

Chapter 3: Filing Status and Dependency Exemptions

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Corrections were made to this material through January of 2012. No subsequent modifications were made.

FILING STATUS

Choosing the right taxpayer filing status seems to be a relatively simple matter. For unmarried taxpayers with no children, this is generally true. However, many people have complex lives and this causes difficulties with even the most basic applications of tax law. This section reviews the rules for the filing statuses and presents several real-life scenarios to illustrate how the rules are applied. The five filing statuses are as follows.¹

1. Single (S)
2. Married filing jointly (MFJ)
3. Married filing separately (MFS)
4. Head of household (HoH)
5. Qualifying widow(er) (QW)

The first step in discovering a taxpayer's proper filing status is determining whether the taxpayer is **considered** married or unmarried. Although marital status is generally a matter of state law, there are several exceptions. Under tax law, the following people are **considered unmarried**.²

1. Anyone who is not married under state law on the last day of the tax year, except for certain widow(er)s
2. Anyone who is legally separated under state law on the last day of the tax year by a final divorce decree or a decree of separate maintenance
3. Anyone who is married to a person of the same sex
4. Anyone who is married under state law but who also qualifies for the HoH filing status

SINGLE

All persons considered unmarried who do not qualify for another filing status must file using the single filing status.

¹. IRS Pub. 501, *Exemptions, Standard Deduction, and Filing Information*.

². *Ibid*.

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MARRIED FILING JOINTLY

Taxpayers can file jointly if they are married at the end of the year and both agree to file together.³ As previously discussed, even if they are legally married under state tax law, they are considered unmarried for tax purposes if one of the four conditions shown above applies.

If one spouse died during the tax year, the couple is still considered married for the whole year. If the surviving spouse did not remarry before the end of the year, a joint return may be filed. The executor (personal representative) of the estate is responsible for filing for the deceased spouse. If no personal representative has been appointed before the due date for filing, the surviving spouse can file the joint return.⁴

Note. The decedent's income up to the date of death is reportable on the joint return. After the date of death, any income from the decedent's assets is reported under the laws applicable to estates.

If the surviving spouse remarried, the executor for the deceased spouse must file a return, if required, using the appropriate filing status. The deceased spouse must use MFS or, if qualified, HoH.

MARRIED FILING SEPARATELY⁵

Married taxpayers may **choose** to file separately if the tax result is more favorable than filing jointly or if they do not want to be responsible for their spouse's tax liability. Taxpayers considered married may be **required** to use the MFS status if their spouse does not agree to file as MFJ and they do not qualify to file as HoH. Unfortunately, many deductions and credits are limited or denied for taxpayers who use the MFS filing status.

Taxpayers who file separately generally have three years from the due date of the return to amend the return to file jointly. **The deadline does not include extensions.** In this case, filing separately includes filing as S, HoH, and MFS.

Taxpayers who initially file jointly are allowed to amend their returns to file separately only if the amended return is filed before the due date of the return.⁶ However, if a surviving spouse elected to file jointly with the decedent, a personal representative for the decedent's estate has one year from the due date of the return (including extensions) to change the election. To change the election, a personal representative files a separate return on behalf of the decedent.

HEAD OF HOUSEHOLD⁷

The HoH filing status may be used by taxpayers who:

1. Are unmarried or considered unmarried,
2. Provide over one-half of the costs of maintaining a household, and
3. Live with a **qualifying person** in the same household for over six months. (See special exceptions for parents below.)

³ IRS Pub. 501, *Exemptions, Standard Deduction, and Filing Information*.

⁴ IRS Pub. 559, *Survivors, Executors, and Administrators*.

⁵ IRS Pub. 501, *Exemptions, Standard Deduction, and Filing Information*.

⁶ *Ibid.*

⁷ *Ibid.*

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Unmarried or Considered Unmarried

As explained previously, not everyone married under state law is treated as being married under tax law. In addition to persons legally separated and persons in state-recognized same-sex marriages, the following taxpayers are also considered **unmarried** for purposes of using the HoH filing status.

1. A taxpayer married to a spouse who was a nonresident alien for any part of the year
2. Spouses who did not live together at any time during the last six months of the year, excluding **temporary** absences

Example 1. In June 2011, Skip abandons his wife and child to move in with his girlfriend. He does not move back home. His wife, Mary, may file as HoH if she meets the other requirements.

Example 2. John Soldier is stationed overseas from May 2010 through May 2012. His wife, Jane, lives in Massachusetts with their two children. For 2010 and 2011, Jane cannot use the HoH filing status because John's absence was **temporary** due to military service.

Costs of Maintaining a Household

To file as HoH, the taxpayer must pay over one-half of the costs of maintaining a household. There can be only **one** head of each household.

To determine whether this test is met, the following costs are included.

- Property taxes
- Mortgage interest expense
- Rent
- Utilities
- Repairs and maintenance
- Property insurance
- Food consumed on the premises

The following costs are **not** considered expenses of maintaining a home.

- Clothing
- Education
- Medical treatments
- Vacations
- Life insurance
- Transportation
- Rental value of home
- Value of services

When determining the amount that the taxpayer paid toward maintaining the home, the taxpayer does not include amounts received from government assistance programs. For example, if the taxpayer receives aid under the Temporary Assistance for Needy Families (TANF) program, household expenses paid with this money are not counted as expenses paid by the taxpayer.

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Qualifying Person

Residency. In most cases, the qualifying person (QP) must live with the taxpayer for more than six months of the tax year. However, there is an exception when the QP is a parent of the taxpayer. Even if the parent did **not** live with the taxpayer, the taxpayer may use the HoH filing status if they provided more than half of the costs of the parent's home and can claim the parent as a dependent.

Example 3. Gertrude lives in a nursing home. Her unmarried daughter, Alice, pays 60% of the monthly nursing home charges. Alice can claim Gertrude as a dependent. Therefore, Alice can file as HoH.

Another exception to the 6-month rule is for temporary absences. Temporary absences include those due to illness, education, business, vacation, or military service. It must be reasonable to assume that the absent person will return to the home after the temporary absence.

Deaths and births of QPs during the year are also exceptions to the 6-month rule. To qualify, the taxpayer must have paid more than half the costs of maintaining the home during the period in which the QP was alive.

Relationship. For purposes of using the HoH filing status, a QP may be a child or an adult. In either case, the QP must be related to the taxpayer in one of the following ways:

- Son, daughter, stepchild, foster child, or a descendant of any of them;
- Brother, sister, half sibling, or stepsibling;
- Parent, grandparent, or other direct ancestor, but not a foster parent;
- Stepmother or stepfather;
- Niece or nephew;
- Sibling of the taxpayer's parent; or
- Son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law.

Any of these relationships that were established by marriage are not ended by death or divorce.

Exemption. Except for a **qualifying child**, the taxpayer must be able to claim the dependency exemption for the QP in order to use the HoH filing status. The definition of qualifying child is discussed later in this chapter.

The following table from IRS Pub. 17, *Your Federal Income Tax*, is helpful in determining whether someone is a QP.

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Table 2-1. **Who Is a Qualifying Person Qualifying You To File as Head of Household?**¹

Caution. See the text of this chapter for the other requirements you must meet to claim head of household filing status.

IF the person is your . . .	AND . . .	THEN that person is . . .
qualifying child (such as a son, daughter, or grandchild who lived with you more than half the year and meets certain other tests) ²	he or she is single	a qualifying person, whether or not you can claim an exemption for the person.
	he or she is married <u>and</u> you can claim an exemption for him or her	a qualifying person.
	he or she is married <u>and</u> you cannot claim an exemption for him or her	not a qualifying person. ³
qualifying relative ⁴ who is your father or mother	you can claim an exemption for him or her ⁵	a qualifying person. ⁶
	you cannot claim an exemption for him or her	not a qualifying person.
qualifying relative ⁴ other than your father or mother (such as a grandparent, brother, or sister who meets certain tests)	he or she lived with you more than half the year, <u>and</u> he or she is related to you in one of the ways listed under <u>Relatives who do not have to live with you</u> in chapter 3 <u>and</u> you can claim an exemption for him or her ⁵	a qualifying person.
	he or she did not live with you more than half the year	not a qualifying person.
	he or she is not related to you in one of the ways listed under <u>Relatives who do not have to live with you</u> in chapter 3 and is your qualifying relative only because he or she lived with you all year as a member of your household	not a qualifying person.
	you cannot claim an exemption for him or her	not a qualifying person.

¹A person cannot qualify more than one taxpayer to use the head of household filing status for the year.

²The term "qualifying child" is defined in chapter 3. **Note.** If you are a noncustodial parent, the term "qualifying child" for head of household filing status does not include a child who is your qualifying child for exemption purposes only because of the rules described under Children of divorced or separated parents or parents who live apart under Qualifying Child in chapter 3. If you are the custodial parent and those rules apply, the child generally is your qualifying child for head of household filing status even though the child is not a qualifying child for whom you can claim an exemption.

³This person is a qualifying person if the only reason you cannot claim the exemption is that you can be claimed as a dependent on someone else's return.

⁴The term "qualifying relative" is defined in chapter 3.

⁵If you can claim an exemption for a person only because of a multiple support agreement, that person is not a qualifying person. See Multiple Support Agreement in chapter 3.

⁶See Special rule for parent for an additional requirement.

QUALIFYING WIDOW(ER)⁸

The qualifying widow(er) (QW) filing status allows a taxpayer to use the highest standard deduction and the MFJ tax table for **two years** after the death of a spouse. To qualify, a taxpayer must have a dependent **child**. In addition, the following requirements apply.

1. The taxpayer was **entitled** to file a joint return in the year that the spouse died.
2. The spouse died in either of the previous two years and the taxpayer did **not** remarry.
3. The taxpayer has a **child or stepchild** and qualifies to claim the child's exemption. Foster children do not qualify the taxpayer for this status.
4. The child lived in the home for the entire year, except for temporary absences.
5. The taxpayer paid over half of the costs of maintaining a home.

Example 4. Glen died in 2009. His surviving spouse, Pat, filed using the MFJ status for 2009. She has not remarried. Their daughter, Jean, is 10 years old and lives with Pat, who provides all the costs of maintaining the home. Pat can claim Jean as a dependent. Pat can use the QW status for 2010 and 2011.

⁸ Ibid.

UNIFORM DEFINITION OF QUALIFYING CHILD⁹

The taxpayer must have a **qualifying child** in order to take advantage of the following tax benefits.¹⁰

1. The dependency exemption
2. The child tax credit
3. The earned income credit (EIC)
4. The head of household (HoH) filing status
5. The child and dependent care credit

There are also a number of tax benefits that require that the taxpayer be able to claim the dependency exemption for the child to qualify for the tax benefit. For example, the education credits are tied to the dependency exemption.

Caution. These five tax benefits cannot be individually separated. They can only be divided to allow the **noncustodial parent to claim the dependency exemption and child tax credit**. Otherwise, each qualifying child can only be used by one taxpayer, even if the taxpayer does not qualify for all of the benefits.

There are **four** core tests that must be met to be a **qualifying child** under each of the five tax benefits.¹¹ Each benefit also has additional requirements. The taxpayer must be able to answer “yes” to each of these tests for the child to be a qualifying child.

1. **Residency test.** Did the child live with the taxpayer for more than six months of the year? Or, for purposes of the dependency exemption and child tax credit, has the taxpayer received Form 8332, *Release of Claim to Exemption for a Child of Divorced or Separated Parent*?
2. **Relationship test.** Is the child the taxpayer’s son, daughter, stepchild, adopted child, or foster child? Or, is the child the taxpayer’s sibling or stepsibling? Or is the child a descendent of any of these?
3. **Age or disability test.** Is the child under age 19, under age 24 and a full-time student, or totally and permanently disabled?
4. **Joint return test.** Has the child filed a joint return for the tax year in question? If so, did the child only file to claim a refund of taxes withheld?

RESIDENCY TEST

To meet this test, the child must have lived with the taxpayer for more than half of the year. Note that the requirement only stipulates that the taxpayer and child must live together. The taxpayer does not have to maintain a home for the child for this test to be met.

Example 5. After Fred and Wilma’s home was destroyed by a meteor, the entire Flintrock family lived in a homeless shelter. Their daughter, Pebbly, meets the residency test.

There are exceptions to the time requirement for temporary absences — children who were born or died during the year, kidnapped children, and children of divorced or separated parents. The exception for children of divorced or separated parents is explained later in this chapter, because it does not apply to all five benefits.

⁹ IRS Notice 2008-5, 2008-2 IRB 256.

¹⁰ IRS FS 2005-7 (Jan. 2005).

¹¹ IRC §152(c)(1).

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Temporary Absences

The child is considered to have lived with the taxpayer during periods of temporary absences due to special circumstances, such as the following.

- Illness
- Education
- Business
- Vacation
- Military service

Death or Birth of 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 the child was alive during the year. If state or local law treats the child as having been born alive, the child will meet this test even if they only lived for a moment. A stillborn child does not meet this test.

Kidnapped Child

A kidnapped child meets the residency test under the following conditions.

- The child is presumed by law enforcement to have been kidnapped by someone who is not a member of the taxpayer's immediate family or the child's immediate family.
- 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.

This treatment applies for all years until the child:

1. Is returned,
2. Is declared dead, or
3. Reaches age 18.

RELATIONSHIP TEST

The following children meet the relationship test.

