



[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-118997-19]

RIN 1545-BP52

Dependent Defined; Notice of Proposed Rulemaking and Partial Withdrawal of Notice of Proposed Rulemaking

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking; partial withdrawal of a notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that clarify the definition of a “qualifying relative” for purposes of various provisions of the Internal Revenue Code (Code) for taxable years 2018 through 2025. These proposed regulations generally affect taxpayers who claim Federal income tax benefits that require a taxpayer to have a qualifying relative. This document also withdraws a portion of the proposed regulations published on January 19, 2017, addressing the support test for a qualifying relative, and proposes replacement language.

DATES: Written or electronic comments and requests for a public hearing must be received by **[INSERT DATE 45 DAYS AFTER PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**. Requests for a public hearing must be submitted as prescribed in the “**Comments and Requests for a Public Hearing**” section.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at

www.regulations.gov (indicate IRS and REG-118997-19) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The IRS expects to have limited personnel available to process public comments that are submitted on paper through mail. Until further notice, any comments submitted on paper will be considered to the extent practicable. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment submitted electronically, and to the extent practicable on paper, to its public docket. Send paper submissions to: CC:PA:LPD:PR (REG-118997-19), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, D.C. 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Victoria J. Driscoll (202) 317-4718; concerning submissions of comments and/or requests for a public hearing, Regina Johnson, (202) 317-5177 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

On January 19, 2017, the Treasury Department and the IRS published a notice of proposed rulemaking providing rules regarding the definition of a dependent under section 152, which includes a qualifying relative, in the **Federal Register** (82 FR 6370) (January 2017 Proposed Regulations). This document revises the January 2017 Proposed Regulations by adding a paragraph to clarify the definition of a “qualifying relative” for taxable years 2018 through 2025, and withdrawing and reproposing a rule in the January 2017 Proposed Regulations regarding the support of a dependent under section 152.

I. Zero Exemption Amount

Generally, section 151 allows a taxpayer to claim deductions for exemptions for the taxpayer and his or her spouse, and for any dependents. Section 152(a) of the Code generally defines a “dependent” as a “qualifying child” or a “qualifying relative.” The definition of a qualifying relative in section 152(d)(1) includes the requirement that the individual have gross income for the calendar year that is less than the exemption amount as defined in section 151(d). Such an individual must also satisfy the requirement of section 152(d)(1)(C) that the individual receive more than one-half of his or her support from the taxpayer claiming the individual as a qualifying relative.

Before amendment by section 11041(a)(2) of Public Law 115-97, 131 Stat. 2054 (2017), commonly referred to as the Tax Cuts and Jobs Act (TCJA), section 151(d) provided for an exemption amount of \$2,000 that was adjusted annually for inflation beginning with calendar year 1990. Before the enactment of the TCJA, the IRS had determined that the exemption amount for calendar year 2018 was \$4,150. Rev. Proc. 2017-58, 2017-45 I.R.B. 489, modified and superseded by Rev. Proc. 2018-18, 2018-10 I.R.B. 392.

Section 11041(a)(2) of the TCJA added section 151(d)(5) to provide special rules for taxable years 2018 through 2025 regarding the exemption amount in section 151(d). Section 151(d)(5)(A) provides that, for a taxable year beginning after December 31, 2017, and before January 1, 2026, the exemption amount is zero, thereby suspending the deductions for personal exemptions and the dependency exemption. H.R. Rep. No. 115-466, at 202-204 (2017) (Conference Report). However, section 151(d)(5)(B) provides that the reduction of the exemption amount to zero is not taken into account in

determining whether a deduction under section 151 is allowed or allowable to a taxpayer, or whether a taxpayer is entitled to a deduction under section 151, for purposes of any other provision of the Code. The Conference Report states that this provision clarifies that the reduction of the personal exemption to zero “should not alter the operation of those provisions of the Code which refer to a taxpayer allowed a deduction . . . under section 151,” including the child tax credit in section 24(a). *Id.* at 203 n.16.

