

Divorce and Taxes: Dependent Claims and Child Care Credits

Figuring out who claims the children after a divorce is rarely simple—and the tax consequences matter. This section works through the qualifying child and qualifying relative tests as they apply to divorced and separated parents, covering eligibility rules and how to determine which parent gets to claim each dependent. You'll also tackle child and dependent care expense credits, including how to calculate them based on adjusted gross income, and review how the standard deduction intersects with these claims. Essential reading for practitioners regularly working with divorced clients who have minor children.

CREDIT HOURS 2 | FIELD OF STUDY TAXES | EXAM QUESTIONS 10

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LEARNING ASSIGNMENTS AND OBJECTIVES

Assignment

- Study the full course materials included here.
- Complete the review questions after each chapter.
- Answer 10 final exam questions.
- Final exam is scored immediately, 70% or better passes.
- Certificate of completion is available in your account.
- Failed exams can be retaken free of charge.

Course Objectives

- Identify the implications of divorce on the ability to claim child and dependent care tax credits.
- Identify how dependents can be claimed by divorced parents.

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Chapter 1: CHILD AND DEPENDENT CARE EXPENSES

Chapter Objective

After completing this chapter, you should be able to:

- Identify the implications of divorce on the ability to claim child and dependent care tax credits.

I. WHAT'S NEW

A. TRUMP ACCOUNT AND NEW FORM 4547

Recent legislation (the OBBBA) allows parents, guardians, and other authorized individuals to elect to establish a new type of individual retirement account, called a Trump account, for the exclusive benefit of certain children. If the child was born after 2024 and before 2029, is a U.S. citizen, and meets certain other requirements, the authorized individual may also elect to receive a \$1,000 pilot program contribution to the child's Trump account. Both elections can be made on Form 4547, which can be filed at the same time as the authorized individual's income tax return.

II. DEPENDENT CARE EXPENSES

When a couple is married and has dependents, such as minor children, they may be entitled to a tax credit for dependent care expenses. When the couple divorces, one or both parents may be entitled to certain tax credits. This chapter provides an overview of the child and dependent care tax credit and discusses the implications of divorce on its availability.

A. GENERAL REQUIREMENT TO CLAIM CREDIT

To be able to claim the credit for child and dependent care expenses, a taxpayer – whether single, married or divorced – must file Form 1040, 1040-SR, or 1040-NR and meet all the following tests:

- The care must be for one or more “qualifying persons” who are identified on Form 2441;
- The taxpayer (and spouse, if filing jointly) must have earned income during the year;
- The taxpayer must pay child and dependent care expenses so he or she (and his or her spouse if filing jointly) can work or look for work;
- The taxpayer must make payments for child and dependent care expenses to someone he or she (and his or her spouse) cannot claim as a dependent. If a taxpayer makes payments to his or her child (including stepchild or foster child), the child must not be the

taxpayer's dependent and must be age 19 or older by the end of the year in which the credit is claimed. A taxpayer may not make payments to his or her spouse or to the parent of the taxpayer's qualifying person if the qualifying person is his or her child and under age 13;

- The taxpayer's filing status may be single, head of household, or qualifying surviving spouse. A taxpayer must file a joint return if he or she is married, unless an exemption applies;
- The taxpayer must identify the care provider on his or her tax return; and
- If a taxpayer excludes or deducts dependent care benefits provided by a dependent care benefit plan, the total amount he or she excludes or deducts must be less than the dollar limit for qualifying expenses (generally, for 2026, \$3,000 if one qualifying person was cared for, or \$6,000 if two or more qualifying persons were cared for).

B. QUALIFYING PERSON TEST

To be eligible for the tax credit, an individual's child and dependent care expenses must be for the care of one or more qualifying persons pursuant to Internal Revenue Code § 152 (the text of which and implementing Treasury Regulations are provided below). A qualifying person is:

- A taxpayer's child who is his or her dependent and who was under age 13 when the care was provided;
- A taxpayer's spouse who was not physically or mentally able to care for himself or herself and lived with the taxpayer for more than half the year; or
- A person who was not physically or mentally able to care for himself or herself, lived with the taxpayer for more than half of the year, and either:
 - ☐ Was the taxpayer's dependent; or
 - ☐ Would have been the taxpayer's dependent except that:
 - He or she received gross income of \$5,300 or more;
 - He or she filed a joint return; or
 - The taxpayer, or his or her spouse if filing jointly, could be claimed as a dependent on someone else's 2026 return.

For taxpayers who are divorced or separated, the section below will explain which parent may treat a child as a qualifying person.