- | | |
|-----------------|----------------|
| • Son | • Sister |
| • Daughter | • Stepbrother |
| • Stepchild | • Stepsister |
| • Adopted child | • Half-brother |
| • Foster child | • Half-sister |
| • Grandchild | • Niece |
| • Brother | • Nephew |

Note. Relationships established by marriage are not ended by death or divorce.

Example 6. After Tom's wife died, his son Eddie made it his life's crusade to find his father a new wife. After many years, Tom married Judith, but unfortunately he passed away shortly after the ceremony. Judith and Eddie are still related even though Tom is deceased.

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Adopted Child

An adopted child is always treated as a natural child. The term includes a child who is placed with the taxpayer for legal adoption.

Foster Child

To qualify as a foster child, the child must be placed with the taxpayer by an authorized placement agency or by judgment, decree, or other order of any court of competent jurisdiction.

AGE OR DISABILITY TEST

To meet this test, the child must be one of the following.

1. Under age 19 at the end of the year and younger than the taxpayer (or taxpayer's spouse if filing MFJ)
2. A full-time student under age 24 at the end of the year and younger than the taxpayer (or taxpayer's spouse if filing MFJ)
3. Permanently and totally disabled at any time during the year, regardless of age

Younger Than the Taxpayer

To be a qualifying child, a child who is not disabled must be younger than the taxpayer. However, if the taxpayer files MFJ, the child must be younger than **either** the taxpayer or the spouse but does **not** have to be younger than both.

Example 7. Donny is 22 years old and lives with his sister, Marie, who is 18 years old and single. Donny cannot be Marie's qualifying child.

Example 8. Use the same facts as **Example 7**, except Marie is married to Brian, who is 25 years old. Marie and Brian file a joint return. Donny now passes the age test.

Full-Time Student

A full-time student is a student who is enrolled for the number of hours or courses the school considers to be full-time attendance. The child must attend school full-time during some part of each of any **five** calendar months of the year. The five calendar months do not have to be consecutive.

To qualify as a student, the school must have a regular teaching staff, course of study, and a regularly enrolled student body at the school. An on-farm training course given by a state, county, or local government agency also counts as a school.

A school can be an elementary school; junior high school; 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.

Students who work on "co-op" jobs in private industry as a part of a school's regular course of classroom and practical training are considered full-time students.

Permanently and Totally Disabled

A person is permanently and totally disabled if **both** of the following apply.

1. The person cannot engage in any substantial gainful activity because of a physical or mental condition.
2. A doctor determines that the condition has lasted or can be expected to last continuously for at least a year or can lead to death.

Example 9. Lena's son, Timmy, was born with severe handicaps. Timmy's doctors determined that he will never be able to engage in any substantial gainful activities. Timmy will always meet the age test, regardless of his actual age.

JOINT RETURN TEST

A child who files a joint return for the tax year at issue cannot be a qualifying child. However, an exception applies if the return is filed only to claim a refund of taxes withheld and no tax liability would exist for either spouse if separate returns were filed.

Example 10. Marshall's son, Tyler, and his son's wife, Amy, each had less than \$3,000 of wages and had no unearned income for 2010. Neither is required to file a tax return. Taxes were withheld from their pay, so Tyler and Amy filed a 2010 joint return to have their withholding refunded. The exception to the joint return test applies. Therefore, Tyler may be Marshall's qualifying child for 2010 if all of the other tests are met.

Example 11. Use the same facts as **Example 10**, except Tyler and Amy file jointly and claim the EIC for taxpayers who do not have a qualifying child. They no longer meet the exception to the joint return test. Therefore, Tyler is not Marshall's qualifying child.

CHILDREN OF DIVORCED OR SEPARATED PARENTS

There is an exception to the residency test for the noncustodial parent of a qualifying child.¹² If certain requirements are met, one child may be used by two separate taxpayers as a qualifying child. However, this exception applies **only to the dependency exemption and the child tax credit**. Even so, the effects are far reaching, because many other tax benefits, such as the education credits, require that the taxpayer claim the dependency exemption to use the related benefit.

In most cases, because of the residency test, a child of divorced or separated parents is the qualifying child of the custodial parent. However, the child is **treated** as the qualifying child of the noncustodial parent if all four of the following tests are met.¹³

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 or were married.
2. The parents and their spouses provided over half of the child's support for the year.
3. The child is in the custody of one or both parents for more than half the year.
4. The custodial parent signs a written declaration, discussed later, that they will not claim the child as a dependent for the year, and the noncustodial parent attaches this written declaration to their tax return.

Note. This special rule for divorced or separated parents also applies to parents who were never married.

¹² IRS Notice 2006-86, 2006-2 CB 680.

¹³ IRS Pub. 501, *Exemptions, Standard Deduction, and Filing Information*.

CUSTODIAL PARENT AND NONCUSTODIAL PARENT¹⁴

The custodial parent is the parent with whom the child lived for the greater number of nights during the year. The other parent is the noncustodial parent. If the child lived with each parent for an equal number of nights during the year, the custodial parent is the parent with the highest AGI.

If the parents divorced or separated during the year and the child lived with both parents before the separation, the custodial parent is the one with whom the child lived for the greater number of nights during the rest of the year.

A child is treated as living with a parent for a night if the child sleeps:

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

The night of December 31 is treated as part of the year in which it begins.

If a child was not with either parent on a particular night (because, for example, the child was staying at a friend's house), the child is treated as living with the parent with whom the child normally would have lived for that night, except for the absence. But if it cannot be determined with which parent the child normally would have lived or if the child would not have lived with either parent that night, the child is treated as not living with either parent that night.

Example 12. Darrin and Samantha are divorced. They share custody of their son, Adam. He stays with his parents on alternate weeks. In the summer, he spends six weeks at music camp. During the time he is at camp, he is treated as living with each parent for three weeks, because that is how long he would have lived with each parent if he had not attended camp.

Example 13. Cathy and Paul are divorced. Their son, Gabe, lives with Cathy during the week and with Paul every other weekend. Cathy becomes ill and is hospitalized. Paul lives in her home with Gabe for 10 days while Cathy is in the hospital. Gabe is treated as living with Cathy during the 10-day period because he was living in her home.

If, due to a parent's nighttime work schedule, a child lives 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 living at the primary residence registered with the school.

If a child is emancipated under state law, the child is treated as not being in the custody of either parent.¹⁵ According to the IRS, **after the child is an adult there is no custodial parent to release the exemption to the other parent.** In most states, the age of emancipation is 18.

Example 14. Blake and Amy are divorced. Amy and their daughter, Lindsey, live together in Illinois. Illinois considers Lindsey an adult on her 18th birthday. Lindsey turns 18 in May. As a result, she is not considered to be in the custody of either parent for more than half the year. The special rule for children of divorced or separated parents **does not** apply. Amy may **not** release Lindsey's exemption to Blake.

¹⁴ IRC §152(e).

¹⁵ Treas. Reg. §1.152-4, Examples 6 and 7.

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Example 15. Use the same facts as **Example 14**, except Lindsey's 18th birthday is on August 1. Lindsey is in Amy's custody for seven months before she turns 18. Therefore, the special rule for children of divorced or separated parents **does** apply. Amy **may** release Lindsey's exemption to Blake.

Caution. This is a significant rule because it effectively prevents parents of college students from taking turns claiming their children's exemptions. An adult child away at school will only meet the residency test for the parent who lives where the child maintains a permanent residence. Assuming the age and relationship tests are also met, the child will be a qualifying child for only that parent. As explained later in the chapter, one of the requirements for claiming an exemption for someone who is **not** the taxpayer's qualifying child is that the child not be **anyone** else's qualifying child.

Since the education credits and deduction are also tied to the exemption, the tax implications may be considerable. Treas. Reg. §1.152-4, which established this rule, became effective for taxable years beginning after July 2, 2008. IRC §152(e) establishes the right to release a child's exemption to a noncustodial parent. It does not mention emancipation, and it appears that the regulation is inconsistent with congressional intent in this situation.

Tax practitioners are advised to include Form 8275-R, *Regulation Disclosure Statement*, with the return of any taxpayer using the special rule for divorced or separated parents to claim an exemption for an adult child who does not live with that taxpayer.

Example 16. Antonio and Mariana are divorced. They have a son, Carlos, who is 20 years old in 2011 and a full-time student at Duke University. His tuition is \$40,000 per year. Carlos uses Mariana's home address as his permanent address. Carlos meets the age, residency, and relationship tests to be Mariana's qualifying child. The special rule for divorced or separated parents does not apply because Carlos is considered an adult under North Carolina law.

Antonio and his new wife, Selena, have an AGI of \$115,000. If they could claim Carlos, they would save the following on their federal taxes:

Dependency exemption ($\$3,700 \times 25\%$ tax rate)	\$ 925
American opportunity credit	2,500
Total savings	<u>\$3,425</u>

Mariana's AGI is \$10,000. She has no income tax liability, so she would only qualify for the refundable portion of the American opportunity credit, which is \$1,000 ($\$2,500 \times 40\%$).

Under their 2008 divorce decree, Antonio is responsible for paying Carlos' tuition until he graduates from college, and he is allowed to claim Carlos as an exemption as long as he is current on his support. Mariana signs Form 8332, *Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent*, to release the exemption to Antonio.

Antonio's accountant explains to Antonio and Selena that the Form 8332 is not valid because Carlos is an adult under state law. After much discussion, they decide to claim Carlos' dependency exemption despite the regulation. To avoid any potential preparer and taxpayer understatement penalties, the following disclosure form is included with their 2011 return.

Observation. In the above example, Antonio could claim the exemption for Carlos, as well as the education credit, **if** Carlos used Antonio's home as his principal residence.

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For Example 16

Form 8275-R (Rev. August 2008) Department of the Treasury Internal Revenue Service	Regulation Disclosure Statement Use this form only to disclose items or positions that are contrary to Treasury regulations. For other disclosures, use Form 8275, Disclosure Statement. See separate instructions. ► Attach to your tax return.	OMB No. 1545-0889 Attachment Sequence No. 92A
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Name(s) shown on return Antonio & Selena	Identifying number shown on return 313-13-1313
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Part I General Information (see instructions)

(a) Regulation Section	(b) Item or Group of Items	(c) Detailed Description of Items	(d) Form or Schedule	(e) Line No.	(f) Amount
1 1.152-4	Exemption	Dependency exemption for adult child, Carlos	1040	6c	3,700
2					
3					
4					
5					
6					

Part II Detailed Explanation (see instructions)

1 Treas. Reg. §1.152-4 states that a child who is emancipated under state law is not in the custody of his or her parents and therefore the special rule for divorced or separated parents under IRC §152(e) does not apply. IRC §152(d)(1)(D) states that an individual who is a qualifying child of any other taxpayer cannot (cont.)

2

3

4

5

6

Part III Information About Pass-Through Entity. To be completed by partners, shareholders, beneficiaries, or residual interest holders.

Complete this part only if you are making adequate disclosure for a pass-through item.

Note: A pass-through entity is a partnership, S corporation, estate, trust, regulated investment company (RIC), real estate investment trust (REIT), or real estate mortgage investment conduit (REMIC).

1 Name, address, and ZIP code of pass-through entity	2 Identifying number of pass-through entity 3 Tax year of pass-through entity <div style="text-align: center;">/ / to / /</div> 4 Internal Revenue Service Center where the pass-through entity filed its return
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For Paperwork Reduction Act Notice, see separate instructions.

Cat. No. 14594X

Form **8275-R** (Rev. 8-2008)

For Example 16

Form 8275-R (Rev. 8-2008)

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Part IV Explanations *(continued from Parts I and/or II)*

be a taxpayer's qualifying relative. We believe that the IRS has misinterpreted the meaning of custody as used within IRC §152(e) by limiting the applicability of the Code section to dependents who are minors under state law. Our contention is that congressional intent was to make IRC §152(e) available to divorced or separated parents of all individuals who meet the other requirements of IRC §152(c) and (e). Consistent with this interpretation, the taxpayer is claiming the dependency exemption and the related American opportunity credit for his son, who meets the other requirements of IRC §152(c) and (e). The net result of this position is tax savings of \$3,425.

WRITTEN DECLARATION¹⁶

The custodial parent may use Form 8332 to make the written declaration to release the exemption to the noncustodial parent. In lieu of Form 8332, the noncustodial parent may be able to use pages from a divorce decree or separation agreement that went into effect **before 2009**. The noncustodial parent must attach the form or statement to their tax return **each** year even if it was filed with a return in an earlier year.

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.

¹⁶ Treas. Reg. §1.152-4(e).

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Form 8332 (Rev. January 2010) Department of the Treasury Internal Revenue Service	Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent	OMB No. 1545-0074
	▶ Attach a separate form for each child.	Attachment Sequence No. 115
Name of noncustodial parent		Noncustodial parent's social security number (SSN) ▶

Part I Release of Claim to Exemption for Current Year

I agree not to claim an exemption for _____
Name of child

for the tax year 20____.

Signature of custodial parent releasing claim to exemption

Custodial parent's SSN

Date

Note. If you choose not to claim an exemption for this child for future tax years, also complete Part II.

Part II Release of Claim to Exemption for Future Years (If completed, see **Noncustodial Parent** on page 2.)

I agree not to claim an exemption for _____
Name of child

for the tax year(s)_____.
(Specify. See instructions.)

