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[Laws in effect as of January 2, 2001]
[Document not affected by Public Laws enacted between
January 2, 2001 and January 28, 2002]
[CITE: 26USC152]

TITLE 26--INTERNAL REVENUE CODE

Subtitle A--Income Taxes

CHAPTER 1--NORMAL TAXES AND SURTAXES

Subchapter B--Computation of Taxable Income

PART V--DEDUCTIONS FOR PERSONAL EXEMPTIONS

Sec. 152. Dependent defined

(a) General definition

For purposes of this subtitle, the term ``dependent'' means any of the following individuals 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 (c) or (e) as received from the taxpayer):

- (1) A son or daughter of the taxpayer, or a descendant of either,
- (2) A stepson or stepdaughter of the taxpayer,
- (3) A brother, sister, stepbrother, or stepsister of the taxpayer,
- (4) The father or mother of the taxpayer, or an ancestor of either,
- (5) A stepfather or stepmother of the taxpayer,
- (6) A son or daughter of a brother or sister of the taxpayer,
- (7) A brother or sister of the father or mother of the taxpayer,
- (8) A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the taxpayer, or
- (9) An individual (other than an individual who at any time during the taxable year was the spouse, determined without regard to section 7703, of the taxpayer) who, for the taxable year of the taxpayer, has as his principal place of abode the home of the taxpayer and is a member of the taxpayer's household.

(b) Rules relating to general definition

For purposes of this section--

- (1) The terms ``brother'' and ``sister'' include a brother or sister by the halfblood.
- (2) In determining whether any of the relationships specified in subsection (a) or paragraph (1) of this subsection exists, 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), or a foster child of an individual (if such child satisfies the requirements of subsection (a)(9) with respect to such individual), shall be treated as a child of such individual by blood.
- (3) The term ``dependent'' does not include any individual who is not a citizen or national of the United States unless such

individual is a resident of the United States or of a country contiguous to the United States. The preceding sentence shall not exclude from the definition of ``dependent'' any child of the taxpayer legally adopted by him, if, for the taxable year of the taxpayer, the child has as his principal place of abode the home of the taxpayer and is a member of the taxpayer's household, and if the taxpayer is a citizen or national of the United States.

(4) A payment to a wife which is includible in the gross income of the wife under section 71 or 682 shall not be treated as a payment by her husband for the support of any dependent.

(5) An individual is not a member of the taxpayer's household if at any time during the taxable year of the taxpayer the relationship between such individual and the taxpayer is in violation of local law.

(c) Multiple support agreements

For purposes of subsection (a), over half of the support of an individual for a calendar year shall be treated as received from the taxpayer if--

(1) no one person contributed over half of such support;

(2) over half of such support was received from persons each of whom, but for the fact that he did not contribute over half of such support, would have been entitled to claim such individual as a dependent for a taxable year beginning in such calendar year;

(3) the taxpayer contributed over 10 percent of such support;
and

(4) each person described in paragraph (2) (other than the taxpayer) who contributed over 10 percent of such support files a written declaration (in such manner and form as the Secretary may by regulations prescribe) that he will not claim such individual as a dependent for any taxable year beginning in such calendar year.

(d) Special support test in case of students

For purposes of subsection (a), in the case of any individual who is--

(1) a son, stepson, daughter, or stepdaughter of the taxpayer (within the meaning of this section), and

(2) a student (within the meaning of section 151(c)(4)),

amounts received as scholarships for study at an educational organization described in section 170(b)(1)(A)(ii) shall not be taken into account in determining whether such individual received more than half of his support from the taxpayer.

(e) Support test in case of child of divorced parents, etc.

(1) Custodial parent gets exemption

Except as otherwise provided in this subsection, if--

(A) a child (as defined in section 151(c)(3)) receives over half of his support during the calendar year from his 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, and

(B) such child is in the custody of one or both of his

parents for more than one-half of the calendar year,

such child shall be treated, for purposes of subsection (a), as receiving over half of his support during the calendar year from the parent having custody for a greater portion of the calendar year (hereinafter in this subsection referred to as the ``custodial parent'').

(2) Exception where custodial parent releases claim to exemption for the year

A child of parents described in paragraph (1) shall be treated as having received over half of his support during a calendar year from the noncustodial parent if--

(A) the custodial parent signs a written declaration (in such manner and form as the Secretary may by regulations prescribe) that such custodial parent will not claim such child as a dependent for any taxable year beginning in such calendar year, and

(B) the noncustodial parent attaches such written declaration to the noncustodial parent's return for the taxable year beginning during such calendar year.

For purposes of this subsection, the term ``noncustodial parent'' means the parent who is not the custodial parent.

(3) Exception for multiple-support agreement

This subsection shall not apply in any case where over half of the support of the child is treated as having been received from a taxpayer under the provisions of subsection (c).

