he spends equally between Bob's mother and himself for items of support such as clothing, transportation, and recreation. Bob and Helen's total food expense for the household is \$6,000. The heat and utility bills total \$1,200. Bob's mother has hospital and medical expenses of \$600, which Bob paid during the year. Bob's parents' total support is calculated as follows:

Support Provided	Father Expense	Bob Paid for Father	Mother Expense	Bob Paid for Mother
Fair rental value of lodging	\$1,000	\$1,000	\$1,000	\$1,000
Pension spent for their support	2,100		2,100	
Share of food (1/6 of \$6,000)	1,000	1,000	1,000	1,000
Medical expense for mother			600	600
Total support	\$4,100	\$2,000	\$4,700	\$2,600

Bob must apply the support tests separately to each parent. Bob provided \$2,000 of his father's total support of \$4,100, which is less than half of his father's total support. Bob provided \$2,600 for his mother's support, which is more than half of her total support of \$4,700. Bob meets the support test for his mother but not his father. Heat and utility costs are included in the fair rental value of the lodging, so these are not considered separately.

Lodging. If the taxpayer provides lodging for a person, the taxpayer is considered to provide support equal to the fair rental value of the room, apartment, house, or other shelter in which the person lives. Fair rental value includes a reasonable allowance for the use of furniture and appliances and for heat and other utilities that are provided.

Fair Rental Value Defined. Fair rental value is defined as the amount a person could reasonably expect to receive from a stranger for the same kind of lodging. It is used instead of actual expenses such as taxes, interest, depreciation, paint, insurance, utilities, furniture, and appliances. In some cases, fair rental value may be equal to the rent paid.

If the taxpayer provides the total lodging, the amount of support provided is the fair rental value of the room the person uses or any share of the fair rental value of the entire dwelling if the person has use of the entire home. If the taxpayer did not provide total lodging, the total fair rental value must be divided depending on how much of the total lodging the taxpayer provided. If the taxpayer provides only a part and the person supplies the rest, the fair rental value must be divided between both the taxpayer and the person according to the amount each provides.

Example 49. Bob and Helen's parents live rent-free in a house Bob owns. It has a fair rental value of \$5,400 per year furnished, which includes a fair rental value of \$3,600 for the house and \$1,800 for the furniture. This does not include heat and utilities. The house is completely furnished with furniture belonging to the parents. Bob pays \$600 for the utility bills. Utilities are not usually included in rent for houses in the area where the parents live. Therefore, Bob considers the total fair rental value of the lodging to be \$6,000 (\$3,600 fair rental value of the unfurnished house, \$1,800 allowance for the furnishings provided by the parents, and \$600 cost of utilities) of which Bob is considered to provide \$4,200 (\$3,600 plus \$600).

Person Living in Own Home. The total fair rental value of a home the person owns is considered support contributed by that person.

Living with Someone Rent-Free. If a taxpayer lives with a person rent-free in that person's home, the taxpayer must reduce the amount they provide for that person's support by the fair rental value of lodging that the person provides the taxpayer.

Example 50. Mindy (taxpayer) lives with her mother in a home owned by her mother. Mindy pays all of her mother's medical expenses and food expenses. Her mother pays the household expenses of utilities, property tax, and homeowner's insurance.

Mindy must reduce the amount of support she pays for her mother's care by the fair rental value of the home that her mother provides.

Property. Property provided as support is measured by its fair market value. Fair market value is the price that the property would sell for on the open market. It is the price that would be agreed upon between a willing buyer and a willing seller, with neither being required to act, and both having reasonable knowledge of the relevant facts.

Capital Expense. Capital items such as furniture, appliances, and cars that are bought for a person during the year can be included in total support under certain circumstances. The following examples show when a capital item is or is not support.

Example 51. Joe buys a \$200 power lawnmower for his 13-year-old son. The child is given the duty of keeping the lawn trimmed. Because the lawnmower benefits all members of the family, Joe cannot include the cost of the lawnmower in the support of his son.

Example 52. Joe buys a \$150 television as a birthday present for his 12-year-old child. The television is placed in the child's bedroom. Joe can include the cost of the television in the support of the child.

Example 53. Joe pays \$5,000 for a car and registers it in his own name. Joe and his 17-year-old daughter use the car equally. Joe owns the car and he merely lets his daughter use it. Joe cannot include the cost of the car in his daughter's total support. However, Joe can include in his daughter's support his out-of-pocket expenses of operating the car for her benefit.