Signature of custodial parent releasing claim to exemption

Custodial parent's SSN

Date

Part III Revocation of Release of Claim to Exemption for Future Year(s)

I revoke the release of claim to an exemption for _____
Name of child

for the tax year(s)_____.
(Specify. See instructions.)

Signature of custodial parent revoking the release of claim to exemption

Custodial parent's SSN

Date

General Instructions What's New

Post-2008 decree or agreement. If the divorce decree or separation agreement went into effect after 2008, the noncustodial parent cannot attach certain pages from the decree or agreement instead of Form 8332. See *Release of claim to exemption* below.

Definition of custodial parent. New rules apply to determine who is the custodial parent and the noncustodial parent. See *Custodial Parent and Noncustodial Parent* on this page.

Purpose of Form

If you are the custodial parent, you can use this form to do the following.

- Release a claim to exemption for your child so that the noncustodial parent can claim an exemption for the child.
- Revoke a previous release of claim to exemption for your child.

Release of claim to exemption. This release of the exemption will also allow the noncustodial parent to claim the child tax credit and the additional child tax credit (if either applies). Complete this form (or sign a similar statement containing the same

information required by this form) and give it to the noncustodial parent. The noncustodial parent must attach this form or similar statement to his or her tax return each year the exemption is claimed. Use Part I to release a claim to the exemption for the current year. Use Part II if you choose to release a claim to exemption for any future year(s).

Note. If the decree or agreement went into effect after 1984 and before 2009, you can attach certain pages from the decree or agreement instead of Form 8332, provided that these pages are substantially similar to Form 8332. See *Post-1984 and pre-2009 decree or agreement* on page 2.

Revocation of release of claim to exemption. Use Part III to revoke a previous release of claim to an exemption. The revocation will be effective no earlier than the tax year following the year in which you provide the noncustodial parent with a copy of the revocation or make a reasonable effort to provide the noncustodial parent with a copy of the revocation. Therefore, if you revoked a release on Form 8332 and provided a copy of the form to the noncustodial parent in 2010, the earliest tax year the revocation can be effective is 2011. You must attach a copy of the revocation to your tax return each year the exemption is claimed as a result of the revocation. You must also keep for your records a copy of the revocation and evidence

of delivery of the notice to the noncustodial parent, or of reasonable efforts to provide actual notice.

Custodial Parent and Noncustodial Parent

The custodial parent is generally the parent with whom the child lived for the greater number of nights during the year. The noncustodial parent is the other parent. If the child was with each parent for an equal number of nights, the custodial parent is the parent with the higher adjusted gross income. For details and an exception for a parent who works at night, see Pub. 501.

Exemption for a Dependent Child

A dependent is either a qualifying child or a qualifying relative. See your tax return instruction booklet for the definition of these terms. Generally, a child of divorced or separated parents will be a qualifying child of the custodial parent. However, if the special rule on page 2 applies, then the child will be treated as the qualifying child or qualifying relative of the noncustodial parent for purposes of the dependency exemption, the child tax credit, and the additional child tax credit.

For Paperwork Reduction Act Notice, see back of form.

Cat. No. 13910F

Form **8332** (Rev. 1-2010)

Special Rule for Children of Divorced or Separated Parents

A child is treated as a qualifying child or a qualifying relative of the noncustodial parent if all of the following apply.

1. The child received over half of his or her support for the year from one or both of the parents (see the *Exception* below). Public assistance payments, such as Temporary Assistance for Needy Families (TANF), are not support provided by the parents.

2. The child was in the custody of one or both of the parents for more than half of the year.

3. Either of the following applies.

a. The custodial parent agrees not to claim an exemption for the child by signing this form or a similar statement. If the decree or agreement went into effect after 1984 and before 2009, see *Post-1984 and pre-2009 decree or agreement* below.

b. A pre-1985 decree of divorce or separate maintenance or written separation agreement states that the noncustodial parent can claim the child as a dependent. But the noncustodial parent must provide at least \$600 for the child's support during the year. This rule does not apply if the decree or agreement was changed after 1984 to say that the noncustodial parent cannot claim the child as a dependent.

For this rule to apply, the parents must be one of the following.

- Divorced or legally separated under a decree of divorce or separate maintenance.
- Separated under a written separation agreement.
- Living apart at all times during the last 6 months of the year.

If this rule applies, and the other dependency tests in your tax return instruction booklet are also met, the noncustodial parent can claim an exemption for the child.

Exception. If the support of the child is determined under a multiple support agreement, this special rule does not apply, and this form should not be used.

Post-1984 and pre-2009 decree or agreement. If the divorce decree or separation agreement went into effect after 1984 and before 2009, the noncustodial parent can attach certain pages from the decree or agreement instead of Form 8332, provided that these pages are substantially similar to Form 8332. To be able to do this, the decree or agreement must state all three of the following.

1. The noncustodial parent can claim the child as a dependent without regard to any condition (such as payment of support).

2. The other parent will not claim the child as a dependent.

3. The years for which the claim is released.

The noncustodial parent must attach all of the following pages from the decree or agreement.

- Cover page (include the other parent's SSN on that page).
- The pages that include all of the information identified in (1) through (3) above.
- Signature page with the other parent's signature and date of agreement.



The noncustodial parent must attach the required information even if it was filed with a return in an earlier year.

The noncustodial parent can no longer attach certain pages from a divorce decree or separation agreement instead of Form 8332 if the decree or agreement was executed after 2008.

Specific Instructions Custodial Parent

Part I. Complete Part I to release a claim to exemption for your child for the current tax year.

Part II. Complete Part II to release a claim to exemption for your child for one or more future years. Write the specific future year(s) or "all future years" in the space provided in Part II.



To help ensure future support, you may not want to release your claim to the exemption for the child for future years.

Part III. Complete Part III if you are revoking a previous release of claim to exemption for your child. Write the specific future year(s) or "all future years" in the space provided in Part III.

The revocation will be effective no earlier than the tax year following the year you provide the noncustodial parent with a copy of the revocation or make a reasonable effort to provide the noncustodial parent with a copy of the revocation. Also, you must attach a copy of the revocation to your tax return for each year you are claiming the exemption as a result of the revocation. You must also keep for your records a copy of the revocation and evidence of delivery of the notice to the noncustodial parent, or of reasonable efforts to provide actual notice.

Example. In 2007, you released a claim to exemption for your child on Form 8332 for the years 2008 through 2012. In 2010, you decided to revoke the previous release of exemption. If you completed Part III of Form 8332 and provided a copy of the form to the noncustodial parent in 2010, the revocation will be effective for 2011 and 2012. You must attach a copy of the revocation to your 2011 and 2012 tax returns and keep certain records as stated earlier.

Noncustodial Parent

Attach this form or similar statement to your tax return for each year you claim the exemption for your child. You can claim the exemption only if the other dependency tests in your tax return instruction booklet are met.



If the custodial parent released his or her claim to the exemption for the child for any future year, you must attach a copy of this form or similar statement to your tax return for each future year that you claim the exemption. Keep a copy for your records.

Note. If you are filing your return electronically, you must file Form 8332 with Form 8453, U.S. Individual Income Tax Transmittal for an IRS e-file Return. See Form 8453 and its instructions for more details.

Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by Internal Revenue Code section 6103.

The average time and expenses required to complete and file this form will vary depending on individual circumstances. For the estimated averages, see the instructions for your income tax return.

If you have suggestions for making this form simpler, we would be happy to hear from you. See the instructions for your income tax return.

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Form 8332 Substitutes Prohibited for Decrees or Agreements Effective after 2008

The noncustodial parent **cannot** attach pages from the decree or agreement instead of Form 8332 if the decree or agreement went into effect **after 2008**. The noncustodial parent must attach Form 8332 or a similar statement signed by the custodial parent. The **only purpose** of the similar statement must be to release a claim to the exemption.

Pre-2009 Divorce Decree or Separation Agreement

If the divorce decree or separation agreement went into effect **after 1984¹⁷ and before 2009**, the noncustodial parent may be able to attach certain pages from the decree or agreement in lieu of Form 8332. The decree or agreement must state all three of the following.

1. The noncustodial parent can claim the child as a dependent **without regard to any condition**, such as payment of support
2. The custodial parent will not claim the child as a dependent for the year
3. Which years the noncustodial parent, rather than the custodial parent, can claim the child as a dependent

The noncustodial parent must attach all of the following pages of the decree or agreement to their tax return.

- The cover page (write the custodial parent's social security number on this page)
- The pages that include all of the information identified in items 1 through 3 above
- The signature page showing the custodial parent's signature and the date of the agreement

REVOCATION OF RELEASE OF CLAIM TO AN EXEMPTION

A custodial parent may revoke a release of a claim to exemption that the custodial parent previously gave to the noncustodial parent on Form 8332 or a similar statement. To do so, the custodial parent must provide, or make reasonable efforts to provide, the noncustodial parent with written notice of the revocation. The custodial parent can use Part III of Form 8332 for this purpose. The revocation is effective the tax year **following** the year that the notification is provided to the noncustodial parent. The custodial parent must attach a copy of the revocation to the tax return for each tax year that they claim the child as a dependent as a result of the revocation.

Example 17. Immediately after their divorce, Karla gave Geoff Form 8332 releasing the claim to the exemption of their son, Zach, for all future years. Subsequently, Karla remarries. Zach continues to live with Karla and her new husband.

Given the extraordinary amount of food that a teenager eats and the minimal amount of child support received, Karla's new husband convinces her to revoke the release. She completes a new Form 8332 revoking the release and gives it to Geoff on January 1, 2011. The release is effective for tax year 2012.

Caution. In the above example, if the divorce decree requires Karla to release the exemption to Geoff, he may be entitled to legal remedies for violation of the decree.

¹⁷ For agreements that went into effect prior to 1985, see IRS Pub. 17, *Your Federal Income Tax*.

SPECIAL TEST FOR QUALIFYING CHILD OF MORE THAN ONE PERSON

Sometimes, a child meets the tests to be a qualifying child of more than one person. However, only one person can actually treat the child as a qualifying child. This test applies to the following tax benefits.¹⁸

1. The dependency exemption
2. The child tax credit
3. The earned income credit (EIC)
4. The head of household (HoH) filing status
5. The child and dependent care credit
6. The exclusion from income for dependent care benefits

In general, the parents of the qualifying child have the right of first refusal to claim these tax benefits. If the parents qualify **but do not** claim the child for these benefits, another taxpayer may do so, if:

1. The other taxpayer's AGI is higher than **each** of the qualifying parent's, **and**
2. The other taxpayer's AGI is higher than **any other taxpayer** for whom that child is a qualifying child.

If the child is a qualifying child of both parents and the parents do not file together, either parent may use the child for these benefits. However, if the parents do not agree on which one will claim the qualifying child, the parent who lived with the child for the greater portion of the year wins the tiebreaker test. If the child lived with both parents for the same amount of time, the parent with the highest AGI prevails.

If the child is not a qualifying child for either parent, the child is treated as the qualifying child of the taxpayer who has the highest AGI.

Scenario 1. Child lives with parent and grandparent. Annie lives with her mother, Laurie, and her grandmother, Gertrude. She meets the tests to be a qualifying child for both Laurie and Gertrude. Laurie's AGI is \$9,000 and Gertrude's is \$15,000. Laurie may use Annie as her qualifying child or she may allow Gertrude to use Annie.

Scenario 2. Child lives with parent and grandparent. Use the same facts as **Scenario 1**, except Laurie's AGI is \$20,000. Because Gertrude's AGI is not higher than Laurie's, Gertrude cannot claim Annie as a qualifying child.¹⁹

Scenario 3. Child lives with both parents. Jeremy lives with both of his parents, Stephen and Felicia, for the entire year. His parents are not married. He meets the tests to be a qualifying child for both of them. Stephen's AGI is \$10,000 and Felicia's is \$18,000. **Either** parent may claim Jeremy as a qualifying child, **if they both agree**.

Scenario 4. Child lives with both parents. Use the same facts as **Scenario 3**, except Stephen and Felicia cannot agree on who will use Jeremy as a qualifying child. Because Jeremy lives with both of them for the entire year, neither parent wins the tiebreaker based on residency. Therefore, the tiebreaker will be determined by AGI. Felicia, who has the highest AGI, prevails.²⁰

¹⁸ Treas. Reg. §1.152-4(f).

¹⁹ IRC §152(c)(4)(A).

²⁰ IRC §152(c)(4)(B).

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Scenario 5. Child lives with both parents and grandparent. Rosie lives with her parents, Duke and Daisy, and her grandfather, Fred. Rosie meets the tests to be a qualifying child for all three of them. Duke and Daisy file jointly and have a combined AGI of \$20,000. Fred has an AGI of \$15,000.

Duke and Daisy choose not to claim Rosie as a qualifying child. Their combined AGI of \$20,000 is divided between them for this purpose, so they are each considered to have an AGI of \$10,000. Fred's AGI of \$15,000 is greater than either of the parents' AGI of \$10,000, so he may claim Rosie as a qualifying child.²¹

Scenario 6. Child does not live with either parent. Huck lives with his aunt, Bee, and his grandmother, Thelma. He meets the tests to be a qualifying child for both of them. Bee's AGI is \$12,000 and Thelma's AGI is \$16,000. Only Thelma may use Huck as a qualifying child because her AGI is the highest.²²

Scenario 7. Separated parents. Samantha lives with both of her parents until September 1 of this tax year, when her mother moves out of their home. Samantha and her father continue to live together for the rest of the year. Samantha is a qualifying child of both of her parents. **Either** parent may claim Samantha **if they can agree**.

