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WASHINGTON, D.C. 20224

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Dear _____ :

This letter responds to your request for information regarding non-U.S. military North American Treaty Organization (NATO) service members and their spouses who reside in the United States. On February 27, 2004, we provided a general information letter to your office, including information on tax benefits and dependency exemptions available to NATO service members and their families. This follow-up letter provides general information on changes to the Internal Revenue Code made by subsequent legislation. Specifically, this letter provides information on the new "qualifying child" provisions for tax benefits and dependency exemptions.

We understand that your office reviews and endorses employment authorization document (EAD) applications for dependents of non-U.S. NATO service members assigned in the United States. For purposes of the EAD program, a dependent of a non-U.S. NATO service member includes, among others, a spouse, an unmarried child under age 21, and an unmarried child under age 23 enrolled in post-secondary educational institution, provided the dependent lives in the home with the service member. The EAD program requires that NATO dependents pay all applicable local, state, and federal taxes on any income earned in the United States. As proof, NATO dependents must submit copies of their most recent tax returns.

Subsequent Legislation

The Working Families Tax Relief Act of 2004 (WFTRA), Pub. L. No. 108-311, 118 Stat 1169, amended § 152 of the Internal Revenue Code for taxable years beginning after December 31, 2004. WFTRA established a uniform definition of a "qualifying child" that

applies to the following tax benefits: head of household filing status, dependency exemptions, child tax credit, child and dependent care credit, and the earned income tax credit. Each of these tax benefits starts with the same definition of a “qualifying child,” but then provides additional criteria. The following are the “qualifying child” requirements for these tax benefits.

Dependency Exemption

In general, § 151(c) allows an exemption deduction from taxes for each individual who is a dependent of the taxpayer under § 152.

Section 152 provides that a dependent must be either a qualifying child or a qualifying relative. A “qualifying child” means a person that: (1) bears a relationship to the taxpayer (i.e. child, sibling, step-sibling, or a descendant of any of these relatives), (2) lives in the same principal place of abode as the taxpayer for more than half of the year, (3) meets certain age requirements, and (4) meets the support test. In order to meet the age requirements, the “qualifying child” must be under age 19, under age 24 if a full-time student, or any age if permanently and totally disabled. In order to meet the support test, the “qualifying child” must not have provided over half of his or her own support for the year.

A “qualifying relative” means a person that: (1) meets the relationship test, (2) meets the gross income test, (3) meets the support test, and (4) is not a qualifying child of another taxpayer. In order to meet the relationship test, the “qualifying relative” must be the taxpayer’s child or descendant of a child, sibling, step-sibling, parent or ancestor of a parent, step-parent, child of a sibling, sibling of a parent, in-law, or an individual who lives as a member of the household with the taxpayer for the year. In order to meet the gross income test, the “qualifying relative’s” gross income must be less than \$3,400 for 2007. In order to meet the support test, the taxpayer must provide over half of the “qualifying relative’s” support for the taxable year.

Dependent Care Credit

Section 21 allows a taxpayer a credit against tax for dependent care expenses for a “qualifying child,” as defined above; however, the child must not have attained the age of 13 by the end of the year.

Child Tax Credit

Section 24 allows a taxpayer a credit against tax for a “qualifying child,” as defined above; however, the child must not have attained the age of 17 by the end of the year.

Earned Income Credit

Section 32 allows certain low-income earners a credit against tax. For the earned income credit, a “qualifying child,” as defined above, need not meet the support test.

For further information regarding these tax benefits, you may refer to the following IRS publications; Publication 501, *Exemptions, Standard Deduction, and Filing Information*, Publication 503, *Child and Dependent Care Expenses*, Publication 596, *Earned Income Credit*, and Publication 972, *Child Tax Credit*.

We hope you find this information helpful. If you have any other questions or need additional information, please contact me or _____ of my office at ()

Sincerely,

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Senior Technician Reviewer, Branch 4
Office of Associate Chief Counsel
(Income Tax & Accounting)