

elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(g) [The text of proposed § 1.704–3(g) is the same as the text of § 1.704–3T(g) published elsewhere in this issue of the **Federal Register**].

■ **Par. 5.** Section 1.721(c)–1 is added to read as follows:

**§ 1.721(c)–1 Overview, definitions, and rules of general application.**

[The text of proposed § 1.721(c)–1 is the same as the text of § 1.721(c)–1T published elsewhere in this issue of the **Federal Register**].

■ **Par. 6.** Section 1.721(c)–2 is added to read as follows:

**§ 1.721(c)–2 Recognition of gain on certain contributions of property to partnerships with related foreign partners.**

[The text of proposed § 1.721(c)–2 is the same as the text of § 1.721(c)–2T published elsewhere in this issue of the **Federal Register**].

■ **Par. 7.** Section 1.721(c)–3 is added to read as follows:

**§ 1.721(c)–3 Gain deferral method.**

[The text of proposed § 1.721(c)–3 is the same as the text of § 1.721(c)–3T published elsewhere in this issue of the **Federal Register**].

■ **Par. 8.** Section 1.721(c)–4 is added to read as follows:

**§ 1.721(c)–4 Acceleration events.**

[The text of proposed § 1.721(c)–4 is the same as the text of § 1.721(c)–4T published elsewhere in this issue of the **Federal Register**].

■ **Par. 9.** Section 1.721(c)–5 is added to read as follows:

**§ 1.721(c)–5 Acceleration event exceptions.**

[The text of proposed § 1.721(c)–5 is the same as the text of § 1.721(c)–5T published elsewhere in this issue of the **Federal Register**].

■ **Par. 10.** Section 1.721(c)–6 is added to read as follows:

**§ 1.721(c)–6 Procedural and reporting requirements.**

[The text of proposed § 1.721(c)–6 is the same as the text of § 1.721(c)–6T published elsewhere in this issue of the **Federal Register**].

■ **Par. 11.** Section 1.721(c)–7 is added to read as follows:

**§ 1.721(c)–7 Examples.**

[The text of proposed § 1.721(c)–7 is the same as the text of § 1.721(c)–7T published elsewhere in this issue of the **Federal Register**].

■ **Par. 12.** Section 1.6038B–2 is amended by:

- 1. Revising paragraph (a)(3).
- 2. Adding paragraphs (a)(1)(iii), (c)(8), and (c)(9).
- 3. Revising paragraph (h)(3).
- 4. Adding paragraphs (j)(4) and (j)(5).

**§ 1.6038B–2 Reporting of certain transfers to foreign partnerships.**

(a) \* \* \*

(1) \* \* \*

(iii) [The text of proposed § 1.6038B–2(a)(1)(iii) is the same as the text of § 1.6038B–2T(a)(1)(iii) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(3) [The text of proposed § 1.6038B–2(a)(3) is the same as the text of § 1.6038B–2T(a)(3) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(c) \* \* \*

(8) [The text of proposed § 1.6038B–2(c)(8) is the same as the text of § 1.6038B–2T(c)(8) published elsewhere in this issue of the **Federal Register**].

(9) [The text of proposed § 1.6038B–2(c)(9) is the same as the text of § 1.6038B–2T(c)(9) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(h) \* \* \*

(3) [The text of proposed § 1.6038B–2(h)(3) is the same as the text of § 1.6038B–2T(h)(3) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(j) \* \* \*

(4) [The text of proposed § 1.6038B–2(j)(4) is the same as the text of § 1.6038B–2T(j)(4) published elsewhere in this issue of the **Federal Register**].

(5) [The text of proposed § 1.6038B–2(j)(5) is the same as the text of § 1.6038B–2T(j)(5) published elsewhere in this issue of the **Federal Register**].

**John Dalrymple,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. 2017–01048 Filed 1–18–17; 8:45 am]

**BILLING CODE 4830–01–P**

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Parts 1 and 301**

**[REG–137604–07]**

**RIN 1545–BI35**

**Definition of Dependent**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Withdrawal of notice of proposed rulemaking and notice of proposed rulemaking.

**SUMMARY:** This document withdraws proposed regulations relating to the definition of an authorized placement agency for purposes of a dependency exemption for a child placed for adoption that were issued prior to the changes made to the law by the Working Families Tax Relief Act of 2004 (WFTRA). This document contains proposed regulations that reflect changes made by WFTRA and by the Fostering Connections to Success and Increasing Adoptions Act of 2008 (FCSIAA) relating to the dependency exemption. This document also contains proposed regulations that, to reflect current law, amend the regulations relating to the surviving spouse and head of household filing statuses, the tax tables for individuals, the child and dependent care credit, the earned income credit, the standard deduction, joint tax returns, and taxpayer identification numbers for children placed for adoption. These proposed regulations change the IRS's position regarding the category of taxpayers permitted to claim the childless earned income credit. In determining a taxpayer's eligibility to claim a dependency exemption, these proposed regulations change the IRS's position regarding the adjusted gross income of a taxpayer filing a joint return for purposes of the tiebreaker rules and the source of support of certain payments that originated as governmental payments. These regulations provide guidance to individuals who may claim certain child-related tax benefits.

**DATES:** Written or electronic comments and requests for a public hearing must be received by April 19, 2017.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG–137604–07), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–137604–07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, or sent electronically via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS REG–137604–07).

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Victoria J. Driscoll, (202) 317–4718; concerning the submission of comments and requests for a public hearing, Regina Johnson, (202) 317–6901 (not toll-free calls).

**SUPPLEMENTARY INFORMATION:**

## Background

This document withdraws a notice of proposed rulemaking (REG-107279-00) amending § 1.152-2(c)(2) of the Income Tax Regulations that was published in the **Federal Register** (65 FR 71277) on November 30, 2000 (2000 proposed regulations) relating to the definition of an authorized placement agency for purposes of a dependency exemption for a child placed for adoption under prior law. Prior law required that a child be placed with the taxpayer for adoption by an authorized placement agency. Section 152 of the Internal Revenue Code was amended by section 201 of WFTRA (Pub. L. 108-311, 118 Stat. 1166, 1169) to provide that a qualifying child eligible to be the dependent of a taxpayer may include a child lawfully placed with the taxpayer for adoption. Accordingly, the proposed regulations in § 1.152-2(c)(2) under prior law are withdrawn.

This document also contains proposed amendments to 26 CFR part 1 under sections 2, 3, 21, 32, 63, 151, 152, 6013, and to Part 301 under section 6109 to reflect the changes made by WFTRA and FCSIAA (Pub. L. 110-351, 122 Stat. 3949) relating to the dependency exemption, as well as changes to these sections by other acts. WFTRA amended section 152, in part, to provide a uniform definition of a qualifying child; FCSIAA added to the definition of a qualifying child the requirements that the child must be younger than the taxpayer and that the child must not file a joint return (other than as a claim for refund). FCSIAA also amended the rules that apply if two or more taxpayers are eligible to claim an individual as a qualifying child.

### 1. Dependency Rules

Under section 151, a taxpayer may deduct an exemption amount for a dependent as defined in section 152. Prior to WFTRA, section 151 contained many of the rules related to the definition of a dependent. WFTRA moved those rules to section 152. As amended, section 152(a) defines a *dependent* as a qualifying child or a qualifying relative. Taxpayers should note that a taxpayer's treatment of the dependency exemption under section 151 for a particular qualifying child or qualifying relative might have tax consequences under other Code provisions, such as the education tax credits under section 25A, the premium tax credit under section 36B, and the penalty for failure to maintain minimum essential coverage under section 5000A.

#### a. Individual Not a Dependent

Section 152(b) provides that an individual who is a qualifying child or a qualifying relative of a taxpayer is not a taxpayer's dependent in certain circumstances. Section 152(b)(2) provides that, to be a dependent of a taxpayer, an individual must not have filed a joint return with his or her spouse. However, the WFTRA conference report provides that the "restriction does not apply if the return was filed solely to obtain a refund and no tax liability would exist for either spouse if they filed separate returns." See H.R. Rep. No. 108-696, at 55 n.38 (2004) (Conf. Rep.).

#### b. Qualifying Child

WFTRA established under section 152(c) a uniform definition of a qualifying child. The legislative history identifies five child-related benefits to which the uniform definition applies: The filing status of head of household under section 2(b), the child and dependent care credit under section 21, the child tax credit under section 24, the earned income credit under section 32, and the dependency exemption under section 151. See H.R. Rep. No. 108-696, at 55-65.

Section 152(c) defines a qualifying child as an individual who bears a certain relationship to the taxpayer (qualifying child relationship test), has the same principal place of abode as the taxpayer for more than one-half of the taxable year (residency test), is younger than the taxpayer and is under the age of 19 (or age 24 if a full-time student or any age if permanently and totally disabled) (age test), does not provide more than one-half of his or her own support (qualifying child support test), and does not file a joint return with a spouse except to claim a refund of estimated or withheld taxes (joint return test).

#### c. Temporary Absence

A child is considered to reside in the same principal place of abode as a taxpayer during a temporary absence. Under the existing section 152 regulations, a nonpermanent failure to occupy a common abode by reason of illness, education, business, vacation, military service, or a custody agreement may be a temporary absence due to special circumstances. The existing regulations under section 2 defining surviving spouse and head of household include a similar rule relating to the effect of a temporary absence on the requirement to maintain a household, but add the requirement that it is reasonable to assume that the absent

person will return to the household. Under case law, a factor to consider in determining whether an absence is temporary is whether the individual intends to establish a new principal place of abode. In *Rowe v. Commissioner*, 128 T.C. 13 (2007), the court concluded that it was reasonable to assume that a taxpayer would return to her home after pretrial confinement and that the taxpayer's absence was temporary. See also *Hein v. Commissioner*, 28 T.C. 826 (1957) (*acq.*, 1958-2 CB 6), and Rev. Rul. 66-28 (1966-1 CB 31).

#### d. Two or More Taxpayers Eligible To Claim Individual as Qualifying Child

Section 152(c)(4) provides tiebreaker rules that apply if an individual meets the definition of a qualifying child for two or more taxpayers (eligible taxpayers). In general, the eligible taxpayer who is a parent (eligible parent) of the individual may claim the individual as a qualifying child or, if there is no eligible parent, then the individual may be claimed by the eligible taxpayer with the highest adjusted gross income.

If more than one of the eligible taxpayers is a parent of the individual, more than one eligible parent claims the individual as a qualifying child, and the eligible parents claiming the individual do not file a joint return with each other, the individual is treated as the qualifying child of the eligible parent claiming the individual with whom the individual resided for the longest period of time during the taxable year. If the individual resided with each eligible parent claiming the individual for the same amount of time during the taxable year, the individual is treated as the qualifying child of the eligible parent claiming the individual with the highest adjusted gross income.

If at least one, but not all, of two or more eligible taxpayers is a parent of the individual, but no eligible parent claims the individual as a qualifying child, another eligible taxpayer may claim the individual, but only if the eligible taxpayer's adjusted gross income is higher than the adjusted gross income of each eligible parent. Since 2009, IRS Publication 501, *Exemptions, Standard Deduction, and Filing Information*, has stated that "[i]f a child's parents file a joint return with each other, this rule may be applied by dividing the parents' combined AGI equally between the parents."

Notice 2006-86 (2006-2 CB 680) provides interim guidance on these rules prior to the amendments by FCSIAA. The notice provides that, except to the extent that a noncustodial

parent may claim the child as a qualifying child under the special rule for divorced or separated parents in section 152(e), discussed in the next paragraph, if more than one taxpayer claims a child as a qualifying child, the child is treated as the qualifying child of only one taxpayer (as determined under the tiebreaker rules of section 152(c)(4)) for purposes of the five provisions subject to the uniform definition of a qualifying child (the filing status of head of household under section 2(b), the child and dependent care credit under section 21, the child tax credit under section 24, the earned income credit under section 32, and the dependency exemption under section 151, as well as for purposes of the exclusion for dependent care assistance under section 129 (which may apply to the care of a dependent qualifying child under age 13)). Thus, in general, the tiebreaker rules for determining which taxpayer may claim a child as a qualifying child apply to these provisions as a group, rather than on a section-by-section basis.

Notice 2006–86 contains an exception to the rule that only one taxpayer may claim a child as a qualifying child for all purposes. Section 152(e) has a special rule for divorced or separated parents that determines who, as between the custodial and noncustodial parent, may claim a child as a qualifying child or qualifying relative if certain tests (different from the general tests under sections 152(c) and (d)) regarding residency and support are met and the custodial parent releases a claim to exemption for the child. The notice provides that, if this special rule applies, a noncustodial parent may claim a child as a qualifying child for purposes of the dependency exemption and the child tax credit (the only two of the provisions addressed in the notice to which section 152(e) applies in determining who is a qualifying child), and another taxpayer may claim the child for one or more of the other benefits to which section 152(e) does not apply.

Although FCSIAA affects other aspects of section 152(c)(4) and Notice 2006–86, there is nothing in FCSIAA that would compel a change in the rule described in Notice 2006–86 that an individual is treated as the qualifying child of only one taxpayer for the listed child-related tax benefits, except if the special rule in section 152(e) applies.

#### e. Qualifying Relative

Under section 152(d), a qualifying relative is an individual who bears a certain relationship to the taxpayer, including an individual who has the

same principal place of abode as the taxpayer and is a member of the taxpayer's household for the taxable year (qualifying relative relationship test), has gross income less than the exemption amount for the taxable year (gross income test), receives more than one-half of his or her support from the taxpayer (qualifying relative support test), and is not a qualifying child of any taxpayer (not a qualifying child test).

Notice 2008–5 (2008–1 CB 256) addresses whether a taxpayer meets the test under section 152(d)(1)(D) to claim an individual as a qualifying relative. That provision requires that the individual not be a qualifying child of either the taxpayer or any other taxpayer during a taxable year beginning in the calendar year in which the taxpayer's taxable year begins. The notice provides that, for purposes of section 152(d)(1)(D), an individual is not a qualifying child of "any other taxpayer" if the individual's parent (or other person for whom the individual is defined as a qualifying child) is not required by section 6012 to file an income tax return and (1) does not file an income tax return, or (2) files an income tax return solely to obtain a refund of withheld income taxes.