Section 11022(a) of the TCJA amended section 24 of the Code to create a \$500 credit for certain dependents of a taxpayer other than a qualifying child described in section 24(c) for whom the child tax credit is allowed. The \$500 credit applies to two categories of dependents: (1) Qualifying children for whom a child tax credit is not allowed, and (2) qualifying relatives as defined in section 152(d). Section 24(h)(4)(A) and (C). Like the amendment to section 151(d) reducing the exemption amount to zero, this new credit applies for taxable years 2018 through 2025. The Conference Report explains that “[t]he credit is further modified to temporarily provide for a \$500 nonrefundable credit for qualifying dependents other than qualifying children. The provision generally retains the present-law definition of dependent.” H.R. Rep. No. 115-466, at 227.

The definition of head of household in section 2(b)(1)(A) includes the requirement that the taxpayer maintain as his or her home a household for a qualifying individual for a specified period of time. A qualifying individual under section 2(b)(1)(A)(ii) includes a qualifying relative if the taxpayer is entitled to a deduction under section 151 for the person for the taxable year. As noted above, taxpayers are allowed a deduction under

section 151 for individuals who are dependents as defined in section 152, including qualifying relatives described in section 152(d).

On August 28, 2018, the Treasury Department and the IRS issued Notice 2018-70, 2018-38 I.R.B. 441. This notice announced the intent to issue proposed regulations providing that the reduction of the exemption amount to zero under section 151(d)(5)(A) for taxable years 2018 through 2025 will not be taken into account in determining whether an individual meets the requirement of section 152(d)(1)(B) to be a qualifying relative. Notice 2018-70 also stated that, before the issuance of the proposed regulations described in the notice, a taxpayer may rely on the rules described in the notice.

Consistent with Notice 2018-70, these proposed regulations provide that in determining whether an individual is a qualifying relative for purposes of various provisions of the Code that refer to section 152 in years in which the exemption amount is zero, the section 151(d) exemption amount will be the inflation-adjusted section 152(d)(1)(B) exemption amount in the annual revenue procedure setting forth inflation-adjusted items that is published in the Internal Revenue Bulletin. Thus, the exemption amount is \$4,150 for 2018 (section 3.24 of Rev. Proc. 2017-58, 2017-45 I.R.B. 489, modified and superseded by Rev. Proc. 2018-18, 2018-10 I.R.B. 392); \$4,200 for 2019 (section 3.25 of Rev. Proc. 2018-57, 2018-49 I.R.B. 827); and \$4,300 for 2020 (section 3.25 of Rev. Proc. 2019-44, 2019-47 I.R.B. 1093).

II. Alimony and Separate Maintenance Payments

Prior to the TCJA, alimony and separate maintenance payments were deductible by the payor spouse and includible in income by the recipient spouse under sections

61(a)(8), 71(a), and 215(a) of the Code. Under section 71(c), child support payments were not treated as alimony. Section 11051 of the TCJA repealed sections 61(a)(8), 71 and 215, and, in a conforming change, also repealed section 682 of the Code for any divorce or separation instrument executed after 2018, and for any instrument executed before 2019 and later modified to apply the provisions of the TCJA.

To conform with the repeal of section 71, section 11051(b)(3)(B) of the TCJA amended section 152(d)(5) of the Code regarding the source of a qualifying relative's support. As mentioned in part I of this Background, section 152(d)(1)(C) requires that an individual receive more than one-half of his or her support from the taxpayer to be claimed as a qualifying relative of that taxpayer. Consistent with prior law, the TCJA provides that payments of alimony or separate maintenance paid to a spouse or former spouse are not treated as support of a dependent provided by the payor spouse. However, the TCJA revised the language of section 152(d)(5) to eliminate references to sections 71 and 682, which were repealed by the TCJA. Section 1.152-3(d)(2) of the January 2017 Proposed Regulations originally included references to sections 71 and 682. Accordingly, these proposed regulations withdraw §1.152-3(d)(2) of the January 2017 Proposed Regulations and replace it with proposed §1.152-3(d)(2) to reflect these amendments to section 152(d)(5).

