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## We Believe in Being Honest: Dependency Exemptions for LDS Missionaries

*Annalee Hickman Moser\**

### INTRODUCTION

Under what circumstances, if any, can American parents take the dependency exemption for their children on missions for The Church of Jesus Christ of Latter-day Saints (“the LDS Church”)? A recent survey indicates that 91% of American parents of LDS missionaries take the dependency exemption for their missionary child for at least one taxable year during which their child is a missionary.<sup>1</sup> These parents are most likely automatically taking the exemption without thinking about it. This current norm calls into question whether these types of missionaries actually meet the legal definition of a dependent. Although many, if not most, missionaries may be eligible as dependents for which their parents may take the exemption for one or more of the two to three calendar years that they are missionaries, the dependency exemption is not automatic and ought to be analyzed for each missionary’s situation for each of the years. This article gives a roadmap for this analysis.

Within this analysis there are two gray areas that the parents can argue in their favor for the dependency exemption, but which areas are not definitively legal, as the ambiguity in these two areas has yet to be addressed by the IRS. These two areas are the residency and support tests under the dependent definition of the United States Tax Code.<sup>2</sup> The residency test specifies certain permitted temporary absences

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1. See *infra* Part III.
2. 26 U.S.C. § 152(c)(1)(B), (D) (2012).

from the “principal place of abode,”<sup>3</sup> but it is unclear whether a mission would be a permitted temporary absence. As for the support test, it is unclear from which sources missionary support comes, as well as which sources of support count in the calculation of the total support under the test. These gray areas can cause confusion among parents in their application to LDS missionaries,<sup>4</sup> and it is likely that some parents are not in compliance with the Tax Code.

Although there is no definitive answer to parents taking the dependency exemption for the missionary children for each taxable year that they are serving missions, parents should be allowed to. Parents should analyze each of their missionary children on a case-by-case and year-by-year basis, focusing on the residency, age/education, and support tests under the dependent definition of the Tax Code.<sup>5</sup> Additionally, parents, in conjunction with the LDS Church, should implement the tax planning strategies discussed in this article in order to maximize the number of years the dependency exemption can most likely be taken legally. Parents should also use the arguments in this article to support their favorable interpretations of the dependent definition set forth in the Tax Code, since, when there is ambiguity in a statute, the taxpayer should be favored.<sup>6</sup> The IRS should allow the arguments in this article to parents, not only because the arguments are compelling, but also because most parents of LDS missionaries are already taking the dependency exemption for their missionaries,<sup>7</sup> there is ambiguity in the statute, and the difference between the children being college students (in which the dependency exemption may be permitted) and the children being LDS missionaries should matter little to the IRS.

Part I of this article gives background on the LDS missionary program and how it currently operates, as well as some history on the changes that have been made to the program. Part II explains the dependency exemption rules from the United States Tax Code, regula-

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3. *Id.* § 152(c)(1)(B).

4. It is not just this set of taxpayers for which this rule causes confusion. *See, e.g.*, Robert S. Steinberg, *The Dependency Exemption for Minor Children: When Following the Rules Pays Off*, 89 FLA. B.J., Jan. 2015, at 38, 38 (“With so many taxpayers claiming a child exemption, one would think that Congress would make the tax code addressing the exemption as simple as possible. However, it is anything but simple.”).

5. *See infra* Part II.

6. *See, e.g.*, 82 C.J.S. *Statutes to Stenographers* § 544 (2016) (“When the meaning of a term providing for taxation is ambiguous, it is construed against the state and in favor of the taxpayer . . .”).

7. *See infra* Part IV.

tions, and IRS Publications. Part III applies the LDS missionary program to the dependency exemption to see when and/or why missionaries should qualify as dependents under the Tax Code. Part IV describes current practices of when American parents of LDS missionaries are taking the dependency exemptions for their missionary children. Part V concludes this article.

## I. BACKGROUND

The LDS Church is a Christian denominational church with (as of 2015) 15,634,199 members worldwide<sup>8</sup> and 6,531,656 members in the United States.<sup>9</sup> One aspect of the LDS Church that sets it apart from many other Christian religions is its emphasis on proselyting through missionary work.<sup>10</sup> While the LDS Church employs, both literally and figuratively, missionaries in a variety of ways, its main “source” of missionaries is through young, single adult men and women. At the end of 2015, there were 74,049 full-time missionaries serving worldwide,<sup>11</sup> most of whom were young, single adults.<sup>12</sup>

Because many religions have missionaries, it is important to distinguish the basics of what it means to be an LDS missionary. In this article, the term “missionary,” refers to a single<sup>13</sup> adult, full-time proselyting missionary for the LDS Church, as opposed to service

8. Brook P. Hales, *Statistical Report, 2015*, THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS (Apr. 2, 2016), <https://www.lds.org/general-conference/2016/04/statistical-report-2015?lang=eng>.

9. *Facts and Statistics: United States*, THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS: NEWSROOM, <http://www.mormonnewsroom.org/facts-and-statistics/country/united-states> (last visited Sept. 28, 2016).

10. See, e.g., HANDBOOK 2: ADMINISTERING THE CHURCH § 2.2 (2010) (“[T]he [LDS] Church focuses on divinely appointed responsibilities . . . includ[ing] . . . gathering Israel through missionary work . . .”). See also Spencer W. Kimball, *A Report of My Stewardship*, THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS (Apr. 4, 1981), <https://www.lds.org/general-conference/1981/04/a-report-of-my-stewardship?lang=eng> (“[T]he mission of the [LDS] Church is threefold, . . .” one fold of which is “[t]o proclaim the gospel of the Lord Jesus Christ to every nation, kindred, tongue, and people . . .”).

11. Hales, *supra* note 8.

12. *Missionary Program*, MORMON NEWSROOM, <http://www.mormonnewsroom.org/topic/missionary-program> (last visited Oct. 6, 2016) (“Most missionaries are young people under the age of 25.”).

13. “Single” in this context means not currently married.

missionaries<sup>14</sup> or senior missionaries<sup>15</sup> for the LDS Church or missionaries of other religions. Missionaries referred to in this article leave behind their families and are assigned by the leaders of the LDS Church to a “mission,” and they have no choice as to their mission location.<sup>16</sup> The LDS Church divides the world, at least the parts where missionaries are permitted by the local governments,<sup>17</sup> into regions called “missions,”<sup>18</sup> and once assigned to a specific mission missionaries may be moved to different areas within their mission during their time as missionaries.<sup>19</sup> They are rarely moved to a different mission. Each is paired with one other missionary, a “companion,” with whom they live and preach.<sup>20</sup> Every so often they may receive a different companion with whom to work, or they may go to a different area to work within the same mission.<sup>21</sup> A “mission president” presides over, guides, and is responsible for all the missionaries in a particular mission, and

14. See generally *Church Service Missionary*, THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, <https://www.lds.org/callings/missionary/church-service-missionary?lang=eng> (last visited Sept. 28, 2016); *Young Church-Service Missionaries*, THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, <https://www.lds.org/callings/missionary/church-service-missionary/yacsm/?lang=eng> (last visited Oct. 5, 2016).

15. See generally *Full-Time Senior Missionaries*, THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, <https://www.lds.org/callings/missionary/senior?lang=eng> (last visited Oct. 5, 2016).

16. See, e.g., *Missionary Program*, *supra* note 12. See also *Preparing to Serve: Frequently Asked Questions from Prospective Missionaries and Their Parents*, THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, <https://www.lds.org/callings/missionary/faqs?lang=eng> (last visited Nov. 11, 2015). Missionaries sometimes are called to mission locations where their native language is not the primary language. *Missionary Program*, *supra* note 12. In these cases, missionaries study and learn throughout their missions the primary language of the areas in which they serve. MISSIONARY HANDBOOK 16 (2010), <https://www.lds.org/manual/missionary-handbook?lang=eng>.

17. *Missionary Program*, *supra* note 12 (“Missionaries . . . are sent only to countries where governments allow the [LDS] Church to operate.”). For example, missionaries are not allowed on mainland China. See *New Church Website Will Help Chinese Nationals, Church Leaders Around the World*, MORMON NEWSROOM (Mar. 15, 2013), <http://www.mormonnewsroom.org/article/china-website-mormons> (“[T]he [LDS] Church has no proselytizing missionaries in the [People’s Republic of China].”). See generally THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS IN CHINA, <http://www.mormonsandchina.org/> (last visited Oct. 6, 2016).

18. *All Missions*, THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, <https://www.lds.org/callings/missionary/mission-maps/all?lang=eng> (last visited Oct. 6, 2016). There are currently over 300 LDS missions to which a missionary can be assigned. *Preparing to Serve: Frequently Asked Questions from Prospective Missionaries and Their Parents*, *supra* note 16.

19. Brief of the Church of Jesus Christ of Latter-day Saints as Amicus Curiae in Support of Petitioners at 14, *Davis v. United States*, 495 U.S. 472 (1990) (No. 89-98) [hereinafter Brief of the LDS Church] (“Generally, each missionary is moved from one area to another every three to six months.”).

20. MISSIONARY HANDBOOK, *supra* note 16, at 5–6.

21. *Id.* at 5–6, 33.

missionaries report to him their progress and problems, if any.<sup>22</sup> Each day of their mission, missionaries follow a strict schedule of proselytizing.<sup>23</sup> They have little discretion over how to spend their time.<sup>24</sup> They are told what to wear,<sup>25</sup> where to live,<sup>26</sup> and where they can go.<sup>27</sup> They are not paid for their missionary service, but their basic needs are provided for.<sup>28</sup> They dedicate all their time for the length of their missions to their Lord and the LDS Church.<sup>29</sup>

Young adult LDS members must meet certain requirements in order to go on a mission. Men need to be at least eighteen years old, and women need to be at least nineteen years old.<sup>30</sup> They commit to being missionaries for the required length of time: two years for men and eighteen months for women.<sup>31</sup> They agree to minimal contact with their families and friends.<sup>32</sup> They forgo their education and/or jobs in order to preach the gospel of Christ.<sup>33</sup> They keep themselves morally clean<sup>34</sup> and live the commandments set forth by the LDS Church.<sup>35</sup>

Missionaries must also contribute \$400 monthly to missionary work.<sup>36</sup> These \$400 monthly payments are expected to be paid for each missionary each month that he/she is serving a mission.<sup>37</sup> The monthly

22. *Id.* at 5–6.

