



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

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REVISED ACTION ON DECISION

SUBJECT: McLeod v. United States, 276 F.Supp. 213 (S.D. Ala.1967)

Issue: Whether minor children, listed as exemptions on taxpayer's income tax return for 1964, were taxpayer's dependents within the meaning of I.R.C. § 152.

Discussion: The minor children would qualify as taxpayer's dependents if they were placed with the taxpayer by an "authorized placement agency" for legal adoption as provided in section 152(b)(2). The children were placed in taxpayer's home by their birth mother on April 15, 1964, and taxpayer filed a petition for adoption of the children with the Probate Court of Mobile County, Alabama on April 27, 1964. As required by the Alabama Code, Title 27, Section 2, the matter was referred to the Department of Pensions and Security to "verify the allegations of the petition, to make a thorough investigation of the matter and to report its findings in writing to the court." The court held that the Department of Pensions and Security "constructively placed" the children in the taxpayer's home for adoption by presenting its favorable report to the court. Therefore, the requirements of section 152(b)(2) and Treas. Reg. § 1.152-2(c) were satisfied and taxpayer was entitled to the exemptions.

In the Action on Decision in McLeod distributed on January 11, 1968, 1968 AOD LEXIS 75, the Service disagreed with the court. The Action on Decision states that "[T]his approval by the state agency does not meet the requirements of the Regulations section 1.152-2(c), which specifically provides that the child be '...placed with the individual by an authorized placement agency for legal adoption pursuant to a formal application filed by the individual with the agency.'"

The Service now believes that under Treas. Reg. § 1.152-2(c), authorized placement agency is not limited to governmental and private organizations authorized by state law to place children for legal adoption. This term also refers to birth parents and other persons authorized by state law to place children for legal adoption. Furthermore, It is not essential that the taxpayer file a formal application with the authorized placement agency in a case like McLeod in which the birth mother is the authorized placement agency. The Service does not agree with the "constructive placement" rationale of McLeod. The Service, however, no longer disagrees with the result in McLeod.

Recommendation: Acquiescence in result only. That the Action on Decision distributed on January 11, 1968, be withdrawn and this Revised Action on Decision be substituted therefor.

Reviewers:

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