**8514. Who is entitled to the dependency exemption for qualifying children when the parents are divorced or have never been married?**

For purposes of determining if a parent is entitled to the dependency exemption for qualifying children, it makes no difference whether the parents were divorced or had never been married.[[1]](#endnote-1) As a general rule, the custodial parent is entitled to claim the dependency exemption. According to the Code, the parent having custody for the greater portion of the year is considered to be the “custodial parent.”[[2]](#endnote-2) However, if both parents have custody for equal amounts of time during the taxable year, the parent with the highest adjusted gross income is entitled to claim the exemption.[[3]](#endnote-3)

One the other hand the custodial parent may release the claim for exemption to allow the noncustodial parent to claim the exemption. In order to claim the exemption, the custodial spouse executes a Form 8332 that the noncustodial parent must attach to the tax return. As explained below, it is also possible for the custodial spouse to revoke the release of the exemption in order to claim it for himself or herself.

**POST 2008 RULES FOR RELEASE AND REVOCATION OF RELEASE OF CLAIM TO EXEMPTION**

For tax years beginning after July 2, 2008, there are prescribed ways to release the claim to the exemption to the noncustodial parent as well as to revoke the release of the claim to the exemption from the noncustodial parent (effectively returning to the custodial parent).

* ***Releasing the Exemption to Noncustodial Spouse***

As mentioned above, the custodial spouse may release the claim to the exemption by executing a Form 8332 (Release/Revocation of Claim to Exemption for Child by Custodial Parent). Form 8332 provides the custodial parent with the option of releasing the right to claim the exemption for a single tax year or for multiple tax years. In the alternative, the custodial spouse may execute a conforming written document that includes the same information as it appears on a Form 8332. However, such written declaration must have been executed for the *sole purpose* of releasing the exemption to the noncustodial spouse for one or more tax years. Importantly, this means that attaching a court document such as a decree or a divorce or separation agreement would not be an acceptable written instrument even if it contains all of the required information.[[4]](#endnote-4) Also, in order to claim the exemption, the noncustodial parent must attach the Form 8332 or written declaration to the tax return.

* ***Revoking the Release of the Exemption to Noncustodial Spouse***

According to the regulations, the custodial parent has the unilateral right to revoke the release of the exemption from the noncustodial spouse in order to claim it for himself or herself. To do so, the custodial parent is required to provide a noncustodial written notice of the intent to revoke and make reasonable efforts to deliver such notice to the noncustodial parent. The revocation is effective no earlier than the tax year *following* the calendar year in which the custodial parent delivered or made reasonable efforts to deliver the notice to the noncustodial spouse.[[5]](#endnote-5)

*Example:*  Ashley and Asher are divorced parents with one child. Prior to tax year 2014, Ashley had executed a Form 8332 releasing the claim to the dependency exemption to Asher through tax year 2016. In February 2015, Ashley provides Asher written notice of her intent to revoke the release. Even though Asher received written notice of Ashley’s intent to revoke the release, it would not be effective earlier than tax year 2015. Thus, for tax year 2014, Asher remains entitled to claim the dependency exemption.

Similar to the release, the revocation is made on Form 8332 or a separate conforming written document containing the same information contained on Form 8332. If a separate written document is used it must be executed for the sole purpose of revoking the release. Similar to the release, the revocation must specify the year or years in which it is to be in effect. To re-claim the exemption, the custodial spouse must attach the Form 8832 or conforming document to the return. [[6]](#endnote-6)

1. *King v. Comm*., 121 TC 245 (2003). See also Preamble, REG-149856-03, 72 Fed. Reg. 24192, 24194 (5-2-2007). [↑](#endnote-ref-1)
2. IRC Sec. 152(e)(1)(B). [↑](#endnote-ref-2)
3. IRC. Sec. 152(c)(4)(B). [↑](#endnote-ref-3)
4. Treas. Reg. § 1.152-4(e). [↑](#endnote-ref-4)
5. Treas. Reg. § 1.152-4(e)(3). [↑](#endnote-ref-5)
6. Treas. Reg. § 1.152-4(e).(3). [↑](#endnote-ref-6)