Qualifying Child of More Than One Person, AGI and Tiebreaker Rules

The following are some of the questions preparers frequently ask us about determining who claims the EITC if a child is a qualifying child of more than one person.

Preparer Question	IRS Answer
How should a preparer **document that a non-parent claiming a child as a qualifying child has an AGI higher** than the AGI of a parent of the child? Our client may not know the AGI of a child's parent or may say that the information is none of our business.	To meet your due diligence requirements, you must ask the appropriate questions and document your client's answers. You do not have the responsibility to verify AGI. Your client does not need to know the exact amount of the AGI of the child's parent(s) for the year, but your client should be able to determine if his or her AGI is higher than the AGI of the parent with the highest adjusted gross income. Let your client know EITC tax law requires the information to determine who is eligible to claim the EITC, and you are asking to make sure you file an accurate return. If your client is reluctant to answer, you may want to hand them Publication 4717, *Help Your Tax Preparer get you the EITC you Deserve*. This publication helps explain why you need to ask the questions. If your client does not have the information or refuses to answer your questions, you must decide whether to prepare the return.

Preparer Question	IRS Answer
Two **unmarried parents live together** all year and have two children together. The parent with the higher income wants to claim the children as dependents and file as Head of Household. The parent with the lower income wants to claim the EITC. How do I determine which parent may claim a child as a qualifying child for the child-related benefits?	**Note**: Consider whether the State in which the parents live recognizes the parents' relationship as a common law marriage. Only a taxpayer who pays more than half of the household expenses may qualify for Head of Household filing status. If the parents truly split expenses equally, neither qualifies as Head of Household. If a child is a qualifying child of both the parents, generally, only one parent can claim the child as a qualifying child for all of the child-related tax benefits: EITC, dependency exemption, child tax credit, head of household filing status, credit for child and dependent care expenses, and the exclusion for dependent care benefits. One parent cannot claim Head of Household filing status, the dependency exemption and the child tax credit for a child, and the other parent claim the EITC for the same child. Each parent may claim one of the children for all of the child-related benefits for which the parent otherwise qualifies. If both parents claim the same child for child-related tax benefits, the IRS applies a tiebreaker rule. If a child lived with each parent the same amount of time during the year, the IRS allows the parent with the higher adjusted gross income (AGI) to claim the child. See Publication 596, *Earned Income Credit*, or Publication 596 (SP), Credito por Ingreso del Trabajo, for more information on the tiebreaker rules.

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How do I determine who may claim the EITC when a child lives with a parent and a grandparent?	A tool that may help is Publication 3524, *EITC Eligibility Checklist* or 3524 Spanish Version. If the parent of the child is the qualifying child of the grandparent, the parent may not take the EITC. If the parent's AGI is higher than the AGI of the grandparent, the grandparent may not claim the child as a qualifying child for the EITC or other child-related benefits. If the grandparent's AGI is higher than the AGI of any parent who can claim the child, the grandparent can claim the child as a qualifying child for the EITC if no parent of the child who can claim the child actually claims the child for any of the child-related tax benefits (an exception allows the noncustodial parent to claim the dependency exemption and child tax credit in certain circumstances and another taxpayer to claim the other child-related tax benefits) If two taxpayers can claim a child as a qualifying child for child-related tax benefits, the IRS applies the tiebreaker rules. Read more about the tiebreaker rules here... We also have some scenarios on this and similar situations. See" Handling Common Due Diligence Situations."
My client is 25-years old and has a child. She and the child lived with the client's mother for over half of the year. The father of the child has not been around for more than a year. The grandparent has a higher income than either parent and helps support the child. Can the 25-year old claim the child for EITC even though the grandparent has the higher income?	Yes. If the child is a qualifying child of both a parent and a grandparent, the child would be treated as the qualifying child of the parent if both the parent and grandparent claimed the child as a qualifying child for tax-related benefits. The AGI rule for a nonparent only applies if a parent may claim a child as a qualifying child but no parent claims the child as a qualifying child.

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I have a question regarding unmarried biological parents who have two children living in the home. The mother's income qualifies her for the EITC. She claims the children as qualifying children for purposes of Head of Household filing status and the EITC, while the father of the children files single and claims the children as dependents. Is this correct?	No, generally, you cannot split the child-related tax benefits for a qualifying child: EITC, dependency exemption, child tax credit, head of household filing status, credit for child and dependent care expenses and the exclusion for dependent care benefits. There is an exception for divorced or separated parents or parents who live apart. See the next answer for more information on this exception.
I have a client who is divorced and claims his son as a qualifying child for the EITC, because his AGI is higher than the AGI of the child's mother. The father is the noncustodial parent, but the mother agrees to allow him to claim the EITC. Are they doing the right thing?	Probably not. The custodial parent may release the dependency exemption and the child tax credit to the noncustodial parent, but not the EITC. To claim the EITC, the child must have lived with you in the United States for more than half of the year. If his son did not live with him for more than half of the year, the father may not claim the EITC. Here are the rules for divorced parents as stated in Publication 596: Special rule for divorced or separated parents or parents who live apart. A child will be treated as the qualifying child of his or her noncustodial parent (<u>for purposes of claiming an exemption and the child tax credit, but not for the EIC)</u> if all of the following apply: 1. The parents: a. Are divorced or legally separated under a decree of divorce or separate maintenance, b. Are separated under a written separation agreement, or c. Lived apart at all times during the last 6 months of the tax year, whether or not they are or were married. 2. The child received over half of his or her support for the year from the parents. 3. The child is in the custody of one or both parents for more than half of the tax year. 4. Either of the following statements is true. a. The custodial parent signs Form 8332 or a substantially similar statement that he or she will not claim the child as a dependent for the year, and the noncustodial parent attaches the form or statement to his or

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	her return. If the divorce decree or separation agreement went into effect after 1984 and before the current tax year, the noncustodial parent may be able to attach certain pages from the decree or agreement instead of Form 8332. A pre-1985 decree of divorce or separate maintenance or written separation agreement that applies to the current tax year provides that the noncustodial parent can claim the child as a dependent, and the noncustodial parent provides at least $600 for support of the child.

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