



Dependency

- **Overview of Rules for Claiming a Dependent is included in your folder.**

Intro to Dependents

What is a dependent?

- A person, other than the taxpayer or spouse, who entitles the taxpayer to claim a dependency exemption as defined by the IRS.
 - The deduction for personal and dependency exemptions is reduced to \$0 for tax years 2018 through 2025 by the Tax Cuts and Jobs Act.
- Dependents must pass a number of different tests in order to qualify
- Dependents are needed for State and City income tax returns
- Individuals who qualify to be claimed as a dependent may be required to file a tax return if they meet the filing requirements.

Intro to Dependents

- Although the exemption amount is zero, the ability to claim a dependent may make taxpayers eligible for other tax benefits.
- The following tax benefits may all be associated with a dependent:
 - Child tax credit,
 - Additional child tax credit,
 - Credit for other dependents,
 - Earned income credit,
 - Child and dependent care credit,
 - Head of household filing status, and
 - Other tax benefits

Intro to Dependents

Who are dependents?

- Dependents are either a **qualifying child** or a **qualifying relative** of the taxpayer.
- Some examples of dependents include a child, stepchild, brother, sister, or parent.

Who are not dependents?

- The taxpayer's spouse cannot be claimed as a dependent.
- An individual is not a dependent of a person if that person is not required to file an income tax return and either does not file an income tax return or files an income tax return solely to claim a refund of estimated or withheld taxes.

All Dependent Rules

- A dependent may be either a qualifying child or a qualifying relative.
- Both types of dependents have unique rules, but some requirements are the same for both.
- To determine if an individual can be claimed as a dependent, begin with the rules that apply to both qualifying child and qualifying relative dependents:
 - Dependent taxpayer test
 - Joint return test
 - Citizen or resident test

All Dependent Rules

Dependent taxpayer test:

- A taxpayer (or taxpayer's spouse, if filing a joint return) who may be claimed as a dependent by another taxpayer may not claim anyone as a dependent on his or her own tax return.

Joint return test:

- A married person who files a joint return cannot be claimed as a dependent unless that joint return is filed only to claim a refund of withheld income tax or estimated tax paid.

Citizen or resident test:

- To be claimed as a dependent, a person must be a U.S. citizen, U.S. resident alien, U.S. national, or a resident of Canada or Mexico. (See Pub 17 for an exception for certain adopted children and for information on foreign students.)

Qualifying Child Tests

Five tests must be met for a child to be a qualifying child.

The five tests are:

1. Relationship Test
2. Age Test
3. Residency Test
4. Support Test
5. Joint Return Test

Qualifying Child Tests – Relationship Test

Five tests must be met for a child to be a qualifying child.

1. Relationship Test:

- To meet this test, the child must be:
 - Your son, daughter, stepchild, foster child, or a descendant (for example, your grandchild) of any of them, **or**
 - Your brother, sister, half brother, half sister, stepbrother, stepsister, or a descendant (for example, your niece or nephew) of any of them.
- Adopted Child – An adopted child is treated as the taxpayer's own child for the purposes of the relationships described above. The term “adopted child” includes a child who was lawfully placed with the taxpayer for legal adoption.
- Foster child – A foster child is an individual who is placed with the taxpayer by an authorized placement agency or by judgment, decree, or other order of any court of competent jurisdiction.

Qualifying Child Tests – Age Test

Five tests must be met for a child to be a qualifying child.

2. Age Test

- To meet this test, the child must meet one of the following three criteria:
 - Under age 19 at the end of the year and younger than the taxpayer (or taxpayer's spouse, if filing jointly)
 - A full-time student under the age of 24 at the end of the year and younger than the taxpayer (or spouse, if filing jointly)
 - See next slide for definition of student
 - Any age if permanently and totally disabled at any time during the year. An individual is considered permanently and totally disabled if both of the following conditions apply:
 - He or she can't engage in any substantial gainful activity because of a physical or mental condition.
 - A doctor determines the condition has lasted or can be expected to last continuously for at least a year or can lead to death.