#### f. Support Tests

Under section 152(c)(1)(D), to be a taxpayer's qualifying child, an individual must not have provided over one-half of the individual's own support for the calendar year. Under section 152(d)(1)(C), to be a taxpayer's qualifying relative, a taxpayer must have provided over one-half of an individual's support for the calendar year.

Regarding governmental payments to a person with a qualifying need, the WFTRA conference report, H.R. Rep. No. 108–696, at 57, states that "[g]overnmental payments and subsidies (e.g., Temporary Assistance [for] Needy Families, food stamps, and housing) generally are treated as support provided by a third party." The IRS has successfully asserted in litigation that governmental payments provided to a parent to aid a family with dependent children and used by the parent for support of her children was support of the children provided by the government, and not support provided by the parent. See *Lutter v. Commissioner*, 61 T.C. 685 (1974), *affd. per curiam*, 514 F.2d 1095 (7th Cir. 1975).

#### 2. Surviving Spouse and Head of Household, and Conforming Changes

Prior to amendment by section 803(b) of the Tax Reform Act of 1969 (Pub. L.

91–172, 83 Stat. 487), section 2(a) provided that the return of a surviving spouse is treated as a joint return for purposes of the tax rates, the tax tables for individuals, and the standard deduction. Following the 1969 amendments, section 2(a) defines the term *surviving spouse* for purposes of section 1. The return of a taxpayer filing as a surviving spouse is no longer treated as a joint return under sections 2, 3, or 63. Section 3 provides tax tables for certain individuals in lieu of the tax imposed by section 1. Section 63(c) provides the same basic standard deduction for a taxpayer filing as a surviving spouse as a taxpayer filing a joint return. Accordingly, a taxpayer filing as a surviving spouse is no longer treated as filing a joint return for any tax purpose, but rather, a taxpayer filing as a surviving spouse simply uses the same tax rates under section 1, the same amounts in the tax tables under section 3, and the same standard deduction under section 63 as a taxpayer filing a joint return.

Generally, under section 2(b), to qualify as a head of household, a taxpayer must maintain a household that is the principal place of abode of a qualifying child or other dependent for more than one-half of the taxable year. If the dependent is a parent of the taxpayer and the parent does not share a principal place of abode with the taxpayer, the household maintained by the taxpayer must be the parent's principal place of abode for the entire taxable year.

Prior to WFTRA, section 21 required that a taxpayer maintain a household to claim the credit for dependent care expenses, and regulations on maintaining a household were published under that section. WFTRA removed that requirement from the dependent care credit.

#### 3. Earned Income Credit

Section 32 provides a tax credit to eligible taxpayers who work and have earned income below a certain dollar amount. Before the amendment of section 32 by the Omnibus Reconciliation Act of 1993 (Pub. L. 103–66, 107 Stat. 312), the earned income credit (EIC) was allowable only to a taxpayer with one or more qualifying children. If an individual met the definition of a qualifying child for more than one taxpayer, a tiebreaker rule in section 32 determined which taxpayer was allowed to claim the individual as a qualifying child for the EIC. For taxable years beginning after 1993, section 32(c)(1)(A)(ii) allows a taxpayer without a qualifying child to claim the EIC (childless EIC) if certain

requirements are met. Although there is no regulatory guidance on this issue, since 1995, the IRS has taken the position in IRS Publication 596, *Earned Income Credit*, that if an individual meets the definition of a qualifying child for more than one taxpayer and the individual is not treated as the qualifying child of a taxpayer under the tiebreaker rules, then that taxpayer is precluded from claiming the childless EIC. WFTRA moved the tiebreaker rules from section 32 to section 152(c)(4).

Before repeal in 2010, section 3507 allowed advance payment of the EIC. Section 3507 was repealed by the FAA Air Transportation Modernization and Safety Improvement Act (Pub. L. 111–226, 124 Stat. 2389).

#### 4. Additional Standard Deduction for the Aged and Blind

Before the amendments to sections 63 and 151 made by the Tax Reform Act of 1986 (Pub. L. 99–514, 100 Stat. 2085), a taxpayer was entitled to an additional personal exemption under section 151 for the taxpayer or the taxpayer's spouse (or both), if either was age 65 or older or was blind at the close of the taxable year. As amended, section 63 provides an additional standard deduction for age or blindness instead of an additional personal exemption under section 151.

#### Explanation of Provisions

The proposed regulations reflect statutory amendments to sections 2, 3, 21, 32, 63, 151, 152, 6013, and 6109. In addition, the regulations address certain significant issues arising under these sections and modify certain IRS positions, as explained below.

##### 1. Dependency Exemption

Consistent with the amendments made to sections 151 and 152 by WFTRA, the proposed regulations move rules related to the definition of a dependent from the regulations under section 151 to the regulations under section 152.

##### a. Relationship Test

##### i. General Rules

Section 152(c)(2) provides that a qualifying child must be a child or a descendant of a child of the taxpayer, or a brother, sister, stepbrother, or stepsister of the taxpayer, or a descendant of any of these relatives. Section 152(d)(2) provides that a qualifying relative must bear a certain relationship to the taxpayer, which includes a child or a descendant of a child, a brother, sister, stepbrother, stepsister, parent or ancestor of a parent, or an aunt or uncle of the taxpayer. An individual (other than the taxpayer's

spouse) who is not related to the taxpayer in one of the named relationships nevertheless may satisfy the relationship test for a qualifying relative if the individual has the same principal place of abode as the taxpayer and is a member of the taxpayer's household for the taxpayer's taxable year.

The proposed regulations adopt the rule in Notice 2008–5 regarding whether an individual is a qualifying child of a taxpayer for purposes of determining whether that individual may be a qualifying relative. That is, the proposed regulations provide that an individual is not a qualifying child of a person if that person is not required to file an income tax return under section 6012, and either does not file an income tax return or files an income tax return solely to claim a refund of estimated or withheld taxes.

##### ii. Adopted Child—Adoption by Individual Other Than the Taxpayer

Prior to 2005, for purposes of the relationship test, a person's legally adopted child was treated as that person's child by blood. Specifically, section 152(b)(2) provided that "a legally adopted child of an individual (and a child who is a member of an individual's household, if placed with such individual by an authorized placement agency for legal adoption by such individual), . . . shall be treated as a child of such individual by blood." Therefore, a taxpayer other than the adopting "individual" could be eligible to claim an exemption for an adopted child. For example, the parent of the adopting parent could claim a dependency exemption for the legally adopted child of the taxpayer's son or daughter (just as biological grandparents may claim an exemption for a grandchild) if all other requirements were met.

WFTRA amended section 152 to change the reference from a child placed by an authorized placement agency for adoption to a child who is "lawfully placed" for legal adoption. In making that change, however, WFTRA also changed the reference to the adopting person from "an individual" to "the taxpayer," so that section 152(f)(1)(B) currently provides that a legally adopted individual of the taxpayer is treated as a child by blood of the taxpayer. The use of the word "taxpayer" rather than "individual" arguably limits the recognition of a relationship through adoption only to those situations in which the taxpayer claiming a dependency exemption for the child is the person who adopts the child. This interpretation of the amended statutory

language would diverge from the results of a legal adoption under property, inheritance, and other nontax law, and from the prior tax treatment of adoptions—a significant change in the applicable law. However, there is nothing in the legislative history indicating that Congress intended to limit the treatment of an adopted child as a child by blood in this manner or that otherwise suggests this change in language was intended to effect a change in existing law.

To fill this apparent gap in the statute, the proposed regulations provide that any child legally adopted by a "person," or any child who is placed with a "person" for legal adoption by that "person," is treated as a child by blood of that person for purposes of the relationship tests under sections 152(c)(2) and 152(d)(2). Similarly, the proposed regulations provide that an eligible foster child is a child who is placed with a "person" rather than with a taxpayer.

##### iii. Adopted Child and Foster Child—Child Placement

Although WFTRA removed the reference to an authorized placement agency from the provisions relating to an adopted child in section 152(f)(1)(B), the reference to an authorized placement agency continues to appear in section 152(f)(1)(C), relating to an eligible foster child. Prior to amendment by WFTRA, section 152 treated a child who was a member of an individual's household pending adoption as a child by blood of the individual for purposes of the relationship test only if the child was a foster child living with the individual or if the child was placed with the individual by an authorized placement agency for adoption by the individual. Similarly, § 301.6109–3(a) currently provides that a taxpayer may obtain an adoption taxpayer identification number (ATIN) only for a child who was placed for adoption by an authorized placement agency.

As amended by WFTRA, section 152 treats a child placed for adoption as a child by blood of the taxpayer if the child "is lawfully placed with the taxpayer for legal adoption by the taxpayer." A child may be lawfully placed for legal adoption by an authorized placement agency, the child's parents, or other persons authorized by State law to place children for legal adoption. These proposed regulations reflect the changes made by WFTRA and amend the regulations under section 6109 to provide that the IRS will assign an ATIN to a child who has been lawfully placed with a person for legal adoption.

Under section 152(f)(1)(A)(ii) and § 1.152-1(b)(1)(iii) of these proposed regulations, the term *child* also includes an eligible foster child of the taxpayer as defined in 152(f)(1)(C), that is, a child who is placed with the taxpayer by an authorized placement agency or by the judgment, decree, or other order of a court of competent jurisdiction.

#### iv. Definition of Authorized Placement Agency

The 2000 proposed regulations under § 1.152-2(c)(2) defined an authorized placement agency for purposes of the prior law regarding a child placed for legal adoption. These proposed regulations define an authorized placement agency for purposes of the definition of an eligible foster child and withdraw the 2000 proposed regulations, which defined that term without reference to an Indian Tribal Government (ITG).

These proposed regulations provide that an *authorized placement agency* may be a State, the District of Columbia, a possession of the United States, a foreign country, an agency or organization authorized by, or a political subdivision of, any of these entities to place children in foster care or for adoption. Under the Indian Child Welfare Act of 1978 (25 U.S.C. chapter 21), ITGs and states perform similar functions for foster care and adoption programs. Thus, the proposed regulations provide that an authorized placement agency also may be an ITG (as defined in section 7701(a)(40)), or an agency or organization authorized by, or a political subdivision of, an ITG that places children in foster care or for adoption.

#### b. Residency Test—Principal Place of Abode

For purposes of determining whether an individual has the same principal place of abode as the taxpayer in applying the residency test for a qualifying child and the relationship test for a qualifying relative who does not have one of the listed relationships to the taxpayer, the proposed regulations provide that the term *principal place of abode* means a person's main home or dwelling where the person resides. A person's principal place of abode need not be the same physical location throughout the taxable year and may be temporary lodging such as a homeless shelter or relief housing resulting from displacement caused by a natural disaster.

The proposed regulations further provide that a taxpayer and an individual have the same principal place of abode despite a temporary

absence by either person. A person is temporarily absent if, based on the facts and circumstances, the person would have resided with the taxpayer but for the temporary absence and it is reasonable to assume the person will return to reside at the place of abode. Thus, the proposed regulations adopt the "reasonable to assume" language from the existing regulations under section 2. The proposed regulations indicate that a nonpermanent failure to occupy the abode by reason of illness, education, business, vacation, military service, institutionalized care for a child who is permanently and totally disabled (as defined in section 22(e)(3)), or incarceration may be treated as a temporary absence due to special circumstances. This definition of temporary absence applies to the residency test for a qualifying child, to the relationship test for a qualifying relative who does not have a listed relationship to the taxpayer, and to the requirements to maintain a household for surviving spouse and head of household.

For purposes of the residency test for a qualifying child, the proposed regulations provide that an individual is treated as having the same principal place of abode as the taxpayer for more than one-half of the taxable year if the individual resides with the taxpayer for at least 183 nights during the taxpayer's taxable year or for at least 184 nights during the taxpayer's taxable year that includes a leap day (residing for more than one-half of the taxable year). The proposed regulations further provide that an individual resides with the taxpayer for a night if the individual sleeps (1) at the taxpayer's residence, or (2) in the company of the taxpayer when the individual does not sleep at the taxpayer's residence (for example, when the parent and the child are on vacation). The regulations provide additional rules for counting nights if a night extends over two taxable years and for taxpayers who work at night.

The proposed regulations provide special rules for determining whether an individual satisfies a residency test if the individual is born or dies during the taxable year, is adopted or placed for adoption, is an eligible foster child, or is a missing child.

#### c. Age Test

The age test for a qualifying child requires that an individual be younger than the taxpayer claiming the individual as a qualifying child, and the individual must not have attained the age of 19 (or age 24 if the individual is a student). The age requirement is

treated as satisfied if the individual is permanently and totally disabled.

For purposes of this age test, the proposed regulations substantially adopt the existing definition of a student. Accordingly, the proposed regulations provide that the term *student* means an individual who, during some part of each of 5 calendar months during the calendar year in which the taxable year of the taxpayer begins, is a full-time student at an educational organization described in section 170(b)(1)(A)(ii) or is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational institution or of a State or political subdivision of a State. An *educational organization*, as defined in section 170(b)(1)(A)(ii), is a school normally maintaining a regular faculty and curriculum and having a regularly enrolled body of students in attendance at the place where its educational activities are regularly carried on.

#### d. Support Tests

In determining whether an individual provided more than one-half of the individual's own support (qualifying child support test), or whether a taxpayer provided more than one-half of an individual's support (qualifying relative support test), the proposed regulations compare the amount of support provided by the individual or the taxpayer to the total amount of the individual's support from all sources. In general, the amount of an individual's support from all sources includes support the individual provides and income that is excludable from gross income. The proposed regulations further provide that the amount of an item of support is the amount of expenses paid or incurred to furnish the item of support. If support is furnished in the form of property or a benefit (such as lodging), the amount of that support is the fair market value of the item furnished (Rev. Rul. 58-302 (1958-1 CB 62)).

The proposed regulations provide that the term *support* includes food, shelter, clothing, medical and dental care, education, and similar items for the benefit of the supported individual. Support does not include Federal, State, and local income taxes, or Social Security and Medicare taxes, of an individual paid from the individual's own income (Rev. Rul. 58-67 (1958-1 CB 62)), funeral expenses (Rev. Rul. 65-307 (1965-2 CB 40)), life insurance premiums, or scholarships received by a taxpayer's child who is a student as defined in section 152(f)(2).