Example 54. Joe's 17-year-old son, using personal funds, buys a car for \$4,500. Joe provides all the remainder of his son's support (\$4,000). Because the car is bought and owned by Joe's son, the car's fair market value (\$4,500) must be included in the son's support. The son provided more than half of his own total support of \$8,500 (\$4,500 plus \$4,000), so he is not Joe's qualifying child. Joe did not provide more than half of his total support, so he is not Joe's qualifying relative. Joe cannot claim an exemption for his son.

Medical Insurance Premiums. Medical insurance **premiums**, including premiums for supplemental Medicare coverage, **are included** in the support total. Medical insurance **benefits**, including basic and supplemental Medicare benefits, **are not** part of support.

Tuition Payments and Allotments under G.I. Bill. Amounts veterans receive under the G.I. Bill for tuition payments and allowances while they attend school are included in total support.

Example 55. During the year, the taxpayer's son receives \$2,200 from the government under the G.I. Bill. He uses this amount for his education. The taxpayer provided the remainder of the support (\$2,000). Because G.I. benefits are included in total support, the son's total support is \$4,200 (\$2,200 plus \$2,000). Therefore, the parent did not provide more than half of the child's support.

Childcare Expenses. If the taxpayer paid someone to provide child or dependent care, the taxpayer can include these payments in the amount they provided for support of the child or disabled dependent even if the taxpayer claims a credit for these payments.

Support Exclusions

The following items are not included in total support:

1. Federal, state, and local income taxes paid by persons from their own income
2. Social security and Medicare taxes paid by persons from their own income
3. Life insurance premiums
4. Funeral expenses
5. Scholarships received by the taxpayer's child if the child is a full-time student
6. Survivors' and Dependency Educational Assistance payments used for the support of the child who receives them

Government or charitable assistance the taxpayer receives because of his temporary relocation due to storms, tornadoes, or flooding in a Midwestern disaster area is not included in total support. These amounts are disregarded in determining who provided a person's support.

Multiple Support Agreements

Sometimes no one provides more than half of the support of a person. Instead, two or more persons, each of whom would be able to take the exemption but for the support test, together provide more than half of the person's support.

When this happens, the qualified providers can agree that any one of the people who individually provide more than 10% of the person's support — but only one — can claim an exemption for that person as a qualifying relative. Each of the others must sign a statement agreeing not to claim the exemption for that year. The person who claims the exemption must keep these signed statements for his records. A multiple support declaration identifying each of the others who agree not to claim the exemption must be attached to the return of the person claiming the exemption. Form 2120, *Multiple Support Declaration*, can be used for this purpose. The taxpayer can claim an exemption under a multiple support agreement for someone related to him or for someone who lived with him all year as a member of the household.

Example 56. Larry, Mary, and their two brothers provide the entire support of their mother for the year. Larry provides 45%, Mary provides 35%, and the two brothers each provide 10%. Either Larry or Mary can claim an exemption for their mother. The others must sign a statement agreeing not to take an exemption for their mother. The one who claims the exemption must attach Form 2120, or a similar declaration, to his or her return and must keep the statement signed by the siblings in his or her records. Because neither brother provides more than 10% of the support, neither can take the exemption and neither has to sign a statement.

Example 57. Tony and his brother each provide 20% of their mother's support for the year. The remaining 60% of her support is provided equally by two persons who are not related to her. She does not live with them. Because more than half of her support is provided by persons who cannot claim an exemption for her, no one can take the exemption.

Example 58. Jackson's father lives with him and receives 25% of his support from social security, 40% from Jackson, 24% from his brother (Jackson's uncle), and 11% from a friend. Either Jackson or Jackson's uncle can take the exemption for Jackson's father if the other signs a statement agreeing not to take it. The one who takes the exemption must attach Form 2120, or a similar declaration, to his return and must keep in his records the signed statement from the one agreeing not to take the exemption.

SINGLE-PARENT SITUATIONS FOR 2009

The tables¹⁸ on the following pages illustrate single-parent examples that a tax professional may encounter.

¹⁸ Used with permission of Tax Materials, Inc., from *The TaxBook Tax Year 2008* but modified for 2009 new law; [www.thetaxbook.com].

