

Form 8332 is Still Necessary

Jason A Cook filed his 2012 income tax return using the Head of Household filing status, claimed a child as a dependent, and claimed the Child Tax Credit and Earned Income Tax Credit in connection with this child. The case refers to the child as "CDC." The case does not mention CDC's age during 2012 except to state CDC was under the age of 18. Mr. Cook did not attach a Form 8332 (or a reasonable substitute for Form 8332) to his tax return.

IRS denied the HH filing status, the dependency exemption and both credits.

Facts: Mr. Cook was never married to CDC's mother. During 2011 CDC's mother married Mr. Taylor and remained married to him as of the date this case was submitted to the Court. During the entire year 2012 CDC lived with Mr. & Mrs. Taylor and did not live with Mr. Cook at any time during the year.

During late 2011 the York Juvenile and Domestic Relations District Court issued an order of support requiring Mr. Cook to pay \$788 per month for child support and 100% of CDC's reasonable and necessary unreimbursed medical and dental expenses to the extent they exceed \$250 for any calendar year.

Mr. Cook states he and Mrs. Taylor had an oral agreement that he could claim CDC as a dependent on his income tax returns. He also states Mrs. Taylor was not employed and had no income for 2012 and thus would not be filing a Form 1040. Thus, he argued, there should be no need for Mrs. Taylor to provide him with Form 8332 for 2012.

Even if Mr. Cook had a signed Form 8332, CDC did not have the same principal place of abode as Mr. Cook for more than one-half of the taxable year (i.e., CDC didn't live with Mr. Cook for more than one-half of the year). Thus, the Head of Household filing status and the Earned Income Tax credit are not allowed.

Mr. Cook then argued CDC could be a "qualifying relative". One of the provisions for a "qualifying relative" is that CDC could not be a "qualifying child" for any other taxpayer. Since CDC met all of the conditions to be a "qualifying child" for Mrs. Taylor, CDC could not be a "qualifying relative" for any other taxpayer. Also, since Mr. Cook did not attach a Form 8332 to his tax return, he was denied the dependency exemption and Child Tax Credit in connection with CDC. CDC was claimed as a "qualifying child" despite Mr. Cook's claim that Mrs. Taylor did not file a tax return.

Tax Court agreed with IRS on all issues.

Even though the exemption amount no longer exists beginning in 2018, the tax benefits of Head of Household, Child Tax Credit, Child Care Credit, education credits, and Earned Income Tax Credit are all tied to the right to claim someone

as a dependent. In cases where the taxpayer is the noncustodial parent, the Form 8332 is still required.

This court case summary on www.ustaxcourt.gov did not address penalties that may have been imposed on Mr. Cook. Based on a tax professional knowledge of tax law, this case could involve fraudulently trying to claim EIC, HH, etc. and could result in a 2-year or 10-year future disallowance of EIC.

Jason A Cook, TC Memo 2019-48

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