The proposed regulations provide that medical insurance premiums are treated as support. These premiums include Part A Basic Medicare premiums, if any, under Title XVIII of the Social Security Act (42 U.S.C. 1395c to 1395i-5), Part B Supplemental Medicare premiums under Title XVIII of the Social Security Act (42 U.S.C. 1395j to 1395w-6), Part C Medicare + Choice Program premiums under Title XVIII of the Social Security Act (42 U.S.C. 1395w-21 to 1395w-29), and Part D Voluntary Prescription Drug Benefit Medicare premiums under Title XVIII of the Social Security Act (42 U.S.C. 1395w-101 to 1395w-154). However, medical insurance proceeds, including benefits received under Medicare Part A, Part B, Part C, and Part D, are not treated as support and are disregarded in determining the amount of the individual's support. Thus, only the premiums paid and the unreimbursed portion of the expenses for the individual's medical care are support. See Rev. Rul. 64-223 (1964-2 CB 50); and Rev. Rul. 70-341 (1970-2 CB 31), revoked in part by Rev. Rul. 79-173 (1979-1 CB 86) to the extent that it held that Part A Medicare benefits are included as a recipient's contribution to support. In addition, services provided to individuals under the medical and dental care provisions of the Armed Forces Act (10 U.S.C. chapter 55) are not treated as support and are disregarded in determining the amount of the individual's support. Finally, payments from a third party (including a third party's insurance company) for the medical care of an injured individual in satisfaction of a legal claim for the personal injury of the individual are not items of support and are disregarded in determining the amount of the individual's support. See Rev. Rul. 64-223.

The proposed regulations provide that, in general, governmental payments and subsidies are treated as support provided by a third party. Consistent with previously issued rulings and case law, these payments and subsidies include, for example, Temporary Assistance for Needy Families (TANF) (42 U.S.C. 601-619), low-income housing assistance (42 U.S.C. 1437f), benefits under the Supplemental Nutrition Assistance Program (7 U.S.C. chapter 51), Supplemental Security Income payments (42 U.S.C. 1381-1383f), foster care maintenance payments, and adoption assistance payments. See H.R. Rep. No. 108-696, at 57 (2004) (Conf. Rep.); *Gulvin v. Commissioner*, 644 F.2d 2 (5th Cir. 1981); and Rev. Rul. 74-153 (1974-1 CB 20).

However, unlike the subsidies described in the previous paragraph that generally are based solely on need, old age benefits under section 202(b) of Title II of the Social Security Act (SSA) (42 U.S.C. 402) are based on an individual's earnings and contributions into the Social Security system and thus are treated as support provided by the recipient to the extent the recipient uses the payments for support. See Rev. Rul. 58-419 (1958-2 CB 57), as modified by Rev. Rul. 64-222 (1964-2 CB 47). Similarly, Social Security survivor and disability insurance benefit payments made under section 202(d) of the SSA to the child of a deceased or disabled parent are treated as support provided by the child to the extent those payments are used for the child's support. See Rev. Rul. 57-344 (1957-2 CB 112) and Rev. Rul. 74-543 (1974-2 CB 39).

The proposed regulations provide a special rule for governmental payments used by the recipient or other intended beneficiary to support another individual. The proposed regulations draw a distinction between: (1) Governmental payments (such as Social Security old age benefits, or survivor and disability insurance benefits for a child) made to a recipient that are intended to benefit a particular named individual (whether the recipient, or another intended beneficiary for whom the recipient merely acts as the payee on behalf of that other intended beneficiary); and (2) governmental payments made to a recipient that are intended to support the recipient and other individuals (such as TANF). Although the governmental payments of the former variety are intended to benefit a particular named individual, because money is fungible, the intended beneficiary might use the governmental payments to support another individual. In this situation, the proposed regulations provide that, if the intended beneficiary (whether the recipient or another individual) uses the governmental payments to support another individual, that amount would constitute support of that other individual provided by the intended beneficiary. Similarly, the proposed regulations provide that the use of governmental payments of the latter variety by the recipient to support another individual would constitute support of that other individual provided by the recipient, whereas any part of such a payment used for the support of the recipient would constitute support of the recipient by a third party. For example, if a mother receives TANF and uses the TANF

payments to support her children, the proposed regulations treat the mother as having provided that support. Thus, the IRS will no longer assert the position that it took in *Lutter*, which concerned payments received by a mother under a program that was the predecessor of TANF. The Treasury Department and the IRS are proposing this rule for the administrative convenience of both the IRS and taxpayers to avoid the need to trace the use of such governmental payments, as opposed to the use of other funds of the recipient, for the support of another individual.

The Treasury Department and IRS request comments on whether various payments made pursuant to the Patient Protection And Affordable Care Act (Public Law 111-148, 124 Stat. 119) in the form of a cost-sharing reduction, an advanced payment of the premium tax credit, or as a reimbursement of health insurance premiums in the form of a premium tax credit, when used for the benefit of another individual, are support provided by the recipient of those benefits or support provided by a third party.

#### e. Citizenship

Under section 152(b)(3)(A), an individual who is not a citizen or national of the United States is not a dependent unless the individual is a resident of the United States, Canada, or Mexico. Nevertheless, consistent with the exception for certain adopted children in section 152(b)(3)(B), the proposed regulations provide that an adopted child of a taxpayer who is a U.S. citizen or national may qualify as a dependent if, for the taxpayer's taxable year, the child has the same principal place of abode as the taxpayer and is a member of the taxpayer's household, and otherwise qualifies as the taxpayer's dependent.

#### f. Tiebreaker Rules

The proposed regulations change the interpretation in Publication 501 regarding a taxpayer's adjusted gross income on a joint return and provide that, in applying the tiebreaker rules that treat an individual as the qualifying child of the eligible taxpayer with the higher or highest adjusted gross income, the adjusted gross income of a taxpayer who files a joint tax return is the total adjusted gross income shown on the return. The prior interpretation is changed to be consistent with other Code sections that require the filing of a joint return to claim a benefit and therefore calculate income based on the entire amount shown on the joint return. For example, the earned income credit under section 32 calculates the

earned income amount based on the entire amount shown on the joint return. This joint return rule also is relevant for determining whether section 152(c)(4)(C) applies. Under that provision, if an eligible parent does not claim an individual as a qualifying child, another eligible taxpayer may claim the individual as a qualifying child only if that taxpayer's adjusted gross income is higher than the adjusted gross income of any eligible parent.

The proposed regulations also expand the tiebreaker rule in section 152(c)(4)(C) to address the situation in which an eligible parent does not claim an individual as a qualifying child and two or more taxpayers, none of whom is a parent, are eligible to claim the individual as a qualifying child and each has adjusted gross income higher than any eligible parent. In this situation, the proposed regulations provide that the individual is treated as the qualifying child of the eligible taxpayer with the highest adjusted gross income.

#### g. Child of Parents Who Are Divorced, Separated, or Living Apart

Section 152(e) provides, in general, that a child is treated as the qualifying child or qualifying relative of a noncustodial parent for a calendar year if, among other things, the custodial parent provides to the noncustodial parent a written declaration that the custodial parent will not claim the child as a dependent for any taxable year beginning in that calendar year. Under section 152(e)(2)(B), the noncustodial parent must attach the written declaration to his or her return.

The proposed regulations provide that the noncustodial parent must attach a copy of the written declaration to an original or amended return. A taxpayer may submit a copy of the written declaration to the IRS during an examination of that parent's return. However, to provide certainty for both taxpayers and the IRS, the proposed regulations provide that a copy of a written declaration attached to an amended return or provided during an examination will not meet the requirements of section 152(e) and § 1.152-5(e) if the custodial parent signed the written declaration after the custodial parent filed a return claiming a dependency exemption for the child for the year at issue, and the custodial parent has not filed an amended return to remove that claim to a dependency exemption. The proposed regulations provide similar rules for a parent revoking a written declaration.

#### h. Filing a Return Solely To Obtain a Refund of Taxes

Individuals who file an income tax return solely to obtain a refund of estimated or withheld taxes are subject to special rules under various provisions of section 152. Section 152(c)(1)(E) provides that, for an individual to be a qualifying child of a taxpayer, the individual cannot have filed a joint return "other than only for a claim of refund." Section 152(b)(2) provides that, for an individual to be a dependent of a taxpayer, the individual cannot have filed a joint return with the individual's spouse. However, the WFTRA conference report states that "[t]his restriction does not apply if the return was filed solely to obtain a refund and no tax liability would exist for either spouse if they filed separate returns." Section 152(d)(1)(D) provides that, to be a qualifying relative, an individual may not be the qualifying child of the taxpayer or of any other taxpayer. Notice 2008-5 concludes that an individual is not the qualifying child of "any other taxpayer," within the meaning of section 152(d)(1)(D), if the person who could have claimed the individual as a qualifying child does not have a filing obligation and either does not file a return or files a return solely to obtain a refund of withheld taxes.

The proposed regulations provide a similar exception to the rule in section 152(b)(1) that a taxpayer cannot have a dependent if the taxpayer himself or herself is a dependent of another taxpayer. Specifically, the proposed regulations provide that an individual is not a dependent of a person if that person is not required to file an income tax return under section 6012 and either does not file an income tax return or files an income tax return solely to claim a refund of estimated or withheld taxes.

#### 2. *Surviving Spouse, Head of Household, and Conforming Changes*

The proposed regulations amend the regulations under section 2 regarding the definition of surviving spouse and the definition of head of household to conform to the amendments made by WFTRA. To reflect the amendments made by the Tax Reform Act of 1969, the proposed regulations remove from the regulations under sections 2, 3, and 6013 references to the return of a surviving spouse being treated as a joint return. The proposed regulations also revise and move from the regulations under section 21 to the regulations under section 2 the definition of maintaining a household, in part, to conform to the amendments to section

21 made by WFTRA, which removed the requirement that a taxpayer maintain a household to claim the credit under section 21.

#### a. *Surviving Spouse*

From the time of the 1969 amendment until the enactment of WFTRA, section 2(a)(1)(B) provided that a taxpayer who is a surviving spouse described in section 2(a)(1)(A) may file as a surviving spouse (and thus may use the tax rates of joint filers) only if the taxpayer "maintains as his home a household which constitutes for the taxable year the principal place of abode (as a member of such household) of a dependent (i) who (within the meaning of section 152) is a son, stepson, daughter, or stepdaughter of the taxpayer, and (ii) with respect to whom the taxpayer is entitled to a deduction for the taxable year under section 151." Thus, the member of the taxpayer's household had to be a son or daughter or stepson or stepdaughter for whom the taxpayer was entitled to a dependency deduction.

WFTRA amended section 2(a), as well as certain other sections such as section 42 relating to the low-income housing credit and section 125 relating to cafeteria plans, to provide that the reference to section 152 applies "without regard to subsections (b)(1), (b)(2), and (d)(1)(B)." These three subsections, respectively: (1) Deny a dependency exemption to a dependent, (2) deny a dependency exemption for a person filing a joint return with his or her spouse, and (3) require the gross income of a qualifying relative to be less than the amount of the dependency exemption. Thus, the language inserted by the WFTRA technical amendment to section 2(a) was intended to broaden the class of individuals whose members could qualify a taxpayer as a surviving spouse for purposes of section 2. See also Staff of Joint Comm. on Taxation, 108th Cong., *General Explanation of Tax Legislation Enacted in the 108th Congress* 130 (Comm. Print 2005) ("technical and conforming amendments . . . provide that an individual may qualify as a dependent for certain purposes . . . without regard to whether the individual has gross income . . . or is married and files a joint return.")

However, in amending section 2(a) for this purpose, WFTRA inserted the direction to exclude the three referenced provisions after the reference to section 152 in section 2(a)(1)(B)(i). Thus, this section currently provides, "(i) who (within the meaning of section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B)

thereof) is a son, stepson, daughter, or stepdaughter of the taxpayer.” Because section 2(a)(1)(B)(ii) continues to require that the taxpayer be entitled to a deduction under section 151 for the dependent (a requirement that could not be met if any of these three sections applied), read literally, section 2(a)(1)(B)(ii) would override the intent of the statutory change in section 2(a)(1)(B)(i), thus preventing the WFTRA amendment from effecting any change in the statute. Therefore, to give effect to the statutory amendment, the proposed regulations construe the language added by WFTRA instead to modify the section 152 requirements that apply in determining whether the taxpayer is entitled to the dependency exemption under section 151 for purposes of section 2(a)(1)(B)(ii). Accordingly, the proposed regulations provide that an individual is a dependent for purposes of section 2(a) if the taxpayer may claim a deduction under section 151 for the individual without applying sections 152(b)(1), (b)(2), and (d)(1)(B).

#### b. Head of Household

The proposed regulations under section 2(b) update and simplify the existing regulations defining head of household. Consistent with the statutory amendments to the definition of a dependent, the proposed regulations provide rules on qualifying as a head of household by maintaining a household that is the principal place of abode of a qualifying child or a dependent. The proposed regulations on head of household apply the rules in the proposed regulations under section 152 for determining principal place of abode, including whether an absence is temporary.

#### c. Maintaining a Household

The proposed regulations provide that a taxpayer maintains a household only if the taxpayer pays more than one-half of the cost related to operating the household for the relevant period. Expenses related to operating the household include property taxes, mortgage interest, rent, utility charges, upkeep and repairs, property insurance, and food consumed on the premises. A taxpayer may treat a home's fair market rental value as a cost of maintaining a household (instead of the sum of payments for mortgage interest, property taxes, and insurance). The proposed regulations provide rules that, in certain circumstances, prorate on a monthly basis the annual cost of maintaining a household when a qualifying child or dependent resides in the household for less than the entire taxable year. The

proposed regulations also, in certain circumstances, recognize the creation of a new household during a year and treat shared living quarters as separate households.

#### 3. Tax Tables for Individuals

The proposed regulations remove from the regulations under section 3 references to the return of a surviving spouse being treated as a joint return to conform to the amendments made by the Tax Reform Act of 1969. The proposed regulations also update the regulations under section 3 to reflect current law.