	The Taxpayer ^a Qualifies for . . .				
	HoH Status	Exemption	Dependency & Child Tax Credit	EIC ^b	Dependent Care Credit ^c
<ul style="list-style-type: none"> • 5-year-old child lives with Mom. • Mom pays over 50% cost of home. • Dad provides no support (irrelevant). 	Mom: Yes Dad: No	Mom: Yes Dad: Maybe ^d	Mom: Yes Dad: Maybe ^d	Mom: Yes Dad: No	Mom: Yes Dad: No
<ul style="list-style-type: none"> • 5-year-old child lives with Mom. • Dad provides over 50% child's support (irrelevant). • Dad pays over 50% cost of Mom's home. 	Mom: No Dad: No	Mom: Yes Dad: Maybe ^d	Mom: Yes Dad: Maybe ^d	Mom: Yes Dad: No	Mom: Yes Dad: No
<ul style="list-style-type: none"> • 5-year-old child lives 50% with each parent under a split-custody arrangement. • Each parent provides over 50% cost of their own home. • Each parent provides about 50% of child's support (irrelevant). • Divorce decree is silent on dependency issue. 	Mom: Maybe ^f Dad: Maybe ^f	Mom: Highest AGI Dad: Highest AGI	Mom: Highest AGI Dad: Highest AGI	Mom: Maybe ^f Dad: Maybe ^f	Mom: Maybe ^f Dad: Maybe ^f

Parent who provides over 50% custody qualifies.^e
If each parent has equal custody, parent with higher AGI qualifies.

^a Assumes Mom and Dad did not live together as husband and wife at anytime during the year, except where noted.
^b Assumes parent's earned income is within the range to qualify for EIC.
^c Assumes parent had earned income and actually paid a daycare facility to care for the child while parent was working.
^d If Form 8832 is properly executed, substitute written document or PRE-2009 unconditional decree.
^e In a 2003 Tax Court case, a father had a log detailing physical custody over 50% of the year and was treated as the custodial parent under Section 1.152-4(b) even though the divorce decree awarded the mother primary custody and control of their daughter (*McCullar*, TC Memo 2003-292, 86 TCM 384, Sep. 17, 2003). In contrast, in a 1991 Tax Court summary opinion, the court held the mother was the custodial parent because the separation agreement stated, "the children shall reside primarily" with the mother. There was conflicting testimony regarding who had greater physical custody. Without proof that the children resided with the father for "a substantially longer portion" of the tax year, custody was determined by what was stated in the separation agreement (*Mullen*, TC Summ. Op. 2006-91, May 30, 2006).
^f Parent must have qualifying child — one of the parents must meet the "more than one-half of the year" test.

The Taxpayer ^a Qualifies for . . .					
	HoH Status	Exemption	Dependency & Child Tax Credit	EIC ^b	Dependent Care Credit ^c
<ul style="list-style-type: none"> • 5-year-old child lives with Mom and Grandma. • Grandma pays over 50% cost of home and has highest AGI. • Mom, Dad, and Grandma each contribute 1/3 to child's support (irrelevant). 	Mom: No Dad: No Grandma: Maybe ^e	Mom: Yes Dad: Maybe ^d Grandma: Maybe ^e	Mom: Yes Dad: Maybe ^d Grandma: Maybe ^e	Mom: Yes Dad: No Grandma: Maybe ^e	Mom: Yes Dad: No Grandma: Maybe ^e
<ul style="list-style-type: none"> • 5-year-old child lives with Mom and Grandma. • Grandma provides over 50% cost of home and has highest AGI. • Grandma provides over 50% of child's and Mom's support, and Dad provides no support. • Mom is age 24 and makes less than the personal exemption amount for the year. 	Mom: No Dad: No Grandma: Yes	Mom: No Dad: No Grandma: Maybe ^e	Mom: No Dad: No Grandma: Maybe ^e	Mom: Yes ^f Dad: No Grandma: Maybe ^e	Mom: No Dad: No Grandma: Maybe ^e

^a Assumes Mom and Dad did not live together as husband and wife at anytime during the year, except where noted.

^b Assumes parent's earned income is within the range to qualify for EIC.

^c Assumes parent had earned income and actually paid a daycare facility to care for the child while parent was working.

^d Unless Form 8832 is properly executed, substitute written document or PRE-2009 unconditional decree.

^e Notice 2008-5. Effective for tax years beginning after 2004, the IRS clarified that an individual is not a qualifying child of any other taxpayer if the individual's parent (or other person for whom the individual is defined as a qualifying child) is not required by §6012 to file an income tax return and does not file an income tax return, or files an income tax return solely to obtain a refund of withheld income taxes.

^f Consider that Grandma will lose all other tax benefits relating to the child because Mom is now a taxpayer.

