

Example (3). D received all of his support, \$1,000, during the calendar year 1970, from his parents E and F, who are separated under a written separation agreement. F had custody of D for the entire year of 1970, but under the agreement E was to provide \$600 for the support of D during 1970, and E is entitled to any deduction allowable under section 151 for the years 1970 and 1971. E, in fact, provides only \$550 for the support of D during 1970, but makes up the arrearage of \$50 early in 1971. Nevertheless, F is treated as having provided over half of the support for D during 1970.

Example (4). Assume the same facts as in example (3) and that F had custody of D for the entire year 1971, and of \$2,350 expended for the support of D during 1971, E provided \$650 while F provided \$1,700. Since under the written separation agreement E is entitled to any deduction allowable under section 151 for D for the year 1971 and E provided at least \$600 for the support of D, E is treated as having provided over half of the support of D, for 1971.

Example (5). G and H are legally separated under a decree of separate maintenance. G has custody of I, the child of G and H, for the entire year, and G and H enter into a written agreement that G is entitled to any deduction allowable under section 151 for I for the calendar year 1970. However, during 1970, of the \$2,000 provided for the support of I, H provided \$1,300 while G provided only \$700. H has provided more than \$1,200 for the support of I, and G cannot establish that G provided more for the support of I, than did H. Therefore, notwithstanding the agreement, since H does not have custody of I, H is treated as having provided over half of the support for I for 1970.

Example (6). J and K, the children of L and M, who are divorced, received a total of \$3,400 for the support of both during the calendar year 1970 from their parents. L, who has custody of J and K for the entire year 1970, provided \$1,800 for the support of both, while M, the noncustodial parent, provided \$1,600 for such support. Under the decree of divorce, M is entitled to any deduction allowable under section 151 for such children. Since M has provided at least \$600 for the support of each child, M is treated as having provided over half the support for J and K for 1970. Furthermore, as J and K are determined under section 152(e) and § 1.152-4 to be dependents of M for purposes of section 151(e), they are also considered to be dependents of M with respect to other provisions of the Code that are dependent upon such a determination for their operation. (For example, section 213.)

Example (7). N, O, and P are the children of divorced parents Q and R, both calendar year taxpayers. During calendar year 1976, the children received over half their support from Q and R. Q, who has custody of the three children for the entire year 1976, pro-

vided \$800 for the support of each of the three children. R, the noncustodial parent, provided \$2,700 during 1976 for the combined support of the three children under the terms of the decree of divorce. So, for calendar year 1976, although R, the noncustodial parent, did not provide support in the amount \$1,200 per child under paragraph (d)(3) of this section, R, the noncustodial parent, is treated as having provided more than half the support of each child during 1976, since R provided more than \$1,200 for the combined support of all the children and Q did not provide more for the support of either N, O, or P (\$800 per child) during 1976 than R provided during 1976 (\$900 per child).

Example (8). Assume the same facts that occurred in 1976 in example 7 also occurred in 1977. For 1977 R does not satisfy the \$1,200 support test under paragraph (d)(3) of this section because he has not provided \$1,200 support for each individual child N, O, or P for calendar year 1977. Therefore, R, the noncustodial parent, is not treated as having provided more than half the support of the children for calendar year 1977.

Example (9). A, B, and C, the children of divorced parents M and N, both calendar year taxpayers, receive all of their support, \$5,900, from their parents during the calendar year 1979. M has custody of A, B, and C and provides \$2,700 for their collective support during 1979. Pursuant to the terms of the decree of divorce N provided \$1,200 for the support of A, \$1,000 for the support of B, and \$1,000 for the support of C. Since N has provided \$1,200 or more for the support of A, and M has provided \$900 ($\$2,700 \div 3$) for the support of A during 1979, N is treated as having provided more than half the support for A during 1979. However, since N has not provided \$1,200 or more for the support of either B or C, N, the noncustodial parent, is not treated as having provided more than half the support of B or C during 1979.

