



IRS Notice 2010-38 (April 27, 2010) provides guidance on the tax treatment of employer-provided health benefits for children, stepchildren, legally adopted children, children placed with the employee for adoption, and eligible foster children under age 27. Employers may now choose to allow employee premium contributions for the coverage of these older children to be paid on a tax-advantaged basis, even if they are not tax dependents. Under the Notice, children who will not attain age 27 in the calendar year for which the premium expense was incurred are eligible.

## **IRS Code § 152 Dependent Definition**

### **A. General Definition**

In general terms, “dependent” means any of the following individuals over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer (or is treated under subsection C or E as received from the taxpayer):

- (1) A son or daughter of the taxpayer, or a descendant of either;
- (2) a stepson or stepdaughter of the taxpayer;
- (3) a brother, sister, stepbrother, or stepsister of the taxpayer;
- (4) the father or mother of the taxpayer, or an ancestor of either;
- (5) a stepfather or stepmother of the taxpayer;
- (6) a son or daughter of a brother or sister of the taxpayer;
- (7) a brother or sister of the father or mother of the taxpayer;
- (8) a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the taxpayer, or;
- (9) an individual (other than an individual who at any time during the taxable year was the spouse, determined without regard to Code § 7703, of the taxpayer) who, for the taxable year of the taxpayer, has as his principal place of abode the home of the taxpayer and is a member of the taxpayer’s household.

### **B. Rules Relating to General Definition**

- (1) The terms “brother” and “sister” include a brother or sister by half-blood.
- (2) In determining whether any of the relationships specified in subsection A or B(1) exists, a legally adopted child of an individual (and a child who is a member of an individual’s household, if placed with such individual by an authorized placement agency for legal adoption by such individual), or a foster child of an individual (if such child satisfies the requirements of

subsection A(9) with respect to such individual), shall be treated as a child of such individual by blood.

- (3) The term "dependent" does not include any individual who is not a citizen or national of the United States unless such individual is a resident of the United States or of a country contiguous to the United States. The preceding sentence shall not exclude from the definition of "dependent" any child of the taxpayer legally adopted by him, if, for the taxable year of the taxpayer, the child has as his principal place of abode the home of the taxpayer and is a member of the taxpayer's household, and if the taxpayer is a citizen or national of the United States.
- (4) A payment to a wife which is includible in the gross income of the wife under Code § 71 or Code § 682 shall not be treated as a payment by her husband for the support of any dependent.
- (5) An individual is not a member of the taxpayer's household if at any time during the taxable year of the taxpayer the relationship between such individual and the taxpayer is in violation of local law.

#### C. Multiple Support Agreements

Over half the support of an individual for a calendar year shall be treated as received from the taxpayer if:

- (1) no one person contributed over half of such support;
- (2) over half of such support was received from persons each of whom, but for the fact that he did not contribute over half of such support, would have been entitled to claim such individual as a dependent for a taxable year beginning in such calendar year;
- (3) the taxpayer contributed over 10 percent of such support, and;
- (4) each person described in C(2) (other than the taxpayer) who contributed over 10 percent of such support files a written declaration (in such manner and form as the Secretary may by regulations prescribe) that he will not claim such individual as a dependent for any taxable year beginning in such calendar year.

#### D. Special Support Test in Case of Students

In the case of any individual who is:

- (1) a son, stepson, daughter, or step-daughter of the taxpayer (within the meaning of this section), and,
- (2) a student (within the meaning of section 151(c)(4)),

amounts received as scholarships for study at an educational organization described in section 170(b)(1)(ii) shall not be taken into account in determining whether such individual received more than half of his support from the taxpayer.

E. Support Test in Case of Child of Divorced Parents, etc.

(1) Custodial Parent Gets Exemption

Except as otherwise provided in this subsection, if:

- (a) a child (as defined in section 151(c)(3)) receives over half of his support during the calendar year from his parents:
  - (i) who are divorced or legally separated under a decree of divorce or separate maintenance,
  - (ii) who are separated under a written separation agreement, or
  - (iii) who live apart at all times during the last 6 months of the calendar year, and
- (b) such child is in the custody of one or both of his parents for more than one-half of the calendar year,

such child shall be treated, for purposes of subsection A, as receiving over half of his support during the calendar year from the parent having custody for a greater portion of the calendar year (hereinafter in this subsection referred to as the custodial parent).

(2) Exception Where Custodial Parent Releases Claim to Exemption for the Year

A child of parents described in paragraph (1) shall be treated as having received over half of his support during a calendar year from the non-custodial parent if:

- (a) the custodial parent signs a written declaration (in such manner and form as the Secretary may by regulations prescribe) that such custodial parent will not claim such child as a dependent for any taxable year beginning in such calendar year, and
- (b) the non-custodial parent attaches such written declaration to the non-custodial parent's return for the taxable year beginning during such calendar year.