#### 4. Earned Income Credit

The proposed regulations conform the regulations under section 32 to amendments made to section 32 by WFTRA. Consistent with the 2010 repeal of section 3507 by the FAA Air Transportation Modernization and Safety Improvement Act, the proposed regulations delete the paragraphs of the regulations under section 32 discussing advance payment of the earned income credit.

In addition, the proposed regulations reflect a change in the IRS's position on the interaction of sections 152(c)(4) and 32. Specifically, the proposed regulations provide that, if an individual meets the definition of a qualifying child under section 152(c)(1) for more than one taxpayer and the individual is not treated as the qualifying child of one such taxpayer under the tiebreaker rules of section 152(c)(4), then the individual also is not treated as a qualifying child of that taxpayer for purposes of section 32(c)(1)(A). Thus, that taxpayer may be an eligible individual under section 32(c)(1)(A)(ii) and may claim the childless EIC if he or she meets the other requirements of that section. The Treasury Department and the IRS have concluded that this change in position is consistent with the language and purpose of section 32 and will be less confusing to taxpayers and easier for the IRS to administer.

The problems with the current rule may be illustrated by the following example. Two sisters (B and C) live together and each of them is a low-income taxpayer. Neither has a child and each may claim the childless EIC under section 32(c)(1)(A)(ii). Later, B has a child, and B's child meets the definition of a qualifying child under section 152(c)(1) for both B and C. The child is treated as the qualifying child of B under the tiebreaker rules of section 152(c)(4), and B may claim the EIC as an eligible individual with a qualifying child under section 32(c)(1)(A)(i). Under

the current rule, C would not be allowed to claim the childless EIC under section 32(c)(1)(A)(ii). The Treasury Department and the IRS have determined that allowing C to continue to claim the childless EIC after the child is born is equitable and consistent with the purpose of section 32 to assist working, low-income taxpayers. Accordingly, the proposed regulations provide that, if an individual is not treated as a qualifying child of a taxpayer after applying the tiebreaker rules of section 152(c)(4), then the individual will not prevent that taxpayer from qualifying for the childless EIC.

#### 5. Additional Standard Deduction for the Aged and Blind

The proposed regulations remove the provisions on additional exemptions for age and blindness from the regulations under section 151 and add regulations under section 63 on the additional standard deduction for the aged and the blind to reflect the changes made by the Tax Reform Act of 1986. The proposed regulations amend the regulations under section 63 to remove a cross reference to now-repealed statutory provisions relating to a charitable deduction for taxpayers who do not itemize. To limit impediments to electronic filing, the proposed regulations also delete the requirement that a taxpayer claiming a tax benefit for blindness must attach a certificate or statement to the taxpayer's tax return. Instead, a taxpayer must maintain the certificate or statement in the taxpayer's records.

#### Applicability Date

These regulations are proposed to apply to taxable years beginning after the date the regulations are published as final regulations in the **Federal Register**. Pending the issuance of the final regulations, taxpayers may choose to apply these proposed regulations in any open taxable years.

#### Effect on Other Documents

When finalized, the proposed regulations will obsolete Rev. Rul. 57–344, Rev. Rul. 58–67, Rev. Rul. 58–302, Rev. Rul. 64–223, Rev. Rul. 65–307, Rev. Rul. 70–341, Rev. Rul. 74–153, Rev. Rul. 74–543, Rev. Rul. 79–173, Rev. Rul. 84–89, Notice 2006–86, and Notice 2008–5.

#### Special Analyses

Certain IRS regulations, including these, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. The regulations affect individuals and do not impose a

collection of information on small entities, therefore the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

#### Statement of Availability of IRS Documents

IRS revenue procedures, revenue rulings, notices and other guidance cited in this preamble are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS Web site at <http://www.irs.gov>.

#### Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS, as prescribed in this preamble under the "Addresses" heading. The IRS and Treasury Department request comments on all aspects of the proposed rules. All comments will be available at [www.regulations.gov](http://www.regulations.gov) or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

#### Drafting Information

The principal authors of these proposed regulations are Christina M. Glendening and Victoria J. Driscoll of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the Treasury Department and the IRS participated in the development of the regulations.

#### List of Subjects

##### 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

##### 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

#### Withdrawal of Notice of Proposed Rulemaking

Accordingly, under authority of 26 U.S.C. 7805, the notice of proposed rulemaking (REG-107279-00) that was published in the **Federal Register** on

November 30, 2000 (65 FR 71277), is withdrawn.

#### Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are proposed to be amended as follows:

#### PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read, in part, as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

■ **Par. 2.** Section 1.2–1 is revised to read as follows:

##### § 1.2–1 Returns of surviving spouse and head of household.

(a) *In general.* Tax is determined under section 1(a) for a return of a surviving spouse, as defined in section 2(a) and § 1.2–2(a). Tax is determined under section 1(b) for a return of a head of household, as defined in section 2(b) and § 1.2–2(b).

(b) *Death of a spouse.* If married taxpayers have different taxable years solely because of the death of either spouse, the taxable year of the deceased spouse is deemed to end on the last day of the surviving spouse's taxable year for purposes of determining their eligibility to file a joint return for that year. For rules relating to filing a joint return in the year a spouse dies, see section 6013 and the related regulations.

(c) *Tax tables.* For rules on the use of the tax tables that apply to individuals, see section 3 and the related regulations.

(d) *Change in rates.* For the treatment of taxable years during which a change in the tax rates occurs, see section 15.

(e) *Applicability date.* This section applies to taxable years beginning after the date these regulations are published as final regulations in the **Federal Register**.

■ **Par. 3.** Section 1.2–2 is revised to read as follows:

##### § 1.2–2 Definitions and special rules.

(a) *Surviving spouse*—(1) *In general.* If a taxpayer is eligible to file a joint return under section 6013 (without applying section 6013(a)(3)) for the taxable year in which the taxpayer's spouse dies, the taxpayer qualifies as a surviving spouse for each of the two taxable years immediately following the year of the spouse's death if the taxpayer—

(i) Has not remarried before the close of the taxable year; and

(ii) Maintains as the taxpayer's home a household that is for the taxable year the principal place of abode of a son or daughter (including by adoption), stepson, or stepdaughter who is a member of the taxpayer's household and

who is a dependent of the taxpayer within the meaning of paragraph (a)(2) of this section.

(2) *Dependent.* An individual is a dependent of a taxpayer for purposes of this paragraph (a) if the taxpayer may claim a deduction under section 151 for the individual, without applying sections 152(b)(1), (b)(2), and (d)(1)(B).

(b) *Head of household*—(1) *In general.* A taxpayer qualifies as a head of household if the taxpayer is not married at the end of the taxable year, is not a surviving spouse, as defined in paragraph (a) of this section, and either—

(i) Maintains as the taxpayer's home a household that is for more than one-half of the taxable year the principal place of abode of a qualifying child or dependent of the taxpayer, within the meaning of paragraph (b)(2) of this section, who is a member of the taxpayer's household during that period; or

(ii) Maintains a household, whether or not the taxpayer's home, that is for the taxable year the principal place of abode of a parent of the taxpayer, within the meaning of paragraph (b)(3) of this section.

(2) *Qualifying child or dependent*—(i) *Qualifying child.* An individual is a qualifying child for purposes of this paragraph (b) if the individual is a qualifying child of the taxpayer as defined in section 152(c) and the related regulations, determined without applying section 152(e). However, if the individual is married at the end of the taxpayer's taxable year, the individual is not a qualifying child for purposes of this section if the individual is not the taxpayer's dependent because of the limitations of section 152(b)(2) (relating to an individual filing a joint return with his or her spouse) or 152(b)(3) (relating to individuals who are citizens or nationals of other countries).

(ii) *Dependent.* An individual is a dependent for purposes of this paragraph (b) if the individual is the taxpayer's dependent, within the meaning of section 152 without applying sections 152(d)(2)(H) (relating to an individual qualifying as a member of the household) and 152(d)(3) (relating to the special rule for multiple support agreements) for whom the taxpayer may claim a deduction under section 151.

(3) *Parent.* An individual is a parent of the taxpayer for purposes of this paragraph (b) if the individual is the taxpayer's father or mother, including a father or mother who legally adopted the taxpayer, and is the taxpayer's dependent within the meaning of section 152 without applying section 152(d)(3), relating to the special rule for

multiple support agreements, for whom the taxpayer may claim a deduction under section 151.

(4) *Limitation.* An individual may qualify only one taxpayer as a head of household for taxable years beginning in the same calendar year.

(5) *Marital status.* For purposes of this paragraph (b), the marital status of a taxpayer is determined at the end of the taxpayer's taxable year. A taxpayer is considered not married if the taxpayer is legally separated from the taxpayer's spouse under a decree of divorce or separate maintenance, if at any time during the taxable year the taxpayer's spouse is a nonresident alien, or if the provisions of section 7703(b) are satisfied. A taxpayer is considered married if the taxpayer's spouse, other than a spouse who is a nonresident alien, dies during the taxable year.

(6) *Nonresident alien.* A taxpayer does not qualify as a head of household if the taxpayer is a nonresident alien, as defined in section 7701(b)(1)(B), at any time during the taxable year.

(c) *Member of the household.* An individual is a member of a taxpayer's household if the individual and the taxpayer reside in the same living quarters and the taxpayer maintains the household, in part, for the benefit of the individual. An individual is a member of a taxpayer's household despite a temporary absence due to special circumstances. An individual is not treated as a member of the taxpayer's household if, at any time during the taxable year of the taxpayer, the relationship between the individual and the taxpayer violates local law. See § 1.152-4(c)(2) for rules relating to temporary absences.

(d) *Maintaining a household*—(1) *In general.* A taxpayer maintains a household only if during the taxable year the taxpayer pays more than one-half of the cost of operating the household for the mutual benefit of the residents. These expenses include property taxes, mortgage interest, rent, utility charges, upkeep and repairs, property insurance, and food consumed on the premises. A taxpayer may treat a home's fair market rental value as a cost of maintaining a household, instead of the sum of payments for property taxes, mortgage interest, and property insurance. Expenses of maintaining a household do not include—

(i) The cost of clothing, education, medical treatment, vacations, life insurance, and transportation;

(ii) The value of services performed in the household by the taxpayer or any other person qualifying the taxpayer as a head of household or as a surviving spouse; or

(iii) An expense paid or reimbursed by any other person.

(2) *Proration of costs.* In determining whether a taxpayer pays more than one-half of the cost of maintaining a household that is the principal place of abode of a qualifying child or dependent for less than a taxable year, the cost for the entire taxable year is prorated on the basis of the number of calendar months the qualifying child or dependent resides in the household. A period of less than a calendar month is treated as a full calendar month. Thus, for example, if the cost of maintaining a household for a taxable year is \$30,000, and a taxpayer shares a principal place of abode with a qualifying child or dependent from May 20 to December 31, the taxpayer must furnish more than \$10,000 ( $8/12$  of  $\$30,000 \times 50$  percent) in maintaining the household from May 1 to December 31 to satisfy the requirements of this paragraph (d).

(3) *New household.* If a new household is established during the taxpayer's taxable year (for example, if spouses separate and one moves out of the family home with the child), the cost of maintaining the new household for the year is the cost of maintaining that household beginning with the date the new household is established. If one spouse and the child remain in the family home and the other parent moves out of the home, the cost of maintaining the household for the year is the cost of maintaining the household beginning with the date the other spouse moves out.

(4) *Birth, death, adoption, or placement.* If an individual is a member of a household for less than a taxable year as a result of the individual's birth, death, adoption, or placement with a taxpayer for adoption or in foster care during that year, the requirement that the individual be a member of the household for more than one-half of the taxable year is satisfied if the individual is a member of the household for more than one-half of the period after the individual's birth, adoption, or placement for adoption or in foster care or before the individual's death.

(5) *Shared residence*—(i) *In general.* If two or more taxpayers not filing a joint return reside in the same living quarters, each taxpayer may be treated as maintaining a separate household if each provides more than one-half of the cost of maintaining the separate household. For this purpose, two households in the same living quarters are not considered separate households if any individual in one household is the spouse of any individual in the other household, or if any individual in one household may claim, or would

have priority under the tiebreaker rules in section 152(c)(4) to claim, any individual in the other household as a dependent.

(ii) *Examples.* The following examples illustrate the rules in this paragraph (d)(5). In each example, assume that if a taxpayer may be treated as residing in a separate household, that taxpayer provides more than one-half of the cost of maintaining that household.

*Example 1.* Two sisters and their respective children reside in the same living quarters. Neither sister may claim the other sister as a dependent. Each sister pays more than one-half of the expenses for herself and her children, and each sister claims each of her own children as a dependent. Because neither sister may claim the other sister as a dependent, and because neither sister would have priority to claim any of the other sister's children as a qualifying child under the tiebreaker rules of section 152(c)(4), each sister is treated as maintaining a separate household.

*Example 2.* A and B, an unmarried couple, have two children together (C1 and C2) and all four individuals live in the same living quarters for the entire tax year. Both A and B contribute to paying the expenses of the couple and the two children. A has higher adjusted gross income than B. Each parent files a tax return. Under the tiebreaker rules in section 152(c)(4), the parent with the higher adjusted gross income (in this case, A) would have priority to claim each child as a qualifying child if both claimed the child. As a result, B may not be treated as maintaining a separate household with either child or both children. Therefore, if B may be claimed as A's dependent, then all four individuals are members of the same household. However, if B may not be claimed as A's dependent, B may be treated as maintaining a separate household consisting solely of B, even if B claims one of the children as a dependent on B's return.

*Example 3.* The facts are the same as in *Example 2* of this paragraph (d)(5)(ii) except that A and B do not have any children together; C1 is the child of A and C2 is the child of B. Neither A nor B may claim the other as a dependent, and each parent pays more than one-half of the expenses for himself or herself and his or her child. Because neither A nor B may claim the other adult or the other adult's child as a dependent, each adult is treated as maintaining a separate household.

*Example 4.* Grandparent, Parent, and Child live together and Child meets the definition of a qualifying child for both Parent and Grandparent. Both Parent and Grandparent pay their respective expenses, and both contribute to paying Child's expenses. Neither Parent nor Grandparent may claim the other as a dependent. Under the tiebreaker rules of section 152(c)(4), Parent would have priority over Grandparent to claim Child as a qualifying child. Therefore, Grandparent may not be treated as maintaining a household for Grandparent and Child separate from the household of Parent. However, Parent may be treated as maintaining a household for Parent and

Child separate from the household of Grandparent.

