



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

OFFICE OF THE CHIEF COUNSEL

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The Honorable Richard Lugar
United States Senate
Washington, DC 20510

Attention:

Dear Senator Lugar:

I am responding to your letter, dated March 11, 2010, on behalf of your constituent, . As a noncustodial parent, he wrote about the requirements for claiming a dependency exemption for his two children.

Regulations published in 2008 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 a claim to exemption for a child (section 1.152-4(e) of the Income Tax Regulations).

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 an exemption for the child, and the noncustodial parent attaches the declaration to his or her tax return (section 152(e) of the Internal Revenue Code). Effective for tax years beginning after July 2, 2008, 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 (section 1.152-4(e) of the Income Tax Regulations). 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 that 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 me at .

Sincerely,

Michael J. Montemurro
Branch Chief
Associate Chief Counsel
(Income Tax & Accounting)

Enclosure