23. *Id.* at 13–15.

24. *See, e.g., id.* *See also* Brief of the LDS Church, *supra* note 19, at 7 (“[M]issionaries face a rigorous schedule of work with essentially no time for personal pleasure, sight-seeing or relaxation.”).

25. Brief of the LDS Church, *supra* note 19, at 10–13.

26. *Id.* at 5, 45.

27. *Id.*

28. *Id.* at 5 (“[T]he [LDS] Church’s financing plan for its missionaries still stresses the concept of an unpaid ministry, living at the level of barest necessity . . .”).

29. *Id.* at 7.

30. Thomas S. Monson, *Welcome to Conference*, THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS (Oct. 6, 2012), <https://www.lds.org/general-conference/2012/10/welcome-to-conference?lang=eng&media=video>.

31. *Missionary Program*, *supra* note 12.

32. MISSIONARY HANDBOOK, *supra* note 16, at 20–21, 37–38 (weekly emails plus phone calls twice a year with parents).

33. *See* Brief of the LDS Church, *supra* note 19, at 11 (“[A] mission represents an interruption in schooling.”).

34. MISSIONARY HANDBOOK, *supra* note 16, at 28.

35. MISSIONARY HANDBOOK, *supra* note 16, at 3–4, 7–8.

36. *See, e.g.,* Michael De Groot, *Saving for Souls: Sending a Missionary Out Can Be Cheaper than Leaving Them at Home*, DESERT NEWS: MONEYWISE (Dec. 28, 2012, 11:40 AM), <http://www.deseretnews.com/article/865569562/Saving-for-souls-Sending-a-missionary-out-can-be-cheaper-than-leaving-them-at-home.html?pg=all> (“The current standardized cost is \$400 for missionaries from the U.S.”).

37. *See Church Equalizes Costs for Single U.S. and Canadian Missionaries*, THE

payments can be paid by the missionaries themselves, their parents, their friends, and/or their extended family.<sup>38</sup> If some of the monthly payments still cannot be afforded, local LDS Church members may contribute.<sup>39</sup> As long as the aggregate amount from these different payment sources for each missionary equals \$400/month, the LDS Church leaders give no further guidance on how the money is paid.<sup>40</sup> In practice, many parents in the United States pay at least some, if not all, of the monthly payments for their child's mission.<sup>41</sup> Additionally, in practice, the LDS Church leaders, when approving a young adult for a mission, require a plan to be in place for how the \$400 monthly payments will be made each month he/she is on a mission.<sup>42</sup> The leaders emphasize that the money should be paid first by the individual and/or his/her family, and then, if that is insufficient, a plan that involves local LDS Church members is set up for the rest of the amount.<sup>43</sup> In short, and in practice, missionaries understand that it is their responsibility that the \$400 monthly payments be paid on their behalf throughout their mission.

It is this practice, even policy if you will, that might confuse some parents of LDS missionaries about whether these monthly payments are their "support" for their missionary children. Facially, it appears to be support, for that money seems to be used as support to feed and house their missionary children during their mission since, in practice, missionaries pay this amount in order to be allowed to go on a mission.

However, even though not well-known or well-publicized within the LDS Church, these \$400 monthly payments, regardless of who pays them, are not considered support as defined by the Tax Code, and are not support because the LDS Church chose it to be that way. The

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CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS (Feb. 1991), <https://www.lds.org/en-sign/1991/02/news-of-the-church/church-equalizes-costs-for-single-us-and-canadian-missionaries?lang=eng>.

38. *See id.*

39. *See id.*

40. *See id.*

41. It feels appropriate here to apologize for the first of many "in practice" comments. Due to the nature of this subject of LDS missionaries, most of what is known about the LDS missionary program and the practices of current LDS missionaries and their families comes from a lifetime of personal involvement with the LDS Church and the LDS missionary program. So, for many of the aspects of the LDS missionary program that are discussed, the reader will simply have to accept that.

42. *See Church Equalizes Costs for Single U.S. and Canadian Missionaries, supra* note 37 (The local LDS Church leader "will be responsible to see that funds are available to meet the requirements of the missionaries called and sent from his [local congregation].").

43. *See id.*

LDS Church chose this money to be considered by the Tax Code as “charitable contributions.”<sup>44</sup> Before this “choice,” parents in the United States paid different amounts of money on behalf of their missionary children, depending on the cost of the specific mission in which those children served. If the children were assigned to missions in the United States, then this money was actually sent directly to and spent personally by the missionary children.<sup>45</sup> However, after a series of litigated cases and a related Revenue Ruling, the LDS Church changed the LDS missionary program payment system to comply with the charitable contributions section of the Tax Code.

In the Tenth Circuit case of *White v. United States*, a couple sent their LDS missionary child a monetary amount each month, in order to support him, which amount was set by the LDS Church and was chosen specifically for the area in which the child served based on the living cost of that area.<sup>46</sup> This amount was given directly from the parents to their child, and the parents claimed this amount under the Tax Code as a charitable contribution.<sup>47</sup> The Tenth Circuit held that the monetary support could be deducted as a charitable donation because the money’s purpose was primarily to benefit the LDS Church as the missionary child was “working” for the LDS Church, in that the missionary child represented the LDS Church and exclusively dedicated his time to teaching others about the LDS Church, even if the money was going directly to him.<sup>48</sup>

*White* was then abrogated by a 1990 Supreme Court ruling; *Davis v. United States* consisted of essentially the same facts as *White*, yet the Supreme Court held that the monetary support could not be deducted as a charitable contribution under that Tax Code section.<sup>49</sup>

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44. See generally K.C. Jensen, *Tax Deductions for Payments for Mormon Missionaries*, 4 BYUJ. PUB. L. 115 (1990).

45. See, e.g., *Davis v. United States*, 495 U.S. 472, 476 (1990) (“[The taxpaying parents] transferred to [their missionary child’s] personal checking account, on which he was the sole authorized signatory, [the amount stipulated by the LDS Church for the duration of the child’s mission].”). See also Brief of the LDS Church, *supra* note 19, at 2 (The taxpaying parents [paid] their donations directly to [their missionary children].” For many missions outside the United States, the missionary children also may have received the money directly. This was likely the ideal that the LDS Church strove for. Only if a mission was in a country where money could not be sent directly to the missionary children did the money get funneled through the LDS Church and/or the leaders in the mission.

46. *White v. United States*, 725 F.2d 1269, 1270 (10th Cir. 1984).

47. *Id.* See 26 U.S.C. § 170 (2012) for the Tax Code section on charitable contributions.

48. *White*, 725 F.2d at 1272.

49. *Davis*, 495 U.S. at 489. Note that while this case was decided in 1990, the tax years in question were 1980 and 1981.

However, *Davis* shortly became moot because six months after it was decided, the LDS Church changed the way it supported its missionaries.<sup>50</sup> The change, which is still currently in place, is a policy called “equalized contribution,” which applies to all missionaries from the United States.<sup>51</sup> The policy is that a contribution of a fixed rate, regardless of the area of the world in which the missionary is serving, is paid to the LDS Church directly for each month the child is a missionary.<sup>52</sup> While the fixed rate, when the policy was instigated, was monthly payments of \$350,<sup>53</sup> the contribution rate is currently monthly payments of \$400.<sup>54</sup> Furthermore, the LDS Church has an internal policy that a missionary’s service is not contingent on the \$400 monthly payments on behalf of the missionary.<sup>55</sup> Additionally, there is a “General Missionary Fund,” to which all members are invited to contribute, even if they do not have a child currently serving a mission.<sup>56</sup> Contributions to this fund go towards supporting missionaries all over the world.<sup>57</sup>

50. See, e.g., *Church Equalizes Costs for Single U.S. and Canadian Missionaries*, *supra* note 37 (explaining that a letter was sent to the LDS Church leaders in November 1990 about the new equalized contributions that would make up the LDS missionary payment program from now on and that the contributions would be monthly payments of \$350 for any missionary from the United States). See also JoAnn Jacobsen-Wells, *LDS Church Equalizes Missionary Funds*, DESERET NEWS (Nov. 26, 1990 12:00 AM), <http://www.deseretnews.com/article/134397/LDS-CHURCH-EQUALIZES-MISSIONARY-FUNDING.html?pg=all>.

51. See *Church Equalizes Costs for Single U.S. and Canadian Missionaries*, *supra* note 37.

52. See *id.*

53. See *id.*

54. See De Groot, *supra* note 36. It is unknown in what year the change was made from \$350 monthly payments to \$400 monthly payments.

55. This internal policy was revealed through a personal conversation with Brigham Young University Law School Professor J. Clifton Fleming, Jr. He, with others, encouraged the LDS Church’s lawyers to implement this policy because it would solidify the monthly payments as charitable contributions in the eyes of the IRS. See *infra* notes 58–59 with accompanying text. However, this internal policy is not publicized or well-known among LDS members; parents are not made aware that if they stop paying the \$400 monthly payments, then their children can still stay on their missions. This unawareness begs the question if this LDS missionary payment system is truly set up to the standards required of a “charitable contribution.”

56. See Thomas S. Monson, *Welcome to Conference*, THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS (Apr. 2013), <https://www.lds.org/general-conference/2013/04/welcome-to-conference?lang=eng> (the President of the LDS Church addressing all the LDS members in the world) (“[B]ecause many of our missionaries come from modest circumstances, [you are invited], as you are able, to contribute generously to the General Missionary Fund of the [LDS] Church.”).

57. See *id.* In particular, the General Missionary Fund is used to support poorer missionaries from countries other than the United States. See, e.g., *id.* See also *Donate to Missionary Fund*, LDS PHILANTHROPIES, <https://www.ldsphilanthropies.org/missionary.html> (last visited

According to Brigham Young University Law School Professor J. Clifton Fleming, Jr., these changes, with the missionary payment system, were based on an example about a church that sponsored a parochial school, published in *Revenue Ruling* 83-104 in 1983.<sup>58</sup> In Fleming's own analysis, *Revenue Ruling* 83-104 held that

a payment by the parent of a student to the church that sponsors the parochial school is deductible [as a charitable deduction] if (1) the payment is not required as a condition of the child's admission, (2) contributions are received by the church from contributors other than parents of students, (3) aggregate contributions from parents are not significantly larger than aggregate contributions from other contributors, and (4) the school's continued operation is not dependent on parental contributions to the church.<sup>59</sup>

While the LDS Church was already aware of this revenue ruling, Fleming, with others, used the analysis from this example as a roadmap to give more confidence to the LDS Church that it should make its missionary payment system set up as per this analysis, and the LDS Church obliged. Thus, these changes removed any concern that prior courts, such as those in *White* and *Davis*, had about these missionary, monetary contributions being considered charitable deductions.

