



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

July 25, 2000

CC:IT&A:2
WTA-N-108040-00

Number: **200034029**
Release Date: 8/25/2000
UIL: 152.06-00

MEMORANDUM FOR RICHARD POPRICK, CUSTOMER SERVICE DIVISION

FROM: George Baker, Assistant to the Branch Chief CC:IT&A:2

SUBJECT: Support for Kidnapped Child
WTA-N-108040-00

This Chief Counsel advice is in response to your memorandum dated April 6, 2000. Chief Counsel advice is not binding on Examination or Appeals and is not a final case determination. Under section 6110(k)(3) of the Internal Revenue Code, this document is not to be used or cited as precedent.

Your memorandum raises the following issues: (1) Do the parents of a minor child who was kidnapped by a person not related to the child meet the support test for taking a dependency exemption for the child in the year of the kidnapping, if the parents provided the sole support for the child before the kidnapping, and the child is missing at the end of the year. (2) If the parents meet the support test for the year of the kidnapping, do the parents meet the support test in later years if the parents continue to maintain a room for the child and incur expenses to search for the child.

Section 151(a) of the Internal Revenue Code allows a deduction for the dependency exemption provided by section 151(c).

Under section 152 (a) of the Internal Revenue Code, generally, the term "dependent" includes a child of a taxpayer if the taxpayer provided over half of the child's support for the calendar year in which the taxable year of the taxpayer begins.

Section 1.152-1(a)(2)(i) of the Income Tax Regulations defines the term "support" by example. It states that support "includes food, shelter, clothing, medical and dental care, education, and the like."

In the absence of any legal authority directly on point, we conclude that in the circumstances described in the statement of the issue, the parents should be presumed to meet the support test of section 152(a) if, before the kidnapping, the parents provided over half of the support for the child. Under the circumstances described in the statement of the issue, proof of total support for the period before

the kidnapping and proof that the parents provided over half of that support should suffice. In favor of this presumption, we note that on the facts presented, no other person would be entitled to the dependency exemption for the child. See section 152(a), which requires that a dependent be related to the taxpayer or be a member of the taxpayer's household for the entire year.

For taxable years after the year of the kidnapping, although the issue is not free from doubt, we do not think that the parents meet the support test of section 152(a), even if the parents continue to maintain a room for the child and continue to expend funds searching for the child. We do not think that under these circumstances, these expenses constitute support. Cf. Otmishi v. Commissioner, T.C.M. 1980-472. In Otmishi, the court stated that the taxpayer did not provide any support for his child in the year in issue, although he expended amounts to locate his child who had been taken by the child's mother.

If you have any questions, please call George Baker at (202) 622-4920.