

ID: CCA_2015121512120822

[Third Party Communication:

UILC: 152.08-02

Date of Communication: Month DD, YYYY]

Number: **201602009**

Release Date: 1/8/2016

From: [REDACTED]

Sent: Tuesday, December 15, 2015 12:12:09 PM

To: [REDACTED]

Cc:

Bcc:

Subject: 152(e) question

- You asked whether the noncustodial parent or the custodial parent should be allowed the dependency exemption in the following situation:

Mother has been the custodial parent of her two children since her divorce from Father, the noncustodial parent. In [REDACTED], both parents claimed the dependency exemption for the children. Father attached to his [REDACTED] return a Form 8332, *Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent*. Part II of the form was completed and on the line of Part II dealing with the years for which the release is effective the words "all future years" were written. Part I of the form was not completed. The custodial parent does not recall having executed the form and says she is confident that she would not have released the dependency exemption for all future years. Under § 152(e) of the Internal Revenue Code, a child is treated as a qualifying child or a qualifying relative of the noncustodial parent if all of the following apply: (1) The child received over half of his or her support for the year from one or both of the parents; (2) The child was in the custody of one or both of the parents for more than half of the year; and (3) The custodial parent agrees not to claim the child as a dependent by completing and signing Form 8332 or a similar statement.

Form 8332 may be executed for all future years. Under § 1.152-4(e)(1)(ii) of the income Tax Regulations, a Form 8332 that specifies all future years is treated as specifying the first taxable year after the taxable year of execution and all taxable years after that.

In the present case, the noncustodial parent attached Form 8332 to his [REDACTED] return. Although Part I was not completed, Part II was and the "all future years" language used in Part II of the form covers the [REDACTED] taxable year. Accordingly, under § 152(e), the two children are treated as qualifying children or qualifying relatives of the Father, the noncustodial parent. Regarding the custodial parent's claim that she did not execute the Form 8332 attached to the non-custodial parent's tax return, if the form is completed, signed, and attached to the noncustodial parent's return, the IRS should allow the dependency exemption for the children named on the form to the noncustodial parent and deny the custodial parent's claim to the dependency exemption. If the custodial parent did not execute the Form 8332, her remedy is against the noncustodial

parent. In addition, if the custodial parent did release the dependency exemption for all future years, the regulations under § 152 allow her to revoke the release for the first calendar year after the year in which she revokes the release. Part III of Form 8332 is used for future year revocations.