Qualifying Child Tests – Age Test Cont

2. Full Time Student Test

- To meet this test, the student must meet these criterias:
 - To qualify as a student, the child must be enrolled in the number of hours or courses the school considers full-time during some part of at least five months of the year. See Publication 17 for additional details
 - A full-time student at a school that has a regular teaching staff and course of study, and a regularly enrolled student body at the school; or
 - A student taking a full-time, on-farm training course given by a school described in (1), or by a state, county, or local government agency. The 5 calendar months don't have to be consecutive.

Qualifying Child Tests – Residency Test

Five tests must be met for a child to be a qualifying child.

3. Residency Test

- To meet this test, the **child must have lived with the taxpayer for more than half the year.**
- The taxpayer's home is any location where they regularly live; it does not need to be a traditional home. For example, a child who lived with the taxpayer for more than half the year in one or more homeless shelters meets the residency test.

There are exceptions for:

- Temporary absences
- Children who were born or died during the year
- Kidnapped children
- Children of divorced or separated parents.

Qualifying Child Tests – Residency Test Exceptions

Five tests must be met for a child to be a qualifying child.

3. Residency Test – Exceptions

- **Temporary absences** – The child is considered to have lived with the taxpayer during periods of time when either the child or the taxpayer is temporarily absent due to:
 - Illness, education, business, vacation, military service, institutionalized care for a child who is permanently and totally disabled, or incarceration.
- **Birth or death of a child** – A child who was born or died during the year is treated as having lived with the taxpayer more than half of the year if their home was the child's home more than half of the time the child was alive during the year. The same is true if the child lived with the taxpayer more than half the year except for any required hospital stay following birth.
 - In the case of a child who was born and died during the year, a SSN is not required but the return cannot be e-filed.

See Pub 17 for examples and specific rules

Qualifying Child Tests – Residency Test Exceptions (cont.)

Five tests must be met for a child to be a qualifying child.

3. Residency Test – Exceptions

- **Kidnapped child** – Taxpayer may be able to treat their kidnapped child as meeting the residency test – See Pub. 17.
- **Children of divorced or separated parents (or parents who live apart)** – In most cases, because of the residency test, a child of divorced or separated parents is the qualifying child of the custodial parent.
 - However, there is a special rule that will allow the child to be treated as the qualifying child of the noncustodial parent if certain conditions are met. This will be covered later in the presentation in the slides for *Special Rule for Divorced or Separated Parents*.

Qualifying Child Tests – Support Test

Five tests must be met for a child to be a qualifying child.

4. Support Test:

- To meet this test, the **child cannot have provided more than half of his or her own support** during the tax year. Note: This test is different than the support test for a qualifying relative.
 - A person's own funds are not support unless they are actually spent for support.
 - State benefits provided to a person in need (such as TANF, Family Independence Program (FIP), Food Assistance, State Disability Assistance, Supplemental Security Income (SSI), State SSI, Housing) are generally considered support provided by the state, not the taxpayer.
 - However, see the next slide regarding proposed regulations.
 - If a child receives Social Security benefits that are used for the child's own support, the benefits are considered to be provided by the child.
 - A scholarship received by a child who is a student isn't taken into account in determining whether the child provided more than half of his or her own support.

Qualifying Child Tests – Support Test (cont.)

Five tests must be met for a child to be a qualifying child.

4. Support Test (cont.):

- Proposed Regulations – Government Payments as Support
 - Governmental payments based on need made to a recipient that is used for the support of the recipient are considered as provided by the government.
 - Governmental payments based on need made to a recipient that is used, in part, to support others are treated as support of the others provided by the recipient.
 - For example, if a mother receives Temporary Assistance for Needy Families (TANF) and uses TANF payments to support her child, proposed regulations treat the mother as having provided that support.
 - Even though proposed, taxpayers can rely on these regulations at their option.
 - See IRS Pub 4012 at page C-3 and Pub 17 (2022) at page 34.
- Use the *Worksheet for Determining Support* on page C-9 of Pub 4012 to assist in determining if the support test is met.