[T.D. 7099, 36 FR 5337, Mar. 20, 1971, as amended by T.D. 7145, 36 FR 20039, Oct. 15, 1971; T.D. 7639, 44 FR 48674, Aug. 20, 1979]

§ 1.152-4T Dependency exemption in the case of a child of divorced parents, etc. (temporary).

(a) In general.

Q-1 Which parent may claim the dependency exemption in the case of a child of divorced or separated parents?

A-1 Provided the parents together would have been entitled to the dependency exemption had they been married and filing a joint return, the parent having custody of a child for the greater portion of the year (the custodial parent) will generally be entitled to the dependency exemption. This rule

applies to parents not living together during the last 6 months of the calendar year, as well as those divorced or separated under a separation agreement.

Q-2 Are there any exceptions to the general rule in A-1?

A-2 Yes, there are three exceptions. The general rule does not apply (i) if a multiple support agreement is in effect (see section 152(c)), (ii) if a decree or agreement executed prior to January 1, 1985 provides that the custodial parent has agreed to release his or her claim to the dependency exemption to the noncustodial parent and the noncustodial parent provides at least \$600 of support to the child (see section 152(e)(4)), or (iii) if the custodial parent relinquishes the exemption in the manner described in A-3.

Q-3 How may the exemption for a dependent child be claimed by a noncustodial parent?

A-3 A noncustodial parent may claim the exemption for a dependent child only if the noncustodial parent attaches to his/her income tax return for the year of the exemption a written declaration from the custodial parent stating that he/she will not claim the child as a dependent for the taxable year beginning in such calendar year. The written declaration may be made on a form to be provided by the Service for this purpose. Once the Service has released the form, any declaration made other than on the official form shall conform to the substance of such form.

Q-4 For what period may a custodial parent release to the noncustodial parent a claim to the exemption for a dependent child?

A-4 The exemption may be released for a single 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 spouse and a copy of such release must be attached to his/her return for each succeeding taxable year for which he/she claims the dependency exemption.

Q-5 May only the custodial parent claim a deduction under section 213(d) for medical expenses paid by the parent

or an income exclusion under section 105(b) for medical expenses paid by an employer for a dependent child?

A-5 No. Under the new rules, if a child receives over half of his support during the calendar year from his parents who are divorced or legally separated under a decree of divorce or separate maintenance, or who are separated under a written separation agreement, that child will be treated as a dependent of both parents for purposes of sections 105(b) and 213(d). Thus, a parent can deduct medical expenses paid by that parent for a child even though a dependency exemption for the child is claimed by the other parent. The special rule of sections 105(b) and 213(d) does not apply where over half of the support of a child is treated as having been received from a person under the provisions of section 152(c) (relating to multiple support agreements).

Q-6 When does section 152(e), as amended by the Tax Reform Act of 1984, become effective?

A-6 Section 152(e), as amended, is effective with respect to dependency exemptions for taxable years beginning after December 31, 1984.

(Secs. 1041(d)(4) (98 Stat. 798, 26 U.S.C. 1041(d)(4)), 152(e)(2)(A) (98 Stat. 802, 26 U.S.C. 152(e)(2)(A)), 215(c) (98 Stat. 800, 26 U.S.C. 215(c)) and 7805 (68A Stat. 917, 26 U.S.C. 7805) of the Internal Revenue Code of 1954)

[T.D. 7973, 49 FR 34459, Aug. 31, 1984]

§ 1.153-1 Determination of marital status.

For the purpose of determining the right of an individual to claim an exemption for his spouse under section 151(b), the determination of whether such individual is married shall be made as of the close of his taxable year, unless his spouse dies during such year, in which case the determination shall be made as of the time of such death. An individual legally separated from his spouse under a decree of divorce or separate maintenance shall not be considered as married. The provisions of this section may be illustrated by the following examples:

Example (1). A, who files his returns on the basis of a calendar year, married B on December 31, 1956. B, who had never previously married, had no gross income for the calendar year 1956 nor was she the dependent of