

Legislative Recommendation #52**Adopt a Consistent and More Modern Definition of “Qualifying Child” Throughout the Internal Revenue Code****SUMMARY**

- *Problem:* Numerous provisions in the tax code use the term “qualifying child,” but they contain several different definitions of the term. These inconsistent definitions are confusing to taxpayers. The different definitions make compliance difficult, causing some taxpayers to fail to claim tax benefits for which they qualify and other taxpayers to claim tax benefits for which they do not qualify, which subjects them to liability for additional tax, penalties, and interest. Furthermore, the relationship test embedded in the definitions has not been updated to reflect the rise of non-traditional families and childcare arrangements, preventing primary caregivers from receiving certain benefits.
- *Solution:* Adopt a consistent and more modern definition of the term “qualifying child” throughout the tax code by using a consistent age requirement, removing or replacing the relationship test to expand eligibility to modern families, and revising the definition of a “qualifying relative” to allow a taxpayer to claim the qualifying child of another taxpayer who is entitled to claim the child but does not do so.

PRESENT LAW

IRC § 152(a) broadly defines a “dependent” as a “qualifying child” or a “qualifying relative.”¹ The term “qualifying child” is defined in IRC § 152(c). In general, to be a qualifying child under IRC § 152(c), an individual must: (1) be under age 19, or age 24 if a student, unless permanently and totally disabled; (2) be the taxpayer’s child, stepchild, foster child, brother, sister, half-brother, half-sister, stepbrother, stepsister, or a descendant of any of them; (3) live with the taxpayer for more than half the year; (4) not provide more than one-half of the individual’s own support during the year; and (5) not file a joint return for the year.

IRC § 152(c) is meant to provide a uniform definition of a “qualifying child” for five tax benefits: head-of-household (HoH) filing status, the Child and Dependent Care Credit, the Child Tax Credit (CTC), the Earned Income Tax Credit (EITC), and the dependency exemption.² The definition also affects eligibility for other provisions like premature distributions from tax-favored accounts for medical and education expenses, dependent care assistance programs, and family member fringe benefits.³

The uniform definition was added to the IRC as part of the Working Families Tax Relief Act of 2004.⁴ At that time, Congress concluded that the use of multiple definitions contributed to a lack of clarity.⁵ Despite these efforts, there are still parts of the IRC that deviate from the uniform definition. For example, while the uniform definition requires a qualifying child be under age 19 (or age 24 if a student), the CTC may only be claimed with respect to children under age 17.⁶ Another example is that the term “qualifying child” and the relationships described in IRC § 152(c)(2) encompass several types of familial relationships, including grandchildren; however, in the case of a married taxpayer who is seeking to be treated as unmarried for

1 IRC § 152(a).

2 IRC §§ 2(b), 21, 24, 32, 151. The dependency exemption is paused through 2025. IRC § 151(d)(5).

3 IRC §§ 81, 129, 132.

4 Pub. L. No. 108-311, § 201, 118 Stat. 1166, 1169-1165 (2004).

5 STAFF OF J. COMM. ON TAX’N, 109TH CONG., GENERAL EXPLANATION OF TAX LEGISLATION ENACTED IN THE 108TH CONGRESS 124-125, JCS-5-05 (J. Comm. Print 2005), <https://www.jct.gov/publications/2005/jcs-5-05/>.

6 IRC §§ 24(c)(4), 152(c)(3).

purposes of claiming HoH filing status, only a son or daughter meets the definition of a “qualifying child” – grandchildren do not qualify.⁷

The term “qualifying relative” is defined in IRC § 152(d). Under IRC § 152(d)(1)(D), one criterion for being a qualifying relative of a taxpayer is that the individual “is not a qualifying child of such taxpayer or any other taxpayer....” This provision, as currently written, excludes children who could be claimed as qualifying children by another taxpayer but are not.

REASONS FOR CHANGE

Consistency Reduces Confusion and Eases Administration

The deviations from a uniform definition are needlessly confusing. Not surprisingly, many taxpayers do not understand the differences in requirements. They may assume that if a child is “qualifying” for purposes of one IRC provision, the child is qualifying for all IRC provisions. Conversely, they may assume that if a child is not qualifying for purposes of one IRC provision, the child is not a “qualifying child” for any IRC provision.⁸ This confusion can result in inaccuracies on their tax returns, which may lead to audits and additional tax liabilities, plus penalties and interest charges. It can also result in a failure to claim benefits that are intended by Congress. For example, in tax year (TY) 2019, about 14 percent of taxpayers with children who are eligible to receive EITC benefits did not claim them.⁹

Confusion also increases the administrative burden on the IRS, as it must program its return processing systems using different definitions for different provisions, it must program its audit selection models to distinguish among conflicting definitions, and it must devote audit and collection resources to reporting inaccuracies that exist solely because taxpayers and even some tax preparers confuse the various definitions when filling out tax returns.

The Relationship Test Prevents Primary Caregivers From Receiving Certain Tax Benefits

The uniform definition and other eligibility rules for family-focused tax benefits, such as the EITC and CTC, were written when two-parent households predominated. Living arrangements have evolved. Blended families, multigenerational family arrangements, divorce, and cohabitation have become more common.¹⁰ For example, the percentage of children in multigenerational households nearly doubled between 1980 and 2018, from 5.0 percent to 9.9 percent.¹¹ Childcare arrangements have become complex as more children split their time between different households and an increasing number live with or are supported by non-parent relatives and others.¹² In 2019, approximately 4.0 percent of children did not live with a parent (3.0 million children), slightly more than half of which (53.2 percent) resided with a grandparent.¹³

7 IRC §§ 152, 7703(b).

8 See, e.g., Treasury Inspector General for Tax Administration, Ref. No. 2021-40-070, *Addressing Complex and Inconsistent Earned Income Tax Credit and Additional Child Tax Credit Rules May Reduce Unintentional Errors and Increase Participation* 6-7 (2021), <https://www.tigta.gov/reports/audit/addressing-complex-and-inconsistent-earned-income-tax-credit-and-additional-child-tax>.

