

The GIBSON&PERKINS Tax Letter

CIRCULATED TO TAX ADVISORS AND CLIENTS

July 2, 2009

A CONCERN FOR NON-CUSTODIAL PARENTS WHO CLAIM DEPENDENCY EXEMPTIONS.

According to the June 26, 2009 Kiplinger Tax Letter:

“Any conditions in the divorce agreement nix the exemption - if the parent with custody hasn’t signed Form 8332¹ to waive his or her right to the exemption. For divorces before July 3, 2008, a signed divorce decree awarding the exemption to the noncustodial parent is OK in lieu of the 8332. But now, the Service says that it will reject signed decrees that have conditions, such as requiring payment of a settlement that must be satisfied before the noncustodial parent gets the break. This is so even if the parent has documentation showing that the condition was met. That’s even more reason to ensure the custodial parent provides a signed Form 8332.”²

The regulations also require that the written declaration must include an unconditional statement that the custodial parent will not claim the child as a dependent for the specified year or years. *Under the regulations, a statement would be unconditional if it does not expressly condition the custodial parent's waiver as dependent on the noncustodial parent's meeting an obligation (e.g., payment of support).* The written declaration would have to specify the year or years for which the release is effective. A written declaration not specifying a year or years would have no effect and a written declaration specifying all future years would be treated as specifying the first tax year after the tax year of execution and all subsequent tax years.

A written declaration may be made on Form 8332, or successor form designated by the IRS.

A written declaration not on the form designated by the IRS must conform to the substance of that form and must be a document executed for the sole purpose of serving as a written declaration to release the claim to the dependency exemption. *A court order or decree could not serve as the written declaration.*

In negotiating allocation of the dependency exemption in divorce settlements, the noncustodial parent should insist on unconditional releases to avoid litigation in the event the custodial parent refuses to sign a release without cause.

¹ IRS Form 8332 – Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent

² The Kiplinger Tax Letter, Vol. 84, No. 13

Conversely, the custodial parent should insist on any releases to the exemption being conditional on child support payments being current.

For your reference, you can view a copy of Form 8332 by clicking this link:

<http://www.irs.gov/pub/irs-pdf/f8332.pdf>

Regards,



Ted Perkins

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