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 IRS Proposed Rules (REG-137604-07 Jan. 19, 2017.) on Definition of Dependent, Withdrawing 2000 Proposed Rules (REG-107279-00)

These proposed regulations are scheduled to be published in the Federal Register dated Jan. 19, 2017.

[4830-01-p]

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Parts 1 and 301****[REG-137604-07]****RIN 1545-BI35****Definition of Dependent**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking and notice of proposed rulemaking.

SUMMARY: This document withdraws proposed regulations relating to the definition of an authorized placement agency for purposes of a dependency exemption for a child placed for adoption that were issued prior to the changes made to the law by the Working Families Tax Relief Act of 2004 (WFTRA). This document contains proposed regulations that reflect changes made by WFTRA and by the Fostering Connections to Success and Increasing Adoptions Act of 2008 (FCSIAA) relating to the dependency exemption. This document also contains proposed regulations that, to reflect current law, amend the regulations relating to the surviving spouse and head of household filing statuses, the tax tables for individuals, the child and dependent care credit, the earned income credit, the standard deduction, joint tax returns, and taxpayer identification numbers for children placed for adoption. These proposed regulations change the IRS's position regarding the category of taxpayers permitted to claim the childless earned income credit. In determining a taxpayer's eligibility to claim a dependency exemption, these proposed regulations change the IRS's position regarding the adjusted gross income of a taxpayer filing a joint return for purposes of the tiebreaker rules and the source of support of certain payments that originated as governmental payments. These regulations provide guidance to individuals who may claim certain child-related tax benefits.

DATES: Written or electronic comments and requests for a public hearing must be received by **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-137604-07), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044.

may claim the individual as a qualifying child only if that taxpayer's adjusted gross income is higher than the adjusted gross income of any eligible parent.

The proposed regulations also expand the tiebreaker rule in section 152(c)(4)(C) to address the situation in which an eligible parent does not claim an individual as a qualifying child and two or more taxpayers, none of whom is a parent, are eligible to claim the individual as a qualifying child and each has adjusted gross income higher than any eligible parent. In this situation, the proposed regulations provide that the individual is treated as the qualifying child of the eligible taxpayer with the highest adjusted gross income.

✓ *g. Child of parents who are divorced, separated, or living apart*

Section 152(e) provides, in general, that a child is treated as the qualifying child or qualifying relative of a noncustodial parent for a calendar year if, among other things, the custodial parent provides to the noncustodial parent a written declaration that the custodial parent will not claim the child as a dependent for any taxable year beginning in that calendar year. Under section 152(e)(2)(B), the noncustodial parent must attach the written declaration to his or her return.

The proposed regulations provide that the noncustodial parent must attach a copy of the written declaration to an original or amended return. A taxpayer may submit a copy of the written declaration to the IRS during an examination of that parent's return. However, to provide certainty for both taxpayers and the IRS, the proposed regulations provide that a copy of a written declaration attached to an amended return or provided during an examination will not meet the requirements of section 152(e) and §1.152-5(e) if the custodial parent signed the written declaration after the custodial parent filed a return claiming a dependency exemption for the child for the year at issue, and the custodial parent has not filed an amended return to remove that claim to a dependency exemption. The proposed regulations provide similar rules for a parent revoking a written declaration.

h. Filing a return solely to obtain a refund of taxes

Individuals who file an income tax return solely to obtain a refund of estimated or withheld taxes are subject to special rules under various provisions of section 152. Section 152(c)(1)(E) provides that, for an individual to be a qualifying child of a taxpayer, the individual cannot have filed a joint return "other than only for a claim of refund." Section 152(b)(2) provides that, for an individual to be a dependent of a taxpayer, the individual cannot have filed a joint return with the individual's spouse. However, the WFTRA conference report states that "[t]his restriction does not apply if the return was filed solely to obtain a refund and no tax liability would exist for either spouse if they filed separate returns." Section 152(d)(1)(D) provides that, to be a qualifying relative, an individual may not be the qualifying child of the taxpayer or of any other taxpayer. Notice 2008-5 concludes that an individual is not the qualifying child of

"any other taxpayer," within the meaning of section 152(d)(1)(D), if the person who could have claimed the individual as a qualifying child does not have a filing obligation and either does not file a return or files a return solely to obtain a refund of withheld taxes.

The proposed regulations provide a similar exception to the rule in section 152(b)(1) that a taxpayer cannot have a dependent if the taxpayer himself or herself is a dependent of another taxpayer. Specifically, the proposed regulations provide that an individual is not a dependent of a person if that person is not required to file an

The problems with the current rule may be illustrated by the following example. Two sisters (B and C) live together and each of them is a low-income taxpayer. Neither has a child and each may claim the childless EIC under section 32(c)(1)(A)(ii). Later, B has a child, and B's child meets the definition of a qualifying child under section 152(c)(1) for both B and C. The child is treated as the qualifying child of B under the tiebreaker rules of section 152(c)(4), and B may claim the EIC as an eligible individual with a qualifying child under section 32(c)(1)(A)(i). Under the current rule, C would not be allowed to claim the childless EIC under section 32(c)(1)(A)(ii). The Treasury Department and the IRS have determined that allowing C to continue to claim the childless EIC after the child is born is equitable and consistent with the purpose of section 32 to assist working, low-income taxpayers. Accordingly, the proposed regulations provide that, if an individual is not treated as a qualifying child of a taxpayer after applying the tiebreaker rules of section 152(c)(4), then the individual will not prevent that taxpayer from qualifying for the childless EIC. 5. *Additional Standard Deduction for the Aged and Blind*

The proposed regulations remove the provisions on additional exemptions for age and blindness from the regulations under section 151 and add regulations under section 63 on the additional standard deduction for the aged and the blind to reflect the changes made by the Tax Reform Act of 1986. The proposed regulations amend the regulations under section 63 to remove a cross reference to now-repealed statutory provisions relating to a charitable deduction for taxpayers who do not itemize. To limit impediments to electronic filing, the proposed regulations also delete the requirement that a taxpayer claiming a tax benefit for blindness must attach a certificate or statement to the taxpayer's tax return. Instead, a taxpayer must maintain the certificate or statement in the taxpayer's records.

Applicability Date

These regulations are proposed to apply to taxable years beginning after the date the regulations are published as final regulations in the **Federal Register**. Pending the issuance of the final regulations, taxpayers may choose to apply these proposed regulations in any open taxable years.

Effect on Other Documents

When finalized, the proposed regulations will obsolete Rev. Rul. 57-344, Rev. Rul. 58-67, Rev. Rul. 58-302, Rev. Rul. 64-223, Rev. Rul. 65-307, Rev. Rul. 70-341, Rev. Rul. 74-153, Rev. Rul. 74-543, Rev. Rul. 79-173, Rev. Rul. 84-89, Notice 2006-86, and Notice 2008-5.

Special Analyses

Certain IRS regulations, including these, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563.

Therefore, a regulatory impact assessment is not required. The regulations affect individuals and do not impose a collection of information on small entities, therefore the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Statement of Availability of IRS Documents

IRS revenue procedures, revenue rulings, notices and other guidance cited in this preamble are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and