Since the LDS Church deliberately chose for its missionary payment program to be in compliance with charitable contribution rules, the \$400 monthly payments are deductible as Schedule A charitable contributions and cannot be considered support to the individual missionary children. The reasoning behind this is the classic tax principle that along with no double taxation<sup>60</sup> comes no double deductions.<sup>61</sup>

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Oct. 6, 2016) (Not all "young men and young women from around the globe . . . have the financial resources . . . to fully fund a full-time mission. Generous donors provide needed funding so that all who want to serve a full-time mission may do so.").

58. Rev. Rul. 83-104, 1983-2 C.B. 46.

59. JOSEPH M. DODGE, J. CLIFTON FLEMING, JR., & ROBERT J. PERONI, *FEDERAL INCOME TAX: DOCTRINE, STRUCTURE, AND POLICY* 363 n.1 (4th ed. 2012).

60. For an explanation of "double taxation," see, for example, 14A *FLETCHER CYCLOPEDIA OF THE LAW OF CORPORATIONS* § 6948 (2015). See also 84 C.J.S. *Taxation* § 60 (2015).

61. The term "double deduction" first appeared in *Comm'r v. Crane* and was used by the Supreme Court. *Comm'r v. Crane*, 153 F.2d 504, 505 (2d Cir. 1945), *aff'd*, 331 U.S. 1 (1947). Since then, the term has become a well-established and often-applied principle. See, e.g., *FEDERAL TAX COORDINATOR* ¶ L-1005 (2d ed. 1991) ("[D]ouble deductions are not permitted."). See also Diane M. Anderson, *Federal Income Tax Treatment of Nonrecourse Debt*, 82 *COLUM. L. REV.* 1498, 1502-03 (1982); Nancy B. Nichols et al., *Dependency Exemption Issues for College Students*, 41 *THE TAX ADVISER*, Aug. 2010, at 546, 553. ("No double benefits are allowed for the same qualified education expenses. . . . [In other words,] [t]he same expenses cannot be used for more than one benefit."); W. Wade Sutton, Jr., *Duquesne and Ilfeld: A Risen*

Therefore, these monthly missionary payments likely cannot be both charitable contributions and “support” for a particular missionary because then taxpayers would be essentially receiving double deductions for the same dollars.<sup>62</sup> However, the IRS has not confirmed this.

With the strictness of the missionary work and all the requirements, it may seem surprising that the LDS Church had, and continues to have, many missionaries. When Gordon B. Hinckley, President of the LDS Church from 1995 to 2008, was asked at a news conference how the LDS Church recruits so many missionaries, he replied, “[W]e simply ask them.”<sup>63</sup> Further, the number of missionaries continues to increase. Since the end of 2012, the number of missionaries has increased by 44%.<sup>64</sup>

Missionaries are a major part not only of the growth of the LDS Church but of LDS families. Due to the doctrinal and cultural expectation that young men serve missions, with women also permitted to serve but not under the same “mandate” as the young men,<sup>65</sup> it is likely that the majority of faithful LDS parents have sent at least one child on a mission.

With missionary children being so commonplace, it is surprising that the United States federal tax ramifications of having a child on an LDS mission are not legally definite and are minimally understood, if at all, by (American<sup>66</sup>) missionary parents,<sup>67</sup> especially when it comes to the Tax Code’s allowance of the dependency exemption.<sup>68</sup> Some

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*Phoenix or an Entirely Different Animal?*, 41 J. CORP. TAX’N 28, 31 (2014) (“[T]here are cases in which a single taxpayer claims a double deduction arising out of a single transaction. Taxpayers invariably lose these cases . . .”).

62. While this principle of double deductions has never been applied to the deductions of the same money given for charitable contributions and used as support for the qualified relative test, it is very likely that this principle would be applied if it were brought to the attention of the IRS.

63. Gordon B. Hinckley, *The Miracle of Faith*, THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS (Apr. 2001), <https://www.lds.org/general-conference/2001/04/the-miracle-of-faith?lang=eng>.

64. Brady McCombs, *Number of LDS Converts, Missionaries Increasing; Conversion Rate Declines*, DESERET NEWS (Apr. 17, 2015, 4:20 PM), <http://www.deseretnews.com/article/865626695/Number-of-LDS-converts-missionaries-increasing-conversion-rate-declines.html?pg=all>.

65. Monson, *supra* note 30.

66. While the LDS Church is a worldwide church, *see supra* note 8 and accompanying text, and, therefore, there are parents from many countries that have children on missions, this article limits the scope of parents discussed to parents that are U.S. citizens.

67. *See infra* Part IV.

68. *See* 26 U.S.C. §§ 151–152 (2012) for the current text of the dependency exemption and *Publication 501: Exemptions, Standard Deduction, and Filing Information*, IRS, 1, 11–23

may argue that it appears odd that the dependency exemption is even relevant in the case of parents of LDS missionaries. They assume that since missionaries serve at age eighteen or later, missionaries are independent of their parents by that point in their lives and cannot be considered dependent on their parents. However, in practice, most U.S. citizen missionaries attend college in the months leading up to and following their missions and/or are still significantly financially supported by their parents during those months. As a result, many parents continue the habit of taking the dependency exemption for their missionary children without looking closely at, for the given taxable year,<sup>69</sup> whether those children meet the definition of a dependent.<sup>70</sup>

The rationale for this habit is complicated at best. One argument is that these missionary children should be taking the personal exemption themselves.<sup>71</sup> While this seems logical, the Tax Code does not allow them to do this *if* they do in fact meet the definition of a dependent.<sup>72</sup> Simply put, a personal exemption and a dependency exemption cannot be taken by two different people for the same person.<sup>73</sup> So, the question becomes, are many missionary children not taking the personal exemptions because they truly cannot or because their parents are, in essence, appropriating the opportunity from them without giving the children a choice (even though the Tax Code does not allow a choice in this situation<sup>74</sup>)? While wrong, the majority of these children probably assume that they cannot take the personal exemptions for themselves. This situation is further complicated because many parents (1) might not tell their missionary children that they can take personal exemptions, (2) might believe it is their right to take dependency exemptions for their missionary children because the personal exemp-

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(2015), <https://www.irs.gov/pub/irs-pdf/p501.pdf> [hereinafter *Publication 501*] for an IRS publication explaining the dependency exemption.

69. Throughout this article, the term “taxable year” refers to the calendar year from January through December. There are a few instances where parents’ taxable years might not fall on the calendar year. Those instances are but a few. So, for consistency purposes in this article, the taxable year is assumed to be the calendar year.

70. See *infra* Part IV.

71. The Tax Code allows deductions for personal exemptions and dependency exemptions. 26 U.S.C. § 151 (2012).

72. *Id.* § 151(d)(2).

73. *Id.* Nonetheless, “something as simple as which taxpayer claims the exemption deduction (parent or child) can have numerous tax consequences.” Nichols, *supra* note 61, at 549. These tax consequences lead many parents to strategically influence their children so that their children meet the dependency definition. See *id.*

74. See 26 U.S.C. § 151(d)(2) (2012).

tions will not benefit their missionary children's taxable income anyway,<sup>75</sup> and/or (3) might not even realize that they may not legally be permitted to take the dependency exemptions.

## II. THE DEPENDENCY EXEMPTION

26 U.S.C. § 151 allows a taxpayer to receive an exemption for each dependent the taxpayer has,<sup>76</sup> and 26 U.S.C. § 152 defines a dependent; at its simplest level, a dependent is a person who is either a "qualifying child" or a "qualifying relative" of the taxpayer.<sup>77</sup>

### A. The Qualifying Child Test

There are five sub-tests to be met for a person to be a qualifying child, and therefore a dependent, of a taxpayer.

First, to pass the relationship test, the person and taxpayer must have one of the relationships listed in 26 U.S.C. § 152(c)(2).<sup>78</sup> A few of the permitted relationships listed are child and parent; descendent of the parent's child and parent; and siblings.<sup>79</sup>

Second, to pass the residency test, the person must have "the same

75. For the 2015 taxable year, the amount that taxpayers could deduct for the personal and dependency exemptions was \$4000 per exemption. *Publication 501*, *supra* note 68. These amounts are deducted from taxpayers' adjustable gross incomes, lowering their taxable incomes so that they pay taxes on a smaller amount. 26 U.S.C. § 151(a) (2012). The truth of the matter is children often do not earn (much) money, do not pay taxes, and do not need the personal exemptions. See Joseph D. Beams & John W. Briggs, *Tax Planning for Parents of College Students: Help Clients Form a Strategy from the Code's Array of Options*, 213 J. ACCT., Mar. 2012, at 50, 51 ("Most students have little to no tax liability while in [college]; therefore, it is usually beneficial for their parents or guardians to claim them as dependents.").

76. 26 U.S.C. § 151 (2012).

77. *Id.* § 152(a). The dependency exemption was enacted in 1917. 35 Ch. 9A U.S. COMPILED STAT. § 6336g[a] (1918) (originally enacted as Act of Oct. 3, 1917, ch. 63, § 1203(1), 40 Stat. 300, 331 (amending Act of Sept. 8, 1916, ch. 463, tit. I, Part I, 39 Stat. 756, 761)) ("Provided further, that if the person making the return is the head of a family there shall be an additional exemption of \$200 for each child dependent upon such person, if under eighteen years of age."). The exemption amount was "relatively small" in 1917. Michael J. McIntyre & Oliver Oldman, *Taxation of the Family in a Comprehensive and Simplified Income Tax*, 90 HARV. L. REV. 1573, 1600 (1977). However, it has since grown to \$4000. *Publication 501*, *supra* note 68. The dependency exemption sections in the Tax Code have changed as well. After the enactment of the dependency exemption, there was no definition of a dependent beyond a child under eighteen years old until 1944. 26 U.S.C. § 25(b)(3) (Supp. V 1945) (originally enacted as Act of May 29, 1944, ch. 210, § 10, 58 Stat. 231, 239) ("[T]he term 'dependent' means any of the following persons over half of whose support, for the calendar year, . . . was received from the taxpayer.").

