

Office of Chief Counsel  
Internal Revenue Service  
**Memorandum**

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to: Senior Tax Analyst  
Reporting Compliance, W&I  
W:CP:RC:S

from: Senior Technician Reviewer  
Associate Chief Counsel  
(Income Tax & Accounting)  
CC:ITA:4

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subject: Form 8332

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

You asked whether the Service may consider a Form 8332 presented during an examination of a noncustodial parent's return if he or she claimed the exemption for a child on his or her return but did not attach a Form 8332 to the return. As discussed below, Form 8332 constitutes evidence concerning the noncustodial parent's right to claim the exemption. The Service may consider the form in evaluating the parent's claim during examination.

Law

The pre-1985 version of section 152(e) presented difficult problems of proof and substantiation of support. To provide more certainty, Congress amended section 152(e) to allow the custodial parent the exemption for a child unless an exception applied. The relevant exception permits the custodial parent to waive the exemption and allows the noncustodial parent to claim the exemption. As amended, section 152(e) requires that

the custodial parent memorialize the waiver in a signed written declaration (as prescribed by regulations) that the noncustodial parent attaches to the noncustodial parent's return. Congress believed that the new methodology would provide the IRS and the parties with much clearer substantiation of the parties' intent on waiver of the exemption. The increased certainty would reduce the need for the IRS to adjudicate the issue. See H. Rept. 98-432 (Part II), at 1498-99.

The regulations under section 152(e) authorize the Service to prescribe the form and manner of the written declaration. The custodial parent may waive a claim to an exemption for a child by signing a Form 8332, "Release of Claim to Exemption for Child of Divorced or Separated Parents," or a substantially similar statement. The requirement to attach the custodial parent's signed written declaration to the noncustodial parent's return is designed to force the parents to stipulate to who claims the exemption when the return is filed and thus avoid subsequent disputes.

### Analysis and Conclusion

If the parents dispute entitlement to the exemption (usually when both parents claim the exemption), the Service will need to address the issue by considering all relevant evidence of the custodial parent's waiver of the exemption and may consider the form in evaluating the parent's claim during examination. Of course, only one parent is entitled to the dependency exemption for a child under section 152(e). Evaluating the noncustodial parent's claim during audit necessarily affects the custodial parent's right to the exemption.

We hope this memorandum is responsive to your request. Please call if you have any further questions.