

Head of Household, Child Tax Credit, Earned Income Credit, and Dependency Deduction Outline

1. Filing Status

- a. **Head of Household.** A taxpayer can only claim Head of Household (HOH) status if the taxpayer is not married (or considered not married; and claims a dependency exemption) on the last day of the tax year. § 2(b)(1).
 - i. “Not married” status is determined at the close of the taxable year, unless the taxpayer’s spouse dies during the taxable year (then, marital status is determined at time of death). § 7703(a).
 - ii. “Considered not married” includes:
 1. taxpayer who is legally separated from spouse under a divorce decree or separate maintenance order; OR
 2. taxpayer who has a spouse at any time during the taxable year who is a nonresident alien; OR
 3. taxpayer is married but (a) files a separate return, (b) maintains as taxpayer’s home a household for a child (son, daughter, stepson, stepdaughter, eligible foster child) for more than half the year, (c) taxpayer furnishes more than one-half of maintaining the household for the tax year, and (d) during the last six months of the tax year, the taxpayer’s spouse is not a member of the household. § 7703(b).
 - iii. “Claims a dependency exemption” means that the taxpayer must claim either a Qualifying Child or a Qualifying Relative. (See part 3 *infra*).
 - iv. Cannot be a Head of Household if:
 1. taxpayer is a nonresident alien at any time during the taxable year; or
 2. taxpayer’s only dependent is either:
 - a. Unrelated to taxpayer by blood or marriage but shares a principal place of abode with taxpayer, and is a member of taxpayer’s household; or
 - b. Taxpayer did not provide over one-half of the support for the dependent.
- b. **Married Filing Jointly.** Married taxpayers can choose to file their taxes jointly or separately. § 6013(a). A taxpayer is considered married if:
 - i. Taxpayer is married on the last day of the tax year.
 - ii. Taxpayer’s spouse died during the taxable year (except for a legally separated, divorced or nonresident alien spouse).
 - iii. Exceptions:

1. Taxpayers cannot file jointly if either spouse is a nonresident alien at anytime during the tax year. § 6013(a)(1).
2. Taxpayers cannot file jointly if the spouses have different taxable years (unless caused by death of one spouse). § 6013(a)(2).
3. Election to file jointly cannot be made after:
 - a. 3 years from the original filing date (excluding extensions);
 - b. The Service has issued a notice of deficiency and the taxpayer has filed a petition in Tax Court;
 - c. The taxpayer has filed a refund suit; or
 - d. Either spouse has entered into a closing agreement. § 6103(b)(2).

c. Married Filing Separately. Married taxpayers can choose to file their returns separately. A taxpayer who files “married filing separately” is only responsible for his or her own taxes. (*See* Publication 501).

2. Dependency Deduction

- a. Individuals are generally allowed a personal exemption deduction for dependents. § 151(c).
 - i. 2005 - \$3,200
 - ii. 2006 - \$3,300
 - iii. 2007 - \$3,400
 - iv. 2008 - \$3,500
- b. Exemptions are subject to phaseouts based on adjusted gross income. § 151(d)(3). These phaseouts should not come into play in a *pro bono* practice.
- c. Taxpayer Identification Number (TIN) (usually the Social Security Number) of dependent must be included on the return. § 151(e). *Furlow v. United States*, 55 F.Supp. 2d 260 (D. Md. 1999), *aff’d per curiam*, 210 F.3d 361 (4th Cir. 2000).
 - i. There is no exception for taxpayers with moral or religious objections to Social Security Numbers. *Miller v. Commissioner*, 114 T.C. 511 (2000).
 - ii. The statute does not limit the deduction to “original” or “timely-filed” returns. Therefore, if the taxpayer has a TIN for the dependent, but did not put it on the original return, the taxpayer could claim the deduction on an amended return. IRS Counsel should not force the taxpayer to prepare and file an amended return if failure to put the TIN on the return is the only reason the deduction was denied.
 - iii. If a taxpayer or claimed dependents do not have a TIN, for future years, you can help taxpayers file a W-7 “Application for IRS

Individual Taxpayer Identification Number.” A W-7 is only for taxpayers who are not American citizens or permanent residents.