78. 26 U.S.C. § 152(c)(1)(A) (2012); *Publication 501*, *supra* note 68, at 13.

79. 26 U.S.C. § 152(c)(2) (2012).

principal place of abode as the taxpayer” for more than half of the taxable year.<sup>80</sup> The regulations to the Tax Code describe “temporary absences,” which do not prevent the residency test from being met.<sup>81</sup> Explicitly, the regulations list illness, business, education, vacation, and military service as temporary absences. The time spent away from the principal place of abode of the taxpaying parent because of any of these activities (if “illness” can be called an activity) will not count against the possible dependent’s minimum of six months and a day to meet the residency test.<sup>82</sup>

Third, to pass the age/education test, the person must not have turned nineteen by the end of the taxable year or the person must have been a student and not have reached age twenty-four by the end of the taxable year.<sup>83</sup> “Student” is defined as a “full-time student at an educational organization.”<sup>84</sup> “Full-time” means a student “is enrolled for some part of [five] calendar months for the number of hours or courses which is considered to be full-time attendance” at the educational organization/institution at which the student is enrolled.<sup>85</sup> Full-time at most colleges is at least twelve hours of credits per semester.<sup>86</sup> Notice that because “some part” precedes the “[five] calendar months” requirement, it is unambiguously not necessary for the student to be enrolled in school for the entire month for that month to count for purposes of meeting the five-month threshold.<sup>87</sup> The regulations further explain that the five calendar months “need not be consecutive” during the taxable year in question.<sup>88</sup>

An “educational organization” is one that “normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.”<sup>89</sup> The regulations, which call it an “educational institution,” say it must “maintain[]” an “estab-

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80. *Id.* § 152(c)(1)(B); *Publication 501*, *supra* note 68, at 14–15.

81. 26 C.F.R. § 1.152-1(b) (2016).

82. *Id.*

83. 26 U.S.C. § 152(c)(1)(C) (2012); *Publication 501*, *supra* note 68, at 13–14.

84. 26 U.S.C. § 152(f)(2)(A) (2012).

85. 26 C.F.R. § 1.151-3(b) (2016).

86. Beams & Briggs, *supra* note 75, at 51.

87. *See* 26 C.F.R. § 1.151-3(b) (2016).

88. *Id.*

89. 26 U.S.C. § 170(b)(1)(A)(ii) (2012).

lished” curriculum and have “an organized body of students in attendance.”<sup>90</sup> Why the regulations use the term “educational institution” and the Tax Code uses the term “educational organization” is unclear, but there is no commentary in any published sources to suggest that these two terms are not referring to the same idea or that these two terms have different standards to meet their definitions. The regulations also explicitly list the following as included under the umbrella of educational institutions: “primary and secondary schools, colleges, universities, normal schools, technical schools, mechanical schools, and similar institutions”; “noneducational institutions, on-the-job training, correspondence schools, night schools, and so forth” are not included.<sup>91</sup>

Fourth, to pass the support test, the person must not have provided more than half of his/her own support for the taxable year.<sup>92</sup> Support includes “food, shelter, clothing, medical and dental care, education, and the like.”<sup>93</sup> Further, the regulations explain, “Generally, the amount of an item of support will be the amount of expense incurred by the one furnishing such item. If the item of support furnished an individual is in the form of property or lodging, it will be necessary to measure the amount of such item of support in terms of its fair market value.”<sup>94</sup> Scholarships received by the student do not count towards the support that the student provides for him/herself.<sup>95</sup> “A person’s own funds are not support unless they are actually spent for support,” and recreation, transportation, and travel all fall under the umbrella as “support,” according to the “Worksheet for Determining Support.”<sup>96</sup>

Fifth, to pass the joint return test, the person must not have filed a

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90. 26 C.F.R. § 1.151-3(c) (2016).

91. *Id.*

92. 26 U.S.C. § 152(c)(1)(D) (2012); *Publication 501*, *supra* note 68, at 14. Note that the support test for the qualifying child test is different from the support test for the qualifying relative test. *See infra* text accompanying note 102. However, both these support tests used to be the same. Prior to 2005, the support test for the qualifying child test was satisfied when “over half [of the person’s] support, for the calendar year, . . . was received from the *taxpayer*.” 26 U.S.C. § 152(a) (Supp. II 1954) (emphasis added), *amended by* 26 U.S.C. § 152(c)(1)(D) (Supp. IV 2004) (requiring only that the *individual* must not have provided more than half of his/her own support).

93. 26 C.F.R. § 1.152-1(a)(2)(i) (2016).

94. *Id.*

95. 26 U.S.C. § 152(f)(5) (2012).

96. *Publication 501*, *supra* note 68, at 16, 20. Note that in this paragraph are the definitions and rules of support pertinent to the majority of missionaries and their parents. However, for the entirety of the rules and specific examples for the support test, see 26 C.F.R. § 1.152-1(a) (2016) and *Publication 501*, *supra* note 68, at 15–16, 20–22.

joint tax return, with the exception of a claim of refund.<sup>97</sup>

### *B. The Qualifying Relative Test*

The qualifying relative test is the second option for a person to meet the dependent definition in the Tax Code. It has the four following sub-tests.

First, to pass the relationship test, the person and the taxpayer must have one of the relationships listed in 26 U.S.C § 152(d)(2).<sup>98</sup> Some of the permitted relationships listed include those for the relationship test under the qualifying child test as well as allowing the person to be the parent of the taxpayer.<sup>99</sup>

Second, to pass the income test, the person must have a gross income for the taxable year of less than \$4000.<sup>100</sup> Generally whenever the dependency exemption amount increases, this gross income threshold usually increases by the same amount.<sup>101</sup>

Third, to pass the support test, the taxpayer must provide over half the support of the person.<sup>102</sup> The definitions for “support” are the same under this test as they are under the support test for the qualifying child test.<sup>103</sup> This support test is different from the support test for the qualifying child test in regard to who has to be the one to provide more than half the support of the missionary. Here, the taxpayer must provide more than half of the support; in the qualified child test, the person cannot provide more than half of his/her own support.

Fourth, to pass the not-a-qualifying-child test, the person must fail the qualifying child test.<sup>104</sup>

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97. 26 U.S.C. § 152(c)(1)(E) (2012); *Publication 501*, *supra* note 68, at 15.

98. 26 U.S.C. § 152(d)(1)(A) (2012); *Publication 501*, *supra* note 68, at 19.

99. 26 U.S.C. § 152(d)(2) (2012).

100. *Id.* § 152(d)(1)(B); *Publication 501*, *supra* note 68, at 19.

101. This generalization comes from personal observation year after year as the exemption amount increases so does the gross income amount identically increase. *See Personal and Dependent Exemptions: Facts About Claiming Exemptions on Your Tax Return*, IRS, <https://www.irs.com/articles/personal-and-dependent-exemptions> (last visited Oct. 7, 2016) (“The amount of the . . . dependent exemption often changes from year-to-year; it usually increases by \$50 annually to adjust for inflation.”).

102. 26 U.S.C. § 152(d)(1)(C) (2012); *Publication 501*, *supra* note 68, at 20–23.

103. *See supra* notes 93–96 and accompanying text.

104. 26 U.S.C. § 152(d)(1)(D) (2012); *Publication 501*, *supra* note 68, at 18–19.

### III. THE LDS MISSIONARY PROGRAM AND THE DEPENDENCY EXEMPTION

Because the LDS missionary program is unique to itself, this article makes a few general assumptions of all LDS missionaries from the United States, which may not necessarily be true in every case, because it will be easier to consider further the parts of the dependency exemption that are most applicable to the majority of parents of LDS missionaries from the United States. The following are assumed to be true for purposes of my analysis: all LDS missionaries that lived in the United States before their missions are U.S. citizens, have parents that are U.S. citizens, have no dependents of their own, and are not currently married.<sup>105</sup>

These assumptions allow the analysis of the dependency exemption to LDS missionaries to move to the relevant sub-tests of the qualifying child test found in 26 U.S.C. § 152(c). It is only after a possible dependent has not succeeded in passing the qualifying child test does the Tax Code then allow the possible dependent to go through the qualifying relative test.<sup>106</sup> Thus, the analysis begins with the application of the qualifying child test to LDS missionaries before looking at the qualifying relative test.

#### *A. LDS Missionaries as Qualifying Children*

The relationship and joint return tests are satisfied for the purposes of this analysis due to the assumptions made previously in this article.<sup>107</sup> The first relationship listed in 26 U.S.C. § 152(c)(2) is child of the taxpayer, so the relationship test is satisfied. Missionaries cannot be married so the joint return test is satisfied. The residency, age/education, and support tests have terms that are further explained in 26 C.F.R. § 1.152-1, and an understanding of these terms becomes important when fleshing out how missionaries meet, or do not meet, these sub-tests.

For the residency test to be satisfied, the missionary must have the same principal place of abode as his/her taxpaying parent for more than

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105. Some of these assumptions must be true or else these young adults could not serve missions, namely that they cannot have any children that are dependent on them, and they cannot be currently married.

106. 26 U.S.C. § 152(d)(1)(D) (2012).

107. See *supra* note 105 and accompanying text.

half of the taxable year.<sup>108</sup> Missionaries who serve the full amount of time assigned by the LDS Church are gone during either two or three taxable years, depending on when they begin their service<sup>109</sup> and if they are male or female.<sup>110</sup> If children leave for their missions on July 3<sup>rd</sup> or later, then it is safe to assume the residency test will be met for that taxable year, for the majority of children before their missions either live at home or are away because of education.<sup>111</sup> The same analysis is true for the last taxable year of the children's missions if they return home from their missions before July 3<sup>rd</sup>. Thus, it is only for years in which neither of these situations is true that will cause the need for more understanding and strategy regarding the residency test.

