

Are we still concerned about the Dependency Exemption?

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Since December of 2017 we have heard news reports, read articles, and heard speeches about the changes that were enacted to the IRS Code through the Tax Cuts and Jobs Act and how it would affect the average taxpayer. For divorcing couples, the removal of the alimony deduction has been the most widely discussed topic; however, the change to the dependency exemption and who can correctly claim a child as a dependent is an equally important topic to consider.

For tax purposes, the custodial parent is considered to be the parent with whom the child resides the greater number of nights during the tax year. As we are seeing equal custody arrangements more and more frequently, it is important to know that the second test is the parent with the *higher* adjusted gross income. The custodial parent is eligible to file as Head of Household rather than Single for the tax year.

The child dependency exemption is suspended from 2018 to 2025. This means that stating which parent will claim the dependency exemption in a settlement agreement is not accurate or effective language. Instead, it should be determined which parent will claim the Child Tax Credit. The Child Tax Credit offers up to \$2,000 per child under age 17 at the end of the tax year. The credit begins to phase out when a taxpayer has an adjusted gross income of \$200,000 and completely disappears at \$240,000. The IRS has provided guidance that the Child Tax Credit can be released to the noncustodial parent through Form 8332 just as the dependency exemption was previously.

Another credit tied to the parent who claims the child as a dependent is the Dependent Care Credit. This credit is available to the parent who claimed the child for the tax year, has earned income, and actually paid the expenses for work-related child care. The credit starts at 35% of the expenses up to \$3,000 for one child and \$6,000 for two or more children and is phased down to 20% of such expenses for taxpayers with income over \$43,000.

During the divorce process, which parent will claim the children is an important topic to consider and it is wise to consult an accountant to advise the parties as to how each individual will be affected in order to have effective settlement negotiations.