Scenario 8. Separated parents. Use the same facts as **Scenario 7**, except Samantha's father and mother both want to claim her as a qualifying child. Because Samantha lived with her father longer, he wins the tiebreaker test.²³

Scenario 9. More than one qualifying child. Huey, Louie, and Dewey live with their mother and their grandmother. They meet the tests to be qualifying children for both the mother and grandmother. If the grandmother's AGI is higher than the mother's, the mother may allow the grandmother to use one or more of the boys on her tax return, while the mother uses the remaining boy(s) on her return.²⁴

DEPENDENCY TESTS FOR BOTH A QUALIFYING CHILD AND RELATIVE

A dependent may be either of the following.²⁵

- Qualifying child
- Qualifying relative

These two tests apply to both qualifying children and qualifying relatives.

1. Dependent taxpayer test
2. Citizen or resident test

If a taxpayer can claim a person as a dependent, the dependent cannot claim their own exemption on the dependent's tax return.²⁶ This is true even if the taxpayer chooses **not** to claim the dependent's exemption.

²¹. IRC §152(c)(4)(C).

²². IRC §152(c)(4)(A).

²³. IRC §152(c)(4)(B).

²⁴. IRC §152(c)(4)(A).

²⁵. IRC §152(a).

²⁶. IRC §151(d)(2).

DEPENDENT TAXPAYER TEST

A person who can be claimed as a dependent by another taxpayer cannot claim anyone else as their own dependent, even if they have a qualifying child or qualifying relative.²⁷

Example 18. 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.

Les's father skipped town before his birth and does not provide any of his support. Kylii's parents can also claim Les as a qualifying child.

If married taxpayers file a joint return and one spouse could be claimed as a dependent by someone else, they cannot claim any dependents on their joint return.

Example 19. Assume the same facts as **Example 18**, except Kylii is married. Kylii and her husband, Jeb, live with Kylii's parents. Jeb wants to file a joint return to claim a refund of his withholding. 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.

CITIZENSHIP OR RESIDENCY TEST

A taxpayer cannot claim a person as a dependent unless that person is one of the following for some part of the year.²⁸

- U.S. citizen
- U.S. resident alien
- U.S. national
- Resident of Canada or Mexico

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 the household for the entire year. This also applies if the child was lawfully placed with the taxpayer for legal adoption.²⁹

Example 20. William, a calendar-year taxpayer and citizen of the United States, is employed by the U.S. government in Brazil. In October 2010, 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 2010 and all of 2011. The adoption proceedings are completed in July 2011. Assuming all other rules are met, Chiquita may be claimed as a dependent on William's 2011 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 citizenship test even if the child is born outside the United States and the other parent is a nonresident alien.

²⁷ IRC §152(b)(1).

²⁸ IRS Pub. 501, *Exemptions, Standard Deduction, and Filing Information*.

²⁹ IRC §152(b)(3)(B).

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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 citizenship/residence test. A taxpayer cannot claim an exemption for these students. However, a taxpayer who provides a home for a foreign student may be able to take a charitable contribution deduction, limited to \$50 per school month for grades 12 or lower.³⁰

U.S. National

A U.S. national is an individual who, although not a U.S. citizen, owes their sole allegiance to the United States. U.S. nationals include individuals born in American Samoa and the Northern Mariana Islands.

The following table from IRS Pub. 17, *Your Federal Income Tax*, summarizes the rules for the dependency exemption.

Table 3-1. **Overview of the Rules for Claiming an Exemption for a Dependent**

Caution. This table is only an overview of the rules. For details, see the rest of this chapter.

<ul style="list-style-type: none">• You cannot claim any dependents if you, or your spouse if filing jointly, could be claimed as a dependent by another taxpayer.• You cannot claim a married person who files a joint return as a dependent unless that joint return is only a claim for refund and there would be no tax liability for either spouse on separate returns.• You 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.¹• You cannot claim a person as a dependent unless that person is your qualifying child or qualifying relative.	
Tests To Be a Qualifying Child	Tests To Be a Qualifying Relative
<ol style="list-style-type: none">1. The child must be your son, daughter, stepchild, foster child, brother, sister, half brother, half sister, stepbrother, stepsister, or a descendant of any of them.2. The child must be (a) under age 19 at the end of the year and younger than you (or your spouse, if filing jointly), (b) under age 24 at the end of the year, a full-time student, and younger than you (or your spouse, if filing jointly), or (c) any age if permanently and totally disabled.3. The child must have lived with you for more than half of the year.²4. The child must not have provided more than half of his or her own support for the year.5. The child is not filing a joint return for the year (unless that return is filed only as a claim for refund) <p>If the child meets the rules to be a qualifying child of more than one person, only one person can actually treat the child as a qualifying child. See the Special Rule for Qualifying Child of More Than One Person to find out which person is the person entitled to claim the child as a qualifying child.</p>	<ol style="list-style-type: none">1. The person cannot be your qualifying child or the qualifying child of any other taxpayer.2. The person either (a) must be related to you in one of the ways listed under Relatives who do not have to live with you, or (b) must live with you all year as a member of your household² (and your relationship must not violate local law).3. The person's gross income for the year must be less than \$3,650.³4. You must provide more than half of the person's total support for the year.⁴
<p>¹There is an exception for certain adopted children.</p> <p>²There are exceptions for temporary absences, children who were born or died during the year, children of divorced or separated parents or parents who live apart, and kidnapped children.</p> <p>³There is an exception if the person is disabled and has income from a sheltered workshop.</p> <p>⁴There are exceptions for multiple support agreements, children of divorced or separated parents or parents who live apart, and kidnapped children.</p>	

³⁰ IRS Pub. 526, *Charitable Contributions*, and IRS Pub. 561, *Determining Value of Donated Property*.

DEPENDENCY TESTS FOR A QUALIFYING CHILD³¹

To be claimed as a dependent, a qualifying child must meet the four core tests explained under “Uniform Definition of Qualifying Child” earlier in the chapter **and** the citizenship/residency test explained under “Dependency Tests for Both a Qualifying Child and Relative.” In addition, the child must meet a special **support test** that is different from the support test for qualifying relatives.

In order to meet this support test, **the child cannot provide over one-half of their own support for the tax year.** To determine whether the child provides more than half of their total support, the taxpayer must compare the amount of support the child provided to the support provided from all other sources.

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

In calculating total resources used for support, any tax-exempt income, savings, and borrowed amounts used to support that person are included. However, **scholarships** received by a full-time student are **not** taken into account when determining the portion of support the child provided.³² **Survivors’ and Dependents’ Educational Assistance** payments used for the support of the child of certain veterans are **not** included as a part of the amount provided by the child. **Wages** paid to the child **are** included as being provided by the child even if a parent paid the wages.

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 cost 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.³³

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.

The following worksheet can be found in IRS Pub. 17, *Your Federal Income Tax*, and IRS Pub. 501, *Exemptions, Standard Deduction, and Filing Information*. It is helpful in determining total support and ascertaining which taxpayer provided more than one-half of total support.

³¹ IRS FS 2005-7 (Jan. 2005).

³² Treas. Reg. §1.151-1(c).

³³ IRS Pub. 17, *Your Federal Income Tax*.

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Worksheet 3-1. **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. Do not include funds provided by the state; include those amounts on line 23 instead **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?

☐ **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.

☐ **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?

☐ **Yes.** You meet the support test for this person to be your qualifying relative.

☐ **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 [Multiple Support Agreement](#), [Support Test for Children of Divorced or Separated Parents or Parents Who Live Apart](#), or [Kidnapped Child](#) under *Qualifying Relative*.

DEPENDENCY TESTS FOR A QUALIFYING RELATIVE

If the dependent does not meet the tests to be a qualifying child, the dependent may meet the requirements to be a qualifying relative. There are five tests that must be met for a person to be a qualifying relative.³⁴

1. Not a qualifying child test
2. Member of household or relationship test
3. Gross income test
4. Support test
5. Joint return test

Note. Unlike a qualifying child, a qualifying relative can be any age.

Example 21. Jonah's son, Keegan, lives with him. Keegan is 30 years old and, therefore, does not meet the age test to be a qualifying child. He may be Jonah's qualifying relative if the other tests are met.

NOT A QUALIFYING CHILD TEST

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

Example 22. Dylan is 23 years old and a full-time student. He lives with his mother in a home she owns. He meets the residency, relationship, and age tests to be her qualifying child. No one else lives in the home. His mother is required to file a return. Dylan cannot be anyone else's qualifying relative.

Example 23. Lylla lives with her boyfriend, Vernon, and her daughter, Patty. Vernon is not Patty's father. Patty meets the residency, relationship, and age tests to be Lylla's qualifying child. Lylla is required to file a tax return. Vernon cannot claim Patty as a qualifying relative.

Child of Person Not Required to File a Return

A child is not a qualifying child of any other person and may qualify as the taxpayer's qualifying relative if the other person is not required to file an income tax return and either:

1. Does not file an income tax return, **or**
2. Files a return only to get a refund of income tax withheld.

Example 24. Sarah supports an unrelated friend, Michael, and his 3-year-old child, Brett, who live with her all year in her home. Michael has no gross income, is not required to file a 2011 tax return, and does not file a 2011 tax return. Michael is not a taxpayer, and therefore Brett is not a qualifying child of any other taxpayer. Sarah may be able to claim the child as a qualifying relative if the other tests are met.

Example 25. The facts are the same as in **Example 24**, except Michael has wages of \$1,500 during the year and has income tax withheld from his wages. He files a return only to get a refund of the income tax withheld and does not claim the EIC or any other tax credits or deductions related to his son, Brett. Michael is not a taxpayer, and therefore Brett is not a qualifying child of any other taxpayer. Sarah may be able to claim Brett as a qualifying relative if the other tests are met.

Example 26. The facts are the same as in **Example 25**, except Michael has wages of \$8,000 during the year and claims the EIC on his return using Brett as a qualifying child. Therefore, Michael is a taxpayer and Brett is his qualifying child. Sarah cannot claim Brett as a qualifying relative.

³⁴ IRC §152(d)(1).

MEMBER OF HOUSEHOLD OR RELATIONSHIP TEST

To meet the member of household or relationship test, a person must either:³⁵

1. Live with the taxpayer the entire year as a member of the taxpayer's household, **or**
2. Be related to the taxpayer in one of the following ways.
 - a. Child, stepchild, foster child, or a descendent of any of them (e.g., the taxpayer's grandchild);
 - 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; or
 - g. Son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law.

Any of these relationships that were established by marriage are not ended by death or divorce.

Note. If at any time during the year a person was the taxpayer's **spouse**, that person cannot be the taxpayer's qualifying relative.

Example 27. Trevor and his wife Renee began supporting her father, a widower, in 2006. Renee died in 2009. In spite of Renee's death, Trevor's father-in-law continues to meet the relationship test, even if he does not live with Trevor. Trevor can claim him as a dependent if all of the other tests are met.

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 28. Wanda provides more than 50% of the support for her husband's Uncle Fred. She and her husband file a joint return. Uncle Fred may be a qualifying relative, even though he does not live with Wanda.

Example 29. Use the same facts as **Example 28**, except 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.

Cohabitation

A person is not considered a member of the household if at any time during the year the relationship between the taxpayer and that person violates local law.³⁶

Example 30. Vince's girlfriend, Janet, lives with him as a member of his household in Florida all year, despite a state law that prohibits cohabitation between an unmarried man and woman. Because Vince's relationship with Janet violates the laws of the state where they live, she does not meet the member of household test and he cannot claim her as a qualifying relative.

The exception to the relationship test for dependents who are members of the taxpayer's household for an entire year is especially relevant for cohabitating couples with children who are related to only one member of the couple. In this situation, it is especially important to consider the requirement that a dependent cannot be a qualifying relative if the dependent is a **qualifying child of another taxpayer**, as discussed in the section "Not a Qualifying Child Test."

Caution. The exception to the relationship test for members of the taxpayer's household only applies for purposes of the **qualifying relative** test. Thus, the exception does **not** apply to the **qualifying child tests**. The taxpayer claiming a child under this exception does **not** qualify for the EIC, child tax credit, the HoH filing status, the child and dependent care credit, or the exclusion from income for dependent care benefits.

³⁵ IRC §152(d)(2).

³⁶ IRC §152(f)(3).

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Example 31. In 2010, Juliet and her 4-year-old son, Buster, lived in the Ohio home of an unrelated friend, Romeo, who furnished all of their support. Cohabitation is not prohibited under local law where they live. Juliet is not required to file an income tax return because she has no gross income. Consequently, 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** assuming they meet the other dependency tests.

Example 32. The facts are the same as **Example 31**, except Juliet earns \$1,000 in 2011. 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 any EIC. Romeo may claim both Juliet and Buster as **qualifying relatives** because Juliet only files a return to obtain a refund of the withheld tax.

Example 33. Use the same facts as **Example 32**, except Juliet claims \$349 of EIC using Buster as her qualifying child. Romeo can no longer claim Buster as a qualifying relative because Buster is the qualifying child of Juliet. However, Juliet may still be Romeo's qualifying relative if the other tests are met.