Qualifying Child Tests – Joint Return Test

Five tests must be met for a child to be a qualifying child.

5. Joint Return Test:

- To meet this test, the child can't file a joint return for the year.
- An exception to the joint return test applies if the child and the child's spouse file a joint return only to claim a refund of income tax withheld or estimated tax paid.

Can the Child Be the Qualifying Child of More Than One Person?

- If the child meets the conditions to be the qualifying child of more than one person, only one person can claim the child as a qualifying child for the following tax benefits (**exception:** if the special rule for children of divorced or separated parents or parents who live apart applies):
 - Dependent
 - Child tax credit or credit for other dependents
 - Head of Household filing status
 - Credit for child and dependent care expenses
 - Exclusion from income for dependent care benefits
 - Earned income credit
 - Premium tax credit, generally
- If two taxpayers have the same qualifying child, then only one taxpayer can generally claim all of the benefits for that particular qualifying child.
 - They cannot agree to split these benefits.
 - The other taxpayer cannot claim any of the benefits, based on the same qualifying child (unless the special rule applies for divorced or separated parents that would allow the noncustodial parent to claim some of the benefits).

Tiebreaker Rules for Qualifying Child of More than One Person

To determine which taxpayer can treat the child as a qualifying child and claim the benefits, apply these rules:

- If only one of the taxpayers is the child's parent, the child is the qualifying child of the parent.
- If the parents file a joint return together and can claim the child as a qualifying child, the child is treated as the qualifying child of the parents.
- If the parents do not file a joint return together but both parents claim the child, IRS will treat the child as the qualifying child of the parent with whom the child lived for the longer period of time during the tax year. If the child lived with both parents the same amount of time, IRS will treat the child as the qualifying child of the parent who had the higher Adjusted Gross Income (AGI) for the tax year.
- If no parent can claim the child as a qualifying child, the child is treated as the qualifying child of the person who had the highest AGI for the tax year and who meets the requisite tests.
- If a parent can claim the child as a qualifying child but no parent does, the child is treated as the qualifying child of the person who had the highest AGI for the year, but only if that person's AGI is higher than the highest AGI of any of the child's parents who could claim the child.

Tiebreaker Rules for Qualifying Child of More than One Person

Example

Example: Mary and her 3-year-old daughter, Jane, lived with Mary's mother, Dorothy, all year. Mary is 25 years old, unmarried, and has an AGI of \$19,000. Dorothy has an AGI of \$25,000. Jane's father didn't live with Mary or Jane. Mary has not signed Form 8332 (or a similar statement).

- Jane is a qualifying child of both Mary and Dorothy because she meets the relationship, age, residency, support, and joint return tests for both Mary and Dorothy. However, only one of them can claim Jane. Jane isn't a qualifying child of anyone else, including her father.

Qualifying Relative Tests

- Dependents who do not meet the tests for qualifying child might meet the slightly different tests to be a qualifying relative.
- In addition to the dependent taxpayer, joint return, and citizen or resident tests, there are four additional 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
 4. Support Test

Qualifying Relative Tests – Not a Qualifying Child Test

Four tests must be met for a person to be a qualifying relative.

1. Not a Qualifying Child Test:

- A child is not considered a taxpayer's qualifying relative if the child is the taxpayer's qualifying child or is the qualifying child of another taxpayer.
- However, there is an exception to this statement. A child may qualify as the taxpayer's dependent under the tests for qualifying relative, even if that child is the qualifying child of another taxpayer.
 - This is allowed only when the child's parent (or other person for whom the child is a qualifying child) is not required to file an income tax return and either:
 - Does not file a return, or
 - Only files to get a refund of income tax withheld or estimated tax paid

Todd has lived with his girlfriend, Eva, and her two children all year in his home. Eva is not required to file, and does not file, a tax return this year. Eva and her two children pass the “not a qualifying child test” to be Todd's qualifying relatives. If Todd meets all other tests, Eva and her two children are qualifying relatives. (Eva and Todd's relationship does not violate local laws.)