Facially, the explicit list of temporary absences permitted under the residency test does not include missionary work. It is conceivable that the IRS, if auditing a parent of an LDS missionary that took a dependency exemption for that missionary child who was on his/her mission for more than six months during the taxable year, may argue that a mission does not count as a temporary absence. However, thus far in tax law, neither this question, nor a question similar to it, has been explored.<sup>112</sup>

Taxpaying parents have several strong arguments that they could make to the IRS. First, they could argue that the mission falls under one of the explicit temporary absence examples. Perhaps, the LDS Church could choose to define the missionary program to help taxpaying parents of missionaries in this strategy. It could explicitly state on its website that missions are a form of education for the missionaries or a form of business for the LDS Church. In fact, the LDS Church currently refers to the missionary program as missionary "work,"<sup>113</sup> so parents have a strong argument that the missionary program is already

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108. 26 U.S.C. § 152(c)(1)(B) (2012).

109. The LDS Church staggers throughout the year when missionaries begin service, making the month that a missionary begins service a factor that needs to be examined on a case-by-case basis by the taxpaying parents and/or their accountants.

110. See *supra* note 31 and accompanying text.

111. Education is one of the explicit temporary absences permitted by the regulations that allow the residency test to still be met. 26 C.F.R. § 1.152-1(b) (2016).

112. As of December 18, 2015, there appeared to be no Private Letter Rulings or Tax Court opinions that addressed a situation like a religious, temporary mission for a young adult nor even a situation involving a possible dependent as a volunteer living away from home.

113. See *Missionary Work*, THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, <https://www.lds.org/topics/missionary-work?lang=eng> (last visited Sept. 28, 2016).

considered a business<sup>114</sup> and that their missionary children are “working” for the LDS Church and so a mission is already one of the explicit temporary absences. The IRS should interpret the LDS missionary program as a business in regards to the residency test.

Another possible argument is that missions meet the following description of a temporary absence found in the regulations: “temporary absence due to special circumstances” and “[a] nonpermanent failure to occupy the common abode.”<sup>115</sup> As it is set up right now, the LDS missionary program is definitely temporary and nonpermanent. This is evidenced by the expected length of missions, the LDS Church-wide practice that missionaries cannot extend their missions beyond the assigned time, and the types of visas missionaries traveling to other countries obtain. Further, in practice, the locations of missionaries’ driver’s licenses, bank accounts, LDS Church membership records, and voting registration do not change on account of their missions. And lastly, other than the two suitcases that they take with them on their missions,<sup>116</sup> in practice, all of the missionaries’ belongings stay in their bedrooms in their parents’ homes.

The parents could also argue that the language in *Publication 501—Exemptions, Standard Deduction, and Filing Information*—leaves open a possibility to add exceptions to the residency test because the list is non-exhaustive. The language relevant to this argument is emphasized in the following excerpt: “Your child is considered to have lived with you during periods of time when one of you, or both, are temporarily absent due to special circumstances *such as* illness, education, business, vacation, military service, or detention in a juvenile facility.”<sup>117</sup> “Such as” allows for the interpretation that there could be other examples as well that are similar to those made explicit by the list, but they are simply not explicitly written down. The taxpaying parent could argue the statutory construction rule of *ejusdem generis* that a temporary religious mission could be an unwritten exception

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114. As of December 22, 2015, there appeared to be no Private Letter Rulings or Tax Court opinions that addressed specific situations that were considered “business” for the purposes of meeting the temporary absence exception to the residency requirement.

115. 26 C.F.R. § 1.152-1(b) (2016).

116. Missionaries are not allowed to take more personal items than two fifty-pound suitcases with them on their missions. *General Travel Information*, THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, <https://www.lds.org/callings/missionary/missionary-travel/general-travel-information?lang=eng> (last visited Oct. 7, 2016).

117. *Publication 501*, *supra* note 68, at 14 (emphasis added).

that is simply like the others listed in this non-exhaustive list.<sup>118</sup> One main weakness in this argument is that the “such as” language comes from an IRS publication and not the Code section nor the regulations, both of which are more binding than an IRS publication.<sup>119</sup> However, even without the “such as” language, *ejusdem generis* would still apply, meaning this argument is very strong and should be upheld by the IRS.

The age/education test has two different options for satisfying it—the missionary must not have turned nineteen by the end of the taxable year *or* the missionary must have been a student and not have reached age twenty-four by the end of the taxable year.<sup>120</sup> While the age option is straightforward, the education option has two prongs that must be met in order to satisfy the age/education test. The second prong, that a child cannot have reached age twenty-four by the end of the taxable year, is a prong that is met by the majority of LDS missionaries; while males and females can be twenty-four or older when serving a mission, the vast majority will be (much) younger.

While the residency and support tests for the qualifying child test may possibly be met every year that children are missionaries, all missionaries will fail the age/education test, and thereby fail the qualifying child test, for at least one taxable year during their missions. Because female missionaries have to be at least nineteen years old to serve, they will always fail the age option to satisfy the age/education test. In regards to male missionaries, all of them will fail the first option for a given taxable year unless they are still eighteen years old by December 31.

As for the education option, all missionaries will fail this option for at least one taxable year, if not more. Children will fail the education option for the given taxable years that they are not in school full-time for at least five calendar months. This means that if children do not go to college after high school, they will fail the education option for the taxable years after the taxable year that they graduated high school. Children will also fail if they attend school but are taking less than twelve credits. Children will also fail if they are missionaries every day of a given taxable year.<sup>121</sup>

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118. See Max Radin, *Statutory Interpretation*, 43 HARV. L. REV. 863, 873–75 (1930).

119. See *Understanding IRS Guidance: A Brief Primer*, IRS, <https://www.irs.gov/uac/Understanding-IRS-Guidance-A-Brief-Primer> (last updated July 6, 2016).

120. 26 U.S.C. § 152(c)(1)(C), (3)(A) (2012).

121. There are no compelling arguments or tax planning strategies that can be implemented so that missionaries doing missionary work during their missions are considered students. Furthermore, the LDS Church seems to agree. See Brief of the LDS Church, *supra* note 19, at

Consider what happens when children barely fail this prong under the age/education test. Can any tax strategy help? A situation where children barely fail this prong is when they leave or return for the missions in the summer time and therefore attend either the winter semester before their missions or the fall semester after their missions of that same taxable year but when those semesters are only four months long. While most schools have semesters from January through May and August through December (which is probably why the Tax Code chose “five” as the magic, but somewhat arbitrary, number of months required in the taxable year to be counted as a student), most years both Brigham Young University (in Provo, Utah) and Brigham Young University–Idaho have their semesters only extending for four months—January through April and September through December.<sup>122</sup> Children who were students at either of these schools for one semester before or after their missions barely fail the five-month requirement for that taxable year. Not only that, but these two schools are owned by the LDS Church and theoretically would have the hopes that their students will serve missions.<sup>123</sup> Therefore, the LDS Church should be concerned that its own universities may prevent, in some cases, children from qualifying under the qualifying child test as dependents according to the Tax Code.

There is at least one argument that could help the LDS Church in this situation, besides simply lengthening the semesters. Missionary

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11 (“Missionary service cannot be compared to schooling, for the mission does not prepare the missionary for any gainful employment, nor is it a prerequisite to any other callings in the [LDS] Church. The missionary receives no educational credits for mission service. On the contrary, a mission represents an interruption in schooling.”).

122. See, e.g., *2016 Academic Calendar*, BYU REGISTRAR, <https://registrar.byu.edu/academic-calendar?2016> (last visited Oct. 4, 2016). See also *2017 Academic Calendar*, BYU REGISTRAR, <https://registrar.byu.edu/academic-calendar?2017> (last visited Oct. 4, 2016); *2018 Academic Calendar*, BYU REGISTRAR, <https://registrar.byu.edu/academic-calendar?2018> (last visited Oct. 4, 2016); *Academic Deadlines*, BYU-IDAHO, <http://www.byui.edu/student-records/academic-deadlines> (last visited Oct. 4, 2016); *Previous Academic Deadlines*, BYU-IDAHO, <http://www.byui.edu/student-records/academic-deadlines/previous-academic-deadlines> (last visited Oct. 4, 2016).

123. See, e.g., Todd Hollingshead, *Fall 2016: Nearly 40 Percent of Female Students Have Served a Mission*, BYU NEWS (Sept. 23, 2016), <http://news.byu.edu/news/fall-2016-enrollment-nearly-40-percent-female-students-have-served-mission> (“highlight[ing]” the new year with the following statistics: 65% of students are returned missionaries, and 40% of female students are returned missionaries). See also Tad Welch, *BYU Sees Dramatic Jump in Number of Returned Missionaries*, DESERET NEWS (Apr. 4, 2016, 9:40 AM), <http://www.deseretnews.com/article/865651508/BYU-sees-dramatic-jump-in-number-of-returned-missionaries.html?pg=all> (reporting the increase in number of returned missionaries, which increase was excitedly shared by the President of BYU in his opening remarks for a conference recently).

Training Centers (“MTCs”) that all missionaries must attend<sup>124</sup> could qualify as educational organizations/institutions with a bit of tax strategy by the LDS Church. This could help at least the missionaries who attend college winter semester before leaving on their missions sometime between May and December of that same year. The LDS Church could explain MTCs on its website in such a way that they meet the requirements to be educational organizations. In fact, there is nothing in the Tax Code that explicitly says they do not already meet that definition. There are teachers at MTCs, there are always missionaries “enrolled” there, and there are classes with established curriculum taught there.<sup>125</sup> Thus, this is a gray area where MTCs *could* be considered educational organizations, and therefore, more missionaries could possibly be considered dependents for the taxable year in which they attend winter semester at one of the BYU universities before going to one of the MTCs.

The support test for the qualifying child test focuses on the missionaries and whether they provide more than half of their own support. It does not matter whether more than half of their support is provided by the LDS Church, their parents, their extended family members, other members of the LDS Church, or a mix of any of them. Just as long as it can be shown that the missionaries are not providing more than half their own support, the support test is satisfied.

Because this support test coincides with much of the support test for the qualifying relative test, the discussion of the gray areas and possible tax compliance problems is better suited in Part III.B. Suffice it to say, that analysis will show that it is nearly impossible that any missionaries provide more than half their own support during the years of their missions where the majority of the months they were missionaries.

The following is a consideration of the only circumstances where missionaries are likely to fail the support test because they do provide more than half their own support. Missionaries who begin their missions towards the end of the taxable year and, during that same taxable

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124. *Missionary Training Centers*, MORMON NEWSROOM, <http://www.mormonnewsroom.org/topic/missionary-training-centers> (last visited Oct. 7, 2016) (“[E]ach missionary’s first stop is one of the [LDS] Church’s 15 missionary training centers (sometimes called MTCs), where they spend two to nine weeks in training . . . before departing for one of the [LDS] Church’s 400-plus missions.”).