Explanation of Provisions

Section 151(d) provides for two different exemption amounts for taxable years 2018 through 2025. For purposes of the deduction allowed for a personal exemption or a dependency exemption, section 151(d)(5)(A) provides that the exemption amount is zero, thereby effectively suspending the deduction. However, for purposes of applying

other provisions of the Code that reference that deduction, Congress provided in section 151(d)(5)(B) that the reduction of the exemption amount to zero is not to be taken into account. For purposes of those other Code provisions, proposed §1.152-3(c)(3) provides that the exemption amount instead should be \$4,150 for 2018, and should be adjusted for inflation for 2019 through 2025, as set forth in guidance published in the Internal Revenue Bulletin. This interpretation accords with section 151(d)(5), which suspends the deduction for a personal exemption or a dependency exemption without substantively changing other Code provisions that directly or indirectly reference the section 151(d) exemption amount.

This interpretation also is confirmed by the structure of several Code provisions that necessitate a non-zero exemption amount in section 152(d)(1)(B). For example, to be a qualifying relative under section 152(d)(1)(B), an individual must have gross income that is “less than the exemption amount.” If the exemption amount were zero, an individual’s gross income would have to be less than zero, a near impossibility. Under such a reading, virtually no individual would meet the definition of a qualifying relative. Thus, a zero-exemption amount for this purpose would effectively render section 152(d)(1)(B) inoperable and eliminate an entire category of dependents. The Treasury Department and the IRS find no indication that Congress intended to make such a significant change in such an indirect manner.

In addition, the new \$500 credit under section 24(h)(4), also enacted in the TCJA, likewise depends on a non-zero exemption amount under section 152(d)(1)(B). Section 24(h)(4)(A) creates a \$500 credit available for each dependent of the taxpayer other than a qualifying child for whom the child tax credit is allowed. This provision

references the definition of dependent in section 152, which includes both qualifying relatives and qualifying children, and it was understood at the time of enactment that this provision “generally retain[ed] the present-law definition of dependent.” H.R. Rep. No. 115-466, at 227. However, if the exemption amount referenced in section 152(d)(1)(B) were treated as zero for this purpose, the entire category of qualifying relatives would be effectively excised from the definition of dependent. As a consequence, the \$500 credit generally would not be available for qualifying relatives, and the class of individuals who could qualify a taxpayer for this credit would shrink to only a limited category of qualifying children for whom the child tax credit is not allowed. The Treasury Department and the IRS find no indication that Congress intended for the suspension of the deduction for a personal exemption or a dependency exemption to have such a broad effect, or intended for the eligibility for the new \$500 credit to be so narrow.

Further, head of household filing status also depends on a non-zero exemption amount under section 152(d)(1)(B). Under section 2(b)(1)(A), an individual is considered a head of household if, among other requirements, he or she maintains as his or her home a household for either (i) a qualifying child, or (ii) any other person who is a dependent of the taxpayer. Because the only dependents other than qualifying children are qualifying relatives, a zero-exemption amount under section 152(d)(1)(B), and the resulting near elimination of qualifying relatives, would render the express provision for other dependents in section 2(b)(1)(A)(ii) surplusage. It also would deny head of household filing status to many individuals who previously qualified for that filing status and otherwise would continue to qualify. Again, the Treasury Department and

the IRS find no indication that Congress intended for the suspension of the deduction for a personal exemption or a dependency exemption to have such a broad effect.

Accordingly, consistent with the guidance provided in Notice 2018-70, proposed §1.152-3(c)(3) provides that the reduction of the exemption amount to zero in section 151(d)(5)(A) for taxable years 2018 through 2025 does not apply for purposes of the gross income limitation in the definition of a qualifying relative in section 152(d)(1)(B). These proposed regulations also withdraw and repropose §1.152-3(d)(2) of the January 2017 Proposed Regulations. Reproposed §1.152-3(d)(2) is substantively the same as the proposed provision it replaces, but the reproposed regulation describes the payment to the spouse without references to repealed sections 71 and 682.