Qualifying Relative Tests – Member of Household or Relationship Test

Four tests must be met for a person to be a qualifying relative.

2. Member of Household or Relationship Test:

- To meet this test, the person must either:
 - Live as a member of the taxpayer's household all year, or
 - Be related to the taxpayer in one of the following ways:
 - Child, stepchild, foster child or a descendant of any of them
 - Brother, sister, half-brother, half-sister, stepbrother or stepsister
 - Father, mother, grandparent or other direct ancestor, but not foster parent
 - Stepfather or stepmother
 - Son or daughter of the taxpayer's brother or sister (nephew or niece)
 - Son or daughter of the taxpayer's half-brother or half-sister
 - Brother or sister of the taxpayer's father or mother (uncle or aunt)
 - Son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law
- Any of these relationships that were established by marriage are not ended by death or divorce.

Qualifying Relative Tests – Member of Household or Relationship Test (cont.)

Four tests must be met for a person to be a qualifying relative.

2. Member of Household or Relationship Test (cont.):

- Temporary absences – A person is still considered living with the taxpayer as a member of the household during periods when *that person or the taxpayer* is temporarily absent due to special circumstances such as illness, education, business, vacation, military service, and placement in a nursing home.
- Cousins – Cousins can meet the relationship test for qualifying relative only if they live with the taxpayer for the entire year.
- Unrelated persons – Qualifying relatives can be unrelated, as long as they lived with the taxpayer all year.
- Household employee – A taxpayer may not claim a housekeeper or other household employee as a dependent.
- Death or birth – A person who died during the year, but lived with the taxpayer as a member of their household until death, will meet this test. The same is true for a child who was born during the year and lived with the taxpayer as a member of their household for the rest of the year.

Qualifying Relative Tests – Gross Income Test

Four tests must be met for a person to be a qualifying relative.

3. Gross Income Test:

- To meet this test, a person's gross income for the tax year must be less than the threshold amount.
 - \$4,700 for tax year 2023
- Gross income means all income the person received in the form of money, goods, property, and services that isn't exempt from tax, including any income from sources outside the United States or from the sale of a main home (even if the person can exclude part or all of it).
- See pages A-3 and D-3 of Pub 4012

Qualifying Relative Tests – Support Test

Four tests must be met for a person to be a qualifying relative.

4. Support Test:

- To meet this test, the **taxpayer must have provided more than 50% of the person's total support for the tax year.**
- This support test is different from the one for a qualifying child, which tests whether the child provided more than one half of their own support.
- Reminders:
 - A person's own funds are not support unless they are actually spent for support.
 - State benefits provided to a person in need (such as TANF, FIP, Food Assistance, State Disability Assistance, Supplemental Security Income (SSI), State SSI, Housing) are generally considered support provided by the state, not the taxpayer.
 - However, a taxpayer may rely on proposed regulations for government payments as support (discussed previously in the presentation).
 - If a child receives Social Security benefits that are used for the child's own support, the benefits are considered to be provided by the child.
 - A scholarship received by a child who is a student isn't taken into account in determining whether the child provided more than half of his or her own support.

Multiple Support Agreements

- Sometimes no one provided more than half the support of a person.
- Multiple support means that two or more people who could claim the person as a dependent (except for the support test) together provide more than half the dependent's support.
- In this situation, the individuals who provide more than 10% of the person's total support, and who meet the other tests for a qualifying relative, can agree that one of them will claim the person as a dependent for any applicable tax benefits.
 - The taxpayer claiming the dependent must file Form 2120, Multiple Support Declaration or similar statement, with the tax return.
 - The other taxpayers providing over 10% of the person's support must provide a written and signed statement agreeing *not* to claim the dependent for that year. The person who claims the dependent must keep a copy of this written statement as a record.
- Multiple Support Agreements apply only to a qualifying relative, not to a qualifying child.
- If a taxpayer can claim a person as a dependent only because of a multiple support agreement, that person isn't a qualifying person for Head of Household status.