9 Combined EITC/CP09-27 Recipient Files, CPS ASEC, Form 1040, and Form W-2, TY 2019. Release authorization CBDRB-FY2022-CES010-010.

10 See LYDIA R. ANDERSON ET AL., U.S. CENSUS BUREAU, P70-174, CURRENT POPULATION REPORTS, LIVING ARRANGEMENTS OF CHILDREN: 2019 (Feb. 2022), <https://www.census.gov/content/dam/Census/library/publications/2022/demo/p70-174.pdf>.

11 *Id.* at 2.

12 See Jacob Goldin & Ariel Jurow Kleiman, *Whose Child Is This? Improving Child-Claiming Rules in Safety-Net Programs*, 131 Yale L.J. 1719 (2022), <https://www.yalelawjournal.org/article/whose-child-is-this>; ELAINE MAAG ET AL., URBAN INST., INCREASING FAMILY COMPLEXITY AND VOLATILITY: THE DIFFICULTY IN DETERMINING CHILD TAX BENEFITS 11 (2016), <https://www.urban.org/research/publication/increasing-family-complexity-and-volatility-difficulty-determining-child-tax-benefits>.

13 LYDIA R. ANDERSON ET AL., U.S. CENSUS BUREAU, P70-174, CURRENT POPULATION REPORTS, LIVING ARRANGEMENTS OF CHILDREN: 2019, at 3 tbl.1, (Feb. 2022), <https://www.census.gov/content/dam/Census/library/publications/2022/demo/p70-174.pdf>.

When children are raised or informally fostered by nonqualified relatives or family friends, benefits like the EITC and CTC cannot be properly claimed. Taxpayers can only receive the child-related portion of the EITC and the CTC when they have a “qualifying child,” not a “qualifying relative.”¹⁴ The IRC § 152(c)(2) relationship test for a qualifying child restricts eligibility to only a few close relatives.¹⁵ This test mainly excludes children who live in low-income households.¹⁶ It is estimated that the relationship test excludes two million children for purposes of some CTC benefits.¹⁷ A child who does not live with a sufficiently close relative cannot be claimed by anyone.¹⁸ Similarly, the relationship rules where a taxpayer is seeking to be treated as unmarried for the purposes of HoH filing status prevent the taxpayer from claiming grandchildren.¹⁹

Congress can address these shortcomings by modernizing the uniform definition of a qualifying child, as the current definition often no longer reflects real-life living arrangements. The definition should be amended to encompass more types of families. The overly restrictive relationship test of IRC § 152(c)(2) should be removed entirely or replaced with a holistic primary caregiver standard.²⁰ The residency test and other requirements should remain in place to ensure the tax benefits are going to taxpayers providing care to children in their household.²¹

To allow heads of non-traditional families to claim children they care for as dependents, another amendment to the current IRC § 152 rules would make a significant difference – adding the words “claimed as” to IRC § 152(d)(1)(D), so the term “qualifying relative” means an individual who is not *claimed as* a qualifying child of such taxpayer or of any other taxpayer for any taxable year in the calendar year in which such taxable year begins. That language would also conform to the language used in IRC § 152(c)(4)(C) that allows a taxpayer other than a parent to claim a qualifying child. Under that provision, if the parents may claim a qualifying child but neither parent does so, the child may be claimed as the qualifying child of another taxpayer if the adjusted gross income of that taxpayer is higher than the highest adjusted gross income of either parent.²²

RECOMMENDATIONS

- Adopt a consistent and more modern definition of the term “qualifying child” throughout the IRC.
- Use a consistent age when defining a “qualifying child.”
- Modernize the definition of a qualifying child in IRC § 152(c) to reflect evolving family units by removing IRC § 152(c)(1)(A) and (2) or by replacing the relationship test of IRC § 152(c)(1)(A) and (2) with a primary caregiver standard.
- Amend IRC § 152(d)(1)(D) to provide that the term “qualifying relative” means an individual “who is not *claimed as* a qualifying child of such taxpayer or of any other taxpayer for any taxable year in the calendar year in which such taxable year begins.”

14 IRC §§ 24, 32, 152.

15 IRC § 152(c).

16 See Jacob Goldin & Katherine Michelmore, *Who Benefits from the Child Tax Credit?*, (Nat'l Bureau of Econ. Rsch., Working Paper No. 27940, 2021), <http://www.nber.org/papers/w27940>.

17 *Id.* at 19, 29 tbl.3.

18 IRC §§ 24(c), 152(c).

19 IRC §§ 2(b), 152(f)(1), 7703(b).

20 Relevant considerations should include which adult performs caregiving and makes caregiving decisions for the child, including factors like who prepares meals, who transports the child to school, and who makes medical appointments for the child. For a more detailed discussion on modernizing the definition of a “qualifying child,” see National Taxpayer Advocate Fiscal Year 2020 Objectives Report to Congress vol. 3, at 17 (*Earned Income Tax Credit: Making the EITC Work for Taxpayers and the Government*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/JRC20_Volume3.pdf; see also Ariel Jurow Kleiman, *Revolutionizing Redistribution: Tax Credits and the American Rescue Plan*, 131 YALE L.J. FORUM 535, 555-556 (2021), <https://www.yalelawjournal.org/forum/revolutionizing-redistribution-tax-credits-and-the-american-rescue-plan>.

21 IRC § 152(c)(1)(B)-(E).

22 IRC § 152(c)(4)(C).