

[4830-01-u]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-107279-00]

RIN 1545-AY18

Rules Relating to General Definition of Dependent

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that amend the definition of “authorized placement agency” for purposes of determining whether a child placed for legal adoption in a taxpayer’s home is a dependent of the taxpayer. A taxpayer who has a child placed for legal adoption in his or her home by an authorized placement agency will be affected by these regulations.

DATES: Written or electronically generated comments and requests for a public hearing must be received by February 28, 2001.

ADDRESSES: Send submissions to: CC:M&SP:RU

(REG-107279-00), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:M&SP (REG-107279-00), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue., NW., Washington, DC. Taxpayers may also submit comments electronically via the internet

by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS internet site at [http://www.irs.ustreas.gov/tax\\_regs/regslst.html](http://www.irs.ustreas.gov/tax_regs/regslst.html).

The IRS will publish the time and date of any public hearing in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Elizabeth Kaye, (202) 622-4910; concerning submissions of comments and requests for a public hearing, Guy Traynor, (202) 622-7180 (not toll-free calls);

SUPPLEMENTARY INFORMATION:

### **Background and Explanation of Provisions**

This document contains proposed amendments to §1.152-2(c)(2) of the Income Tax Regulations (26 CFR part 1) relating to the general definition of a dependent.

On October 12, 1999, the IRS published final regulations under section 6109 regarding IRS adoption taxpayer identification numbers (TD 8839, 64 FR 51241). Those regulations provided, in part, that in order for an adoption taxpayer identification number (ATIN) to be assigned, a child must be placed for adoption by an "authorized placement agency" as defined in §1.152-2(c)(2). Commentators expressed concern that because of this requirement, ATINs are not available in the case of independent adoptions as defined by state law. In general, independent adoptions take two forms. In one type, the biological parent(s) uses an attorney or other intermediary to place the child with the adoptive parents. In other independent adoptions, no intermediary is necessary because the adoptive parents and the biological parent(s) know one another.

The proposed regulations amend the definition of "authorized placement

agency” to provide that an authorized placement agency is not limited to governmental and private organizations authorized by state law to place children for legal adoption, but also includes biological parents and other persons authorized by state law to place children for legal adoption.

These regulations are proposed to apply for taxable years beginning after December 31, 2000. Taxpayers may rely on these proposed regulations for guidance pending the issuance of the final regulations. If, and to the extent, future guidance is more restrictive than the guidance in the proposed regulations, the future guidance will be applied without retroactive effect.

### **Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. Chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue 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.

### **Comments and Requests for a Public Hearing**

Before these proposed regulations are adopted as final regulations,

consideration will be given to any written and electronic comments that are submitted timely to the IRS. The IRS and Treasury specifically request comments on the clarity of the proposed regulations and how it can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested by any person who timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the Federal Register.

### **Drafting Information**

The principal author of these proposed regulations is Elizabeth Kaye, Office of Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and the Treasury Department participated in the development of the regulations.

### **List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

### **Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

#### **PART 1--INCOME TAXES**

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 2. Section 1.152-2 is amended by revising paragraph (c)(2) to read as follows:

§ 1.152-2 Rules relating to general definition of dependent.

\* \* \* \* \*

(c) \* \* \*

(2) For any taxable year beginning after December 31, 2000, a child who is a member of an individual's household will be treated as a child of that individual by blood if the child was placed with the individual by an authorized placement agency for legal adoption pursuant to a formal application filed by the individual with the agency. For purposes of this paragraph (c)(2), an authorized placement agency is any agency that is authorized by a State, the District of Columbia, a possession of the United States, a foreign country, or a political subdivision of any of the foregoing to place children for adoption. An authorized placement agency also includes biological parents and other persons authorized by state law to place children for legal adoption.

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Deputy Commissioner of Internal Revenue