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MEMORANDUM FOR DISTRICT DIRECTOR, KANSAS-MISSOURI DISTRICT
Attn: Sam Catalano

FROM: George Blaine, Chief, Branch 1, Office of Assistant Chief
Counsel (Income Tax & Accounting)

SUBJECT: Section 152(e)

This memorandum is a response to your request for technical assistance dated August 30, 1999.

ISSUE

Does the special support test in section 152(e) of the Internal Revenue Code apply to determine if a child is a dependent of one of two parents who have never married each other?

CONCLUSION

The special support test in section 152(e) of the Code does not apply to parents who have never married each other. Such a parent would have to qualify under another provision of section 152 to claim the child as a dependent.

DISCUSSION

Section 152(a) of the Code defines the term "dependent" to include a son or daughter of the taxpayer over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer or is treated under subsection (e) as received from the taxpayer.

Section 152(e)(1) of the Code provides that if a child of divorced or separated parents receives over half of his or her support during the calendar year from the child's parents and the child is in the custody of one or both of his parents for more than one-half of the calendar year, then, generally, the child is treated as receiving over half of his or her support during the calendar year from the parent having custody for a greater portion of the year.

Specifically, section 152(e)(1)(A) applies to parents (i) who are divorced or legally separated under a decree of divorce or separate maintenance, (ii) who are separated under a written separation agreement, or (iii) who live apart at all times during the last 6 months of the calendar year.

At issue is whether the language of section 152(e)(1)(A)(iii) of the Code, “who live apart at all times during the last 6 months of the calendar year,” applies to parents who have never married each other.

The history of section 152(e) indicates that it does not apply to parents who have never married each other. Before the enactment of the Tax Reform Act of 1984, the support test in section 152(e) specifically applied only to parents described in current section 152(e)(1)(A)(i) or (ii), that is, to divorced parents and to parents legally separated or separated under a written separation agreement. The Tax Reform Act of 1984 added the language in section 152(e)(1)(A)(iii).

The legislative history indicates that section 152(e)(1)(A)(iii) was not meant to apply to parents who have never married each other. The committee reports indicate that the language was added to provide consistent rules among related sections of the Internal Revenue Code concerning the status of married individuals living apart. H.R. REP. NO. 432, 98th Cong., 2d Sess., pt. 2 at 1499 (1984); H.R. CONF. REP. NO. 861, 98th Cong., 2d Sess. at 1118 (1984). Nothing in the legislative history related to this amendment of section 152(e) indicates that Congress intended to broaden the scope of section 152(e) to apply to parents who have never married each other.

If you have any questions, please call Victoria Driscoll at (202) 622-4910.