

## Equivalent to Spouse Tax Credit

January 07, 2002

Document number:2001-0101105

Income Tax Act:118(1)(b)

Please note that the following document, although believed to be correct at the time of issue, may not represent the current position of the CCRA.

Prenez note que ce document, bien qu'exact au moment émis, peut ne pas représenter la position actuelle de l'ADRC.

**PRINCIPAL ISSUES:** Following a marriage breakdown where parents are awarded joint custody of their two children, can both parents claim the equivalent-to-spouse credit?

**POSITION:** Yes

**REASONS:** If both parents have custody of the children, at different times throughout the year, the children would be "wholly dependent" on each parent.

XXXXXXXXXX 2001-010110  
J.E. Grisé

January 7, 2002

Dear XXXXXXXXXXXX :

Re: Equivalent-to-spouse Tax Credit

This is in reply to your letter of August 24, 2001, requesting an advance ruling on the equivalent-to-spouse credit in a situation involving joint custody.

In your letter, you describe a situation where taxpayers A and B are divorced. A and B are the parents of two minor children. Pursuant to the terms of a written separation agreement, A and B share joint custody of their two children. The children are wholly dependent upon their parents and spend significant periods of time with both of them. A written separation agreement requires taxpayer A to pay support for the benefit of only one of the children.

Your ask whether taxpayer A is allowed to claim the equivalent-to-spouse credit in respect of the child that A is not required to pay support, and whether taxpayer B is allowed the equivalent-to-spouse credit in respect of the child for which support is received from A.

Written confirmation of the tax implications inherent in particular transactions is given by this Directorate only where the transactions are proposed and are the subject matter of an advance ruling request submitted in the manner set out in Information Circular 70-6R4, dated January 29, 2001.

Where the particular transactions are completed, the enquiry should be addressed to the relevant tax services office. Also, it would be necessary to review all relevant documentation (including all written agreements and court orders) before a determination of the tax implications could be made. Therefore, we can only provide you with the following general comments.

In order to claim the equivalent-to-spouse credit, an individual must meet the conditions set out in paragraph 118(1)(b) of the Income Tax Act. To qualify for this tax credit, an individual must, among other criteria, support in a residence that is lived in and maintained by the individual a person who is wholly dependent for support on the individual and under 18 or dependent because of mental or physical infirmity. In order for a child to be considered wholly dependent on a parent, the parent must be responsible for the usual day-to-day activities of raising the child, such as ensuring the child attends school, preparing regular meals, etc. In other words, the child would have to live with the parent during the days in question. This can be contrasted with situations where the parent only has visitation rights or "legal access" rights where the child would still be considered to be living with the other parent.

Subject to subsection 118(5) of the Act discussed below, in a joint custody situation where there are at least two children, generally one parent would be able to claim the equivalent-to-spouse credit for one child and the other parent would be able to claim the equivalent-to-spouse credit for another child. Each parent must also meet the requirements of subparagraph 118(1)(b)(i) of the Act that require the parent to be:

(A) a person who is unmarried and who does not live in a common-law partnership, or

(B) a person who is married or in a common-law partnership, who neither supported nor lived with their spouse or common law-partner and who is not supported by that spouse or common-law partner.

Subsection 118(5) of the Act would prevent a parent from claiming the equivalent-to-spouse credit in respect of a child if the parent is required to make child support payments to that parent's spouse or former spouse in respect of that child, or if the parent claims a deduction for the year because of section 60 in respect of a support amount paid to the spouse or former spouse. Whether or not one or both parents are required to pay child support in respect of a particular child is a question of fact and a determination cannot be made without examining the written agreement or court order.

We hope our comments are helpful.

Yours truly,

John Oulton, CA  
for Director  
Business and Partnerships Division  
Income Tax Rulings Directorate

**NOTES FROM TIM CESTNICK:**

If you hope to structure your affairs to entitle each parent the ability to claim an equivalent to spouse credit, it will be necessary to visit a lawyer to have the separation or divorce agreement worded properly. Specifically, there will need to be more than one child, and each parent will need to have responsibility under the agreement to support at least one of the children.