(e) *Special rules for maintaining a household*—(1) *Principal place of abode*. For purposes of this section, the term *principal place of abode* has the same meaning as in section 152 and § 1.152-4(c).

(2) *Part-year residence*. If, during the taxable year, an individual who may qualify a taxpayer as head of household is born or dies, is adopted or lawfully placed for adoption with the taxpayer, is an eligible foster child, or is a missing child, whether the taxpayer maintained a household that is the principal place of abode of the individual for the required period is determined under § 1.152-4(d) and (e).

(3) *Change of location*. A taxpayer may maintain a household even though the physical location of the household changes.

(f) *Certain married individuals living apart*. An individual who is considered not married under section 7703(b) also is considered not married for all purposes of part I of subchapter A of chapter 1 of the Code.

(g) *Applicability date*. This section applies to taxable years beginning after the date these regulations are published as final regulations in the **Federal Register**.

■ **Par. 4.** Section 1.3-1 is revised to read as follows:

**§ 1.3-1 Tax tables for individuals.**

(a) *In general*. Except as otherwise provided in paragraph (b) of this section, in lieu of the tax imposed by section 1, an individual who does not itemize deductions for the taxable year and whose taxable income for the taxable year does not exceed the ceiling amount as defined in paragraph (c) of this section, must determine his or her tax liability under the prescribed tax tables in tax forms and publications of the Internal Revenue Service. The individual must use the appropriate tax rate category under the tax tables. The tax imposed under section 3 and this section shall be treated as tax imposed by section 1.

(b) *Exceptions*. Section 3 and this section do not apply to (1) an individual making a return for a period of fewer than 12 months as a result of a change in annual accounting period, or (2) an estate or trust.

(c) *Ceiling amount defined*. The ceiling amount means the highest amount of taxable income for which a tax amount is determined in the tax tables for the tax rate category in which the taxpayer falls.

(d) *Special rule for surviving spouse*. A taxpayer filing as a surviving spouse

uses the same tax rate category as a taxpayer filing a joint return.

(e) *Applicability date*. This section applies to taxable years beginning after the date these regulations are published as final regulations in the **Federal Register**.

■ **Par. 5.** Section 1.21-1 is amended by revising paragraph (a)(1), removing paragraph (h), redesignating paragraphs (j), (k), and (l) as paragraphs (h), (j), and (k), and revising newly redesignated paragraph (k) to read as follows:

**§ 1.21-1 Expenses for household and dependent care services necessary for gainful employment.**

(a) *In general*. (1) Section 21 allows a credit to a taxpayer against the tax imposed by chapter 1 for employment-related expenses for household services and care (as defined in paragraph (d) of this section) of a qualifying individual (as defined in paragraph (b) of this section). The purpose of the expenses must be to enable the taxpayer to be gainfully employed (as defined in paragraph (c) of this section). For taxable years beginning after December 31, 2004, a qualifying individual must have the same principal place of abode (as defined by paragraph (g) of this section) as the taxpayer for more than one-half of the taxable year.

\* \* \* \* \*

(k) *Applicability date*—(1) *In general*. Except as provide in paragraph (k)(2) of this section, this section and §§ 1.21-2 through 1.21-4 apply to taxable years ending after August 14, 2007.

(2) *Exception*. Paragraph (a)(1) of this section applies to taxable years beginning after the date these regulations are published as final regulations in the **Federal Register**.

■ **Par. 6.** Section 1.32-2 is amended by revising the section heading, adding paragraph (c)(3), and revising paragraph (e) to read as follows:

**§ 1.32-2 Earned income credit.**

\* \* \* \* \*

(c) \* \* \*

(3) *Qualifying child*—(i) *In general*. For purposes of this section, a qualifying child of the taxpayer is a qualifying child as defined in section 152(c), determined without applying sections 152(c)(1)(D) and 152(e).

(ii) *Application of tie-breaker rules*. For purposes of determining whether a taxpayer is an eligible individual under section 32(c)(1)(A), if an individual meets the definition of a qualifying child under paragraph (c)(3)(i) of this section for more than one taxpayer and the individual is treated as the qualifying child of a taxpayer under the tiebreaker rules of section 152(c)(4) and

the related regulations, then that taxpayer may be an eligible individual under section 32(c)(1)(A)(i) and may claim the earned income credit for a taxpayer with a qualifying child if all other requirements of section 32 are satisfied. If an individual meets the definition of a qualifying child under paragraph (c)(3)(i) of this section for more than one taxpayer and the individual is not treated as the qualifying child of a taxpayer under the tiebreaker rules of section 152(c)(4) and the related regulations, then the individual also is not treated as a qualifying child of that taxpayer in the taxable year for purposes of section 32(c)(1)(A). Thus, that taxpayer may be an eligible individual under section 32(c)(1)(A)(ii) and may claim the earned income credit for a taxpayer without a qualifying child if all other requirements are satisfied.

(iii) *Examples*. The following examples illustrate the rules of this paragraph (c). In each example, the taxpayer uses the calendar year as the taxpayer's taxable year and, except to the extent indicated, each taxpayer meets the requirements to claim the benefit(s) described in the example.

*Example 1.* Child, Parent, and Grandparent share the same principal place of abode for the taxable year. Child meets the definition of a qualifying child under paragraph (c)(3)(i) of this section for both Parent and Grandparent (and for no other person) for the taxable year. Parent claims the earned income credit with Child as Parent's qualifying child. Under the tiebreaker rules of section 152(c)(4)(A) and the related regulations, Child is treated as the qualifying child of Parent and is not treated as the qualifying child of Grandparent. Under section 32(c)(1) and paragraph (c)(3)(ii) of this section, Parent is an eligible individual under section 32(c)(1)(A)(i) who may claim the earned income credit for a taxpayer with a qualifying child, and Grandparent is an eligible individual under section 32(c)(1)(A)(ii) who may claim the earned income credit for a taxpayer without a qualifying child.

*Example 2.* The facts are the same as in *Example 1* of this paragraph (c)(3)(iii), except that Grandparent, rather than Parent, claims Child as a qualifying child, and Grandparent's adjusted gross income is higher than Parent's adjusted gross income. Under the tiebreaker rules of section 152(c)(4)(C) and the related regulations, Child is treated as the qualifying child of Grandparent and is not treated as the qualifying child of Parent. Under section 32(c)(1) and paragraph (c)(3)(ii) of this section, Grandparent is an eligible individual under section 32(c)(1)(A)(i) who may claim the earned income credit for a taxpayer with a qualifying child, and Parent is an eligible individual under section 32(c)(1)(A)(ii) who

may claim the earned income credit for a taxpayer without a qualifying child.

(e) *Applicability date*—(1) *In general.* Except as provided in paragraph (e)(2) of this section, this section applies to taxable years beginning after March 5, 2003.

(2) *Exception.* Paragraph (c)(3) of this section applies to taxable years beginning after the date these regulations are published as final regulations in the **Federal Register**.

#### § 1.63–1 [Amended]

■ **Par. 7.** Section 1.63–1 is amended by:

■ 1. Removing the language “the zero bracket amount and” from the section heading.

■ 2. Removing the language “section 63(g)” and replacing it with the language “section 63(e)” in paragraph (a).

■ **Par. 8.** Section 1.63–2 is revised to read as follows:

#### § 1.63–2 Standard deduction.

The standard deduction means the sum of the basic standard deduction and the additional standard deduction.

■ **Par. 9.** Section 1.63–3 is added to read as follows:

#### § 1.63–3 Additional standard deduction for the aged and blind.

(a) *In general.* A taxpayer who, at the end of the taxable year, has attained age 65 or is blind is entitled to an additional standard deduction amount. The additional standard deduction amount is the sum of the amounts to which the taxpayer is entitled under paragraphs (b) and (c) of this section. If an individual meets the requirements for both the additional amount for the aged and the additional amount for the blind, the taxpayer is entitled to both additional amounts.

(b) *Additional amount for the aged*—(1) *Aged taxpayer or spouse.* A taxpayer is entitled to an additional amount under section 63(f)(1) if the taxpayer has attained age 65 before the end of the taxable year. If spouses file a joint return, each spouse who has attained age 65 before the end of the taxable year for which the spouses file the joint return is entitled to an additional amount. A married taxpayer who files a separate return is entitled to an additional amount for the taxpayer's spouse if the spouse has attained age 65 before the end of the taxable year and, for the calendar year in which the taxable year of the taxpayer begins, the spouse has no gross income and is not the dependent of another taxpayer. The taxpayer is not entitled to an additional amount if the spouse dies before

attaining age 65, even though the spouse would have attained age 65 before the end of the taxpayer's taxable year.

(2) *Age determined.* For purposes of section 63(f) and this paragraph (b), a taxpayer's age is determined as of the last day of the taxpayer's taxable year. A person attains the age of 65 on the first moment of the day preceding his or her sixty-fifth birthday.

(c) *Additional amount for the blind*—(1) *Blind taxpayer or spouse.* A taxpayer is entitled to an additional amount under section 63(f)(2) if the taxpayer is blind at the end of the taxable year. If spouses file a joint return, each spouse who is blind at the end of the taxable year for which the spouses file the joint return is entitled to an additional amount. A married taxpayer who files a separate return is entitled to an additional amount for the taxpayer's spouse if the spouse is blind and, for the calendar year in which the taxable year of the taxpayer begins, the spouse has no gross income and is not the dependent of another taxpayer. If the spouse dies during the taxable year, the date of death is the time for determining the spouse's blindness.

(2) *Blindness determined.* A taxpayer who claims an additional amount allowed by section 63(f)(2) for the blind must maintain in the taxpayer's records a statement from a physician skilled in the diseases of the eye or a registered optometrist stating that the physician or optometrist has examined the person for whom the additional amount is claimed and, in the opinion of the physician or optometrist, the person's central visual acuity did not exceed 20/200 in the better eye with correcting lenses, or the person's visual acuity was accompanied by a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees. The statement must provide that the physician or optometrist examined the person in the taxpayer's taxable year for which the amount is claimed, or that the physician or optometrist examined the person in an earlier year and that the visual impairment is irreversible.

(d) *Applicability date.* This section and §§ 1.63–1(a) and 1.63–2 apply to taxable years beginning after the date these regulations are published as final regulations in the **Federal Register**.

■ **Par. 10.** Section 1.151–1 is amended by revising paragraphs (a)(1), (c), and (d) to read as follows:

#### § 1.151–1 Deductions for personal exemptions.

(a) \* \* \* (1) In computing taxable income, an individual is allowed a deduction for the exemptions for an

individual taxpayer and spouse (the personal exemptions) and the exemption for a dependent of the taxpayer.

(c) *Additional exemption for dependent.* Section 151(c) allows a taxpayer an exemption for each individual who is a dependent (as defined in section 152) of the taxpayer for the taxable year. See §§ 1.152–1 through 1.152–5 for rules relating to dependents.

(d) *Applicability date.* Paragraphs (a)(1) and (c) of this section apply to taxable years beginning after the date these regulations are published as final regulations in the **Federal Register**.

#### §§ 1.151–2, 1.151–3, and 1.151–4 [Removed]

■ **Par. 11.** Sections 1.151–2, 1.151–3, and 1.151–4 are removed.

■ **Par. 12.** Section 1.152–0 is added under the undesignated center heading Deductions for Personal Exemptions to read as follows:

#### § 1.152–0 Table of contents.

This section lists the captions contained in § 1.152–1 through § 1.152–5.

§ 1.152–1 General rules for dependents.

(a) In general.

(1) Dependent defined.

(2) Exceptions.

(i) Dependents ineligible.

(ii) Married dependents.

(iii) Citizens or nationals of other countries.

(b) Definitions.

(1) Child.

(i) In general.

(ii) Adopted child.

(iii) Eligible foster child.

(iv) Authorized placement agency.

(2) Student.

(3) Brother and sister.

(4) Parent.

(c) Applicability date.

§ 1.152–2 Qualifying child.

(a) In general.

(b) Qualifying child relationship test.

(c) Residency test.

(d) Age test.

(1) In general.

(2) Disabled individual.

(e) Qualifying child support test.

(f) Joint return test.

(g) Child who is eligible to be claimed as a qualifying child by more than one taxpayer.

(1) In general.

(i) More than one eligible parent.

(ii) Eligible parent not claiming.

(iii) One eligible parent and other eligible taxpayer(s).

(iv) No eligible parent.

(2) Determination of adjusted gross income of a person who files a joint return.

(3) Coordination with other provisions.

(4) Examples.

§ 1.152–3 Qualifying relative.

(a) In general.

- (b) Qualifying relative relationship test.
- (c) Gross income test.
  - (1) In general.
  - (2) Income of disabled or handicapped individuals.
  - (d) Qualifying relative support test.
    - (1) In general.
    - (2) Certain income of taxpayer's spouse.
    - (3) Support from stepparent.
    - (4) Multiple support agreements.
    - (e) Not a qualifying child test.
      - (1) In general.
      - (2) Examples.
- § 1.152-4 Rules for a qualifying child and a qualifying relative.
  - (a) Support.
    - (1) In general.
    - (2) Payments made during the year for unpaid or future support.
    - (3) Governmental payments.
      - (i) Governmental payments as support.
        - (A) In general.
        - (B) Examples.
      - (ii) Governmental payments based on a taxpayer's contributions.
        - (A) In general.
        - (B) Examples.
      - (iii) Payments used for support of another individual.
        - (4) Medical insurance.
        - (5) Medical care payments from personal injury claim.
    - (6) Scholarships.
    - (b) Relationship test.
      - (1) Joint return.
      - (2) Divorce or death of spouse.
      - (c) Principal place of abode.
        - (1) In general.
        - (2) Temporary absence.
        - (3) Residing with taxpayer for more than one-half of the taxable year.
          - (i) In general.
          - (ii) Nights of residence.
            - (A) Nights counted.
            - (B) Night straddling two taxable years.
            - (C) Exception for a parent who works at night.
          - (D) Absences.
          - (4) Examples.
        - (d) Residence for a portion of a taxable year because of special circumstances.
          - (1) Individual who is born or dies during the year.
          - (2) Adopted child or foster child.
          - (e) Missing child.
            - (1) Qualifying child.
            - (2) Qualifying relative.
            - (3) Age limitation.
            - (4) Application.
    - § 1.152-5 Special rule for a child of divorced or separated parents or parents who live apart.
      - (a) In general.
      - (b) Release of claim by custodial parent.
        - (1) In general.
        - (2) Support, custody, and parental status.
          - (i) In general.
          - (ii) Multiple support agreement.
          - (3) Release of claim to child.
          - (c) Custody.
          - (d) Custodial parent.
            - (1) In general.
            - (2) Night straddling taxable years.
            - (3) Absences.
            - (4) Special rule for equal number of nights.
            - (5) Exception for a parent who works at night.