Rule for Children of Divorced or Separated Parents or Parents Who Live Apart

- In most cases, the child is the qualifying child of the custodial parent. However, **a child will be treated as the qualifying child or qualifying relative of his or her noncustodial parent** if all the following conditions apply:

1. The parents:
 - Are divorced or legally separated under divorce or separate maintenance decrees or written separation agreements, **or**
 - Lived apart at all times during the last six months of the year whether or not they are or were married
2. The child received over half of his or her support for the year from the parents. (Multiple Support Agreement rules do not apply.)
3. The child was in the custody of one or both parents for more than half the year.
4. The custodial parent signs a written declaration (Form 8332 or a similar statement) that he or she will not claim the child as a dependent for the year and the noncustodial parent attaches this declaration to his or her return.

If the decree or agreement went into effect after 1984 and before 2009, the noncustodial parent may be able to attach certain pages from the decree or agreement instead of Form 8332. For a pre-1985 decree or agreement, see Publication 17.

Rule for Children of Divorced or Separated Parents or Parents Who Live Apart (cont.)

- This special rule is the exception to:
 - The residency test for qualifying child
 - The support test for qualifying relative
- If all of the conditions 1 through 4 are met, only the noncustodial parent can:
 - Claim the child as a dependent; and
 - Claim the child as a qualifying child for the child tax credit, additional child tax credit or credit for other dependents.
- This rule does not apply for Head of Household filing status, the credit for child and dependent care expenses, or the earned income credit. For these benefits, the child must meet the residency test.
 - The custodial parent may still qualify for these provisions even though the noncustodial parent can claim the child as a dependent and for the other tax benefits.

Rule for Children of Divorced or Separated Parents or Parents Who Live Apart (cont.)

This table summarizes the benefits that remain with the custodial parent, even after they have released the claim to the dependent to the noncustodial parent.

(From Pub 4491, page 6-11.)

Who May Claim	Custodial Parent	Noncustodial Parent with Form 8332
Dependent		✓
Head of Household	✓	
Earned Income Credit (EIC)	✓	
Child Tax Credit or Credit for Other Dependents		✓
Dependent Care Credit	✓	
Education credits		✓
Premium Tax Credit		✓

Custodial and Noncustodial Parents

- The custodial parent is the parent with whom the child lived for the greater number of nights during the year.
- The other parent is the noncustodial parent.
- If the parents divorced or separated during the year and the child lived with both parents before the separation, the custodial parent is the one with whom the child lived for the greater number of nights during the rest of the year.
- A child is treated as living with a parent for a night if the child sleeps:
 - At that parent's home, whether or not the parent is present, **or**
 - In the company of the parent, when the child does not sleep at a parent's home (for example, the parent and child are on vacation together).
- If the child lived with each parent for an equal number of nights during the year, the custodial parent is the parent with the higher adjusted gross income.

Revocation of Release of Claim to an Exemption

- Custodial parents can revoke a release of claim to exemption they previously provided to the noncustodial parent on Form 8332 or a similar statement.
- The custodial parent must provide, or make a reasonable effort to provide, the noncustodial parent with written notice of the revocation in the calendar year prior to the tax year in which the revocation is to take effect.
- Part III of Form 8332 can be used for this purpose.
- Attach a copy of the revocation to the return for each tax year the child is claimed as a dependent as a result of the revocation.

Dependency – Final Notes

- Follow the decision trees in Pub 4012 for making dependency determinations.
 - Start with Table 1 on page C-5
- Refer to Pub 17 for specific rules and for examples on each dependency test.