The Taxpayer ^a Qualifies for ...					
	HoH Status	Exemption	Dependency & Child Tax Credit	EIC ^b	Dependent Care Credit ^c
<ul style="list-style-type: none"> • 5-year-old child, Mom, and Dad, live together for first 8 months, then Dad moves out for last 4 months. • Mom and Dad file separate tax returns. They are not divorced or separated under any decree. • Mom and Dad are still married. 	Nobody MFJ or MFS is only option.	Mom: Yes Dad: No	Mom: Yes Dad: No	Nobody Not allowed for MFS	Nobody Not allowed for MFS ^d
<ul style="list-style-type: none"> • 5-year-old child lives with Mom and Dad in same household. • Mom and Dad have never married. • Dad has highest AGI and pays over 50% cost of home and child's support. 	Mom: No Dad: Yes	Mom: No Dad: Yes	Mom: No Dad: Yes	Mom: No Dad: Yes	Mom: No Dad: Yes
<ul style="list-style-type: none"> • 5-year-old child lives with Mom and her boyfriend. • Mom has some earnings and files a tax return to claim EIC. • Boyfriend pays over 50% cost of home. • Boyfriend pays over 50% of child's support. 	Mom: No Dad: No Boyfriend: No	Mom: Yes Dad: No ^e Boyfriend: No	Mom: Yes Dad: No ^e Boyfriend: No	Mom: Yes Dad: No Boyfriend: No	Mom: Yes Dad: No Boyfriend: No

^a Assumes Mom and Dad did not live together as husband and wife at anytime during the year, except where noted.

^b Assumes parent's earned income is within the range to qualify for EIC.

^c Assumes parent had earned income and actually paid a daycare facility to care for the child while parent was working.

^d The credit would be allowed if spouse has lived apart during the last six months of the year.

^e Mom cannot release the dependency exemption to Dad because the child did not receive over 50% of his support from his parents.

The Taxpayer^a Qualifies for . . .

	HoH Status	Exemption	Dependency & Child Tax Credit	EIC ^b	Dependent Care Credit ^c
<ul style="list-style-type: none"> • 5-year-old child lives with Mom and her boyfriend.^d • Mom's income is below filing requirement and she does not file a return (although she could in order to claim EIC if she wanted to).^e • Boyfriend pays over 50% of cost of home. • Boyfriend pays over 50% of child's support. • Mom has not released dependency exemption. 	Mom: N/A ^f Dad: No Boyfriend: No ^g	Mom: N/A ^f Dad: No ^h Boyfriend: Yes	Mom: N/A ^f Dad: No ^h Boyfriend: No	Mom: N/A ^f Dad: No Boyfriend: No	Mom: N/A ^f Dad: No Boyfriend: No
<ul style="list-style-type: none"> • 19-year-old child lives with Mom. • Child is not a full-time student and has gross income less than \$3,650 (2009). • Mom pays over 50% of cost of home. • Mom pays over 50% of child's support. 	Mom: Yes Dad: No	Mom: Yes Dad: No	Nobody Child too old.	Nobody Child too old.	Nobody Child too old.
<ul style="list-style-type: none"> • 19-year-old child lives with Mom. • Child is not a student and earns \$4,000. • Mom pays over 50% of cost of home. • Mom pays over 50% of child's support. 	Mom: No Dad: No	Mom: No Dad: No	Nobody Child too old.	Nobody Child too old.	Nobody Child too old.

^a Assumes Mom and Dad did not live together as husband and wife at anytime during the year, except where noted.

^b Assumes parent's earned income is within the range to qualify for EIC.

^c Assumes parent had earned income and actually paid a daycare facility to care for the child while parent was working.

^d Assume relationship does not violate local law.

^e Notice 2008-5. Effective for tax years beginning after 2004, the IRS clarified that an individual is not a qualifying child of any other taxpayer if the individual's parent (or other person for whom the individual is defined as a qualifying child) is not required by §6012 to file an income tax return and does not file an income tax return, or files an income tax return solely to obtain a refund of withheld income taxes. In this case, since the child is not a qualifying child of Mom because of her not filing a tax return, the child is a qualifying relative of the boyfriend for dependency rules only. Mom cannot claim any other benefit since she chooses not to file a return, and the boyfriend cannot claim any other benefits because the child is not his qualifying child.

^f Not applicable because Mom did not file a return.

^g IRC §2(b)(3).

^h Mom cannot release the dependency exemption to Dad because the child did not receive over 50% of his support from his parents.