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FORM 8332 — RELEASE OF CLAIM FOR EXEMPTION

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Issue

Can the non-custodial spouse attach a copy of the divorce decree to his or her income tax return and satisfy the requirements of the Internal Revenue Code without Form 8332?


Discussion¹

In 1985, the Internal Revenue Service published Form 8332, which was revised in January 2006 and September 2007. Under current law, any declaration other than on the official form must provide: (1) The name of the child to which an exemption is released; (2) the year for which the exemption is released to the noncustodial parent; (3) signature, date of signature, and Social Security number of the custodial parent; and (4) the name and Social Security number of the noncustodial parent to whom the exemption is released.

To satisfy the written declaration requirements of the Internal Revenue Code (I.R.C.) §152(e)(2) the custodial parent must provide the following on Form 8332 or a statement containing: (1) The names of the children with respect to whom the exemptions are released; (2) the years for which the claims to exemptions are released to the noncustodial parent; (3) the signature of the custodial parent confirming his or her consent; (4) the Social Security number of the custodial parent; (5) the date of the custodial parent's signature; and (6) the name and Social Security number of the parent claiming the exemption. In addition, the signature of the custodial parent must confirm the custodial parent's intention to release the dependency exemption to the non-custodial parent and signify her agreement not to claim the dependency exemption herself.

Conclusion

Attaching a copy of the divorce decree without a written declaration signed by the custodial parent waiving the exemption does not satisfy the requirements of the I.R.C.

See *Miller v. Commissioner*, 114 T.C. No. 13 (March 24, 2000), wherein the court refused to recognize the non-custodial parent's entitlement to the dependency exemption when the parent attached only the state court's decree granting him the right to claim the dependency exemption without the custodial parent's signature. The court said: "The signature of the custodial parent is critical to the successful implementation of Congress' plan to eliminate support-based disputes regarding dependency exemptions and to simplify the rules regarding when a noncustodial parent may claim the dependency exemptions for his or her children." 

¹ *Frumkes on Divorce Taxation*; 8th Edition; Melvin B. Frumkes

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