



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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MEMORANDUM FOR KENNETH J. RUBIN, ASSISTANT DISTRICT COUNSEL
PENNSYLVANIA DISTRICT COUNSEL CC:NER:PEN:PHI

Attn: David A. Breen

FROM: George J. Blaine
Chief, Branch 1 (Income Tax & Accounting) CC:DOM:IT&A:1

SUBJECT: Request for Significant Service Center Advice
Revocation of Form 8332

This responds to your memorandum of September 24, 1999, requesting significant service center advice with respect to the revocation of Form 8332, Release of Claim to Exemption for Child of Divorced or Separated Parents. This advice is to be provided to the Centralized Quality Review Site, which oversees our toll-free telephone assistance lines and other responses to taxpayer inquiries.

Section 152(e) of the Internal Revenue Code sets forth rules for determining the support test in the case of a child of divorced parents, for purposes of claiming the exemption for a dependent under section 151. A child of divorced parents is treated as having received over half of his support during a calendar year from a noncustodial parent if the custodial parent signs a written declaration that such custodial parent will not claim such child as a dependent for the year, and the noncustodial parent attaches such written declaration to the noncustodial parent's return for the year. Pursuant to section 1.152-4T of the Temporary Regulations, Q&A 3, such written declaration may be on Form 8332 or other document which conforms to the substance of that form.

On Form 8332, the custodial parent may release his/her claim to exemption for the child for the current tax year, for specific future years, or for all future years. The noncustodial parent must attach the Form 8332 to his/her return for each year in which he/she claims the exemption. See also Q&A 4 of § 1.152-4T of the Temporary Regulations.

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The Form 8332 is only attached to the noncustodial parent's return. It is not filed by the custodial parent. It contains no cancellation date. If the custodial parent releases his or her claim to the exemption for all future years, he or she only executes the form once and does not have to renew or reiterate the release.

The Form 8332 is not transcribed by the Service Center during the processing of the Form 1040. As stated, the noncustodial parent must attach it to the return each year that the exemption is claimed, even if it states "all future years" and he or she has already submitted it with an earlier year's return.

The form does not state whether a release for future years may be revoked, nor do related publications such as Publication 504, Divorced or Separated Individuals. However, a custodial parent may desire to revoke the release and claim the exemption for the child on his or her own return, due to either a change in circumstance or a failure by the noncustodial parent to fulfill obligations under the divorce decree with respect to support. Customer Service reports that the Service's toll-free lines receive a large number of calls asking about revocation of Form 8332.

As you note in your memorandum, the issue of revocation of Form 8332 has been considered previously by Chief Counsel. Income Tax and Accounting has issued several memoranda setting forth its position that Form 8332 is not irrevocable. Publication 504, which previously contained language stating that Form 8332 could not be revoked, was revised to eliminate that sentence as a result of prior Counsel advice. However, the Service has not developed or published procedures for revoking the Form 8332.

There is no form or checkbox that the custodial parent can unilaterally file to revoke or cancel a previously signed Form 8332. The original form was tendered to the noncustodial parent and he or she can continue to attach a copy to his/her return each year to support the claim for exemption.

It is our position that if the custodial parent chooses to revoke the Form 8332, and therefore claim the child on his or her return, we will allow the exemption to the custodial parent only if the noncustodial parent refrains from claiming the same child as a dependent. Thus, the two ex-spouses must concur in the revocation. If the noncustodial parent does not agree to the revocation, and continues to claim the child while the custodial parent also claims the child, a "duplicate TIN" situation will arise. The Service would be forced to take the position of a stakeholder and disallow the competing exemption claims in the examination process. The Service would then have to determine which parent is properly entitled to claim the child for that year. Thus, while the release of a claim to exemption is not irrevocable, any revocation must be agreed to by both parents or an audit will result.

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Due to the inherent difficulties in revoking the Form 8332, we are suggesting that the Tax Forms Development Branch insert cautionary language into the form. Custodial parents need to be careful not to release the claim for all future years if there is a possibility that circumstances may change or that the noncustodial parent may not comply with the divorce decree conditions governing support and exemptions.

Our toll-free assisters should advise taxpayers that the Form 8332 may be revoked, but that the other parent should agree. The only way for the custodial parent to revoke the form is to claim the dependency exemption for that child for the year. If, however, both parents claim the same child for the same year, an audit will result.

If you have any further questions, please call Nancy Rose at (202) 622-4910.

cc: Tom Erwin OP:C:W:MA