



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

OFFICE OF THE CHIEF COUNSEL

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The Honorable Mark Steven Kirk
Member, U.S. House of Representatives
707 Skokie Boulevard, Suite 350
Northbrook, IL 60062

Attention:

Dear Congressman Kirk:

I am responding to your inquiry dated February 5, 2010, on behalf of your constituent, . She asked about Income Tax Regulations published under section 152(e) of the Internal Revenue Code (the Code) in 2008. These regulations changed the IRS's practice of allowing a noncustodial parent, in certain circumstances, to use pages of a divorce decree to show that the custodial parent released the exemption claim for a child to the noncustodial parent (section 1.152-4(e) of the regulations).

Under section 152(e) of the Code, a noncustodial parent may claim an exemption for a child if the custodial parent signs a written declaration (in such form and manner as provided in regulations) that he or she will not claim the exemption for the child, and the noncustodial parent attaches the declaration to his or her tax return. The regulations under section 152(e), effective for tax years beginning after July 2, 2008, provide that the custodial parent's written declaration must be on Form 8332, *Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent*, or other single-purpose document containing substantially the same information as Form 8332. A noncustodial parent may not, except for certain decrees executed before the effective date of the regulations, substantiate a custodial parent's release of a claim to exemption by attaching pages of a divorce decree.

I am enclosing a copy of the preamble to the regulations under section 152(e) of the Code, which explains why we will not accept a court order or decree as proof of a custodial parent's waiver. In general, divorce decrees are complex documents addressing statuses, rights, and obligations under state law. We found that interpreting a divorce decree was burdensome, caused uncertainty, and led to disputes. In contrast, Form 8332 clearly and specifically designates which parent is entitled to the dependency exemption. The rule adopted in the regulations requiring a noncustodial

parent to use Form 8332 (or a similar single-purpose document) facilitates tax administration, provides more certainty to taxpayers about which parent is entitled to claim a dependency exemption for a child, and reduces tax controversies.

I hope this information is helpful. If you have any questions, please contact _____ or _____ at _____, or me at _____.

Sincerely,

George J. Blaine
Associate Chief Counsel
(Income Tax & Accounting)

Enclosure