GROSS INCOME TEST

To meet the gross income test, a dependent's gross income must be less than the personal exemption amount. For 2011, the exemption is \$3,700. Gross income is defined as **all income** in the form of money, property, and services that is **not exempt** from tax. However, it does not include income earned by a disabled individual from a sheltered workshop.³⁷

Example 34. Esmerelda receives \$2,000 per year in pension benefits and \$10,000 per year in nontaxable social security benefits. Her gross income for purposes of the gross income test is \$2,000.

In certain situations, a dependent's gross income may be higher than their AGI.³⁸

- If the dependent operates a service business, gross income includes the total receipts of the business.
- If the dependent operates a manufacturing, merchandising, or mining business, gross income from the business is the total net sales minus the cost of goods sold, plus any miscellaneous income from the business.
- If the dependent owns rental property, gross income includes gross receipts. Taxes, repairs, and other expenses are **not** deducted to determine gross income from rental property.
- If the dependent is a partner in a partnership, gross income is the dependent's share of the **gross** partnership income, not the net partnership income.

Example 35. Use the same facts as in **Example 34**, except Esmerelda also owns an apartment building. Her net income from the building is \$1,000 per year. Her gross rental receipts are \$15,000. Esmerelda's gross income for purposes of the gross income test is \$17,000 (\$15,000 rental receipts + \$2,000 pension income). Esmerelda fails the gross income test.

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.³⁹

³⁷ IRC §61(a) and IRS Pub. 501, *Exemptions, Standard Deduction, and Filing Information*.

³⁸ IRS Pub. 17, *Your Federal Income Tax*.

³⁹ IRS Pub. 501, *Exemptions, Standard Deduction, and Filing Information*.

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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 their own funds.

Calculating Total Support⁴⁰

To determine whether a taxpayer provided more than half of a 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.

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. Medical expenses paid with insurance benefits
6. Scholarships received by the taxpayer's **child** if the child is a full-time student
7. Survivors' and Dependency Educational Assistance payments used for the support of the child who receives them

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.

⁴⁰ Ibid.

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Example 36. 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.

Frank and Mary 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	0
Share of food ($\frac{1}{5}$ of \$5,200)	1,040	1,040
Medical and drug expense	1,200	1,200
Total support	\$6,440	\$4,040

The total support provided by Frank and Mary is \$4,040, which is more than half of Grace's total support of \$6,440.

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 actually paid plus the cost of utilities and a reasonable allowance for the use of furniture and appliances.

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 37. Bob'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 and appliances. This does not include heat and utilities. The house is completely furnished with furniture belonging to the parents. Bob pays \$600 per year for the utility bills. Utilities are not usually included in rent for houses in the area where the parents live. Therefore, the total fair rental value of the lodging is \$6,000 as shown below:

Fair rental value of the unfurnished house	\$3,600
Allowance for the furniture and appliances owned by the parents	1,800
Cost of utilities	600
Total fair rental value of the home	\$6,000

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 provided for that person's support by the fair rental value of lodging that the person provides the taxpayer.

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Example 38. Lindy lives with her mother in a home owned by her mother. Lindy pays all of her mother's medical and food expenses. Her mother pays the household expenses of utilities, property tax, and homeowner's insurance. The fair rental value of the home is \$6,000 per year, or \$3,000 per person.

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

	Mother's Support	Lindy Paid
Fair rental value of home	\$3,000	\$ 0
Food	2,000	2,000
Medical expenses	4,000	4,000
Less: Lindy's use of home		(3,000)
Total support	\$9,000	\$3,000

Lindy does not provide over half of her mother's support and is not entitled to a dependency exemption for her mother.

Property. Property provided as support is measured by its fair market value (FMV). FMV 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, 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 considered support.

Example 39. Joe buys a \$200 power lawnmower for his son, Jared. Jared 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 computing Jared's total support.

Example 40. Joe buys a \$150 television as a birthday present for his mother. The television is placed in the mother's bedroom. Joe can include the cost of the television in computing his mother's total support.

Example 41. Joe pays \$5,000 for a car and registers it in his own name. Joe and his daughter Amanda use the car equally. Joe owns the car and he merely lets Amanda use it. Joe cannot include the cost of the car in computing Amanda's total support. However, Joe can include in Amanda's support his out-of-pocket expenses (not including depreciation) of operating the car for her benefit.

Example 42. Joe's 17-year-old son, Lance, using personal funds, buys a car for \$4,500. Joe provides all the remainder of Lance's support, which totals \$4,000. Because the car is bought and owned by Lance, the car's FMV of \$4,500 must be included in Lance's support. Lance provided more than half of his own total support of \$8,500, so he is not Joe's qualifying child. Furthermore, Joe did not provide more than half of Lance's total support, so he is not Joe's qualifying relative. Joe cannot claim a dependency exemption for Lance.

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.

Childcare Expenses. If the taxpayer pays someone to provide child or dependent care, the taxpayer can include these payments in computing the support the taxpayer provides for the dependent even if the taxpayer claims a credit for the payments.

Special Circumstances Affecting the Support Calculation

Tax-Exempt Income. In calculating a person's total support, expenses paid with tax-exempt income, savings, and borrowed amounts 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. Larry provides \$4,000 towards his mother's support during the year. His mother spends \$5,600 of her own money on her support. Her money comes from nontaxable social security benefits of \$5,400 and tax-exempt interest of \$200. Larry 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. Jean provides \$2,000 towards her niece's support during the year. Her niece, Morgan, takes out a student loan for \$2,500 and uses it to pay her college tuition. Morgan is personally responsible for the loan. Jean cannot claim an exemption for Morgan because she provides less than half of Morgan's support.

Armed Forces: Dependency Allotments and Military Quarters' Allowances. 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 who 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 the other persons as dependents as long as they meet all other qualifications.

Example 45. 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 claim 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 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.

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 46. During the year, Felix receives \$2,200 from the government under the G.I. Bill. He uses this amount for his education. His aunt, Sally, provides \$2,000 for the remainder of his support. Because G.I. benefits are included in total support, Felix's total support is \$4,200 (\$2,200 + \$2,000). Therefore, Sally did not provide more than half of his support.

Government Benefits. If a husband and wife each receive benefits by a check payable 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 for his or her own support, the benefits are considered as support provided by the child.

Benefits provided to a needy person by the government, such as food stamps, generally are considered support provided by the government. 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 receives 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, out-of-pocket expenses paid by the taxpayer in caring for a foster child are usually considered paid for the child's support. However, if the taxpayer's unreimbursed out-of-pocket expenses are 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.

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Example 47. 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 did not care for Lauren in order to benefit 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 a 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 48. 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 furnishes his mother.

MULTIPLE SUPPORT AGREEMENTS⁴¹

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 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 their 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 a related person or for someone who lived with the taxpayer all year as a member of the household.

Example 49. Lacy, Mary, and their two brothers provide the entire support of their mother for the year. Lacy provides 45%, Mary provides 35%, and the two brothers each provide 10%. Either Lacy or Mary can claim an exemption for their mother. The other must sign Form 2120 agreeing not to take an exemption for their mother. The one who claims the exemption must attach Form 2120, or a similar declaration, to her return and must keep the statement signed by the sister in her records. Because neither brother provides **more than 10%** of the support, neither can take the exemption and neither has to sign Form 2120.

Example 50. 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 either of 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 51. 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 claim the exemption for Jackson's father if the other signs Form 2120 agreeing not to claim it. The one who claims 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 claim the exemption.

⁴¹ IRC §152(d)(3).

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Form 2120 (Rev. October 2005) Department of the Treasury Internal Revenue Service	Multiple Support Declaration ▶ Attach to Form 1040 or Form 1040A.	OMB No. 1545-0074
		Attachment Sequence No. 114
Name(s) shown on return		Your social security number : : : :

During the calendar year _____, the eligible persons listed below each paid over 10% of the support of:

Name of your qualifying relative	
I have a signed statement from each eligible person waiving his or her right to claim this person as a dependent for any tax year that began in the above calendar year.	
Eligible person's name	Social security number : : : :
Address (number, street, apt. no., city, state, and ZIP code)	
Eligible person's name	Social security number : : : :
Address (number, street, apt. no., city, state, and ZIP code)	
Eligible person's name	Social security number : : : :
Address (number, street, apt. no., city, state, and ZIP code)	
Eligible person's name	Social security number : : : :
Address (number, street, apt. no., city, state, and ZIP code)	

Instructions

What's New

The rules for multiple support agreements still apply to claiming an exemption for a qualifying relative, but they no longer apply to claiming an exemption for a qualifying child. For the definitions of "qualifying relative" and "qualifying child," see your tax return instruction booklet.

Purpose of Form

Use Form 2120 to:

- Identify each other eligible person (see below) who paid over 10% of the support of your qualifying relative whom you are claiming as a dependent, and
- Indicate that you have a signed statement from each other eligible person waiving his or her right to claim that person as a dependent.

An eligible person is someone who could have claimed a person as a dependent except that he or she did not pay over half of that person's support.

If there are more than four other eligible persons, attach a statement to your return with the required information.

Claiming a Qualifying Relative

Generally, to claim a person as a qualifying relative, you must pay over half of that person's support. However, even if you did not meet this support test, you may be able to claim him or her as a dependent if all five of the following apply.

1. You and one or more other eligible person(s) (see above) together paid over half of that person's support.
2. You paid over 10% of the support.
3. No one alone paid over half of that person's support.
4. The other dependency tests are met. See *Step 4, Is Your Qualifying Relative Your Dependent?* in the Form 1040 or Form 1040A instructions.
5. Each other eligible person who paid over 10% of the support agrees not to claim that person as a dependent by giving you a signed statement. See *Signed Statement* on this page.

Note. To find out what is included in support, see Pub. 501, Exemptions, Standard Deduction, and Filing Information.

Signed Statement

You must have received, from each other eligible person listed above, a signed statement waiving his or her right to claim the person as a dependent for the calendar year indicated on this form. The statement must include:

- The calendar year the waiver applies to,
- The name of your qualifying relative the eligible person helped to support, and
- The eligible person's name, address, and social security number.

Do not file the signed statement with your return. But you must keep it for your records and be prepared to furnish it and any other information necessary to show that you qualify to claim the person as your dependent.

Additional Information

See Pub. 501 for details.

Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by Internal Revenue Code section 6103.

The average time and expenses required to complete and file this form will vary depending on individual circumstances. For the estimated averages, see the instructions for your income tax return.

If you have suggestions for making this form simpler, we would be happy to hear from you. See the instructions for your income tax return.

THE CHILD TAX CREDIT⁴²

The **child tax credit** is \$1,000 for each qualifying child in 2011. A qualifying child for child tax credit purposes must meet the four core tests to be a qualifying child and **must be claimed as a dependent** by the taxpayer. In addition, the child must be **under age 17** at the end of the calendar year.

Note. If the child is claimed as a dependent under the special exception for children of divorced or separated parents, **the noncustodial parent** may also claim the child for child tax credit purposes.

The amount of the credit is reduced by \$50 for each \$1,000 by which the taxpayer's MAGI exceeds certain thresholds. The thresholds are based on filing status:

Married filing jointly	\$110,000
Single/head of household/qualifying widow(er)	75,000
Married filing separately	55,000

If the taxpayer does not have sufficient income tax liability to absorb the entire amount of the credit, the taxpayer may qualify to claim the additional child tax credit (ACTC). For most taxpayers the amount of the ACTC is limited to the **lesser** of:

1. The unclaimed portion of the child tax credit, or
2. 15% of the taxpayer's earned income in excess of \$3,000.

If number 2 above is less than number 1, taxpayers with **three or more children** may use a substitute amount for number 2. The substitute amount is the excess of social security taxes paid by the taxpayer for the current tax year over any EIC claimed by the taxpayer on the current return.

Nontaxable Combat Pay Election. The taxpayer can elect to include all or none of the nontaxable combat pay in earned income for ACTC purposes. **Including nontaxable combat pay in earned income may increase or decrease the ACTC.** The amount of nontaxable combat pay should be shown in box 12 of the taxpayer's Form W-2 with code "Q."

⁴² IRC §24.

EARNED INCOME CREDIT (EIC)⁴³

The EIC may be claimed by taxpayers who have a qualifying child and also by taxpayers who do not have a qualifying child. Certain rules apply to everyone and certain rules only apply depending on whether the taxpayer does or does not have a qualifying child.

RULES THAT APPLY TO EVERYONE

Rule 1. The taxpayer's AGI must be less than the applicable threshold for the year. The 2011 thresholds are as follows.⁴⁴

- \$43,998 (\$49,078 if MFJ) with three or more qualifying children
- \$40,964 (\$46,044 if MFJ) with two qualifying children
- \$36,052 (\$41,132 if MFJ) with one qualifying child
- \$13,660 (\$18,740 if MFJ) with no qualifying children

Rule 2. The taxpayer (and spouse if filing jointly) must have a valid social security number.

Rule 3. The taxpayer cannot file MFS.

Rule 4. The taxpayer must be a U.S. citizen or resident alien for the entire year.

Rule 5. Neither Form 2555, *Foreign Earned Income*, nor Form 2555-EZ, *Foreign Earned Income Exclusion*, can be filed with the return.

Rule 6. Investment income must be less than \$3,150 in 2011. (This limit is adjusted annually for inflation.)