- (e) Written declaration.
  - (1) Form of declaration.
    - (i) In general.
    - (ii) Form designated by IRS.
  - (2) Attachment to return.
    - (i) In general.
    - (ii) Examples.
  - (3) Revocation of written declaration.
    - (i) In general.
    - (ii) Form of revocation.
    - (iii) Attachment to return.
  - (4) Ineffective declaration or revocation.
  - (5) Written declaration executed in a taxable year beginning on or before July 2, 2008.
    - (f) Coordination with other sections.
    - (g) Examples.
    - (h) Applicability date.
      - (1) In general.
      - (2) Exception.

■ **Par. 13.** Section 1.152-1 is revised to read as follows:

**§ 1.152-1 General rules for dependents.**

(a) *In general*—(1) *Dependent defined*. Except as provided in section 152(b) and paragraph (a)(2) of this section, the term *dependent* means a qualifying child as described in § 1.152-2 or a qualifying relative as described in § 1.152-3. In general, an individual may be treated as the dependent of only one taxpayer for taxable years beginning in the same calendar year.

(2) *Exceptions*—(i) *Dependents ineligible*. If an individual is a dependent of a taxpayer for a taxable year of the taxpayer, the individual is treated as having no dependents for purposes of section 152 and the related regulations in the individual's taxable year beginning in the calendar year in which that taxable year of the taxpayer begins. For purposes of this paragraph (a)(2)(i), an individual is not a dependent of a person if that person is not required to file an income tax return under section 6012 and either does not file an income tax return or files an income tax return solely to claim a refund of estimated or withheld taxes.

(ii) *Married dependents*. An individual is not treated as a dependent of a taxpayer for a taxable year of the taxpayer if the individual files a joint return, other than solely to claim a refund of estimated or withheld taxes, with the individual's spouse under section 6013 for the taxable year beginning in the calendar year in which that taxable year of the taxpayer begins.

(iii) *Citizens or nationals of other countries*. An individual who is not a citizen or national of the United States is not treated as a dependent of a taxpayer unless the individual is a resident, as defined in section 7701(b), of the United States or of a country contiguous to the United States (Canada or Mexico). This limitation, however,

does not apply to an adopted child, as defined in section 152(f)(1)(B) and paragraph (b)(1)(ii) of this section, if the taxpayer is a citizen or national of the United States and the child has the same principal place of abode as the taxpayer and is a member of the taxpayer's household, within the meaning of §§ 1.152-4(c) and 1.2-2(c), respectively, for the taxpayer's taxable year. See § 1.152-4(d)(2) for rules relating to residence for a portion of a taxable year. A taxpayer and the child have the same principal place of abode for the taxpayer's taxable year if the taxpayer and child have the same principal place of abode for the entire portion of the taxable year following the placement of the child with the taxpayer.

(b) *Definitions*. The following definitions apply for purposes of section 152 and the related regulations.

(1) *Child*—(i) *In general*. The term *child* means a son, daughter, stepson, or stepdaughter, or an eligible foster child, within the meaning of paragraph (b)(1)(iii) of this section, of the taxpayer.

(ii) *Adopted child*. In determining whether an individual bears any of the relationships described in paragraph (b)(1)(i) of this section, § 1.152-2(b), or § 1.152-3(b), a legally adopted child of a person, or a child who is lawfully placed with a person for legal adoption by that person, is treated as a child by blood of that person. A child lawfully placed with a person for legal adoption by that person includes a child placed for legal adoption by a parent, an authorized placement agency, or any other person(s) authorized by law to place a child for legal adoption.

(iii) *Eligible foster child*. The term *eligible foster child* means a child who is placed with a person by an authorized placement agency or by judgment, decree, or other order of any court of competent jurisdiction.

(iv) *Authorized placement agency*. The term *authorized placement agency* means a State, the District of Columbia, a possession of the United States, a foreign country, an Indian Tribal Government (ITG) (as defined in section 7701(a)(40)), or an agency or organization that is authorized by a State, the District of Columbia, a possession of the United States, a foreign country, an ITG, or a political subdivision of any of the foregoing, to place children for legal adoption or in foster care.

(2) *Student*. The term *student* means an individual who, for some part of each of five calendar months, whether or not consecutive, during the calendar year in which the taxable year of the taxpayer begins, either is a full-time student at an

educational organization, as defined in section 170(b)(1)(A)(ii), or is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational organization or of a State or political subdivision of a State. A full-time student is one who is enrolled for the number of hours or courses that the educational organization considers full-time attendance.

(3) *Brother and sister.* The terms *brother* and *sister* include a brother or sister by half blood.

(4) *Parent.* The term *parent* refers to a biological or adoptive parent of an individual. It does not include a stepparent who has not adopted the individual.

(c) *Applicability date.* This section, and §§ 1.152–2, 1.152–3, and 1.152–4 apply to taxable years beginning after the date these regulations are published as final regulations in the **Federal Register**.

■ **Par. 14.** Section 1.152–2 is revised to read as follows:

**§ 1.152–2 Qualifying child.**

(a) *In general.* The term *qualifying child* of a taxpayer for a taxable year means an individual who satisfies the tests described in paragraphs (b), (c), (d), (e), and (f) of this section. If an individual satisfies the definition of a qualifying child for more than one taxpayer, then the tiebreaker rules in paragraph (g) of this section apply. See, however, section 152(e) and § 1.152–5 for a special rule for a child of divorced or separated parents or parents who live apart.

(b) *Qualifying child relationship test.* The individual must bear one of the following relationships to the taxpayer—

(1) A child of the taxpayer or descendant of such a child; or  
(2) A brother, sister, stepbrother, or stepsister of the taxpayer, or a descendant of any of these relatives.

(c) *Residency test.* The individual must have the same principal place of abode as the taxpayer for more than one-half of the taxable year. Generally, an individual has the same principal place of abode as the taxpayer for more than one-half of the taxable year if the individual resides with the taxpayer for more than one-half of the taxable year. See § 1.152–4(c) for rules relating to principal place of abode and temporary absence and for determining whether an individual resides with the taxpayer for more than one-half of the taxable year.

(d) *Age test—(1) In general.* The individual must be younger than the taxpayer claiming the individual as a qualifying child and must not have

attained the age of 19, or age 24 if the individual is a student within the meaning of § 1.152–1(b)(2), as of the end of the calendar year in which the taxpayer's taxable year begins. For purposes of this section, an individual attains an age on the anniversary of the individual's birth.

(2) *Disabled individual.* This age requirement is treated as satisfied if the individual is permanently and totally disabled, as defined in section 22(e)(3), at any time during the calendar year.

(e) *Qualifying child support test.* The individual must not provide more than one-half of the individual's own support for the calendar year in which the taxpayer's taxable year begins. See § 1.152–4(a) for rules relating to the definition and sources of an individual's support.

(f) *Joint return test.* The individual must not file a joint return, other than solely to claim a refund of estimated or withheld taxes, under section 6013 with the individual's spouse for the taxable year beginning in the calendar year in which the taxpayer's taxable year begins.

(g) *Child who is eligible to be claimed as a qualifying child by more than one taxpayer—(1) In general.* Under section 152(c)(4), if an individual satisfies the definition of a qualifying child for two or more taxpayers (eligible taxpayers) for a taxable year beginning in the same calendar year, the following rules apply.

(i) *More than one eligible parent.* If more than one eligible taxpayer is a parent of the individual (eligible parent), any one of the eligible parents may claim the individual as a qualifying child. However, if more than one eligible parent claims the individual as a qualifying child, and those eligible parents do not file a joint return with each other, the individual is treated as the qualifying child of the eligible parent claiming the individual with whom the individual resides for the longest period of time during the taxable year as determined under § 1.152–4(c)(3). If the individual resides for the same amount of time during the taxable year with each eligible parent claiming the child, the individual is treated as the qualifying child of the eligible parent with the highest adjusted gross income who claims the individual.

(ii) *Eligible parent not claiming.* If at least one eligible taxpayer is a parent of the individual, but no eligible parent claims the individual as a qualifying child, the individual may be treated as the qualifying child of another eligible taxpayer only if that taxpayer's adjusted gross income exceeds both the adjusted gross income of each eligible parent of the individual and the adjusted gross

income of each other eligible taxpayer, if any.

(iii) *One eligible parent and other eligible taxpayer(s).* Except as provided in paragraph (g)(1)(i) or (ii) of this section, if there are two or more eligible taxpayers, only one of whom is the parent of the individual, the individual is treated as the qualifying child of the eligible parent.

(iv) *No eligible parent.* If no eligible taxpayer is a parent of the individual, the individual is treated as the qualifying child of the eligible taxpayer with the highest adjusted gross income for the taxable year.

(2) *Determination of adjusted gross income of a person who files a joint return.* For purposes of section 152 and the related regulations, the adjusted gross income of each person who files a joint return is the total adjusted gross income shown on the joint return.

(3) *Coordination with other provisions.* Except to the extent that section 152(e) and § 1.152–5 apply, if more than one taxpayer may claim a child as a qualifying child, the child is treated as the qualifying child of only one taxpayer for purposes of head of household filing status under section 2(b), the child and dependent care credit under section 21, the child tax credit under section 24, the earned income credit under section 32, the exclusion from income for dependent care assistance under section 129, and the dependency exemption under section 151. Thus, the taxpayer claiming the individual as a qualifying child under any one of these sections is the only taxpayer who may claim any credit or exemption under these other sections for that same individual for a taxable year beginning in the same calendar year as the taxpayer's taxable year. If section 152(e) applies, however, the noncustodial parent may claim the child as a qualifying child for purposes of the dependency exemption and the child tax credit, and another person may claim the child for purposes of one or more of these other provisions. See § 1.152–5 for rules under section 152(e).

(4) *Examples.* The following examples illustrate the rules in this paragraph (g). In the examples, each taxpayer uses the calendar year as the taxpayer's taxable year, the child is a qualifying child (as described in section 152(c) and this section) of each taxpayer, and, except to the extent indicated, each taxpayer meets the requirements to claim the benefit(s) described in the example.

*Example 1.* (i) A and B, parents of Child, are married to each other. A, B, and Child share the same principal place of abode for the first 8 months of the year. Thus, both parents satisfy the qualifying child residency

test of paragraph (c) of this section. For the last 4 months of the year, the parents live apart from each other, and B and Child share the same principal place of abode. Section 152(e), relating to divorced or separated parents, does not apply. The parents file as married filing separately for the taxable year, and both parents claim Child as a qualifying child.

(ii) Under paragraph (g)(1)(i) of this section, Child is treated as a qualifying child of B for all purposes, because Child resided with B for the longer period of time during the taxable year. Because section 152(e) does not apply, Child may not be treated as a qualifying child of A for any purpose.

**Example 2.** (i) The facts are the same as in *Example 1* of this paragraph (g)(4), except that B does not claim Child as a qualifying child.

(ii) Because A and B are not both claiming the same child as a qualifying child, under paragraph (g)(1)(i) of this section, Child is treated as a qualifying child of A.

**Example 3.** (i) Child, Child's parent (D), and Grandparent share the same principal place of abode. D is not married and is not a qualifying child or dependent of Grandparent, and Grandparent is not D's dependent. Section 152(e), relating to divorced or separated parents, does not apply. Under paragraph (a) of this section, Child meets the definition of a qualifying child of both D and Grandparent. D claims Child as a qualifying child for purposes of the child and dependent care credit under section 21, the earned income credit under section 32, and the dependency exemption under section 151. Grandparent claims Child as a qualifying child for purposes of head of household filing status under section 2(b).

(ii) Under paragraph (g)(1)(iii) of this section, Child is treated as the qualifying child of D for all purposes, because D is eligible to claim and claims Child as D's qualifying child. Because D is eligible to claim and claims Child as D's qualifying child, under paragraph (g)(3) of this section, Child may not be treated as a qualifying child of Grandparent for any purpose. Grandparent erroneously claimed Child as Grandparent's qualifying child for purposes of head of household filing status under section 2(b). If D had not claimed Child as D's qualifying child for any purpose, under paragraph (g)(1)(ii) of this section, Grandparent could have claimed Child as Grandparent's qualifying child if Grandparent's adjusted gross income (AGI) exceeded D's AGI. In that situation, under paragraph (g)(3) of this section, Grandparent could have claimed Child as Grandparent's qualifying child for purposes of any of the child-related tax benefits, provided that Grandparent had met the requirements of those sections.

**Example 4.** (i) The facts are the same as in *Example 3* of this paragraph (g)(4), except that Child's parents, D and E, are married to each other and share the same principal place of abode with Child and Grandparent for the entire taxable year. Under paragraph (a) of this section, Child meets the definition of a qualifying child of both parents and Grandparent. D and E file a joint return for the taxable year and do not claim Child as a qualifying child for any purpose.

(ii) Because D or E may claim Child as a qualifying child but neither claims Child as a qualifying child for any purpose, under paragraph (g)(1)(ii) of this section, Grandparent may claim Child as a qualifying child if Grandparent's AGI exceeds the total AGI reported on the joint return of D and E.

**Example 5.** (i) The facts are the same as in *Example 4* of this paragraph (g)(4), except that D and E are divorced from each other, E moved into a separate residence during that year and is the noncustodial parent, and section 152(e), relating to divorced or separated parents, applies. E attaches to E's return a Form 8332 on which D agrees to release D's claim to a dependency exemption for Child and E claims Child as a qualifying child for purposes of the dependency exemption and the child tax credit.