125. *See id.* (“MTCs provide a . . . rigorous curriculum rooted in gospel fundamentals. The meat and drink of MTC life is daily practice teaching situations [and] intense gospel classroom instruction from teachers who are former missionaries.”).

year before they leave on their missions, do not live at home and pay for more than half their own living expenses (including tuition, if applicable, and healthcare) will likely fail the support test. Missionaries who end their missions towards the beginning of the taxable year, do not live at home for the remainder of that taxable year, and pay for more than half their own living expenses (including tuition, if applicable, and healthcare) will likely fail the support test. Essentially, when adding up the total cost of their support during the months that they are not missionaries, children need to have paid more in that cost to their own support than the total cost of their support received during their missions.<sup>126</sup> The fewer the months during the given taxable year that they are missionaries, the easier it will be for these children to fail the support test under the qualifying child test.

### *B. LDS Missionaries as Qualifying Relatives*

The qualifying relative test is the second option for a missionary to meet the dependent definition in the Tax Code. At this point in the analysis and with the original assumptions made, missionaries satisfy the relationship test and the not-a-qualifying-child test for at least one of the years that they are missionaries. Thus, only the income and support tests for the qualifying relative test will be analyzed in further detail.

The income test is satisfied if the missionary has a gross income<sup>127</sup> for the taxable year less than \$4000.<sup>128</sup> This test is simple to apply on a case-by-case basis. Parents should look at their child specifically during years where their child was a missionary for part of the year to see whether their child made less than \$4000 in gross income during the months that he or she was not a missionary. \$4000 is a low disqualifying threshold if they worked full-time before or after their missions. The Affordable Care Act defines a full-time employee as someone who

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126. The problem with implementing this analysis is discussed in greater detail in Part III.B. In short, it is currently unknown how much monetarily the LDS Church provides in support of missionaries or even of particular missionaries.

127. See *Publication 501*, *supra* note 68, at 19 for specific guidance on determining what is and is not gross income for purposes of this test.

128. 26 U.S.C. § 152(d)(1)(B) (2012); *Publication 501*, *supra* note 68, at 19. Note that § 152(d)(1)(B) sends the reader to § 151(d) which says the exemption amount is \$2000 and that this amount is clearly out of date according to *Publication 501*, which was published in 2015.

works an average of at least 30 hours per week.<sup>129</sup> The federal minimum wage is \$7.25.<sup>130</sup> It only takes four months working full-time for minimum wage to surpass \$4000. Thus, some children may fail the income test for the years that they are missionaries for only part of the year, even if that money was being saved to pay for the mission and the parents were “supporting” the children with essentially room and board.

As for the months that children are missionaries, they will not be making any money through missionary work because the LDS Church does not pay them to be missionaries. Thus, the only way children will have any gross income during the months that they are missionaries is if they happen to be a part of the likely small percentage of young adults that have money invested and are receiving interest or dividends or have sold original material resulting in royalties (for example, David Archuleta<sup>131</sup>). So, if the child is not one of those outliers, and the child was a missionary every month during the taxable year, then the income test is satisfied. Passing the income test is helpful for the missionaries that failed the qualifying child test because they were on missions too many months out of the year and thereby failed the age/education test and maybe even possibly failed the residency test. The income test can work to the advantage of their taxpaying parents.

The support requirement for the qualifying relative test requires the taxpaying parent who wants to take the dependency exemption to provide over half the support of the missionary.<sup>132</sup> Like the other tests, the number of months in the taxable year before the missionaries begin their missions and the number of months left in the taxable year after the missionaries end their missions will have a lot of weight in determining whether the support test will be satisfied. The more months in the taxable year the missionaries were not on their missions, the better chance the support test will be satisfied for that year (unless they are working when they are not on their missions and thereby fail the income test). This conclusion is under the assumption that the missionary children are either living at home before and/or after their missions or are going to college and receiving monetary help, either through

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129. *Identifying Full-Time Employees*, IRS, <https://www.irs.gov/Affordable-Care-Act/Employers/Identifying-Full-time-Employees> (last visited Sept. 28, 2016).

130. *Wage and Hour Division*, UNITED STATES DEPARTMENT OF LABOR, <http://www.dol.gov/whd/minimumwage.htm> (last visited Oct. 4, 2016).

131. *See generally* DAVID ARCHULETA, <http://www.davidarchuleta.com/> (last visited Sept. 28, 2016).

132. 26 U.S.C § 152(d)(1)(C) (2012).

tuition and/or living expenses, from their parents.<sup>133</sup> If this assumption is true, it is advantageous (in order to satisfy the support test) for the missionary to serve a mission for fewer months during the taxable year. This is because when a child is on a mission, it is most likely that the LDS Church is providing the missionary's housing, food, transportation, etc., so neither the missionary nor his/her parents are contributing money each month to "support" the missionary.<sup>134</sup>

When determining support for a child, a parent must look at all the housing, food, medical and dental care (including the value of insurance), and transportation expenses provided to the child, from all relevant sources, including the child himself/herself. In the case of a missionary, much of this support, if not all of it, is actually provided by the LDS Church. Now, here is where the gray area comes in and where some parents may not be in compliance. First, some parents may believe that if they pay the \$400 monthly payments while their children are missionaries, then that money represents direct "support" of their children in regards to living expenses, and therefore, they believe the support test under the qualifying relative test is met. However, as discussed earlier in this article, the \$400 monthly payments paid on behalf of the missionary is most likely not "support" because it is, as of right now, considered a charitable contribution. The IRS may not allow parents to "write it off" as both or even select which of the two they want it to be.

If it is assumed that the \$400 monthly payments are charitable contributions and not "support," there could still be some circumstances in which parents could be providing some support for their missionary

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133. Sociologists confirm that these assumptions are highly probable. See, e.g., Leslie A. Whittington & H. Elizabeth Peters, *Economic Incentives for Financial and Residential Independence*, 33 DEMOGRAPHY, Feb. 1996, at 82, 82, 95 "[C]hildren are remaining dependent on their parents for a longer period . . . [Y]oung people's decreasing wage opportunities may be one explanation of the recently noted increase in the age of homeleaving . . . [Additionally,] [h]igher parental income reduces the probability that a child will become independent.").

134. There is an issue with this statement that is not fully examined in this article but should be noted. If the IRS were to consider missionary work a business for the LDS Church, some of the support provided by the LDS Church to missionaries would actually not be support but instead be business expenses. It could be argued that if missionaries use a car purchased by the LDS Church, then that car and the gas money for the car are business expenses and not "support" to the missionaries. The IRS may consider the missionaries' food and living expenses as business expenses because they are "traveling" (away from their principal place of abode that they share with their parents) and "working" for the LDS Church constantly. Just as people are paid to travel for their work and their hotel and food expenses during the trips are business expenses, so too may it be for children that are missionaries.

children. One circumstance is when the parents are giving their missionary children some extra spending money each month or access to a credit card that the parents pay for. Any of that money gifted to the child<sup>135</sup> or spent on the credit card by the child would be considered support. Another circumstance is when parents are able to provide their missionary children with health insurance, so the fair market value for that insurance would also count as support that the parents are providing. However, it is highly unlikely that those costs in these circumstances would add up to more than the hundreds of dollars the LDS Church is probably paying in housing, food, and transportation expenses to support the missionaries.

Continuing forward, this introduces another issue: is it important and/or necessary for parents to know how much the LDS Church spends each month on each missionary in his/her respective mission and even areas within his/her mission? Currently, the LDS Church does not publish how much it spends on each missionary each month with respect to specific missions. However, that information could help parents (albeit parents in limited, specific circumstances) be in compliance with the Tax Code. When missionaries are only on their missions for part of the year and they clearly meet all the other subtests for the qualifying relative test (including failing the qualifying child test), it is necessary for their parents to know how much money the LDS Church spent providing support for their missionary children in order to see whether the support requirement for the qualifying relative test is met.

During the months that a missionary is on a mission, the LDS Church provides the housing, transportation, and food to the missionary. However, those expenses differ amongst the mission regions, as well as from area to area within the same mission. For example, missionaries generally move areas within their same assigned mission from 2–3 all the way up to 10–12 times during their service. Each area might differ in the mode of transportation (bicycles, bus, subway, or cars) as well as the housing situation (private apartment or living with an LDS family in the area). And that is just the possible changes for one mis-

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135. Children can work and receive income, but if they do not spend it, then it does not count towards their total “support” for themselves. *Publication 501*, *supra* note 68, at 20. Likewise, it can be argued that if parents give their missionary children money but the children do not spend the money, then that money is not to be added into their total “support.” However, the Tax Code and subsequent IRS sources are silent on this issue.

sionary. When comparing mission-to-mission, American and European missions may cost more than missions in the mountains of South America or the jungles of Africa. Furthermore, the amount of money given to the missionary for food and hygiene expenses differs among missions. In a United States mission, for example, I received \$160/month for food and hygiene expenses, but my friend in Mexico received the U.S. equivalent of approximately \$51/month to cover the same expenses because of the cost of living differences between our two missions' areas. Perhaps the IRS should expect parents to know the cost of their children's specific missions, but to keep track of the expenses in each area in which their child is serving appears, on its face, to be tedious, if not impossible, without the help of the LDS Church, which help it is currently not providing.

Another problem with this method of parents needing to know the cost of their children's specific missions is that sometimes that cost changes depending on the areas that they are in, which areas could change as often as every six weeks. On my mission, I served in some of the richer areas and some of the poorer areas. Sometimes I lived in private apartments with the rent paid by the LDS Church, and sometimes I lived with LDS Church members rent-free.<sup>136</sup> I have served in areas where all I had for transportation was my bicycle (which was bought by my parents, not the LDS Church, as required by church policy<sup>137</sup>), and I have served in areas where I was permitted to use a car (a fairly new Toyota Corolla) owned by the LDS Church and gas paid for directly by the LDS Church. However, consistently during my mission, I had health insurance provided because of my father and his job, which specific health insurance's fair market value is considered to be \$350/month. Does and/or should the IRS require that my parents keep track of how many months I get to use a car and how much each place costs in which I live? Also, are the costs divided in half because I share the housing and the car with my missionary companion? My situation is ambiguous with how to calculate the support from the LDS Church. This is an important situation to analyze and have a clear an-

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136. It appears to be that if I am living with an LDS member rent-free, then that LDS member is providing the support for my housing and not the LDS Church. However, the support test is if my parents are providing more than half my support, so it should not matter whether the fair market value of the housing is attributed to the LDS Church or to an LDS member because, either way, my parents must provide more than that amount to counterbalance it in order to have the support test for the qualifying relative test satisfied.

