

Marc J. Soss, Esq.
(941) 928-0310
Sarasota, Florida



Forbes

Published: 2/03/2012

When A Housemate Is A Dependent (And A Tax Break)

Could Liz Lemon (Tina Fey) snag a tax break for supporting her slacker boyfriend who's moved in with her on NBC's 30 Rock? Maybe. If your boyfriend, grandma or unemployed brother is crashing on your pull-out couch, you might be able to claim them as a dependent on your federal income tax return. Yes, it's not just children, or even relatives, that can count as dependents, but unrelated friends whom you support and who live with you. The idea is these folks aren't filing tax returns and taking a personal exemption for themselves. So you add them to your return as a dependent, taking a dependent exemption, and share the wealth.

"The tax implications are pretty dramatic," says Robert Meighan, vice president of Intuit's TurboTax. A dependent exemption on your return gives you a \$3,700 deduction (you'll owe less in tax or get a bigger refund). Plus it can mean that you qualify for other tax breaks including the child tax credit worth \$1,000, the earned income credit up to \$5,751, and the dependent care tax credit up to \$2,100.

The question of whom you can claim as a dependent has always been one of the most common questions at tax time, Meighan says, and it's been more prevalent lately. Why? Changing family dynamics, the lackluster economy, and high unemployment have made impacted living arrangements and upended the old notions of who typically supports whom. A record 54.1 million Americans lived in multi-generational households in 2009—up from 46.5 million in 2007, according to a Pew report, "Fighting Poverty In A Tough Economy, Americans Move In With Their Relatives." This included many unemployed young adults moving back in with their parents.

In order to catch these changing dynamics, TurboTax revamped its questions around dependents in the 2011 version of its tax software to get at the breadth of the deduction. The questionnaire begins: “Your children and those your support are worth every penny you spend on them. Let’s see if we can get you a \$3,700 deduction for each dependent you support.”

The rules for parents claiming minor kids as dependents as “a qualifying child” is pretty straightforward. The child must live with you for more than half the year and be under 19 at the end of the year, or under 24 and a full-time student. There is no income test.

The 30-something who’s moved back home and is out of work has to meet the “qualifying relative” rules to be a dependent. Bizarrely, a “qualifying relative” does not have to be a relative at all. The person you’re claiming as a dependent under these rules has to be a U.S. citizen and can’t have filed a joint tax return. You must have paid for more than half of his or her living expenses (this is the “support” test). And he or she must have earned less than \$3,700 last year (Social Security or disability payments don’t count towards this limit).

If it’s a relative you’re claiming under this rule, the relative does not have to have lived with you (think grandma in a nursing home). If it’s a non-relative, then he or she has to have lived with you “full-time.” Note: the IRS allows for absences. A person is considered to have lived with you during periods of time when one or both of you are temporarily absent (IRS emphasis) due to special circumstances such as illness, education, business, vacation or military service, although it must be reasonable to assume that the absent person will return to the home after the temporary absence.

You get one exemption per dependent. Danita Leonard, a correctional officer in Virginia, won a U.S. Tax Court case (*Danita J. Leonard v. Commissioner*) in 2008 claiming dependent exemptions of \$3,200 each for a friend and the friend’s two minor grandchildren who lived with her in her rented apartment. They lived off of Leonard’s salary (79%) and the friend’s disability income (21%)—thus Leonard provided more than half of the others’ support, the judge reasoned.

“A lot of people in the past viewed it as ‘my obligation’ to take care of family members, and they did it and didn’t think of it as a tax deduction,” says **Marc Soss, a tax and elder lawyer in Sarasota, Fla.** Now he regularly brings up the dependent exemption at client meetings. One client couple moved the wife’s

mom, recently widowed and in her 80s, from New York to Florida to live in an in-law suite they built for her on their property. The couple brought mom in to Soss to update her estate planning documents, he told them about the dependent exemption, and they've been taking it for her for the past four years. "They did it before it was the fab thing to do," says Soss. "When I told them about the deduction, they said, 'That's not why I'm helping mom, but I'll take it,'" he says.

High income taxpayers once faced a phase-out of the exemption deduction, but that phase-out expired in 2010, and isn't set to return until 2013. So there is a window where high-income taxpayers will be able to take the full exemption deductions for themselves and their dependents. But if you're subject to the alternative minimum tax, you can't deduct exemptions in any case.

On the IRS interactive tool "Who Can I Claim As A Dependent?" there's one more question: Did your relationship violate local law? This refers to the fact that there are still some jurisdictions where it violates law for unmarried individuals to cohabit. "The tax code recognizes the scarlet A if the local jurisdiction still has such laws," says Claudia Hill, an enrolled agent in Cupertino, Calif. But in practice, Meighan says he's never heard of this being challenged, and TurboTax doesn't even include the question in its software.