(ii) Under paragraph (g)(3) of this section, Child is treated as a qualifying child of E for purposes of the dependency exemption and the child tax credit. Child may be treated as a qualifying child of D for purposes of the earned income credit. If D claims Child as a qualifying child for purposes of the earned income credit, under paragraph (g)(1)(iii) of this section, Child may not be treated as a qualifying child of Grandparent for any purpose.

**Example 6.** (i) F and G, parents of two children, are married to each other. F, G, and both children share the same principal place of abode for the entire taxable year. F and G file as married filing separately for the taxable year. F claims the older child as a qualifying child for purposes of the child tax credit, dependency exemption, and the child and dependent care credit. G claims the younger child as a qualifying child for purposes of the same three tax benefits.

(ii) The older child is treated as a qualifying child of F and the younger child is treated as a qualifying child of G. The tiebreaker rule of paragraph (g)(1)(i) of this section does not apply because F and G are not claiming the same child as a qualifying child.

■ **Par. 15.** Section 1.152-3 is revised to read as follows:

#### **§ 1.152-3 Qualifying relative.**

(a) *In general.* The term *qualifying relative* of a taxpayer for a taxable year means an individual who satisfies the tests described in paragraphs (b), (c), (d), and (e) of this section. See, however, section 152(e) and § 1.152-5 for a special rule for a child of divorced or separated parents or parents who live apart.

(b) *Qualifying relative relationship test.* The individual must bear one of the following relationships to the taxpayer:

- (1) A child or descendant of a child;
- (2) A brother, sister, stepbrother, or stepsister;
- (3) A father or mother, or an ancestor of either;
- (4) A stepfather or stepmother;
- (5) A niece or nephew;
- (6) An aunt or uncle;

(7) A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law; or

(8) An individual (other than one who at any time during the taxable year was the taxpayer's spouse, determined without regard to section 7703) who for the taxable year of the taxpayer has the same principal place of abode as the taxpayer and is a member of the taxpayer's household. See § 1.2-2(c) for the definition of a member of the household, and § 1.152-4(c) for rules relating to the meaning of principal place of abode and the meaning of temporary absence.

(c) *Gross income test*—(1) *In general.* The individual's gross income for the calendar year in which the taxable year begins must be less than the exemption amount as defined in section 151(d).

(2) *Income of disabled or handicapped individuals.* For purposes of paragraph (c)(1) of this section, the gross income of an individual who is permanently and totally disabled, as defined in section 22(e)(3), at any time during the taxable year does not include income for services performed by the individual at a sheltered workshop, as defined in section 152(d)(4)(B), if—

(i) The principal reason for the individual's presence at the workshop is the availability of medical care there; and

(ii) The individual's income arises solely from activities at the workshop that are incident to the medical care.

(d) *Qualifying relative support test*—(1) *In general.* The individual must receive over one-half of the individual's support from the taxpayer for the calendar year in which the taxpayer's taxable year begins. See § 1.152-4(a) for rules relating to support.

(2) *Certain income of taxpayer's spouse.* A payment to a spouse that is includible in the payee spouse's gross income under section 71 (relating to alimony and separate maintenance payments) or section 682 (relating to income of an estate or trust in the case of divorce) is not treated as a payment by the payor spouse for the support of any dependent.

(3) *Support from stepparent.* Any support provided to or for the benefit of an individual by a stepparent of the individual is treated as support provided by the individual's parent who is married to the stepparent.

(4) *Multiple support agreements.* If more than one-half of an individual's support is provided by two or more persons together, a taxpayer is treated as having contributed over one-half of the support of that individual for the calendar year if—

(i) No one person contributes more than one-half of the individual's support;

(ii) Each member of the group that collectively contributes more than one-half of the support of the individual would have been entitled to claim the individual as a dependent for a taxable year beginning in that calendar year but for the fact that the group member alone did not contribute more than one-half of the individual's support;

(iii) The taxpayer claiming the individual as a qualifying relative contributes more than 10 percent of the individual's support; and

(iv) Each other group member who contributes more than 10 percent of the support of the individual furnishes to the taxpayer claiming the individual as a dependent a written declaration that the other person will not claim the individual as a dependent for any taxable year beginning in that calendar year.

(e) *Not a qualifying child test*—(1) *In general.* The individual must not be a qualifying child of the taxpayer or of any other taxpayer for any taxable year beginning in the calendar year in which the taxpayer's taxable year begins. An individual is not a qualifying child of a person, however, if that person is not required to file an income tax return under section 6012, and either does not file an income tax return or files an income tax return solely to claim a refund of estimated or withheld taxes.

(2) *Examples.* The following examples illustrate the rules in this paragraph (e). In each example, each taxpayer uses the calendar year as the taxpayer's taxable year, and except to the extent otherwise indicated, each taxpayer meets the requirements to claim the benefits described in the example.

*Example 1.* For the taxable year, B provides more than one-half of the support of an unrelated friend, C, and C's 3-year-old child, D, who are members of B's household. No taxpayer other than C is eligible to claim D as a qualifying child. C has no gross income, is not required by section 6012 to file a Federal income tax return, and does not file a Federal income tax return for the taxable year. Under paragraph (e)(1) of this section, because C does not have a filing requirement and does not file an income tax return, D is not treated as a qualifying child of C, and B may claim both C and D as B's qualifying relatives.

*Example 2.* The facts are the same as in *Example 1* of this paragraph (e)(2) except that C has earned income of \$1,500 during the taxable year, had income tax withheld from C's wages, and is not required by section 6012 to file an income tax return. C files an income tax return solely to obtain a refund of withheld taxes and does not claim the earned income credit under section 32. Under paragraph (e)(1) of this section,

because C does not have a filing requirement and files only to obtain a refund of withheld taxes, D is not treated as a qualifying child of C, and B may claim both C and D as B's qualifying relatives.

*Example 3.* The facts are the same as in *Example 2* of this paragraph (e)(2) except that C's earned income is more than the amount of the dependency exemption for that year. C files an income tax return for the taxable year to obtain a refund of withheld taxes and claims the earned income credit. Because C filed an income tax return to obtain the earned income credit and not solely to obtain a refund of withheld taxes, D is a qualifying child of a taxpayer (C), and B may not claim D as a qualifying relative. B also may not claim C as a qualifying relative because C fails the gross income test under paragraph (c) of this section.

■ **Par. 16.** Redesignate § 1.152–4 as § 1.152–5, and add a new § 1.152–4 to read as follows:

**§ 1.152–4 Rules for a qualifying child and a qualifying relative.**

(a) *Support*—(1) *In general.* The term *support* includes food, shelter, clothing, medical and dental care, education, and similar items. Support does not include an individual's Federal, State, and local income taxes paid from the individual's own income or assets, Social Security and Medicare taxes under section 3101 paid from the individual's own income, life insurance premiums, or funeral expenses. In determining whether an individual provided more than one-half of the individual's own support for purposes of § 1.152–2(e), or whether a taxpayer provided more than one-half of an individual's support for purposes of § 1.152–3(d), the amount of support provided by the individual, or the taxpayer, is compared to the total amount of the individual's support from all sources. For these purposes, except as otherwise provided in this paragraph (a), the amount of an individual's total support is the amount of support from all sources, and includes support the individual provides and amounts that are excludable from gross income. Generally, the amount of an item of support is the amount of expense paid or incurred to furnish the item of support. If the item of support furnished is property or a benefit, such as lodging, however, the amount of the item of support is the fair market value of the item.

(2) *Payments made during the year for unpaid or future support.* For purposes of determining the amount of support provided in a calendar year, an amount paid in a calendar year after the calendar year in which the liability is incurred is treated as paid in the year of payment. An amount paid in a calendar year before due, whether or not made in the form of a lump sum payment in

settlement of a person's liability for support, is treated as support paid during the calendar year of payment rather than the calendar year when payment is due. A payment of a liability from amounts set aside in trust in a prior year is treated as made in the year in which the liability is paid.

(3) *Governmental payments*—(i) *Governmental payments as support*—(A) *In general.* Except as provided in paragraph (a)(3)(iii) of this section, governmental payments and subsidies for an item of support are support provided by a third party, the government.

(B) *Examples.* Payments of Temporary Assistance for Needy Families (42 U.S.C. 601–619), low-income housing assistance (42 U.S.C. 1437f), Supplemental Nutrition Assistance Program benefits (7 U.S.C. chapter 51), Supplemental Security Income payments (42 U.S.C. 1381–1383f), foster care maintenance payments, and adoption assistance payments are governmental payments and subsidies for an item of support as described in paragraph (a)(3)(i)(A) of this section.

(ii) *Governmental payments based on a taxpayer's contributions*—(A) *In general.* Except as provided in paragraph (a)(3)(iii) of this section, governmental payments based on a taxpayer's earnings and contributions into the Social Security system are support provided by the individual for whose benefit the payments are made to the extent those payments are used for that individual's support.

(B) *Examples.* Social Security old age benefits under section 202(b) of Title II of the Social Security Act (SSA) (42 U.S.C. 402) are governmental payments based on a taxpayer's earnings and contributions into the Social Security system as described in paragraph (a)(3)(ii)(A) of this section. Similarly, Social Security survivor and disability insurance benefits paid under section 202(d) of the SSA to, or for the benefit of, the child of a deceased or disabled parent are treated as support provided by the child to the extent those payments are used for the child's support.

(iii) *Payments used for support of another individual.* Governmental payments and subsidies described in paragraph (a)(3)(i) of this section and governmental payments described in paragraph (a)(3)(ii) of this section that are used by the recipient or other intended beneficiary to support another person are support of that person provided by the recipient or other intended beneficiary, rather than support provided by a third party, the government.

(4) *Medical insurance.* Medical insurance premiums, including Part A Basic Medicare premiums, if any, under Title XVIII of the Social Security Act (42 U.S.C. 1395c to 1395i-5), Part B Supplemental Medicare premiums under Title XVIII of the Social Security Act (42 U.S.C. 1395j to 1395w-6), Part C Medicare + Choice Program premiums under Title XVIII of the Social Security Act (42 U.S.C. 1395w-21 to 1395w-29), and Part D Voluntary Prescription Drug Benefit Medicare premiums under Title XVIII of the Social Security Act (42 U.S.C. 1395w-101 to 1395w-154), are treated as support. Medical insurance proceeds, including benefits received under Medicare Part A, Part B, Part C, and Part D, are not treated as items of support and are disregarded in determining the amount of the individual's support. Services provided to an individual under the medical and dental care provisions of the Armed Forces Act (10 U.S.C. chapter 55) are not treated as support and are disregarded in determining the amount of the individual's support.

(5) *Medical care payments from personal injury claim.* Payments for the medical care of an injured individual from a third party, including a third party's insurance company, in satisfaction of a legal claim for the personal injury of the individual are not treated as items of support and are disregarded in determining the amount of the individual's support.

(6) *Scholarships.* Amounts a student who is the child of the taxpayer receives as a scholarship for study at an educational organization described in section 170(b)(1)(A)(ii) are not treated as an item of support and are disregarded in determining the amount of the student's support.

(b) *Relationship test*—(1) *Joint return.* A taxpayer may satisfy the relationship test described in § 1.152-2(b) (relating to a qualifying child) or in § 1.152-3(b) (relating to a qualifying relative) if a described relationship exists between an individual and the taxpayer claiming that individual as a qualifying child or qualifying relative, even though the taxpayer files a joint return with his or her spouse who does not have a described relationship with the individual.

(2) *Divorce or death of spouse.* If the relationship between the taxpayer and an individual claimed by that taxpayer as a dependent results from a marriage, the taxpayer's qualifying relationship with the individual continues after the termination of the marriage by divorce or death.

(c) *Principal place of abode*—(1) *In general.* The term *principal place of*

*abode* of a person means the primary or main home or dwelling where the person resides. A person's principal place of abode need not be the same physical location throughout the taxable year and may be temporary lodging such as a homeless shelter or relief housing resulting from displacement caused by a natural disaster.

(2) *Temporary absence.* The taxpayer and an individual have the same principal place of abode despite a temporary absence by either person because of special circumstances. An absence is temporary if the person would have resided at the place of abode but for the absence and, under the facts and circumstances, it is reasonable to assume that the person will return to reside at the place of abode. An individual who does not reside with the taxpayer because of a temporary absence is treated as residing with the taxpayer. For example, a nonpermanent failure to occupy the abode by reason of illness, education, business, vacation, military service, institutionalized care for a child who is totally and permanently disabled (as defined in section 22(e)(3)), or incarceration may be treated as a temporary absence because of special circumstances. If an infant must remain in a hospital for a period of time after birth and would have resided with the taxpayer during that period but for the hospitalization, the infant is treated as having the same principal place of abode as the taxpayer during the period of hospitalization.

(3) *Residing with taxpayer for more than one-half of the taxable year*—(i) *In general.* An individual has the same principal place of abode as the taxpayer for more than one-half of the taxable year if the individual resides with the taxpayer for at least 183 nights during the taxpayer's taxable year, or 184 nights if the taxable year includes a leap day.

(ii) *Nights of residence*—(A) *Nights counted.* For purposes of determining whether an individual resides with the taxpayer for more than one-half of the taxable year, an individual resides with a taxpayer for a night if the individual sleeps—

(1) At the taxpayer's principal place of abode, whether or not the taxpayer is present; or

(2) In the company of the taxpayer when the individual does not sleep at the taxpayer's principal place of abode (for example, when the taxpayer and the individual are on vacation).

(B) *Night straddling two taxable years.* If an individual resides with a taxpayer for a night that extends over two taxable years, that night is allocated to the taxable year in which the night begins.

(C) *Exception for a parent who works at night.* If, in a calendar year, because of a taxpayer's nighttime work schedule, an individual resides for at least 183 days, or 184 days if the taxable year includes a leap day, but not nights with the taxpayer, the individual is treated as residing with the taxpayer for more than one-half of the taxable year.

(D) *Absences.* An individual who does not reside with a taxpayer for a night because of a temporary absence as described in paragraph (c)(2) of this section is treated as residing with the taxpayer for that night if the individual would have resided with the taxpayer for that night but for the absence.

