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CHIEF COUNSEL

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MEMORANDUM FOR SANDRA WEST, QUALITY ASSURANCE COORDINATOR,  
RICHMOND

FROM: George Blaine, Chief, Branch1 CC:DOM:IT&A

SUBJECT: Dependency Exemption for Foster Child

This memorandum is a response to an e-mail from Jeryl Crawford that raises the question why the Service deleted the following language from Publication 17: "However, if a state, one of its political subdivisions, or a tax-exempt child placing agency makes payments to you as a foster parent, you may not take an exemption for the child." This office recommended the deletion of this language because, under certain circumstances, a foster parent may be able to claim a foster child as a dependent despite receiving payments from a tax-exempt child placing agency or a state or one its political subdivisions.

Section 151(c)(1) of the Internal Revenue Code states the general rule that allows an exemption for a dependent (A) whose gross income for the calendar year is less than the exemption amount or (B) who is a child of the taxpayer and who has not attained the age of 19 at the close of the calendar year or who is a student who has not attained the age of 24 at the close of the calendar year.

Section 152(a) of the Code defines the term "dependent" to include a son or daughter of the taxpayer, if the taxpayer provides over half of the child's support for the calendar year (or is treated as providing over half of the child's support under subsection (c) or (e) of section 152). Section 152(b) provides that a foster child of a taxpayer shall be treated as a natural child of the taxpayer if the foster child meets the requirements of section 152(a)(9), that is, for the entire taxable year of the taxpayer, the foster child has the taxpayer's home as his principal place of abode and is a member of the taxpayer's household.

The receipt of foster care payments is relevant to whether the foster parent provides over half of the foster child's support, as required by section 152(a). The receipt of foster care payments does not, in itself, preclude a foster parent from claiming a dependency exemption for the foster child, as the deleted language in

Publication 17 implied. The receipt of foster care payments is not relevant to the “member of the household or relationship” test under section 152(a).

In calculating support under section 152(a), payments that a foster parent receives from a tax-exempt child placing agency or a state or one of its political subdivisions would count as part of the foster child’s total support but would not count as support provided by the foster parent. Similarly, a foster parent’s unreimbursed out-of-pocket expenses deducted under section 170 would count as part of the foster child’s total support but would not count as support provided by the foster parent. If the foster parent nevertheless provides over one-half of the foster child’s total support, then the foster parent meets the support test under section 152(a).

If you have any questions, please call Victoria Driscoll at (202) 622-4910.