1. Dependent Defined

A dependent is a person, other than a taxpayer or his or her spouse, who he or she can claim on his or her tax return. To be another person's dependent, a person must be a qualifying child (or qualifying relative). However, the deductions for personal and dependency exemptions for tax years

2018 through 2025 are suspended, and therefore, the amount of the deduction is zero. But in determining whether you may claim a person as a qualifying relative for 2026, the person's gross income must be less than \$5,300, not zero. To be a taxpayer's qualifying child, a child must live with that person for more than half the year and meet other requirements discussed below.

Note

The OBBBA permanently eliminates the deduction for personal and dependent exemptions. There is a temporary exception for certain senior taxpayers (those 65 and older) allowing them to take a \$6,000 personal exemption deduction from 2025 to 2028. This deduction phases out for single filers with a MAGI over \$75,000 and for married couples with a MAGI over \$150,000.

To offset the elimination of personal exemptions, the OBBBA makes permanent the larger standard deduction originally implemented by the TCJA and further increases it.

2. Physically or Mentally Not Able to Care for Oneself

Persons who cannot dress, clean, or feed themselves because of physical or mental problems are considered not able to care for themselves. Also, persons who must have constant attention to prevent them from injuring themselves or others are considered not able to care for themselves.

3. Person Qualifying for Part of Year

A taxpayer must determine a person's qualifying status each day. For example, if the person for whom he or she pays child and dependent care expenses no longer qualifies on September 16, count only those expenses through September 15.

4. Taxpayer Identification Number

A taxpayer must include on his or her return the name and taxpayer identification number (generally the social security number) of the qualifying person(s). If the correct information is not shown, the credit may be reduced or disallowed.

If the qualifying person is a nonresident or resident alien who does not have and cannot get a social security number (SSN), a taxpayer should use that person's individual taxpayer identification number (ITIN). The ITIN is entered wherever an SSN is requested on a tax return. Note that an ITIN is for tax use only. It does not entitle the holder to social security benefits or change the holder's employment or immigration status under U.S. law.

If the qualifying person is a child placed in the taxpayer's home for adoption and the child doesn't have a Social Security number, the taxpayer must get an ATIN for the child by filing Form W-7A, *Application for Taxpayer Identification Number for Pending U.S. Adoptions*.

C. CHILDREN OF DIVORCED OR SEPARATED PARENTS

Even if a taxpayer cannot claim his or her child as a dependent, the child is treated as the taxpayer's qualifying person if:

- The child was under age 13 or was not physically or mentally able to care for himself or herself;
- The child received over half of his or her support during the calendar year from one or both parents who are divorced or legally separated under a decree of divorce or separate maintenance, are separated under a written separation agreement, or lived apart at all times during the last six months of the calendar year;
- The child was in the custody of one or both parents for more than half the year; and
- The taxpayer was the child's custodial parent (the parent with whom the child lived for the greater number of nights of 2026). If the child was with each parent for an equal number of nights, the custodial parent is the parent with the higher adjusted gross income.

The noncustodial parent cannot treat the child as a qualifying person even if that parent is entitled to claim the child as a dependent under the special rules for a child of divorced or separated parents.

D. EARNED INCOME TEST

To claim the credit, the taxpayer (and his or her spouse if married) must have earned income during the year.

1. Earned Income

Earned income includes wages, salaries, tips, other taxable employee compensation, and net earnings from self-employment. A net loss from self-employment reduces earned income. Earned income also includes strike benefits and any disability pay the individual reports as wages.

Generally, only taxable compensation is included. However, the individual can elect to include nontaxable combat pay in earned income. If the individual is filing a joint return and both he or she and his or her spouse received nontaxable combat pay, the individual can each make his or her own election. (In other words, if one makes the election, the other one can also make it but does not have to.) Including this income will give the individual a larger credit only if his or her (or his or her spouse's) other earned income is less than the amount entered on line 3 of Form 2441. The individual should figure the credit both ways and make the election if it gives the individual a greater tax benefit.

The individual can choose to include nontaxable combat pay in earned income when figuring his or her credit for child and dependent care expenses, even if he or she chooses not to include it in

earned income for the earned income credit or the exclusion or deduction for dependent care benefits.

2. Not Earned Income

Earned income does not include:

- Amounts excluded as foreign earned income (including any housing exclusion) on Form 2555, line 43;
- Pensions and annuities;
- Social security and railroad retirement benefits;
- Worker's compensation;
- Interest and dividends;
- Unemployment compensation;
- Scholarships or fellowship grants, except for those reported on Form W-2, paid for teaching or other services;
- Nontaxable workfare payments;
- Child support payments received;
- Income of a nonresident alien that is not effectively connected with a U.S. trade or business; or
- Any amount received for work while an inmate in a penal institution.