Rule 7. The taxpayer must have earned income.

Earned Income

To qualify, the taxpayer must work and have earned income. On a joint return, only one spouse **must** have earned income. Earned income includes all of the following types of income:

- Wages, salaries, tips, and other taxable employee pay (Nontaxable pay, such as certain dependent care benefits, is not earned income. There is an exception for **nontaxable combat pay**, which the taxpayer can choose to include in earned income, as explained below.)
- Net earnings from self-employment
- Gross income received as a statutory employee

Disability Benefits. If the taxpayer retired on disability, taxable benefits received under the employer's disability **retirement plan** are considered earned income until the taxpayer reaches minimum retirement age. Minimum retirement age generally is the earliest age at which the taxpayer could have received a pension or annuity if not disabled.

Taxable disability payments are reported as wages until the taxpayer reaches minimum retirement age. Beginning on the day **after** the taxpayer reaches minimum retirement age, payments under the plan are taxable as a pension and are not considered earned income.

⁴³ IRS Pub. 596, *Earned Income Credit*.

⁴⁴ *Preview of 2011 EITC Income Limits, Maximum Credit Amounts and Tax Law Updates*. IRS. [www.irs.gov/individuals/article/0,,id=233839,00.html] Accessed on July 11, 2011.

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Income That Is Not Earned Income

Examples of items that are **not** earned income include the following.

- Interest and dividends
- Pensions and annuities
- Social security and railroad retirement benefits
- Disability insurance payments under a policy purchased by the taxpayer
- Alimony and child support
- Welfare benefits
- Workers' compensation benefits
- Unemployment compensation
- Nontaxable foster care payments
- Veterans' benefits, including VA rehabilitation payments
- Earnings while an inmate, in a work release program, or in a halfway house for inmates
- Workfare payments received under programs funded by the federal Temporary Assistance for Needy Families program
- Nontaxable military pay such as the Basic Allowance for Housing and the Basic Allowance for Subsistence (Combat pay may be included in earned income if the taxpayer elects to do so.)
- Income earned by a spouse in a community property state if not filing jointly even though the income is reportable by the taxpayer

Exemption from Social Security Taxes. See IRS Pub. 17, *Your Federal Income Tax*, for information about how to calculate earned income for people who have received exemptions from social security taxes by using either of the following.

- Form 4361, *Application for Exemption From Self-Employment Tax for Use by Ministers, Members of Religious Orders and Christian Science Practitioners*
- Form 4029, *Application for Exemption From Social Security and Medicare Taxes and Waiver of Benefits*

RULES IF THE TAXPAYER HAS A QUALIFYING CHILD

Rule 8. The child must meet the four core tests to be a qualifying child. These tests (the relationship, age, residency, and joint return tests) are explained under “Uniform Definition of Qualifying Child” earlier in the chapter.

The residency test is further restricted to require that the taxpayer and child must live in the United States. However, there is an exception for U.S. military personnel stationed outside the United States on extended active duty. They are considered to live in the United States during that duty period for EIC purposes.

The joint return test is also further restricted. A **child who is married** as of the end of the year is **not** a qualifying child for EIC even if the child does not file a joint return unless **either**:

- The taxpayer claims the child as a dependent, or
- The noncustodial parent claims the child as a dependent under the special rule for divorced or separated parents.

Finally, the qualifying child must have a **valid social security number**. An exception applies for a child who was born and died during the year.

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Rule 9. The qualifying child **cannot** be used by more than one person to claim the EIC. See “Special Test for Qualifying Child of More Than One Person” earlier in the chapter.

If a child is treated as the qualifying child of the noncustodial parent under the special rule for children of divorced or separated parents, the noncustodial parent can claim the dependency exemption and the child tax credit for the child. However, the custodial parent, if eligible, or another eligible taxpayer can claim the child as a qualifying child for the EIC and other tax benefits listed earlier. If the child is the qualifying child of more than one person for these benefits, then the tiebreaker rules determine which person can treat the child as a qualifying child.

Example 52. Samantha and her 5-year-old son, Chad, lived all year with her mother, Hortense. Hortense paid the entire cost of keeping up the home. Samantha’s AGI is \$10,000. Hortense’s AGI is \$25,000.

Chad’s father, Lou, did not live with Samantha and Chad at any time during the year. Under the special rule for children of divorced or separated parents, Samantha releases Chad’s dependency exemption to Lou, who **claims the dependency exemption and the child tax credit** for him. Lou cannot claim Chad as a qualifying child for HoH filing status, the credit for child and dependent care expenses, the exclusion for dependent care benefits, or the EIC.

Samantha and Hortense did not incur any childcare expenses or receive any dependent care benefits for Chad. If Samantha does not claim Chad as a qualifying child, her mother can claim him as a qualifying child for the EIC and HoH filing status, **if** she qualifies for these tax benefits.

Note. If the taxpayer **cannot** claim the EIC because the qualifying child is treated under the **tiebreaker rules** as the qualifying child of another person, the taxpayer may be able to take the EIC using a **different** qualifying child. However, the taxpayer cannot take the EIC using the rules for people who do not have a qualifying child.

Rule 10. The taxpayer cannot be a qualifying child of another person based on the four core tests explained under “Uniform Definition of Qualifying Child.”

If the taxpayer or taxpayer’s spouse is a qualifying child of another person, they cannot claim the EIC. This is true even if the person for whom the taxpayer is a qualifying child does not claim the EIC or meet all of the rules to claim the EIC. To indicate that the taxpayer is disqualified under this rule, write “**No**” beside the EIC line on Form 1040 or Form 1040A.

Example 53. Phil and his daughter live with his mother all year. Phil is 22 years old, unmarried, and attends a trade school full time. He has a part-time job and earns \$5,700. He has no other income. Because he meets the relationship, age, residency, and joint return tests, he is a qualifying child of his mother. She can claim the EIC if she meets all the other requirements. **Because Phil is his mother’s qualifying child, he cannot claim the EIC even though his daughter is his qualifying child.** This is true even if his mother cannot or does not use him as a qualifying child for the EIC.

RULES IF THE TAXPAYER DOES NOT HAVE A QUALIFYING CHILD

Rule 11. The taxpayer must be at least age 25 but under age 65 at the end of the year. If the taxpayer is filing MFJ, either spouse may meet this test. This is true even if the qualifying spouse died during the year.

Example 54. Olivia is married and files a joint return with her spouse, who died in August 2011. She is age 67. Her spouse would have been age 65 in November 2011. Because her spouse was under age 65 when he died, she meets the age test.

Rule 12. The taxpayer cannot qualify as a dependent of another taxpayer.

Example 55. Scott lives at home with his parents. He is 27 years old and earns \$2,000 in 2011. He is a qualifying relative of his parents for dependency purposes. His parents can claim Scott as a dependent but decide not to. **Scott cannot claim the EIC because his parents could have claimed him as a dependent.**

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Rule 13. The taxpayer **cannot be a qualifying child of another taxpayer** based on the four core tests explained under “Uniform Definition of Qualifying Child.”

Example 56. Patty lives with her father all year. She is age 46, unmarried, and permanently and totally disabled. Her only income was from a community center where she works three days per week answering telephones. She earns \$5,000 for the year. Because she meets the relationship, age, residency, and joint return tests, she is a qualifying child of her father for the EIC. Her father can claim the EIC if he meets all the other requirements. However, **because Patty is a qualifying child of her father, she cannot claim the EIC.** This is true even if her father cannot or does not claim the EIC.

Rule 14. The taxpayer must live in the United States for more than half of the tax year. This does not include Puerto Rico or U.S. possessions such as Guam. U.S. military personnel stationed outside of the United States on extended active duty are considered to live in the United States during that duty period for purposes of the EIC. To indicate that the taxpayer is disqualified under this rule, write “No” beside the EIC line on Form 1040 or Form 1040A.

EIC DUE-DILIGENCE REQUIREMENTS⁴⁵

Because there is considerable fraud associated with EIC claims, tax preparers are cautioned to practice due diligence when completing returns that include claims for the EIC. There are four due-diligence requirements.

1. **Eligibility checklist.** Tax return preparers must complete Form 8867, *Paid Preparer’s Earned Income Credit Checklist*, or its equivalent to satisfy this requirement.
2. **Appropriate worksheets.** Preparers are required to keep the EIC worksheet from the Form 1040 instructions or an equivalent showing how the credit was computed. Tax preparation software that contains acceptable equivalent worksheets may be used for this purpose in lieu of paper copies of the worksheets.
3. **Knowledge.** This is the **key** requirement. The regulations specifically require that the tax preparer:
 - a. Not know **or have reason to know** that any information used in determining the taxpayer’s **eligibility** for the credit is incorrect, incomplete, or inconsistent;
 - b. Not know **or have reason to know** that any information used in determining the **amount** of the credit is incorrect, incomplete, or inconsistent;
 - c. Not ignore the implications of information furnished or known;
 - d. **Make reasonable inquiries** if a reasonable and well-informed tax return preparer, knowledgeable in the law, would conclude the information furnished appears to be incorrect, inconsistent, or incomplete; and
 - e. Document any inquiries made and any responses provided.
4. **Record retention.** The following must be retained for three years after June 30 following the date the return or claim was presented for signature.
 - a. The checklist
 - b. The worksheets
 - c. A record of how and when the information used to complete the checklist and worksheets was obtained, including the identity of any person furnishing the information

⁴⁵ [www.irs.gov/individuals/article/0,,id=150531,00.html] Updated Dec. 18, 2009. Accessed on Aug. 17, 2010. See also Treas. Reg. §1.6695-2.

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On its website, the IRS summarizes the knowledge requirement with these directives to tax preparers.

1. Evaluate the information received from clients.
2. Apply consistent and reasonable standards to the information.
3. Ask additional questions if the information appears incorrect, inconsistent, or incomplete.

Another indication of what the IRS expects from preparers is found in IRS Pub. 4716, *Be Prepared to Get the Earned Income Tax Credit You Earned*. **The IRS advises taxpayers to bring certain documents to their tax preparers to prove EIC eligibility.** These documents include:

- A valid driver's license or photo identification for the taxpayer (and spouse, if applicable),
- Social security cards for all persons listed on the return, and
- Proof of an account at the financial institution used for a direct debit or deposit.

This publication also includes the following:

Your Return Preparer, whether paid or volunteer, is required to ask you multiple questions to determine your correct income, expenses, deductions, and credits. Your Return Preparer has your best interests in mind and wants to help you avoid penalties, interest, or additional taxes that could result from later IRS contacts.

EIC COMPLIANCE RESOURCES

The IRS offers a number of tools and publications to educate tax preparers and assist them in meeting the due-diligence requirements. The IRS has a Tax Preparer Toolkit at www.eitc.irs.gov/rptoolkit/main, that includes almost everything a preparer needs to understand EIC and comply with the complex EIC rules. This website also has an EIC training module specifically designed for tax preparers. The module contains interactive scenarios with examples of applying the due-diligence requirements. Enrolled agents may obtain CPE credits for completing the related test.

Other resources (also available in Spanish) include the following.

1. IRS Pub. 596, *Earned Income Credit*
2. Form 8862, *Information to Claim Earned Income Credit After Disallowance*
3. EITC Assistant, a web-based tool to help determine EIC eligibility and calculate the credit

The **following IRS forms**, which are designed for **IRS examiners** to present to taxpayers, can also be used by tax return preparers to explain to taxpayers what type of documentation would be necessary in the event of an audit.

- Form 886-H-DEP, *Supporting Documents for Dependency Exemptions*
- Form 886-H-EIC, *Documents You Need to Prove You Can Claim an Earned Income Credit on the Basis of a Qualifying Child*
- Form 886-H-HOH, *Supporting Documents to Prove Head of Household Filing Status*

THE CHILD AND DEPENDENT CARE CREDIT⁴⁶

Taxpayers may be able to claim the child and dependent care credit if they pay someone to care for:

- A dependent who is under age 13, or
- A disabled spouse or disabled dependent who is not able to care for themselves.

The credit can be up to 35% of the related expenses. To qualify, the taxpayer must pay these expenses so they can work or look for work.

This credit is nonrefundable. The amount of the credit is limited to the taxpayer's regular income tax, less any allowable foreign tax credit, plus any AMT. The credit is claimed on Form 2441, *Child and Dependent Care Expenses*, which is shown later in this chapter.

Note. Noncustodial parents cannot claim this credit even if they pay childcare expenses.

TESTS TO CLAIM THE CREDIT

In order to claim the child and dependent care credit, each of the following tests must be passed.

1. **Qualifying person test.** The care must be for one or more qualifying persons.
2. **Earned income test.** The taxpayer (and spouse if filing jointly) must have earned income during the year. However, there are exceptions for spouses who are students and for spouses who are not able to care for themselves.
3. **Work-related expense test.** The taxpayer must pay child and dependent care expenses so the taxpayer (and spouse if filing jointly) can work or look for work.
4. **Payments to relatives or dependents.** The payments for child and dependent care must be made to someone the taxpayer cannot claim as a dependent. If the care provider is the taxpayer's child, the provider must also be age 19 or older by the end of the year. The taxpayer **cannot** include payments made to the following people.
 - a. The spouse
 - b. The parent of the qualifying person if the qualifying person is the taxpayer's child and under age 13
5. **The taxpayer cannot file MFS.**
6. **Provider identification test.** The taxpayer must identify the provider on Form 2441 by name, address, and identifying number.
7. **Dependent care benefits (DCB) plan.** If the taxpayer excludes or deducts dependent care benefits provided by a DCB plan, the total amount excluded or deducted must be less than the dollar limit for qualifying expenses.