(4) Exception for certain pre-1985 instruments

(A) In general

A child of parents described in paragraph (1) shall be treated as having received over half his support during a calendar year from the noncustodial parent if--

(i) a qualified pre-1985 instrument between the parents applicable to the taxable year beginning in such calendar year provides that the noncustodial parent shall be entitled to any deduction allowable under section 151 for such child, and

(ii) the noncustodial parent provides at least \$600 for the support of such child during such calendar year.

For purposes of this subparagraph, amounts expended for the support of a child or children shall be treated as received from the noncustodial parent to the extent that such parent provided amounts for such support.

(B) Qualified pre-1985 instrument

For purposes of this paragraph, the term ``qualified pre-1985 instrument'' means any decree of divorce or separate maintenance or written agreement--

(i) which is executed before January 1, 1985,

(ii) which on such date contains the provision described in subparagraph (A)(i), and

(iii) which is not modified on or after such date in a

modification which expressly provides that this paragraph shall not apply to such decree or agreement.

(5) Special rule for support received from new spouse of parent

For purposes of this subsection, in the case of the remarriage of a parent, support of a child received from the parent's spouse shall be treated as received from the parent.

(6) Cross reference

For provision treating child as dependent of both parents for purposes of medical expense deduction, see section 213(d)(5).

(Aug. 16, 1954, ch. 736, 68A Stat. 43; Aug. 9, 1955, ch. 693, Sec. 2, 69 Stat. 626; Pub. L. 85-866, title I, Sec. 4(a)-(c), Sept. 2, 1958, 72 Stat. 1607; Pub. L. 86-376, Sec. 1(a), Sept. 23, 1959, 73 Stat. 699; Pub. L. 90-78, Sec. 1, Aug. 31, 1967, 81 Stat. 191; Pub. L. 91-172, title IX, Sec. 912(a), Dec. 30, 1969, 83 Stat. 722; Pub. L. 92-580, Sec. 1(a), Oct. 27, 1972, 86 Stat. 1276; Pub. L. 94-455, title XIX, Secs. 1901(a)(24), (b)(7)(B), (8)(A), 1906(b)(13)(A), title XXI, Sec. 2139(a), Oct. 4, 1976, 90 Stat. 1767, 1794, 1834, 1932; Pub. L. 98-369, div. A, title IV, Secs. 423(a), 482(b)(2), July 18, 1984, 98 Stat. 799, 848; Pub. L. 99-514, title I, Sec. 104(b)(1)(B), (3), title XIII, Sec. 1301(j)(8), Oct. 22, 1986, 100 Stat. 2104, 2105, 2658.)

Amendments

1986--Subsec. (a)(9). Pub. L. 99-514, Sec. 1301(j)(8), substituted ``section 7703'' for ``section 143''.

Subsec. (d)(2). Pub. L. 99-514, Sec. 104(b)(3), substituted ``section 151(c)(4)'' for ``section 151(e)(4)''.

Subsec. (e)(1)(A). Pub. L. 99-514, Sec. 104(b)(1)(B), substituted ``section 151(c)(3)'' for ``section 151(e)(3)''.

1984--Subsec. (e). Pub. L. 98-369, Sec. 423(a), amended subsec. (e) generally, and in substantially revising support test provisions, enacted par. (1) custodial parent exemption, former par. (1) declaring the general rule that where a child received over one-half of his calendar year support from parents who were divorced or legally separated under a decree of divorce or separate maintenance, or were separated under a written separation agreement and the child was in the custody of one or both parents for more than one-half of the calendar year, the child would be treated as receiving over half of his support from the parent having custody for a greater portion of the calendar year unless treated under special rule provision as having received over half of his support from the parent not having custody; enacted par. (2) release of custodial parent exemption for the year, former par. (2) declaring the special rule that parent without custody would be deemed as furnishing over half of the support where the decree of divorce or separate maintenance, or written agreement, covering the taxable year, provided that parent without custody should be entitled to the section 151 deduction for the child and such parent provided at least \$600 calendar year support, or alternatively, such parent without custody provided \$1,200 or more calendar year support and the parent with custody did not establish more support of the child than the parent without custody; redesignated as par. (3) former par. (4) provision respecting exception for multiple-support agreement, deleting former par. (3) respecting requirement of an itemized statement of expenditures

to resolve more support claims; added par. (4) respecting exception for certain pre-1985 instruments; added par. (5) enunciating special rule for support received from new spouse of parent, deleting former par. (5) regulations prescription provision; and added par. (6) cross reference provision.

Subsec. (e)(6). Pub. L. 98-369, Sec. 482(b)(2), substituted ``section 213(d)(5)'' for ``section 213(d)(4)''.

1976--Subsec. (a)(9). Pub. L. 94-455, Sec. 1901(b)(7)(B), substituted ``section 143'' for ``section 153''.

Subsec. (a)(10). Pub. L. 94-455, Sec. 1901(a)(24)(A), struck out par. (10) relating to descendants of a taxpayer, who were members of taxpayer's household, before receiving institutional care.

