



# Divorce Taxation: Dependent Care Credit and Claiming Dependents

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Course #3123B

Taxes

2 Credit Hours

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# DIVORCE TAXATION: DEPENDENT CARE CREDIT AND CLAIMING DEPENDENTS

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This course provides an overview of the child and dependent care tax credit and discusses the implications of divorce on its availability. It also includes details on how dependents can be claimed by divorced parents.

## LEARNING ASSIGNMENTS AND OBJECTIVES

*As a result of studying each assignment, you should be able to meet the objectives listed below each individual assignment.*

### SUBJECTS

**Child and Dependent Care Expenses**  
**Dependents of Divorced Parents**  
**Costs of Getting a Divorce**

Study the course materials from pages 1 to 61

Complete the review questions at the end of each chapter

Answer the exam questions 1 to 10

### 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.
- Identify what fees related to divorce are deductible.

## **NOTICE**

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## EXAM OUTLINE

- **TEST FORMAT:** The final exam for this course consists of 10 multiple-choice questions and is based specifically on the information covered in the course materials.
- **ACCESS FINAL EXAM:** Log in to your account and click Take Exam. A copy of the final exam is provided at the end of these course materials for your convenience, however you must submit your answers online to receive credit for the course.
- **LICENSE RENEWAL INFORMATION:** This course qualifies for **2** CPE hours.
- **PROCESSING:** You will receive the score for your final exam immediately after it is submitted. A score of 70% or better is required to pass.
- **CERTIFICATE OF COMPLETION:** Will be available in your account to view online or print. If you do not pass an exam, it can be retaken free of charge.

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# CHAPTER 1: CHILD AND DEPENDENT CARE EXPENSES

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## 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.

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.

## I. DEPENDENT CARE EXPENSES

### 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 his or her 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 (i.e., an older sibling), 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 widow(er) with dependent child. 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, \$3,000 if one qualifying person was cared for, or \$6,000 if two or more qualifying persons were cared for). If two or more qualifying persons were cared for, the amount a taxpayer can exclude or deduct will always be less than the dollar limit, since the total amount that can be excluded or deducted is limited to \$5,000.

## 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 \$4,300 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 2020 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 2020, the person's gross income must be less than \$4,300, 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.



## 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.

## **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 2020). 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.