⁴⁶ TD 9354 (Aug. 14, 2007), and IRC §21.

Qualifying Person Test

The child and dependent care expenses must be for the care of one or more **qualifying persons**. A qualifying person is one of the following.

1. A **qualifying child** who is **claimed as a dependent** and who is **under age 13** when the care was provided. There is an **exception** for taxpayers **releasing the exemption** under the special rule for divorced or separated parents. To be a qualifying child under this test, the child must meet the four core tests explained previously under “Uniform Definition of Qualifying Child” and the tests for the dependency exemption for a qualifying child explained earlier in the chapter.
2. The taxpayer’s spouse who was physically or mentally incapable of self-care and who lived with the taxpayer more than half the year.
3. A person who was physically or mentally incapable of self-care, who lived with the taxpayer for more than half the year, and either:
 - a. Is claimed as a dependent, or
 - b. Would have been claimed as a dependent except that:
 - The person received gross income of \$3,700 (in 2011) or more,
 - The person filed a joint return, or
 - The taxpayer, or spouse if filing jointly, can be claimed as a dependent on someone else’s return.

Physically or Mentally Incapable of Self-Care. Persons who cannot dress, clean, or feed themselves because of physical or mental problems are considered not able to care for themselves. Also, persons who must have constant attention to prevent them from injuring themselves or others are considered not able to care for themselves. To qualify for the credit, the person must regularly spend at least eight hours a day in the taxpayer’s home. Therefore, the cost of keeping a dependent in a nursing home full-time does not qualify for the credit.

Person Qualifying for Part of Year. A person’s qualifying status is determined on a daily basis. For example, if the child turns 13 on September 16, only expenses through September 15 are included.

Taxpayer Identification Number. The name and taxpayer identification number of the **qualifying person** must be shown on the return. If the correct information is not shown, the credit may be reduced or disallowed. If necessary, instead of reporting the qualifying person’s social security number, the taxpayer may use the individual’s:

- Individual taxpayer identification number (ITIN) for aliens, or
- Adoption taxpayer identification number (ATIN).

Earned Income Test

Earned income was defined previously under the “Earned Income Credit (EIC)” section. In addition, there are special rules that allow the taxpayer to act as if there were earned income during periods that the taxpayer or spouse is a full-time student or disabled. These rules are explained in the “Calculating the Credit” section later in this chapter.

Work-Related Expense Test

In order to be considered a work-related expense, the purpose of the expenses must be to allow the taxpayer(s) to work or look for work. If filing MFJ, both spouses must work, look for work, be a full-time student, or be disabled. Unlike the allowance for students and disabled taxpayers, there is no provision to treat someone as having earned income during months they are looking for work.

Generally, only the expenses incurred on a day that the taxpayer is engaged in work-related activities qualify. However, if the care provider requires that the taxpayer pay for care on a basis that includes both days worked and not worked, all of the expenses can be included.

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Example 57. Maureen works three days per week. While at work, her 6-year-old child attends a daycare center. Maureen can pay the center \$150 for any three days per week or \$250 for five days per week. Her child attends the center five days per week. Her work-related expenses are limited to \$150 a week.

Example 58. The facts are the same as in **Example 57**, except the center does not offer a 3-day option. The entire \$250 weekly fee paid may be included as a work-related expense.

Care of a Qualifying Person. In order to be considered work-related, the expenses must be for providing care for a qualifying person. Expenses are considered for the care of a qualifying person only if their main purpose is the person's well-being and protection. However, expenses for household services may qualify if part of the services is for the care of qualifying persons. A dependent care center that provides care for more than six persons must comply with all state and local regulations in order to be considered a qualified provider.

Expenses for care do not include amounts paid for food, lodging, clothing, education, and entertainment. However, small amounts paid for these items can be included if they are incidental to and cannot be separated from the cost of caring for the qualifying person.

Expenses for a child in nursery school, preschool, or similar programs for children below the level of kindergarten are expenses for care. Expenses to attend kindergarten or a higher grade are not expenses for care. However, expenses for before- or after-school care of a child in kindergarten or a higher grade may be expenses for care. Summer school and tutoring programs are not eligible.

Example 59. Gertrude takes her 3-year-old child to a nursery school that provides lunch and educational activities as part of its preschool childcare service. The lunch and educational activities are incidental to the child care, and their cost cannot be separated from the total cost of care. She can use the entire childcare cost when claiming the credit on Form 2441.

Example 60. Pablo places his 10-year-old child in a boarding school so he can work full time. Only the part of the boarding school expense that is for the care of the child is a work-related expense. That part of the expense can be included in calculating the credit only if it can be separated from the cost of education. The education expense cannot be included.

The cost of sending a child to an **overnight camp** is **not** considered a work-related expense. The cost of sending a child to a **day camp** may be a work-related expense, even if the camp specializes in a particular activity, such as computers or soccer.

If a **care provider** takes a qualifying person to or from a place where care is provided, that transportation is for the care of the qualifying person. This includes transportation by bus, subway, taxi, or private car. However, transportation not provided by a care provider is not part of the care for a qualifying person. Also, transportation costs paid for the care provider to come to the taxpayer's home are not for the care of a qualifying person.

Fees paid to an **agency** to get the services of a care provider, deposits paid to an agency or preschool, application fees, and other indirect expenses **are work-related expenses** if required to get care, even though they are not directly for care. However, a forfeited deposit is not for the care of a qualifying person if care is not provided.

Expenses paid for **household services** meet the work-related expense test if they are at least partly for the well-being and protection of a qualifying person. Household services are ordinary and usual services done in and around the home that are necessary to run the home. They include the services of a housekeeper, maid, or cook. However, they do not include the services of a chauffeur, bartender, or gardener. The employer taxes paid on wages for qualifying child and dependent care services are work-related expenses.

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Payments to Relatives or Dependents

Work-related payments made to relatives can qualify for the credit. However, amounts **paid** to the following providers do **not** qualify.

- A **dependent** for whom the taxpayer can claim an exemption
- The **taxpayer's child who was under age 19** at the end of the year, even if the child is not the taxpayer's dependent
- A person who was the taxpayer's **spouse** any time during the year
- The **parent** of the taxpayer's qualifying person if the qualifying person is the taxpayer's child and under age 13

Example 61. Sylvester and Tonya were divorced in 2008. Sylvester has sole custody of their child, Hobart, who is 4 years old. He claims Hobart's exemption on his 2011 tax return. Sylvester pays Tonya to keep Hobart while he is at work. These payments **do not qualify** for the credit.

Example 62. Use the same facts as **Example 61**, except Hobart is Sylvester's disabled father. Sylvester's payments to ex-wife Tonya for keeping Sylvester's father **do qualify** for the credit.

Provider Identification Test

All persons or organizations that provide care for the qualifying person must be identified in Part I of Form 2441 with the following information.

- Name
- Address
- Taxpayer identification number (TIN)

If the care provider is a tax-exempt organization, such as a church or school, "**Tax-Exempt**" is written in the space provided on Form 2441 for the taxpayer identification number. If the taxpayer is living abroad, the care provider may not have a U.S. TIN. In this case, write "**LAFCP**" (Living Abroad Foreign Care Provider) in the space for the TIN.

Form W-10, *Dependent Care Provider's Identification and Certification*, can be used to document the TIN furnished by the provider. If the taxpayer **cannot** provide all of the information or if the information is incorrect, the taxpayer must be able to show that **due diligence** was used in trying to furnish the necessary information. The taxpayer can show **due diligence** by getting and keeping the provider's completed Form W-10 or another source of information. Care providers can be penalized if they do not provide this information or if they provide incorrect information.

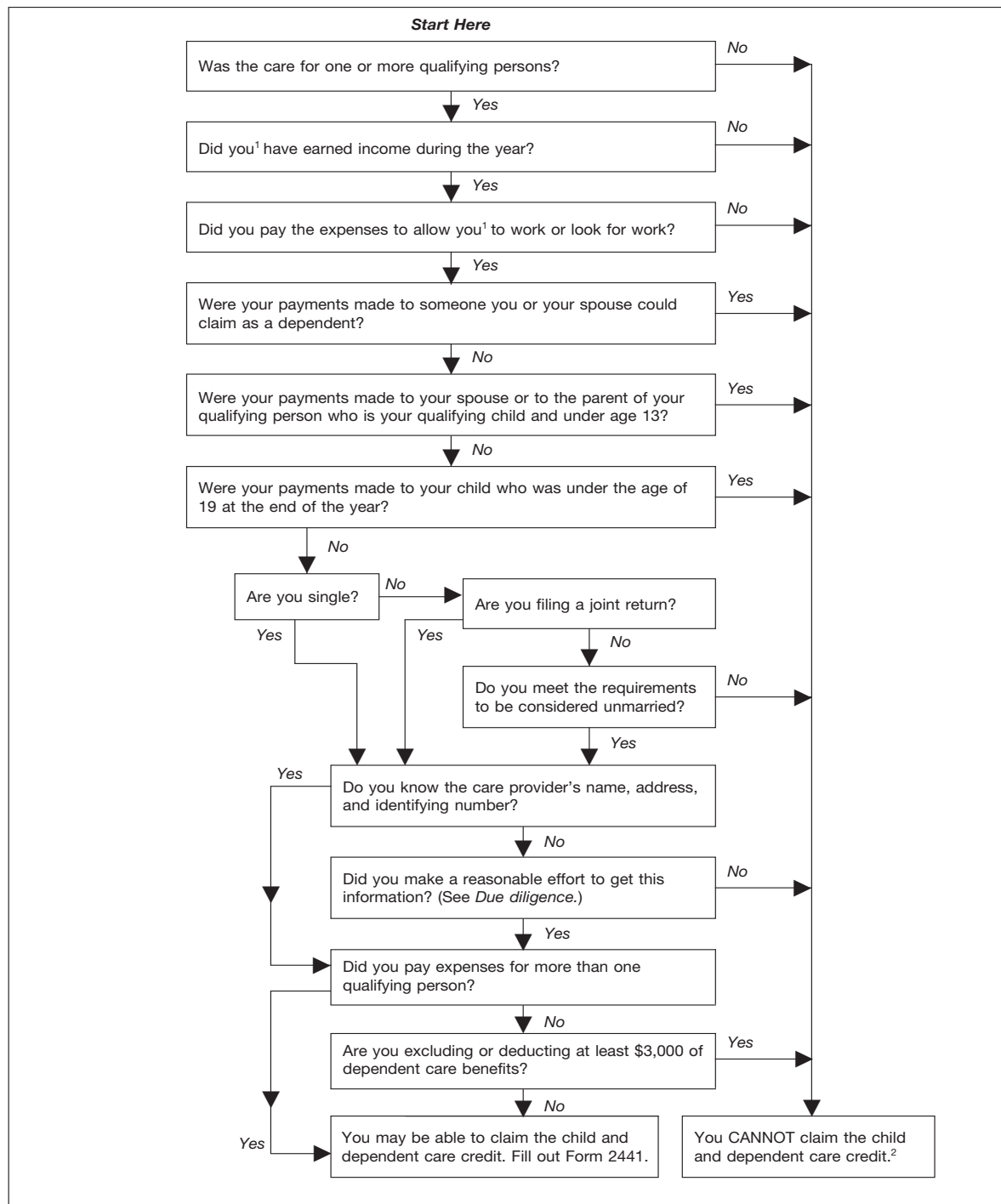
If the provider refuses to give the taxpayer their identifying information, the taxpayer should include on Form 2441 all the information that the taxpayer does have. "See Attached Statement" should be written in the columns calling for the missing information. **A statement must be attached to the return that explains that the information was requested but the provider refused to furnish it.**

Note. Form 2441 completed without a valid TIN is ineligible for electronic filing, except when "TAXEXEMPT" or "LAFCP" is entered in lieu of a TIN. For e-filing purposes, there is no hyphen in TAXEXEMPT.

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The following chart from IRS Pub. 17, *Your Federal Income Tax*, is helpful in determining whether a taxpayer is entitled to claim the child and dependent care credit.

Figure 32-A. **Can You Claim the Credit?**



¹ This also applies to your spouse, unless your spouse was disabled or a full-time student.

² If you had expenses that met the requirements for 2009, except that you did not pay them until 2010, you may be able to claim those expenses in 2010. See *Expenses not paid until the following year* under *How To Figure the Credit*.

Dependent Care Benefits (DCB)

If the taxpayer receives DCB, the dollar limit for purposes of the credit may be reduced. In addition, Form 2441 must be included with the return for the taxpayer to exclude the DCB from income or to deduct the expenses as a business expense.

Dependent care benefits include:

- Amounts the employer pays directly to either the taxpayer or the provider for the care of the qualifying person while the taxpayer works,
- The FMV of care in a daycare facility provided or sponsored by the employer, and
- Pre-tax contributions made under a dependent care flexible spending arrangement.

The taxpayer's salary may be reduced to pay for these benefits. Benefits received by an employee are shown in box 10 of Form W-2. Benefits received by a partner are shown in box 13 of Schedule K-1 (Form 1065) with code "O." These benefits are entered on the first line of Part III of Form 2441.