Subsec. (b)(3). Pub. L. 94-455, Sec. 1901(a)(24)(B), among other changes struck out ``of the Canal Zone, or of the Republic of Panama'' after ``country contiguous to the United States,'' and provisions relating to children born or adopted in Philippines.

Subsec. (c)(4). Pub. L. 94-455, Sec. 1906(b)(13)(A), struck out ``or his delegate'' after ``Secretary''.

Subsec. (d). Pub. L. 94-455, Sec. 1901(b)(8)(A), substituted ``organization described in section 170(b)(1)(A)(ii)'' for ``institution (as defined in section 151(e)(4))''.

Subsec. (e)(2)(B)(i). Pub. L. 94-455, Sec. 2139(a), substituted ``each'' for ``all''.

Subsec. (e)(3), (5). Pub. L. 94-455, Sec. 1906(b)(13)(A), struck out ``or his delegate'' after ``Secretary''.

1972--Subsec. (b)(3). Pub. L. 92-580 substituted ``citizen or national of the United States'' for ``citizen of the United States'' in two places.

1969--Subsec. (b)(2). Pub. L. 91-172 inserted reference to foster children who satisfy requirements of subsec. (a)(9) of this section.

1967--Subsec. (a). Pub. L. 90-78, Sec. 1(b), inserted ``or (e)'' after ``subsection (c)''.

Subsec. (e). Pub. L. 90-78, Sec. 1(a), added subsec. (e).

1959--Subsec. (b)(2). Pub. L. 86-376 provided that 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 by blood.

1958--Subsec. (a)(9). Pub. L. 85-866, Sec. 4(a), inserted ``(other than an individual who at any time during the taxable year was the spouse, determined without regard to section 153, of the taxpayer)''.

Subsec. (b)(3). Pub. L. 85-866, Sec. 4(b), among other changes, struck out provision that ``dependent'' does not include any individual who is not a United States citizen unless such individual is a resident of United States or of a contiguous country, or of Canal Zone or Panama, and inserted provision barring exclusion from definition of ``dependent'' any child of taxpayer, legally adopted by him, if, for taxable year of taxpayer, child's principal place of abode is taxpayer's home and child is member of taxpayer's household, if taxpayer is United States citizen.

Subsec. (b)(5). Pub. L. 85-866, Sec. 4(c), added par. (5).

1955--Subsec. (b)(3). Act Aug. 9, 1955, substituted ``January 1, 1956'' for ``July 5, 1946''.

Effective Date of 1986 Amendment

Amendment by section 104(b)(1)(B), (3) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99-514, set out as a note under section 1 of this title.

Amendment by section 1301(j)(8) of Pub. L. 99-514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see

sections 1311 to 1318 of Pub. L. 99-514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

Effective Date of 1984 Amendment

Amendment by section 423(a) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1984, see section 423(d) of Pub. L. 98-369, set out as a note under section 2 of this title.

Amendment by section 482(b)(2) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, see section 482(c) of Pub. L. 98-369, set out as a note under section 213 of this title.

Effective Date of 1976 Amendment

Amendment by section 1901(a)(24), (b)(7)(B), (8)(A) of Pub. L. 94-455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as a note under section 2 of this title.

Section 2139(b) of Pub. L. 94-455 provided that: ``The amendment made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 4, 1976].''

Effective Date of 1972 Amendment

Section 1(c) of Pub. L. 92-580 provided that: ``The amendments made by subsections (a) [amending this section] and (b) [amending section 873 of this title] shall apply to taxable years beginning after December 31, 1971.''

Effective Date of 1969 Amendment

Section 912(b) of Pub. L. 91-172 provided that: ``The amendment made by subsection (a) of this section [amending this section] shall apply to taxable years beginning after December 31, 1969.''

Effective Date of 1967 Amendment

Section 2 of Pub. L. 90-78 provided that: ``The amendments made by the first section of this Act [amending this section] shall apply with respect to taxable years beginning after December 31, 1966.''

Effective Date of 1959 Amendment

Section 1(b) of Pub. L. 86-376 provided that: ``The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1958.''

Effective Date of 1958 Amendment

Amendment by section 4(a), (c) of Pub. L. 85-866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85-866, set out as a note under section 165 of this title.

Section 4(d) of Pub. L. 85-866 provided that: ``The amendment made by subsection (b) [amending this section] shall apply with respect to taxable years beginning after December 31, 1957.''

Effective Date of 1955 Amendment

Section 3(b) of act Aug. 9, 1955, provided that: ``The amendment made by section 2 of this Act [amending this section] shall apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954.''

Section Referred to in Other Sections

This section is referred to in sections 1, 2, 21, 24, 32, 42, 51, 72, 105, 120, 125, 132, 151, 153, 170, 213, 220, 221, 529, 2057, 7701, 7702B, 7703 of this title; title 5 section 7342; title 20 section 1232g; title 30 section 28f; title 33 section 909; title 43 section 390bb.