3. Dependent Defined

- a. A dependent is either a Qualifying Child or a Qualifying Relative. § 152(a). This only applies for tax years beginning after December 31, 2004.
- b. **Qualifying Child.** § 152(c). With respect to a taxpayer, a qualifying child is a person who satisfies each of the following tests:
 - i. Relationship Test: dependent is the taxpayer’s child or other descendant, brother, sister, stepbrother, stepsister, half-brother, half-sister or a descendant of such relative (e.g. niece or nephew). § 152(c)(1)(A) & 152(c)(2).
 - ii. Residency Test: Taxpayer shares the same principal place of abode with the dependent for more than one-half of the tax year. § 152(c)(1)(B).
 1. This fact may be established by credible testimony.
 2. Temporary absences may not count. *See Rowe v. Commissioner*, 128 T.C. 13 (2007) (EIC allowed even though taxpayer was incarcerated).
 - iii. Age Requirement: Less than 19 years old at the close of the taxable year. § 152(c)(1)(C) & 152(c)(3).
 1. Exception for student less than 24 years old;
 2. Exception for the permanently and totally disabled. *See* §§ 22(e) & 152(c)(3)(B).
 - iv. Support Test: Dependent cannot have provided over one-half of the dependent’s own support for the calendar year in which the taxpayer’s tax year begins. § 152(c)(1)(D).
 - v. Tiebreaker rule: When more than one taxpayer claims a child as a Qualifying Child, the following rules apply. § 152(c)(4).
 1. Parent of dependent is allowed to claim the dependent as a qualifying child before a non-parent.
 2. If neither parent claims the child, the taxpayer with the highest AGI for the tax year is allowed to claim the dependent as the taxpayer’s qualifying child.
 3. If both parents claim the child, and they do not file jointly, the parent with whom the child resided the longest period of time may take the deduction.
 4. If both parents claim the child, and the child resides with both parents for the same amount of time, the parent with the higher AGI may take the deduction.
- c. **Qualifying Relative.** § 152(d). With respect to a taxpayer, a Qualifying Relative is a person who satisfies each of the following tests:
 - i. Relationship Test: Dependent is the taxpayer’s descendant, sibling, stepsibling, niece, nephew, parents, parent’s ancestor,

stepparents, aunt, uncle, son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, sister-in-law or any other person who is: (a) not married to the taxpayer, and (b) who lives in the same principal place of abode as taxpayer, and (c) who is a member of taxpayer's household.

- ii. **Gross Income Test:** Dependent's gross income for the calendar year in which the taxpayer's tax year begins, must be less than the exemption amount listed in §151(d). Section 151(d)(1) still lists the exemption amount as \$2,000, but the yearly exemption amount is adjusted for inflation under §151(d)(4). In 2008, the exemption amount was \$3,500.
- iii. **Support Test:** Taxpayer must provide dependent with over one-half of the dependent's support for the calendar year in which the taxpayer's tax year begins; and
- iv. **Exclusivity:** Dependent cannot be a qualifying child of the taxpayer or any other taxpayer for any tax year beginning in the calendar year in which such tax year begins.

d. **Divorced or Separated Parents.** A divorced taxpayer is eligible to claim a child as a qualifying child or qualifying relative, even if the taxpayer is not the custodial parent if the taxpayer meets all of the following requirements:

- i. Child's parents provide over one-half of the child's support.
- ii. Child's parents are divorced or legally separated under a decree of divorce or separate maintenance; or
 - 1. The child's parents are separated under a written separation agreement; or
 - 2. The child's parents live apart at all times during the last 6 months of the calendar year. § 152(e)(1)(A).
- iii. The child is in one or both of the parents' custody for more than one-half of the calendar year.
- iv. The custodial parent signs a written declaration (Form 8332) that the custodial parent will not claim the child as a dependent for any tax year beginning in the calendar year. The noncustodial parent must attach the written declaration (Form 8332) to the noncustodial parent's return for the tax year beginning during the calendar year. § 152(e)(2)(A)&(B).
 - 1. An oral release by the custodial parent is ineffective. *See Thomas v. Commissioner*, T.C. Memo. 1998-384.
 - 2. Substantially complying with Form 8332's requirements satisfies §152(e)(2)'s requirements. *See Bramante v. Commissioner*, T.C. Memo. 2002-228.

e. **General rules:**

- i. Dependents cannot have dependents. § 152(b)(1).

