

**Office of Chief Counsel
Internal Revenue Service
memorandum**

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to: Modesto Milan, Policy Analyst
(ITIN Program Office)

from: Amy Pfalzgraf, Senior Counsel
(CC:ITA:5)



subject: Child Tax Credit and Dependency Exemption

This Chief Counsel Advice responds to your request for assistance. Your primary concern is with taxpayers claiming the dependency exemption under § 151 of the Internal Revenue Code, and the child tax credit under § 24 for children who are not citizens, nationals, or residents of the United States.

We described below the general requirements for a child to qualify as a “dependent” under § 152 for purpose of the dependency exemption under § 151, and a “qualifying child” under § 24 for purpose of the child tax credit. We also addressed specific examples described in your November 27, 2007, email.

EXAMPLES

1. Whether a parent can claim a child tax credit pursuant to § 24 for his or her child who is not a citizen, national, or resident of the United States.
2. Whether a parent can claim a dependency exemption under § 151 for his or her child who is not a citizen, national, or resident of the United States.
3. Whether a parent who resides outside of the United States with his or her child can claim a child tax credit pursuant to § 24.

CONCLUSIONS

1. No. A parent cannot claim a child tax credit pursuant to § 24 for his or her child who is not a citizen, national, or resident of the United States.
2. If the child is not a citizen, national, or resident of the United States, nor a resident of Mexico or Canada, then the parent cannot take a dependency exemption for the child. If a child is a resident of Mexico or Canada, then the

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child may qualify as a dependent under § 152 for whom the parent may take a dependency exemption under § 151, provided all the requirements of § 151 and § 152 are met. A child is a dependent under § 152 if the child is either a qualifying child or a qualifying relative. If the child lives with the parent for more than half of the year, then the child may meet the definition of "qualifying child" under § 152(c). If the child lives with the parent for half of the year or less, then the child may meet the definition of "qualifying relative" under § 152(d).

3. If the child is not a citizen, national, or resident of the United States, the parent of that child cannot claim a child tax credit pursuant to § 24. However, if the child is a citizen, national, or resident of the United States and meets all other requirements of § 24, then the parent can claim a child tax credit pursuant to § 24. Whether the parent resides outside of the United States is immaterial for purposes of the child tax credit.

Sections 151 and 152. Dependency Exemption and Dependent Defined.

Section 151 provides that an individual may take a deduction for each exemption, including an exemption for a dependent as defined by § 152.

Section 152(a) provides that the term "dependent" means a qualifying child or a qualifying relative.

Section 152(b) provides generally that (1) a dependent cannot have dependents of his or her own, (2) a person who made a joint return with his or her spouse cannot be treated as a dependent, and (3) the term "dependent" does not include an individual who is not a citizen or national of the United States, unless such individual is a resident of the United States, or a country contiguous to the United States.

Section 7701(b)(1)(A) provides that an alien individual shall be treated as a resident of the United States, if the individual: (i) is a lawful permanent resident of the United States at any time during the calendar year; (ii) meets the substantial presence test (*i.e.*, present in the United States at least 31 days during the calendar year, and the total of the number of days that the individual was present during the calendar year and the two preceding years equals or exceeds 183 days when multiplied by the applicable multiplier provided in § 7701(b)(3)); or (iii) makes a first-year election as prescribed by § 7701(b)(4).

Section 152(c)(1) provides generally that the term "qualifying child" means an individual (A) who is a child of the taxpayer or a descendant of such a child; or a brother, sister, stepbrother, or stepsister of the taxpayer or a descendant of any such relative, (B) who has the same principal place of abode as the taxpayer for more than one-half of the taxpayer's taxable year, (C) who has not attained the age of 19 or who is a student and has not attained the age of 24 as of the close of such calendar year, and (D) who has not provided over one-half of such individual's own support.

Note that a child who satisfies the principal place of abode test of § 152(c) may not satisfy the substantial presence test or other residency tests under § 7701(b)(1)(A), and vice versa. For example, a child lives with his or her parent in the United States for 31 days in the current year. For the remaining days of the year, the child lives with the other parent outside of the United States. Adding the time the child spent in the United States in the current year to the time spent in the United States during the two preceding calendar years, the child meets the substantial presence test. That child would satisfy the residency test of § 7701(b), but would not satisfy the principal place of abode test of § 152(c) for the current year. Accordingly, if a child is not a citizen or national of the United States, or a resident of Canada or Mexico, the child must satisfy the substantial presence test or other residency tests as well as the principal place of abode test to be treated as a qualifying child under § 152.

Section 152(d)(1) provides generally that the term "qualifying relative" means an individual (A) who is a child or a descendant of a child; brother, sister, stepbrother, stepsister; father, mother, ancestor of father or mother; stepfather, stepmother; son or daughter of a brother or sister of the taxpayer; brother or sister of the father or mother of the taxpayer; son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, sister-in-law; or individual (other than a spouse) who has the same principal place of abode as the taxpayer and is a member of the taxpayer's household, (B) whose gross income for the calendar year in which such taxable year begins is less than the exemption amount, (C) with respect to whom the taxpayer provides over one-half of the individual's support for the calendar year in which such taxable year begins, and (D) who is not a qualifying child of such taxpayer or of any other taxpayer.

Section 24. Child Tax Credit

Section 24(a) provides a credit against the tax imposed for the taxable year with respect to each qualifying child.

Section 24(c)(1) provides that the term "qualifying child" means a qualifying child of the taxpayer (as defined in § 152(c)) who has not attained the age of 17.

Section 24(c)(2) provides that the term "qualifying child" does not include any individual who would not be a dependent if § 152(b)(3)(A) were applied without regard to all that follows "resident of the United States." Accordingly, § 24 only applies to a child who is a citizen, national, or resident of the United States.

This document may not be used or cited as precedent. See section 6110(k)(3) of the Code.

Please call (202) 622-4960 if you have any further questions.