3. Rule for Student-Spouse or Spouse Not Able to Care for Self

A taxpayer's spouse is treated as having earned income for any month that he or she is:

- A full-time student; or
- Physically or mentally not able to care for himself or herself (note, however, that the spouse must live with the taxpayer for more than half of the year).

This rule applies to only one spouse for any one month. If, in the same month, for example, both spouses do not work and are either full-time students or physically or mentally not able to care for themselves, only one of them can be treated as having earned income in that month.

a. **Full-time Student**

An individual is considered to be a full-time student if he or she is enrolled at a school for the number of hours or classes that the school considers full time. To qualify, an individual must have been a student for some part of each of five calendar months during the year, although the months need not be consecutive. The term "school" includes high schools, colleges, universities, and technical, trade, and mechanical schools. A school does not include an on-the-job training course, correspondence schools, or schools offering courses only through the Internet.

E. WORK-RELATED EXPENSE TEST

Child and dependent care expenses must be work-related to qualify for the credit. Expenses are considered work-related only if both of the following are true:

- They allow the taxpayer to work or look for work; and
- They are for a qualifying person's care.

F. WORKING OR LOOKING FOR WORK

To be work-related, an individual's expenses must allow him or her to work or look for work. If an individual is married, generally both he or she and his or her spouse must work or look for work. A person who is divorced must show only that he or she was looking for work. A spouse is treated as working during any month he or she is a full-time student or is physically or mentally not able to care for himself or herself. An individual's work can be for others or in his or her own business or partnership. It can be either full time or part time. Work also includes actively looking for work. However, if an individual does not find a job and has no earned income for a tax year, he or she cannot take this credit.

Whether an individual's expenses allow him or her to work or look for work depends on the facts. For example, the cost of a baby sitter while a divorced father goes out to eat and to the movies is not a work-related expense. Also, an expense is not considered to be work-related solely because it was incurred while the individual was at work. The purpose of the expense must be to enable an individual to work.

1. Volunteer Work

An individual is not considered to be working if he or she does unpaid volunteer work or volunteer work for a nominal salary.

2. Work for Part of Year

If an individual works or actively looks for work during only part of the period covered by the expenses, then he or she must figure his or her expenses for each day. For example, if an individual works all year and pays care expenses of \$250 a month (\$3,000 for the year), all the expenses are work related. However, if that individual works or looks for work for only 2 months and 15 days during the year and pays expenses of \$250 a month, his or her work-related expenses are limited to \$625 ($2\frac{1}{2}$ months $\times$ \$250).

3. Temporary Absence from Work

An individual does not have to figure his or her expenses for each day during a short, temporary absence from work, such as for vacation or a minor illness, if he or she has to pay for care anyway.

Instead, the individual can figure his or her credit including the expenses he or she paid for the period of absence.

An absence of 2 weeks or less is a short, temporary absence. An absence of more than 2 weeks may be considered a short, temporary absence, depending on the circumstances.

Example

Samantha pays a nanny to care for her 2-year-old son and 4-year-old daughter so she can work. Samantha becomes ill and misses 4 months of work but receives sick pay. She continues to pay the nanny to care for the children while she is ill. Samantha's absence is not a short, temporary absence, and her expenses are not considered work-related.

G. CARE OF A QUALIFYING PERSON

To be work-related, the expenses must be to provide care for a qualifying person. An individual does not have to choose the least expensive way of providing the care. Expenses are for the care of a qualifying person only if their main purpose is the person's well-being and protection. Expenses for household services qualify if part of the services are for the care of qualifying persons.

1. Expenses Not for Care

Expenses for care do not include amounts paid for food, lodging, clothing, education, and entertainment. However, a taxpayer may include small amounts paid for these items if they are incident to and cannot be separated from the cost of caring for the qualifying person. Child support payments are not for care and do not qualify for the credit.

2. Education

Expenses for a child in nursery school, pre-school, or similar programs for children below the level of kindergarten are expenses for care. Expenses to attend kindergarten or a higher grade are not expenses for care and cannot be used to determine a taxpayer's credit. However, expenses for before- or after-school care of a child in kindergarten or a higher grade may be expenses for care. Summer school and tutoring programs are not for care.

Example 1

Roger, a divorced father, takes his 3-year-old child to a nursery school that provides lunch and a few educational activities as part of its preschool childcare service. The lunch and educational activities are incidental to the childcare, and their cost cannot be separated from the cost of care. Roger can count the total cost when he calculates his credit.