(4) *Examples.* The following examples illustrate the rules of this paragraph (c). In each example, each taxpayer uses the calendar taxable year, and section 152(e) does not apply.

*Example 1.* B and C are the divorced parents of Child. In 2015, Child sleeps at B's principal place of abode for 210 nights and at C's principal place of abode for 155 nights. Under paragraph (c)(3) of this section, Child resides with B for at least 183 nights during 2015 and has the same principal place of abode as B for more than one-half of 2015.

*Example 2.* D and E are the divorced parents of Child, and Grandparent is E's parent. In 2015, Child resides with D for 140 nights, with E for 135 nights, and with Grandparent for the last 90 nights of the year. None of these periods is a temporary absence. Under paragraph (c)(3) of this section, Child does not have the same principal place of abode as D, E, or Grandparent for more than one-half of 2015.

*Example 3.* The facts are the same as in *Example 2* of this paragraph (c)(4), except that, for the 90-day period that Child lives with Grandparent, E is temporarily absent on military service. Child would have lived with E if E had not been absent during that period. Under paragraphs (c)(2) and (c)(3)(ii)(D) of this section, Child is treated as residing with E for 225 nights in 2015 and, therefore, Child has the same principal place of abode as E for more than one-half of 2015.

*Example 4.* The facts are the same as in *Example 2* of this paragraph (c)(4), except that, for the last 90 days of the year Child, who is 18, moves into Child's own apartment and begins full-time employment. Because Child's absence is not temporary, under paragraph (c)(2) of this section, Child is not treated as residing with D or E for the 90 nights. Under paragraph (c) of this section, Child does not have the same principal place of abode as D or E for more than one-half of 2015.

*Example 5.* F and G are the divorced parents of Child. In 2015, Child sleeps at F's principal place of abode for 170 nights and at G's principal place of abode for 170 nights. Child spends 25 nights of the year away from F and G at a summer camp. Child would have spent those nights with F if Child had not gone to summer camp. Under paragraphs (c)(2) and (c)(3)(ii)(D) of this section, Child is treated as residing with F for 195 nights and,

therefore, Child has the same principal place of abode as F for more than one-half of 2015.

**Example 6.** H and J are the divorced parents of Child. In 2015, Child sleeps at H's principal place of abode for 180 nights and at J's principal place of abode for 180 nights. For 5 nights during that year, Child sleeps at Grandparent's abode or at the house of a friend. Child would have spent all 5 nights at H's house if Child had not slept at Grandparent's or a friend's house. Under paragraphs (c)(2) and (c)(3)(ii)(D) of this section, Child is treated as residing with H for 185 nights and, therefore, Child has the same principal place of abode as H for more than one-half of 2015.

(d) *Residence for a portion of a taxable year because of special circumstances*—(1) *Individual who is born or dies during the year.* If an individual is born or dies during a taxpayer's taxable year, the residency test for a qualifying child is treated as met if the taxpayer and the individual have the same principal place of abode for more than one-half of the portion of the taxable year during which the individual is alive. If an individual is born or dies during a taxpayer's taxable year, the relationship test for a qualifying relative who is a member of the taxpayer's household is treated as met if the taxpayer and the individual have the same principal place of abode for the entire portion of the taxable year during which the individual is alive.

(2) *Adopted child or foster child.* If, during a taxpayer's taxable year, the taxpayer adopts a child, a child is lawfully placed with a taxpayer for legal adoption by that taxpayer, or an eligible foster child is placed with a taxpayer, the residency test for a qualifying child and the residency requirement under § 1.152–1(a)(2)(iii) for a child who is not a citizen or national of the United States are treated as met if the taxpayer and the child have the same principal place of abode for more than one-half of the portion of the taxable year as required for a qualifying child, or for the entire taxable year as required for a noncitizen, following the placement of the child with the taxpayer.

(e) *Missing child*—(1) *Qualifying child.* A child of the taxpayer who is presumed by law enforcement authorities to have been kidnapped by someone who is not a member of the family of either the child or the taxpayer, and who had for the taxable year in which the kidnapping occurred the same principal place of abode as the taxpayer for more than one-half of the portion of the taxable year before the date of the kidnapping, is treated as meeting the residency test for a qualifying child, as described in § 1.152–2(c), of the taxpayer for all taxable years ending during the period

that the child is missing. Also, the child is treated as meeting the residency test in the year of the child's return if the child has the same principal place of abode as the taxpayer for more than one-half of the portion of the taxable year following the date of the child's return.

(2) *Qualifying relative.* A child of the taxpayer who is presumed by law enforcement authorities to have been kidnapped by someone who is not a member of the family of either the child or the taxpayer, and who was a qualifying relative of the taxpayer for the portion of the taxable year before the date of the kidnapping, is treated as a qualifying relative, as described in section 152(d) and § 1.152–3, of the taxpayer for all taxable years ending during the period that the child is missing. Also, the child is treated as a qualifying relative of the taxpayer in the year of the child's return if the child is a qualifying relative of the taxpayer for the portion of the taxable year following the date of the child's return.

(3) *Age limitation.* The special rules provided in this paragraph (e) cease to apply as of the first taxable year of the taxpayer beginning after the calendar year in which there is a determination that the child is dead or, if earlier, in which the child would have attained age 18.

(4) *Application.* This paragraph (e) applies solely for purposes of determining surviving spouse or head of household filing status under section 2, the child tax credit under section 24, the earned income credit under section 32, and the dependency exemption under section 151.

■ **Par. 17** In newly redesignated § 1.152–5, paragraphs (e)(2), (e)(3)(iii), and (h) are revised to read as follows:

**§ 1.152–5 Special rule for a child of divorced or separated parents or parents who live apart.**

\* \* \* \* \*

(e) \* \* \*

(2) *Attachment to return*—(i) *In general.* A noncustodial parent must attach a copy of the written declaration to the parent's original or amended return for each taxable year for which the noncustodial parent claims an exemption for the child. A noncustodial parent may submit a copy of the written declaration to the IRS during an examination to substantiate a claim to a dependency exemption for a child. A copy of a written declaration attached to an amended return, or provided during an examination, will not meet the requirement of this paragraph (e) if the custodial parent signed the written declaration after the custodial parent filed a return claiming a dependency

exemption for the child for the year at issue, and the custodial parent has not filed an amended return to remove that claim to a dependency exemption for the child.

(ii) *Examples.* The following examples illustrate the rules of this paragraph (e).

**Example 1.** Custodial parent (CP) files her 2015 return on March 1, 2016, and claims a dependency exemption for Child. At noncustodial parent's (NCP) request, CP signs a Form 8332 for the 2015 tax year on April 15, 2016. On April 15, NCP files his return claiming a dependency exemption for Child and attaches the signed Form 8332 to his return. Under section 152(e) and paragraph (b) of this section, NCP is allowed a dependency exemption for Child for 2015, and CP is not allowed a dependency exemption for Child for that year.

**Example 2.** The facts are the same as in **Example 1** of this paragraph (e)(2)(ii), except NCP files on April 15, 2016, a request for an extension to file his tax return because he does not have a signed Form 8332. CP signs the Form 8332 for the 2015 tax year in August of 2016, and NCP files his return a week later. NCP claims a dependency exemption for Child and attaches the signed Form 8332 to his return. Under section 152(e) and paragraph (b) of this section, NCP is allowed a dependency exemption for Child for 2015, and CP is not allowed a dependency exemption for Child for that year.

**Example 3.** CP files his 2015 return on March 1, 2016, and claims a dependency exemption for Child. NCP files her return on April 15, 2016, and does not claim a dependency exemption for Child, even though her divorce decree allocates the dependency exemption for Child to her. CP signs a Form 8332 for the 2015 tax year in August of 2016, and NCP files an amended return a week later and attaches the signed Form 8332 to her amended return claiming a dependency exemption for Child. Under paragraph (e)(2) of this section, NCP is not allowed a dependency exemption for Child for 2015 if CP has not amended his return to remove a claim to the dependency exemption for Child for that year.

(3) \* \* \*

(iii) *Attachment to return.* The parent revoking the written declaration must attach a copy of the revocation to the parent's original or amended return for each taxable year for which the parent claims a child as a dependent as a result of the revocation. The parent revoking the written declaration must keep a copy of the revocation and evidence of delivery of the notice to the other parent, or of the reasonable efforts to provide actual notice. A parent may submit a copy of a revocation to the IRS during an examination to substantiate a claim to a dependency exemption for the child.

\* \* \* \* \*

(h) *Applicability date*—(1) *In general.* Except as provided in paragraph (h)(2)

of this section, this section applies to taxable years beginning after July 2, 2008.

(2) *Exception.* Paragraphs (e)(2) and (e)(3)(iii) of this section apply to taxable years beginning after the date these regulations are published as final regulations in the **Federal Register**.

#### § 1.6013-1 [Amended]

■ **Par. 18.** Section 1.6013-1 is amended by removing paragraph (e).

### PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 19.** The authority citation for part 301 continues to read in part as follows:

*Authority:* 26 U.S.C. 7805 \* \* \*

■ **Par. 20.** Section 301.6109-3 is amended by:

■ 1. Revising the first sentence and adding a sentence to the end of the paragraph in paragraph (a)(1).

■ 2. Revising paragraphs (b), (c)(1)(ii), the fourth and fifth sentences of (c)(2) introductory text, and paragraph (d).

The revisions and addition read as follows:

#### § 301.6109-3 IRS adoption taxpayer identification numbers.

(a) *In general*—(1) *Definition.* An IRS adoption taxpayer identification number (ATIN) is a temporary taxpayer identifying number assigned by the Internal Revenue Service (IRS) to a child (other than an alien individual as defined in § 301.6109-1(d)(3)(i)) who has been placed lawfully with a prospective adoptive parent for legal adoption by that person. \* \* \* A child lawfully placed with a prospective adoptive parent for legal adoption includes a child placed for legal adoption by the child's parent or parents by blood, an authorized placement agency, or any other person authorized by State law to place a child for legal adoption.

\* \* \* \* \*

(b) *Definitions*—(1) Authorized placement agency has the same meaning as in § 1.152-1(b)(1)(iv).

(2) *Child* means a child who has not been adopted but has been placed lawfully with a prospective adoptive parent for legal adoption by that person.

(3) *Prospective adoptive parent* means a person in whose household a child has been placed lawfully for legal adoption by that person.

(c) \* \* \*

(1) \* \* \*

(ii) The child has been placed lawfully with the prospective adoptive parent for legal adoption by that person;

\* \* \* \* \*

(2) \* \* \* In addition, the application must include documentary evidence the IRS prescribes to establish that a child has been placed lawfully with the prospective adoptive parent for legal adoption by that person. Examples of acceptable documentary evidence establishing lawful placement for a legal adoption may include—

\* \* \* \* \*

(d) *Applicability date*—(1) *In general.* Except as otherwise provided in paragraph (d)(2) of this section, the provisions of this section apply to income tax returns due (without regard to extension) on or after April 15, 1998.

(2) *Exception.* Paragraphs (a)(1), (b), (c)(1)(ii), and (c)(2) of this section apply to income tax returns due (without regard to extension) on or after the date these regulations are published as final regulations in the **Federal Register**.

**John Dalrymple,**

*Deputy Commissioner for Services and Enforcement.*

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### DEPARTMENT OF JUSTICE

#### Office of the Attorney General

#### 28 CFR Part 42

[Docket No. OAG 154; AG Order No. 3818-2017]

**RIN 1105-AB50**

#### Amendment of Regulations Implementing Section 504 of the Rehabilitation Act of 1973—Nondiscrimination Based on Disability in Federally Assisted Programs or Activities

**AGENCY:** Department of Justice.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Justice is issuing this notice of proposed rulemaking to revise its regulation implementing section 504 of the Rehabilitation Act of 1973, as applicable to programs and activities receiving financial assistance from the Department, in order to incorporate amendments to the statute, including the changes in the meaning and interpretation of the applicable definition of disability required by the ADA Amendments Act of 2008; incorporate requirements stemming from judicial decisions; update accessibility standards applicable to new construction and alteration of buildings and facilities; update certain provisions to promote consistency with

comparable provisions implementing title II of the Americans with Disabilities Act; and make other non-substantive clarifying edits, including updating outdated terminology and references that currently exist in 28 CFR part 42, such as changing the word “handicapped” and similar variations of that word to language referencing “individuals with disabilities,” modifying the order of the regulatory provisions to group like provisions together, and adding some headings to make the regulation more user-friendly.

**DATES:** All comments must be submitted on or before March 20, 2017.

**ADDRESSES:** You may submit comments, identified by RIN 1105-AB50, by any one of the following methods:

• *Federal eRulemaking portal:* <http://www.regulations.gov>. Follow the Web site's instructions for submitting comments.

• *Regular U.S. mail:* Disability Rights Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 2885, Fairfax, VA 22031-0885.

• *Overnight, courier, or hand delivery:* Disability Rights Section, Civil Rights Division, U.S. Department of Justice, 1425 New York Avenue NW., Suite 4055, Washington, DC 20005.

#### FOR FURTHER INFORMATION CONTACT:

Rebecca Bond, Chief, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, at (202) 307-0663 (voice or TTY) (not a toll-free number); or Michael Alston, Director, Office for Civil Rights, Office of Justice Programs, U.S. Department of Justice, at (202) 307-0690 (not a toll-free number). Information may also be obtained from the Department's toll-free ADA Information Line at (800) 514-0301 (voice), or (800) 514-0383 (TTY).

You may obtain copies of this notice of proposed rulemaking (NPRM) in an alternative format by calling the ADA Information Line at (800) 514-0301 (voice), or (800) 514-0383 (TTY). This NPRM is also available on the ADA Home Page at <http://www.ada.gov>.

#### SUPPLEMENTARY INFORMATION:

#### Electronic Submission of Comments and Posting of Public Comments

You may submit electronic comments to <http://www.regulations.gov>. When submitting comments electronically, you must include “RIN 1105-AB50” in the subject field, and you must include your full name and address. Electronic files should avoid the use of special characters or any form of encryption and should be free of any defects or viruses.

Please note that all comments received are considered part of the