

Phone: (818) 243-1977

Fax (213) 984-2653

email nbsandco@aol.com

210 N Central Ave. #100

Glendale, Ca 91203

Web www.8182431977.com

JOINT CUSTODY ISSUES

IRS ARBITRATES IF BOTH PARENTS CLAIM. After 2008, Form 8332 (or a written document conforming to the substance of Form 8332) must be used to release claim to a child's exemption. A court order or decree or a separation agreement may NOT serve as a written declaration. If IRS is forced to enter the argument, they apply rules under TD 9408 – the “final” IRS Regulations:

“COUNTING NIGHTS” RULE. IRS awards a “day” of custody depending upon where the child sleeps. The child is deemed to reside for the night with the parent if the child sleeps:

1. at the parent's residence (whether parent is present or not), or
2. in the company of the parent when not at the residence (e.g., vacations).

NIGHT OF DECEMBER 31 is allocated to the earlier tax year.

STATE LAW DETERMINES ALLOWABLE CUSTODY. For instance, when the child reaches majority under state law, the child is not in the custody of either parent.

SLEEP WITH NEITHER PARENT. In this case, the child is treated as residing with the parent with whom child *would* have resided, but for the absence.

NIGHTS EQUAL, USE AGI. If the child resides for an equal number of nights with each parent, custody is deemed to be with the parent with higher AGI.

EXCEPTION FOR ONE PARENT WORKING NIGHTS. If the child resides with the working parent for a greater number of days, but not nights because that parent works nights, that working parent is treated as the custodial parent. However, on school days, the child is deemed as residing at the primary residence registered with the school.

BEST IF PARENTS “SING THE SAME SONG”! The rules above are taken from the Regulations. However, in dealing with clients, it pays to acquaint them with these rules and then ask if they are willing to each file returns consistent with their agreed-upon stance.

Phone: (818) 243-1977

Fax (213) 984-2653

email nbsandco@aol.com

210 N Central Ave. #100

Glendale, Ca 91203

Web www.8182431977.com



RECENT TAX COURT CASE

FACTS

Daughter is 19-year old, full-time college student.

Mom was awarded custody in divorce 10 years ago.

Dad and daughter live with Paternal Grandma entire year.

More than 50% of support by Dad, Mom, Paternal Grandma and Maternal Grandpa.

Dad does not have a Form 8332.

Can Dad claim Daughter as a dependent?

RULING

Yes. Form 8332 is not required because Daughter actually lived with Dad for the greater portion of the year. (*Patrick A. Davis, TC Memo 2014-147*)