

**INTERNAL REVENUE SERVICE**

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[REDACTED]

Dear [REDACTED]:

I apologize for the delay in responding to your letter of February 5, 2003, to the St. Louis Taxpayer Advocate on behalf of your constituent, [REDACTED]. Although [REDACTED] has custody of her children, a judge ruled that only her former husband can claim the dependency exemptions for them. [REDACTED] believes the rules regarding which divorced parent can claim the dependency exemption for a child and claim the child credit are unfair and should be changed.

Rules concerning dependency exemptions are found in §§ 151 and 152 of the Internal Revenue Code. Generally, if parents are divorced, the custodial parent is allowed the dependency exemption for a child. However, an exception allows the noncustodial parent to claim the dependency exemption if the custodial parent releases the claim to the exemption by completing a Form 8332 or by making a substantially similar declaration.

Section 24 provides that, in general, a taxpayer who has a qualifying child may claim a child credit. Section 24(c) defines the term "qualifying child" so that a taxpayer can not claim the credit for a child unless he or she is allowed a deduction under § 151 for that tax year. Because these rules are statutory, any change would require legislative action.

I hope this information is helpful. Please contact [REDACTED], if you have any questions.

Sincerely,

Lewis J. Fernandez  
Deputy Associate Chief Counsel  
(Income Tax & Accounting)