

Dependency tests for a Qualifying child 2011

- ❖ Relationship
 - Son, Daughter, Stepchild, Foster Child, Brother, Sister, Stepbrother, Stepsister or
 - A descendent of any of the above, including
 - Grandchildren, Nieces, Nephews and others
- ❖ Residency Test
 - Child must live with the taxpayer for more than half of the year.
- ❖ Age
 - Under the age of 19 at the end of the tax year
 - Under the age of 24 and a full-time student ((full-time student)
 - Any age if he is totally and permanently disabled
- ❖ Support Test
 - In order to meet the support test, a child cannot provide over ½ of his own support for the tax year. Support test worksheet.

CHILDREN OF DIVORCED OR SEPARATED PARENTS

The tax laws are somewhat different for children of divorced or separated parents because several special rules apply.

Custodial Parent and Noncustodial Parent

In most cases, because of the residency test, a child of divorced or separated parents is the qualifying child of the custodial parent. The “custodial parent” is a parent with whom the child resides for the greater number of nights during a calendar year. The “noncustodial parent” is the parent who is not the custodial parent. A child is treated as residing with neither parent if the child is emancipated under state law. A child is considered residing with the parent for a night if the child sleeps:

- At the residence of that parent (whether or not the parent is present); or
- In the company of the parent when the child does not sleep at a parent’s residence (for example, the parent and child are on vacation together).

A night that extends over two taxable years is allocated to the taxable year in which the night begins. A child who does not reside with a parent for a night is treated as residing with the parent that the child would have resided with for the night but for the absence. If it cannot be determined which parent the child would have resided with or if the child would not have resided with either parent for the night, the child is treated as not residing with either parent.

If a child is in the custody of one or both parents for more than one-half of the calendar year and the child resides with each parent for an equal number of nights during the year, the parent with the higher adjusted gross income for the calendar year is treated as the custodial parent.

An exception exists for a parent who works nights. If, in a calendar year, due to a parent’s nighttime work schedule, a child resides for a greater number of days but not nights with the parent who works at night, that parent is treated as the custodial parent. On a school day, the child is treated as residing at the primary residence registered with the school.

However, the child is treated as the qualifying child of the noncustodial parent if **all four** of the following statements are true:

1. The parents:
 - a. Are divorced or legally separated under a decree of divorce or separate maintenance,
 - b. Are separated under a written separation agreement, or
 - c. Lived apart at all times during the last six months of the year, whether or not they are married.
2. The child received over half of her support for the year from the parents.
3. The child is in the custody of one or both parents for more than half of the year.
4. The custodial parent signed a written declaration (discussed later) that indicates the custodial parent will not claim the child as a dependent for the year, and the noncustodial parent attaches this written declaration to his return.

Written Declaration

The custodial parent may use Form 8332, *Release of Claim to Exemption for Child of Divorced or Separated Parents*, or a similar statement (containing the same information required by the form) to make the written declaration to **unconditionally** release the exemption to the noncustodial parent. The noncustodial parent must attach the form or statement to his tax return. The release is **not** unconditional if it contains any conditions (e.g., being current on all child support payments).

*A written declaration may be made on Form 8332 or a successor form designated by the IRS. If the declaration is not on an IRS designated form, it must conform to the substance of the IRS form and must be a document executed for the sole purpose of serving as a written declaration. For calendar-year taxpayers, a court order or decree, or a separation agreement may **not** serve as a written declaration if issued after December 31, 2008.*

Divorce Decrees

Divorce decrees can be used in lieu of Form 8332 if:

1. The right to claim the child is unconditional, **and**
2. The written declaration was executed prior to December 31, 2008 for calendar-year taxpayers (for fiscal year taxpayers, the document must be issued in any taxable year beginning before July 2, 2008).

Parents Who Never Married

The written declaration rule mentioned above also applies to divorced or separated parents as well as to parents who were never married.

New Tie-Breaker Rule¹²

If an individual may be claimed as a qualifying child by two or more taxpayers, the tie-breaker rule applies. **The tiebreaker rule is mandatory.**

Applying This Special Test to Divorced or Separated Parents

If a child is treated as a **qualifying child of the noncustodial parent** under the rules for children of divorced or separated parents described earlier, the noncustodial parent can only claim an **exemption** and the **child tax credit** for the child. The noncustodial parent **cannot** claim the child as a qualifying child for head of household filing status, the credit for child and dependent care expenses, the exclusion for dependent care benefits, and the earned income credit.

Only the custodial parent or another eligible taxpayer can claim the child as a qualifying child for these four tax benefits. When the custodial parent and another eligible taxpayer both claim the child as a qualifying child for any of these four tax benefits, the IRS disallows all but one of the claims using the tie-breaker rule shown in the above table.¹³

IF more than one person is eligible to claim the same qualifying child and .	THEN the child will be treated as the qualifying child of the
Only one of the persons is the child's parent,	Parent.
Two or more persons are parents of the child and they do not file a joint return together,	Parent with whom the child lived for the longer period of time during the year.
Two of the persons are parents of the child, they do not file a joint return together, and the child lived with each parent the same amount of time during the year,	Parent with the highest AGI.
None of the persons are the child's parents,	Person with the highest AGI.

Applying This Special Test to Divorced or Separated Parents

If a child is treated as a **qualifying child of the noncustodial parent** under the rules for children of divorced or separated parents described earlier, the noncustodial parent can only claim an **exemption** and the **child tax credit** for the child. The noncustodial parent **cannot** claim the child as a qualifying child for head of household filing status, the credit for child and dependent care expenses, the exclusion for dependent care benefits, and the earned income credit. Only the custodial parent or another eligible taxpayer can claim the child as a qualifying child for these four tax benefits. When the custodial parent and another eligible taxpayer both claim the child as a qualifying child for any of these four tax benefits, the IRS disallows all but one of the claims using the tie-breaker rule shown in the above table.

DEPENDENCY TESTS FOR A QUALIFYING RELATIVE

If the person does not meet the rules to be a qualifying child, the taxpayer should determine whether the person meets the requirements to be a qualifying relative. There are four tests that must be met for a person to be a qualifying relative. The four tests are:

1. Not-a-qualifying-child test,
2. Member-of-household or relationship test,
3. Gross-income test, and
4. Support test.

Unlike a qualifying child, a qualifying relative can be any age. The test for a kidnapped child is the same as for a qualifying child as previously discussed.

MEMBER-OF-HOUSEHOLD OR RELATIONSHIP TEST

To meet the member-of-household or relationship test, a person must either:

1. Live with the taxpayer all year as a member of the taxpayer's household, or
2. Be related to the taxpayer in one of the following ways even if he did not live with the taxpayer:
 - a. Child, stepchild, foster child, or a descendent of any of them such as the taxpayer's grandchild (A legally adopted child is considered the taxpayer's child.)
 - b. Brother, sister, half-brother, half-sister, stepbrother, or stepsister
 - c. Mother, father, grandparent, or other direct ancestor, but not foster parent
 - d. Stepfather or stepmother
 - e. Nephew or niece
 - f. Aunt or uncle
 - g. Son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law

The relationships established by marriage are **not** ended by death or divorce. If at any time during the year a person was the taxpayer's spouse, that person cannot be the taxpayer's qualifying relative. A foster child is an individual, who is placed with the taxpayer by an authorized placement agency or by judgment,