- ii. Taxpayer cannot claim a person as a dependent if that person has filed a joint return with a tax liability for the tax year beginning in the calendar year in which the taxpayer's tax year begins. § 152(b)(2).
 - 1. Section 7701(a)(14) defines taxpayer as: "any person subject to any internal revenue tax."
 - 2. A person is not a taxpayer unless the person has a tax obligation.
 - a. Example: "An individual is not a qualifying child of 'any other taxpayer' if the individual's parent (or other person with respect to whom the individual is defined as a qualifying child) is not required by §6012 to file an income tax return and (i) does not file an income tax return, or (ii) files an income tax return solely to obtain a refund of withheld income taxes." Notice 2008-5, 2008-2 I.R.B. 256.
- iii. Dependent must be citizen or national of United States, Canada, Mexico, § 152(b)(3), or any other country "contiguous" to the United States. Query: Are Cuba and the Bahamas, for example, contiguous to the United States?
 - a. Exception for foreign national adopted child, § 152(b)(3)(B), if:
 - i. the child has the same principal place of abode as the taxpayer
 - ii. is a member of the taxpayer's household, and
 - iii. The taxpayer is a citizen or national of the United States.

4. Child Tax Credit

- a. A taxpayer may claim a \$1,000 credit for each qualifying child under 17 (see above) for whom the taxpayer is entitled to a dependency deduction. § 24(a)&(c)(1).
 - i. Taxpayers cannot claim a Child Tax Credit for a qualifying relative.
 - ii. Exceptions: Phaseouts based on adjusted gross income
 - iii. Exception: No child tax credit for dependents who are residents of countries contiguous to the United States. § 24(c)(2).

5. Earned Income Credit (EIC)

- a. Eligible individuals are entitled to a refundable credit that is a function of earned income and the number of qualifying children, subject to phaseouts.
 - i. Eligible Individuals with a Qualifying Child. To claim the EIC, the taxpayer must satisfy the following requirements. § 32(c).
 - 1. Taxpayer cannot be a qualifying child of another person.

- § 32(c)(1)(B).
 - 2. Taxpayer must be a United States citizen or resident living in the United States. § 32(c)(1)(C)&(D).
 - 3. Taxpayer must have a valid TIN (usually Social Security number). If married, taxpayer's spouse must also have a valid TIN. § 32(c)(1)(E).
 - 4. Taxpayer must have earned income. § 32(c)(2).
 - 5. Taxpayer cannot have investment income that exceeds \$2,950 (in 2008). § 32(i).
 - 6. If married, taxpayer must file a joint return. § 32(d).
 - 7. The qualifying child is not married at the end of the taxpayer's tax year, unless the taxpayer is entitled to a personal exemption, § 151, with respect to the individual (without regard to section 152(e)).
 - 8. The child's principal place of abode is in the United States. § 32(c)(3)(C).
 - 9. The child's name, age and TIN are on the tax return. § 32(c)(3)(D).
- ii. Eligible Individuals without a Qualifying Child (The Credit is much smaller).
 - 1. Taxpayer cannot be a qualifying child of another person. § 32(c)(1)(B). A taxpayer who is an eligible individual also cannot be a dependent for whom a personal exemption under section 151 is allowable to another taxpayer for any tax year beginning in the same calendar year as the eligible individual's tax year in which he is claiming the EIC. § 32(c)(1)(A)(ii)(III).
 - 2. Taxpayer must be a United States citizen or resident living in the United States. § 32(c)(1)(C)&(D).
 - 3. Taxpayer must have a valid TIN (usually Social Security number). If married, taxpayer's spouse must also have a valid TIN. § 32(c)(1)(E).
 - 4. Taxpayer must have earned income. § 32(c)(2).
 - 5. Taxpayer cannot have investment income that exceeds \$2,950. § 32(i).
 - 6. If married, taxpayer must file a joint return. § 32(d).
 - 7. Taxpayer's principal place of abode is in U.S. for more than one-half of the taxable year. § 32(c)(1)(A)(ii)(I).
 - 8. Individual (or spouse) is between 25 and 64 years old, § 32(c)(1)(A)(ii)(II); and
- iii. Exceptions – The following classes of individuals are not eligible for the earned income credit:
 - 1. Qualifying child.
 - 2. Individuals claiming section 911 benefits,
 - a. Unless on active duty with U.S. Armed Forces.

3. Nonresident aliens,
 - a. Unless the nonresident alien elects to be taxed as a resident (together with citizen or resident spouse) under section 6013(g) or -(h).
 - b. Unless the nonresident alien is on active duty with Armed Forces of United States.
4. Individuals who fail to provide a TIN.
5. Individuals with more than \$2,950 (in 2008) in interest, dividend, net rents and royalties, capital gain, and net passive activity income.
6. Married individuals (within the meaning of section 7703) whose filing status is Married Filing Separately.