137. See *MISSIONARY HANDBOOK*, *supra* note 16, at 44.

swer to because plenty of missionaries leave and return from their missions during a month in the taxable year where the answers to these questions would make a difference.

Finally, it is possible that none of this previous analysis about the support test is pertinent because perhaps the IRS, if this question was brought to its decision-making hands, would hold that the LDS Church does not “support,” in the sense of the Tax Code’s definition of support, its missionaries.<sup>138</sup> This would mean that the value of housing, food, transportation, etc. that the LDS Church technically provides to missionaries is not included in the total sum of “support” when analyzing the support test for missionaries under either the qualifying child or qualifying relative tests for the dependent definition. The result would be \$0 being put towards support of the missionaries. The only other support items left for missionaries would be any spending money the missionary or his parents provide as well as health insurance and a bicycle (if applicable, since not all missions require missionaries to purchase bicycles). With the high value of health insurance currently in the United States, it is likely through this interpretation of the support test that if parents are providing the insurance for their missionary children, then the parents are likely to be providing more than half the support of their missionary children. This interpretation would allow many more parents to legally take the dependency exemption for their missionary children.

### *C. Examples of the Application of the Dependency Exemption to LDS Missionaries*

The dependency exemption needs to be analyzed on a case-by-case basis for each individual missionary. The following are examples of real-life missionaries and what questions their parents (or parents’ accountants) should ask (or should have asked) in order to be in compliance with the dependency exemption.

*Example 1.* Genny June, at age twenty, began her mission on July

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138. The IRS could compare this situation between the missionaries and the LDS Church with certain traveling employees and their employers. For example, operating engineers of heavy equipment may travel and be on location for months or years at a time, such as when building a pipeline. Since they have to maintain their house back at home, the employer pays a *per diem*, or per day amount, that they can use for lodging and food, and that amount is not taxed and would not be considered support. Rev. Rul. 2006-56, 2006-2 C.B. 874. There is a federal *per diem* threshold, but the \$400 monthly missionary payments are significantly below it. See *Publication 1542: Per Diem Rates (For Travel Within the Continental United States)*, IRS (Feb. 1998), <https://www.irs.gov/pub/irs-prior/p1542-1998.pdf>.

2, 2014 and returned January 14, 2016. She attended the University of Oklahoma from January 2014 through May 2014. She began at that university again and attended winter semester from January 2016 through May 2016. While she worked part-time jobs at the University of Oklahoma both before and after her mission, her parents mostly covered any tuition and living expenses not covered by her college scholarships. Although she did contribute half of each \$400 monthly payment for her mission, it is safe to say that she did not provide over half of her own support in any of the relevant three taxable years.

For the 2014 taxable year, it is unclear whether Genny June's parents can claim her as a dependent. Under the qualifying child test, she definitely meets the age/education test and the support test. However, she may or may not meet the residency test, depending on whether the IRS allows missionary service as a temporary absence. Notice that she most certainly would have satisfied the residency test had she left one day later on July 3, 2014. Because she spent one extra night as a missionary in 2014, it is ambiguous whether she spent more than half the year at the same principal place of abode as her parents. Under the qualifying relative test, she meets the income test because while she worked a part-time job in 2014 before she left on her mission, she only earned \$2,000. Her parents also paid for her food, housing, gas, health insurance, and any tuition leftover after scholarship money for the months in 2014 before she left on her mission. It is unclear whether she satisfies the support test for the qualifying relative test. Depending on the IRS's interpretation of missionary work and support, her parents may need to know how much the LDS Church has spent on Genny June during the time she was a missionary in 2014. If the aggregated amount for the LDS Church monthly is less than what they paid before Genny June left, then they can claim her as a dependent in 2014. This is an example where it is imperative that the LDS Church make the information available about the support it provides to missionaries available to their parents. However, if the IRS were to say that any money that the LDS Church spends on the missionary is not included in the total amount of support for the missionary for the year (the *per diem* argument<sup>139</sup>), then Genny June's parents would satisfy the support test under the qualifying relative test because of the health insurance (approximately \$350 per month as the fair market value) that they provided for her.

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139. See *supra* note 138 and accompanying text.

For the 2015 taxable year, Genny June's parents may be able to claim her as a dependent. Under the qualifying child test, she fails the age/education test, rendering the gray area of the residency test moot in this analysis. She will have been a missionary for the entire 2015 year and will not have attended school a single month that year. Under the qualifying relative test, she satisfies the income test because she has not invested any of her money and, therefore, has a gross income of \$0. While her parents are paying the \$200 of the \$400 monthly payments that are required for her to be on a mission, even if that money were to count as support (which is highly unlikely), because she is serving her mission in Sacramento, California, it is a safe bet that the money it takes to support her is more than \$200/month, meaning the LDS Church is supporting her more than her parents. Thus, if the IRS chooses the interpretation that the LDS Church is supporting the missionary in some way, then the support test is failed. However, if that money is not support, then the health insurance from her parents is enough to win over more than half her total support, and Genny June will be their dependent for the 2015 taxable year.

For the 2016 taxable year, Genny June should qualify as a dependent. She was only a missionary for fourteen days of that taxable year, attended school full-time for the rest of the year, receive support from her parents for her tuition and living expenses, and did not get married. Thus, her parents can, legally, take the dependency exemption for her.

*Example 2.* Taylor began his mission at the beginning of March 2013 when he was nineteen and returned at the beginning of March 2015. After he graduated high school in June 2012, Taylor did not attend anymore schooling and instead worked full-time until he left on his mission in March 2013. After he returned from his mission in March 2015, he immediately began working full-time and took a couple of classes at a local community college in the fall. Since he lived at home and received healthcare, food, etc. from his parents all the months before and after his mission, it is safe to say that he has not provided more than half of his own support at any point in time yet.

For the 2013 taxable year, Taylor's parents cannot claim him as a dependent. Under the qualifying child test, Taylor fails the age/education test because he was twenty when the year 2013 ended, and he was not a student for at least five months. Analysis on the rest of the sub-tests is not necessary. Under the qualifying relative test, Taylor does pass the income test for 2013 because he only worked in January and February before his mission and did not earn more than the gross

income threshold. Because of the analysis of the support test examined earlier, it is possibly unclear which interpretation the IRS would confirm, which interpretation would determine whether Taylor is a dependent under the qualifying relative test for the 2013 taxable year. However, it is highly unlikely that Taylor is a dependent since his parents' \$400 monthly payments should not be "support" because the LDS Church characterizes them as charitable contributions and not support.

For the 2014 taxable year, Taylor's parents cannot claim him as a dependent. Under the qualifying child test, he fails the age/education test since he is a missionary every day of that year. Analysis on the rest of the sub-tests is not necessary. Under the qualifying relative test, it is unclear whether the support test is met. Note that if his parents did not provide health insurance to him, no matter the interpretation taken by the IRS, Taylor would not be a dependent of his parents for the 2014 taxable year.

For the 2015 taxable year, Taylor's parents cannot claim him as a dependent. Under the qualifying child test, he fails the age/education test. While he did take two college classes from August to December 2015, those classes were only worth 6 credits total, and his school considers twelve credits to be full-time. Since he did not attend school full-time in 2015, he fails the age/education test. Analysis on the rest of the sub-tests is not necessary. Under the qualifying relative test, Taylor fails the income test. He worked full-time for all of 2015 since he returned home from his mission. He quickly made over \$4000 in 2015. This result makes the fact that the support test may be satisfied this year moot.

*Example 3.* I began my mission at age twenty-one on May 11, 2011, and returned home eighteen months later in November 2012. In the months of 2011 leading up to my mission, I attended BYU. When I returned home at the end of November, I relaxed at home until winter semester in January 2013. I did not contribute to any of the \$400/month during my mission. I also did not work the semester before my mission, so I did not file any tax returns in 2011 or 2012.

For the taxable year of 2011, it is not clear whether I passed the qualifying child test. Both the age/education test and the residency test could either be satisfied or not. Since the semester only lasted from January through April, I technically was not a student for 5 months in 2011. However, I did attend the MTC in May when I began my mis-

sion. If the MTC does count as “school,” then I satisfied the age/education test for 2011. If not, I failed it. It is also unclear whether or not I passed the residency test for 2011. If the mission does not count as a temporary absence according to the IRS, then I failed this test.

Even if I did indeed fail it in 2011, I probably failed the qualifying relative test for that year. While I passed the income test, my parents did not provide more than half of my support during my mission months if the LDS Church’s money supporting me is counted as support by the IRS when analyzing the support test. However, even if the IRS does choose this interpretation, since I did not start my mission until May 11, perhaps the time before May 11, my parents paid more support to me than what it costs the LDS Church to support me May 11 through December 31. For example, what if I went to a university with high tuition in a city with a high cost of living? My sister attends the University of Southern California, which currently boasts a semester of tuition as \$24,732.<sup>140</sup> Her off-campus housing is \$900/month. With those prices plus healthcare, utilities, and food expenses, her “support” for one semester alone is easily over \$30,000. It is a safe bet that no mission in the world costs the LDS Church more than \$30,000 per missionary for an entire year. That said, if my sister was a missionary and did not meet the qualifying child test during a given taxable year where she also attended college for only four months, she would satisfy the support test, and my parents could claim her as a dependent.

For the taxable year of 2012, it is unclear whether my parents could have claimed me as a dependent. Under the qualifying child test, I failed the age/education test because I was not in school any month of 2012. Analysis on the rest of the sub-tests is not necessary. Under the qualifying relative test, the IRS’s interpretation of support will determine whether I passed the qualifying relative test.

*Example 4.* Blake graduated from high school in 2015 and left on his mission that September. He was eighteen at the time and did not turn nineteen until August 2016. He did not work while in high school.