If the taxpayer is self-employed and receives benefits from a qualified DCB plan, the taxpayer is treated as both employer and employee. The expenses are deducted on these lines of the following forms (2010 version).

- Line 14, Schedule C, *Profit or Loss From Business*
- Line 18 or 28, Schedule E, *Supplemental Income and Loss*
- Line 17, Schedule F, *Profit or Loss From Farming*

The amount excluded or deducted is limited to the **smallest** of the following.

- The total amount of dependent care benefits received during the year
- The total amount of qualified expenses incurred during the year
- Taxpayer's earned income
- Spouse's earned income
- \$5,000 (\$2,500 if MFS)

The definition of earned income for the exclusion or deduction is the same as the definition used for the child and dependent care credit except that earned income for this purpose does not include any dependent care benefits received.

The amount paid to providers and the limit on expenses eligible for the credit are both reduced by any amounts excluded or deducted from income under a DCB plan.

CALCULATING THE CREDIT

There are four steps to calculating the credit.

1. Determine the total qualifying expenses paid.
2. Apply the earned income limit.
3. Apply the overall dollar limit.
4. Multiply the result by the applicable percentage.

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Step 1: Determine the Total Qualifying Expenses Paid

As discussed earlier, the expenses must be for the care of a qualifying person while the taxpayer(s) works, looks for work, is a full-time student, or is disabled. The expenses must be reduced by any reimbursements received by the taxpayer. Reimbursements may include amounts paid by employers under a DCB plan and amounts paid by social service agencies.

Some expenses may qualify as both medical expenses and dependent care expenses. Such expenses may be claimed in the manner most beneficial for the taxpayer. However, the same payments should not be used for both the medical deduction and the dependent care credit.

In general, only the expenses paid in the current tax year qualify for a credit on the current year's return. However, payments in advance of the services can be included only in the year the services are received.

A credit for expenses incurred during the prior tax year but not paid until the current year may be claimed with the **current year's return** using a separate calculation. This calculation is beneficial only for taxpayers whose payments in the prior year were less than the limits.

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Example 63. J. J. incurred \$3,000 of childcare expenses for her 2-year-old son in 2009. She paid \$2,500 of the expenses in **2009** and \$500 of the expenses in **2010**. Her earned income and adjusted gross income were both \$15,000 in 2009. The following worksheet from IRS Pub. 503, *Child and Dependent Care Expenses*, is used to calculate the additional amount of credit claimed on the **2010** return.

Worksheet A. Worksheet for 2009 Expenses Paid in 2010

Keep for Your Records



Use this worksheet to figure the credit you may claim for 2009 expenses paid in 2010.

1. Enter your 2009 qualified expenses paid in 2009	1. <u>\$2,500</u>
2. Enter your 2009 qualified expenses paid in 2010	2. <u>500</u>
3. Add the amounts on lines 1 and 2	3. <u>3,000</u>
4. Enter \$3,000 if care was for one qualifying person (\$6,000 if for two or more)	4. <u>3,000</u>
5. Enter any dependent care benefits received for 2009 and excluded from your income (from your 2009 Form 2441, line 28).	5. <u>0</u>
6. Subtract the amount on line 5 from the amount on line 4 and enter the result	6. <u>3,000</u>
7. Compare your earned income for 2009 and your spouse's earned income for 2009 and enter the smaller amount	7. <u>15,000</u>
8. Compare the amounts on lines 3, 6, and 7 and enter the smallest amount	8. <u>3,000</u>
9. Enter the amount on which you figured the credit for 2009 (from line 6 of your 2009 Form 2441).	9. <u>2,500</u>
10. Subtract the amount on line 9 from the amount on line 8 and enter the result. If zero or less, stop here. You cannot increase your credit by any previous year's expenses	10. <u>500</u>
11. Enter your 2009 adjusted gross income (from your 2009 Form 1040, line 38, Form 1040A, line 22, or Form 1040NR, line 36).	11. <u>15,000</u>
12. Find your 2009 adjusted gross income in the table below and enter the corresponding decimal amount here	12. <u>.35</u>

IF your 2009 adjusted gross income is:		THEN the decimal
Over:	But not over:	amount is:
\$ 0 —	\$15,000	.35
15,000 —	17,000	.34
17,000 —	19,000	.33
19,000 —	21,000	.32
21,000 —	23,000	.31
23,000 —	25,000	.30
25,000 —	27,000	.29
27,000 —	29,000	.28
29,000 —	31,000	.27
31,000 —	33,000	.26
33,000 —	35,000	.25
35,000 —	37,000	.24
37,000 —	39,000	.23
39,000 —	41,000	.22
41,000 —	43,000	.21
43,000 —	No limit	.20

13. Multiply line 10 by line 12. Add this amount to your 2010 credit and enter the total on line 9 of your 2010 Form 2441. Enter the following on the dotted line next to line 9 of Form 2441:

- "CPYE"
- The amount of this credit for a prior year's expenses

Also, attach a statement to your tax return showing the name and taxpayer identification number of the person for whom you paid the prior year's expenses and how you figured the credit. 13. \$175

Observation. In **Example 63**, J. J. did not receive any child and dependent care credit on her 2009 return because she had no income tax liability. If she has an income tax liability for 2010, she may be able to receive the credit for the \$500 of 2009 expenses she paid in 2010, even though she would not have received the credit if the expenses were paid in 2009.

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Step 2: Apply the Earned Income Limit

The amount of work-related expenses used to calculate the credit cannot be more than:

- The taxpayer's earned income for the year if filing S, HoH, or QW, or
- The **smaller** of the taxpayer or spouse's earned income if filing MFJ.

Caution. If the taxpayer's spouse died during the year and the taxpayer is filing a joint return as a surviving spouse, only the taxpayer's income is used in calculating the earned income limit.

Earnings for a Full-Time Student or Disabled Person. A taxpayer or spouse who is either a full-time student or is incapable of self-care is treated as having earned income. Their earned income for each month is considered to be at least \$250 if there is one qualifying person in the home, or at least \$500 if there are two or more.

If the person also works during that month, the higher of actual earnings or the allowance is used. The full allowance applies even if the condition is met for only part of the month. If both the taxpayer and spouse qualify in the same month, the allowance may be used for only one of them.

Step 3: Apply the Dollar Limit

The amount of expenses used to calculate the credit is limited to **\$3,000** for **one** qualifying person **or \$6,000** for **two or more** qualifying persons. The \$6,000 limit does not have to be divided equally among the qualifying persons.

Example 64. In order for Peg to work, she pays \$5,000 to an adult daycare facility to watch her mother, who has dementia. Peg also pays \$600 to an after-school program to watch her 10-year-old son until she gets home from work. She may include the entire \$5,600 when calculating the credit.

The limit is reduced by any DCB excluded or deducted from income. The reduced dollar limit is calculated in Part III of Form 2441.

Example 65. Gerard is a widower with one child and earns \$24,000 per year. He pays work-related expenses of \$2,900 for the care of his 4-year-old child. His employer also pays an additional \$1,000 under a DCB plan. This \$1,000 is excluded from Gerard's income.

Although the dollar limit for his work-related expenses is \$3,000 based on one qualifying person, this limit is reduced to \$2,000 after **subtracting the \$1,000 excluded from his income** under the DCB plan. Gerard calculates his credit on the smaller amount of \$2,000 instead of the \$2,900 he paid.

Step 4: Multiply by the Applicable Percentage

The resulting amount determined after calculating the qualifying expenses, applying the earned income limit, and applying the dollar limit is multiplied by a percentage based on the taxpayer's AGI. The table used to determine the percentage is shown on Form 2441.

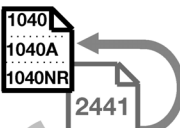
Example 66. Robert and Sharon Myers paid \$7,000 of childcare expenses in 2011 to Bright Star Daycare Center for their two children, Sydney, age 9, and Charles, age 7. Both Robert and Sharon worked full time in 2011. Their 2011 AGI is \$102,000, as shown:

Robert's Form W-2 wages	\$ 43,000
Sharon's Form W-2 wages	53,000
Interest and dividend income	6,000
2011 AGI	<u>\$102,000</u>

2011 Federal Tax Fundamentals

Robert and Sharon had no 2011 foreign tax credit and received no 2011 dependent care benefits from their employers. They filed jointly for 2011 and their tax liability before considering any credits was \$11,369. They had no 2011 AMT liability.

Robert and Sharon's 2011 childcare credit is \$1,200 as shown on their Form 2441, which follows.

Form 2441 Department of the Treasury Internal Revenue Service (99)	Child and Dependent Care Expenses ► Attach to Form 1040, Form 1040A, or Form 1040NR. ► See separate instructions.	 2441	OMB No. 1545-0074 2011 Attachment Sequence No. 21																																																						
Name(s) shown on return Robert and Sharon Myers		Your social security number 123-45-6789																																																							
Part I Persons or Organizations Who Provided the Care —You must complete this part. (If you have more than two care providers, see the instructions.)																																																									
1 (a) Care provider's name	(b) Address (number, street, apt. no., city, state, and ZIP code)	(c) Identifying number (SSN or EIN)	(d) Amount paid (see instructions)																																																						
Bright Star Daycare	45 Bright Star Circle Metropolis, IL 62960	37-1111111	7,000																																																						
Did you receive dependent care benefits? No Yes Complete only Part II below. Complete Part III on the back next.																																																									
Caution. If the care was provided in your home, you may owe employment taxes. If you do, you cannot file Form 1040A. For details, see the instructions for Form 1040, line 59, or Form 1040NR, line 58.																																																									
Part II Credit for Child and Dependent Care Expenses																																																									
2 Information about your qualifying person(s) . If you have more than two qualifying persons, see the instructions.																																																									
(a) Qualifying person's name		(b) Qualifying person's social security number	(c) Qualified expenses you incurred and paid in 2011 for the person listed in column (a)																																																						
First	Last																																																								
Sydney	Myers	444-44-4444	3,500																																																						
Charles	Myers	555-55-5555	3,500																																																						
3 Add the amounts in column (c) of line 2. Do not enter more than \$3,000 for one qualifying person or \$6,000 for two or more persons. If you completed Part III, enter the amount from line 31		3	6,000																																																						
4 Enter your earned income . See instructions		4	43,000																																																						
5 If married filing jointly, enter your spouse's earned income (if your spouse was a student or was disabled, see the instructions); all others , enter the amount from line 4		5	53,000																																																						
6 Enter the smallest of line 3, 4, or 5		6	6,000																																																						
7 Enter the amount from Form 1040, line 38; Form 1040A, line 22; or Form 1040NR, line 37		7	102,000																																																						
8 Enter on line 8 the decimal amount shown below that applies to the amount on line 7																																																									
If line 7 is: <table style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: left;">Over</th> <th style="text-align: left;">But not over</th> <th style="text-align: left;">Decimal amount is</th> </tr> <tr><td>\$0—15,000</td><td></td><td>.35</td></tr> <tr><td>15,000—17,000</td><td></td><td>.34</td></tr> <tr><td>17,000—19,000</td><td></td><td>.33</td></tr> <tr><td>19,000—21,000</td><td></td><td>.32</td></tr> <tr><td>21,000—23,000</td><td></td><td>.31</td></tr> <tr><td>23,000—25,000</td><td></td><td>.30</td></tr> <tr><td>25,000—27,000</td><td></td><td>.29</td></tr> <tr><td>27,000—29,000</td><td></td><td>.28</td></tr> </table>		Over	But not over	Decimal amount is	\$0—15,000		.35	15,000—17,000		.34	17,000—19,000		.33	19,000—21,000		.32	21,000—23,000		.31	23,000—25,000		.30	25,000—27,000		.29	27,000—29,000		.28	If line 7 is: <table style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: left;">Over</th> <th style="text-align: left;">But not over</th> <th style="text-align: left;">Decimal amount is</th> </tr> <tr><td>\$29,000—31,000</td><td></td><td>.27</td></tr> <tr><td>31,000—33,000</td><td></td><td>.26</td></tr> <tr><td>33,000—35,000</td><td></td><td>.25</td></tr> <tr><td>35,000—37,000</td><td></td><td>.24</td></tr> <tr><td>37,000—39,000</td><td></td><td>.23</td></tr> <tr><td>39,000—41,000</td><td></td><td>.22</td></tr> <tr><td>41,000—43,000</td><td></td><td>.21</td></tr> <tr><td>43,000—No limit</td><td></td><td>.20</td></tr> </table>		Over	But not over	Decimal amount is	\$29,000—31,000		.27	31,000—33,000		.26	33,000—35,000		.25	35,000—37,000		.24	37,000—39,000		.23	39,000—41,000		.22	41,000—43,000		.21	43,000—No limit		.20
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9 Multiply line 6 by the decimal amount on line 8. If you paid 2010 expenses in 2011, see the instructions		8	X . 20																																																						
10 Tax liability limit. Enter the amount from the Credit Limit Worksheet in the instructions		10	11,369																																																						
11 Credit for child and dependent care expenses. Enter the smaller of line 9 or line 10 here and on Form 1040, line 48; Form 1040A, line 29; or Form 1040NR, line 46		11	1,200																																																						
For Paperwork Reduction Act Notice, see your tax return instructions. Cat. No. 11862M Form 2441 (2011)																																																									