Finally, the proposed regulations clarify an issue raised regarding a cross reference in section 24(h)(4) to “a qualifying child described in subsection (c).” The proposed regulations clarify that the cross reference is a reference to section 24(c), rather than to section 152(c).

Applicability Date

Section 1.152-3(c)(3) of these regulations is proposed to apply to taxable years ending after August 28, 2018, the date the Treasury Department and the IRS issued Notice 2018-70. See section 7805(b)(1)(C). Sections 1.24-1 and 1.152-3(d)(2) of these regulations are proposed to apply to taxable years beginning on or after the date the regulations are published as final regulations in the **Federal Register**. Pending the issuance of the final regulations, taxpayers may rely on these proposed regulations in any open taxable year.

Special Analyses

These regulations are not subject to review under section 6(b) of Executive Order 12866, pursuant to the Memorandum of Agreement (April 11, 2018) between the Department of the Treasury and the Office of Management and Budget, regarding the review of tax regulations.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is certified that these regulations will not have a significant economic impact on a substantial number of small entities. These regulations primarily affect individuals and will not have a significant economic impact on a substantial number of small entities. Pursuant to section 7805(f) of the Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the IRS as prescribed in the preamble under the “**ADDRESSES**” section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Any electronic comments submitted, and to the extent practicable any paper comments submitted, will be made available at www.regulations.gov or upon request.

A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments. Requests for a public hearing are also encouraged to be made electronically. If a public hearing is scheduled, notice of the date and time for the public hearing will be published in the **Federal Register**.

Announcement 2020-4, 2020-17 IRB 1, provides that until further notice, public hearings conducted by the IRS will be held telephonically. Any telephonic hearing will be made accessible to people with disabilities.

Drafting Information

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

Statement of Availability of IRS Documents

IRS notices and other guidance cited in this preamble are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <http://www.irs.gov>.

Partial Withdrawal of Proposed Regulations

Under the authority of 26 U.S.C. 7805, §1.152-3(d)(2) of the notice of proposed rulemaking (REG-137604-07) published in the **Federal Register** on January 19, 2017 (82 FR 6370) is withdrawn.

Proposed Amendments to the Regulations

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

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 * * *

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Par. 2. Section 1.24-1 is added to read:

§1.24-1 Partial credit allowed for certain other dependents.

(a) In general. For purposes of section 24(h)(4)(A), a taxpayer may be eligible to increase the credit determined under section 24(a) by \$500 for a dependent of the taxpayer, as defined in section 152, other than a qualifying child described in section 24(c).

(b) Applicability date. This section applies to taxable years beginning on or after [date the Treasury Decision adopting these rules is published in the **Federal Register**].

Par. 3. Section 1.152-3, as proposed to be revised by 82 FR 6370, January 19, 2017, is amended by:

- a. Adding paragraph (c)(3); and
- b. Revising paragraph (d)(2).

The addition and revision read as follows:

§1.152-3 Qualifying relative.

* * * * *

(c) * * *

(3)(i) For tax year 2018, the exemption amount under section 152(d)(1)(B) is \$4,150. For tax years 2019 through 2025, the exemption amount, as adjusted for

inflation, is set forth in annual guidance published in the **Internal Revenue Bulletin**.

See §601.601(d)(2) of this chapter.

(ii) Paragraph (c)(3)(i) of this section applies to taxable years ending after August 28, 2018.

* * * * *

(d) * * *

(2) Certain income of a taxpayer's spouse. A payment to a spouse (payee spouse) of alimony or separate maintenance is not treated as a payment by the payor spouse for the support of any dependent. Similarly, the distribution of income of an estate or trust to a divorced or legally separated payee spouse is not treated as a payment by the payor spouse for the support of any dependent. The preceding sentence shall not apply, however, to the extent that such a distribution is in satisfaction of the amount or portion of income that, by the terms of a divorce decree, a written separation agreement, or the trust instrument is fixed as payable for the support of the minor children of the payor spouse.

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Sunita Lough,

Deputy Commissioner for Services and Enforcement.

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