For the 2015 taxable year, Blake’s parents can claim him as a dependent. Because he will be eighteen at the end of the year, he satisfies the age/education test. He did not leave on his mission until September, so he meets the residency test. And since he did not work in high school or before his mission, he meets the support test because his parents pay all his living expenses until his mission, which expenses are

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140. *Tuition and Fees*, UNIVERSITY OF SOUTHERN CALIFORNIA, <https://classes.usc.edu/term-20153/tuition-and-fees/> (last visited Oct. 3, 2016).

probably more than the expenses the LDS Church paid for four months on behalf of Blake (if the expenses paid by the LDS Church are even considered in the total support of Blake for the year).

For the 2016 taxable year, it is unclear if Blake's parents can claim him as a dependent. Under the qualifying child test, he fails the age/education test. He will be nineteen by the end of the year and will have been a missionary the whole year and not a student. Analysis on the rest of the sub-tests is not necessary. Under the qualifying relative test, it will depend on the IRS's interpretation of support whether his parents can claim him as a dependent.

For the 2017 taxable year, Blake's parents may or may not be able to claim him as a dependent. He fails the age/education test because even if he returns to college a couple weeks late into the semester (since he will return from his mission in the middle of September), he will not have been a student for five months out of the year 2017. If Blake had left in August and would have returned in August, and if he attended a college that starts its fall semester in August, he would meet the age/education test for 2017. Then the analysis in his case would turn on whether the mission counts as a temporary absence for the residency test. He would and does meet the support test requirements, regardless of the IRS's interpretation of support. For the 2017 taxable year, he may satisfy the qualifying relative test (if he ends up failing the qualifying child test) under the following circumstances. Once he returns home from his mission in September, he cannot make more than \$4000. His parents would also need to pay his housing, tuition, and living expenses in such an aggregate amount that it costs them more than it cost the LDS Church to support Blake from January until he finished his mission in September, if the IRS determines that the LDS Church's support goes into the calculation for the support test. This situation requires the LDS Church to transparently let Blake's parents know how much it cost to support him while on his mission in Russia. Note that if Blake were to finish his mission in August and return to a college whose fall semester began in August, he would likely meet the qualifying child test, and his parents could claim him as a dependent regardless of how much his parents support him throughout the 2017 taxable year if the IRS accepts that the residency test has been met for the year. But since he returns in September, this is an occasion where the LDS Church should change its precedent and allow families to find out how much their child was monetarily supported by the LDS Church as a missionary.

#### IV. CURRENT PRACTICES WITH LDS MISSIONARIES AND THE DEPENDENCY EXEMPTION

The initial assumption of the premise of this article was that currently parents of LDS missionaries in the United States take the dependency exemption at least one, if not every, year their child is on a mission without going through the analysis of the Tax Code's definition of a dependent. To support this assumption, a survey through Qualtrics was created.<sup>141</sup>

The survey required that parents meet the following five prerequisite requirements in order to take it: (1) their child is their biological, step, or legally adopted child and is a U.S. citizen;<sup>142</sup> (2) their child served the full eighteen months, for females, or two years, for males, without any breaks in time;<sup>143</sup> (3) their child began his/her mission no earlier than January 1, 2005;<sup>144</sup> (4) they are the parent in their household that is most involved in filing their household's federal taxes;<sup>145</sup> and (5) they and their child's other parent are married, live together, and file a joint tax return each year.<sup>146</sup> The survey also noted that while their child does not need to have completed his/her mission by the time they fill out this survey, it asked them to answer the questions as best they could in regards to what they anticipate their child to do after

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141. The results of this survey are on file with the author and are available upon request.

142. Because this requirement would not be met by only an outlier number of parents of LDS missionaries, it is better for this analysis to only consider for whom this requirement is true rather than to explore the complications of a non-U.S.-citizen child, *see* 26 U.S.C. § 152(b)(3)(A) (2012), and/or to explore the complications for grandparents or other extended family members who might support young missionaries, such as their grandchildren. Moreover, this latter complication would likely lead to necessary analysis for when two people can claim the same qualifying child. *See id.* § 152(c)(4).

143. On occasion, for a variety of reasons (for example, physical health, mental health, and disobedience), missionaries unexpectedly do not serve the full time they are assigned to serve. Sometimes missionaries come home early but return months later, and sometimes they do not return at all. In both these situations, their experiences would cause a more in-depth look on a case-by-case basis into whether they meet the dependent definition in the Tax Code for a given taxable year. Because these occasions are not the norm, their situations are removed from the survey so that the survey can be the most accurate in assumptions about missionaries in the simplest ways possible.

144. Because of an important amendment made to the dependent definition section of the Tax Code, *see supra* last sentence of note 92, missionaries serving before January 1, 2005 are not helpful to the analysis.

145. This is a requirement because the parent with the most pertinent knowledge answering the survey questions ensures the highest level of accuracy possible.

146. Since it is assumed that the majority of parents of LDS missionaries fulfill this requirement, the survey makes it necessary in order to save time in the analysis of the dependency exemption because there are more rules, not discussed in this article, to follow if the parents are not together because of divorce, or otherwise. *See* 26 U.S.C. § 152(c)(4)(B), (e) (2012).

his/her mission and what they anticipate they will do when they file their next federal taxes.

Thirty-five parents from all across the United States<sup>147</sup> met these prerequisite requirements and participated in this survey.<sup>148</sup> They answered specific questions about their children's missions: what month and year their missionary children left and returned from their missions; how many months they were in school full-time in the same taxable years as they began and ended their missions; how much of the \$400 monthly missionary requirement did they pay themselves; how much of their own support did they provide in the months in the same taxable years as they began and ended their missions; and whether they resided in the parents' household for over one-half of the taxable years in which they began and ended their missions. The parents also answered (1) during which taxable years that their children were missionaries did they, the parents, take the dependency exemption for them and (2) whether they worked in a tax or finance-related profession.<sup>149</sup>

Because of the way in which the questions were asked and recorded, the survey results revealed not only overall how many parents took the dependency exemption each year that their children were missionaries, but showed each child answered for and all the details surrounding his/her situation on a case-by-case basis. The concluding result from the survey was that 91% of the parents said that they had claimed their missionary child as a dependent for at least one of the taxable years that their child was a missionary; 51% of parents took the dependency exemption for every taxable year that their child was a missionary; 26% of parents took the dependency exemption for two out of the three taxable years that their child was a missionary; and 14% took it for one year.

Only three parents never took the dependency exemption. Looking more closely at these three parents on a case-by-case basis, one of them had a missionary child that was twenty-three when she began her

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147. While the survey was anonymous, for every person that completed the survey, Qualtrics allows the operator of the survey, namely the author, to see the location of the IP address of the computer that took the survey. From seeing these locations, it is evident that the participants are located all over the United States.

148. It is understood that not enough parents have been surveyed to create a statistically valid survey, but enough have been surveyed to indicate that, at least, some parents are taking the dependency exemption when they should not, and it is likely that many others are doing the same.

149. This question is in the survey to see if the results are more compliant with the Tax Code when the parent works in a tax or finance-related profession.

mission, was out of school, and was not only not residing with her parents before or after her mission, but was also providing over half her own support before and after her mission. One of the other parents who never took the dependency exemption during her child's mission explained that her child was not in school during those months in the taxable years that the mission began and ended and that the child was working and made more than the income test allows for both the taxable years that the mission began and ended. The third parent had no clear reason why the dependency exemption would not have legally been permitted for some of those taxable years that his/her child was on a mission.

With the complications addressed in this article, it is likely that some parents are taking this exemption without even thinking that it may not be permitted. This could lead them to possibly being non-compliant, on occasion, with the Tax Code. This issue of possible non-compliance with the dependency exemption may appear to be so minor that the IRS does not care about this particular Tax Code rule. In fact, this may be the justification and/or rationale in the minds of some of these parents of LDS missionaries. However, both history and scholars show that the IRS has often zeroed in on this issue.<sup>150</sup> Thus, it is of the utmost importance for parents of LDS missionaries that do not want to be audited and found deficit in their taxes by the IRS that they follow the correct applications of missionaries to the dependency exemption. If they find themselves not IRS-fearing people, then hopefully, at least, their religious beliefs can push them into definite compliance.<sup>151</sup>

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150. See, e.g., Alistair M. Nevius, *Dependency Rules Can Trip Up Taxpayers*, 219 J. ACCT., Mar. 2015, at 62, 62 (“[There are] problems taxpayers can face if they do not strictly adhere to the rules regarding dependents.”). See also *Hendricks v. Comm’r, T.C.M. (CCH) 317* (2014); Nichols, *supra* note 61, at 554 (“[T]axpayers and tax professionals are advised to approach the dependency issue with prudent planning.”); Sarah B. Lawsky, *Fairly Random: On Compensating Audited Taxpayers*, 41 CONN. L. REV. 161, 164–65 (2008) (“The IRS examines returns . . . that are picked out because of particular ‘IRS projects.’ Previous IRS projects have studied . . . taxpayers who claimed exemptions for dependents who also appeared on other returns . . . . The IRS selects these special projects or automatic audits because it already has reason to believe that these groups tend to underpay taxes, and therefore a high percentage of these audits result in additional tax revenue.”).

151. The LDS Church believes and teaches that its members must obey the laws of the land and be honest. *The Articles of Faith of The Church of Jesus Christ of Latter-day Saints* 1:12–13, <https://www.lds.org/scriptures/pgp/a-of-f/1.12?lang=eng#11>. The LDS Church also explicitly addresses income taxes in one of its handbooks, explaining that LDS members who do not comply with tax laws are “in direct conflict with the law and with the teachings of the [LDS] Church.” HANDBOOK 2: ADMINISTERING THE CHURCH, *supra* note 10, at § 21.1.21.

## V. CONCLUSION

This article explored (1) the history and background of the LDS missionary program, (2) the Tax Code rules for the dependency exemption, (3) the analysis for if and when parents can take the dependency exemption for their children on LDS missions, (4) some arguments that can be employed by either the parents and/or the LDS Church in order to maximize the number of years the dependency exemption should be allowed, and (5) the current practices of parents and when they do take the dependency exemptions for their missionary children.

While this article presented strong arguments on behalf of the tax-paying parents, the IRS should formally declare how the residency and support tests should be applied to LDS missionaries. With this situation affecting so many American families, it would not take much for the IRS to come to a decision so parents of LDS missionaries can feel at peace with being in compliance with the arguments employed in this article.

It is hoped that this article has made the Tax Code more easily understood for parents of LDS missionaries and that compliance with the law will increase and/or become legally definite because of this newfound understanding.