

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 21941
[Redacted])	
Petitioner.)	DECISION
)	
)	
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On May 8, 2009, the staff of the Taxpayer Accounting Section of the Revenue Operations Division of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer) proposing additional income tax and interest for the taxable year 2008 in the total amount of \$86.26.

The taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not respond to the Tax Commission's hearing rights letter and has provided nothing further for the Tax Commission to consider. The Tax Commission, having reviewed the file, hereby issues its decision.

The taxpayer timely filed her 2008 Idaho individual income tax return. The taxpayer's return was processed, and the refund claimed was sent to the taxpayer. As the processing of income tax returns continued, the Taxpayer Accounting Section (Taxpayer Accounting) found that another taxpayer claimed a dependent exemption for the same child the taxpayer claimed on her income tax return. Taxpayer Accounting determined the taxpayer was not entitled to the dependent exemption, disallowed the exemption on the taxpayer's return, and sent her a Notice of Deficiency Determination.

The taxpayer protested the determination stating that she furnished more than half the cost of maintaining a household for her son and that her son lived with her more than six months in 2008. The taxpayer stated her son turned 18 in February 2008 and implied that she provided

his financial and residential support for 10 months of the year. The taxpayer stated her son's income was well below the amount needed to meet his financial and residential needs. Taxpayer Accounting reviewed the information and sent the matter for administrative review.

The Tax Commission reviewed the matter and sent the taxpayer a letter that discussed the methods available for redetermining a protested Notice of Deficiency Determination. The taxpayer did not respond. Therefore, the Tax Commission decided the matter based upon the information available.

Deductions are a matter of legislative grace, and taxpayers bear the burden of proving that they are entitled to the deductions claimed. INDOPCO, Inc. v. Commissioner, 503 U.S. 79, 84, 112 S.Ct. 1039, 117 L.Ed.2d 226 (1992); New Colonial Ice Co. v. Helvering, 292 U.S. 435, 440, 54 S.Ct. 788, 78 L.Ed. 1348 (1934). Internal Revenue Code (IRC) section 151(c) allows a taxpayer a deduction of the exemption amount for each dependent as defined in IRC section 152. A child of a taxpayer is generally a dependent of the taxpayer. IRC section 152(e) provides a special rule for divorced parents. It states in pertinent part:

(1) In general.

Notwithstanding subsection (c)(1)(B), (c)(4), or (d)(1)(C), if—

(A) a child receives over one-half of the child's support during the calendar year from the child's parents—

(i) who are divorced or legally separated under a decree of divorce or separate maintenance,

(ii) who are separated under a written separation agreement, or

(iii) who live apart at all times during the last 6 months of the calendar year, and—

(B) such child is in the custody of 1 or both of the child's parents for more than one-half of the calendar year, such child shall be treated as being the qualifying child or qualifying relative of the noncustodial parent for a calendar year if the requirements described in paragraph (2) or (3) are met.

(2) Exception where custodial parent releases claim to exemption for the year. For purposes of paragraph (1), the requirements described in this paragraph are met with respect to any calendar year if—

(A) the custodial parent signs a written declaration (in such manner and form as the Secretary may by regulations prescribe) that such custodial parent will not

claim such child as a dependent for any taxable year beginning in such calendar year, and

(B) the noncustodial parent attaches such written declaration to the noncustodial parent's return for the taxable year beginning during such calendar year.

Other than a statement and a copy of her divorce decree, the taxpayer provided no information to show that she met the requirements for the custodial parent of the dependent claimed. She also did not attach a statement from the custodial parent to her return releasing the exemption to her. Therefore, IRC section 152(e) is not applicable and the determination of whether the taxpayer can claim the dependent exemption reverts to IRC section 152(c) and (d).

IRC section 152(c) defines a “qualifying child” as an individual who: (1) bears a certain relationship to the taxpayer, such as the taxpayer’s child, (2) has the same principal place of abode as the taxpayer for more than one-half of the taxable year, (3) meets certain age requirements, and (4) has not provided over one-half of the individual's own support for the taxable year. IRC section 152(c)(1) through (3).

IRC section 152(d) defines a “qualifying relative” as an individual: (1) who bears a certain relationship to the taxpayer, such as the taxpayer’s child, (2) whose gross income for the taxable year is less than the exemption amount, (3) with respect to whom the taxpayer provides over one-half of the individual’s support for the taxable year, and (4) who is not a qualifying child of the taxpayer or of any other taxpayer for the taxable year. IRC section 152(d)(1) and (2).

Therefore, to claim a dependent exemption, the taxpayer must show the dependent is either a qualifying child or a qualifying relative. In this case, the dependent claimed is the 18 year old son of the taxpayer. The information available shows that the dependent was in the physical custody of each of his parents equally up to his eighteenth birthday. It also shows that

each parent was responsible for any support needed by the dependent while in their respective custody, other than shared medical and health care expenses. The dependent turned 18 on February 2, 2008. Therefore, assuming the two parties stuck to their agreement, the dependent was equally in the custody of both parents up to February 2, 2008. For the remaining portion of the year, 11 months, it is unknown who had custody for a total of more than half the year. The taxpayer provided no information on how many days her son resided with her in 2008. Consequently, the taxpayer has not proved that her son met the definition of a qualifying child.

As to a qualifying relative, the taxpayer failed to show that she provided over one-half the support of her son for the taxable year. The taxpayer implied there was financial and residential support provided for her son; however, this was not documented. Consequently, the taxpayer had not proved that her son met the definition of a qualifying relative.

Since the taxpayer did not show that her son was either a qualifying child or a qualifying relative as defined in IRC section 152, the Tax Commission finds that the taxpayer is not entitled to the dependency exemption deduction for her son for 2008. And since the taxpayer is not entitled to the dependency exemption, the taxpayer cannot claim the additional grocery credit for her son per Idaho Code section 63-3024A.

Furthermore, the taxpayer reported her filing status as head of household. IRC section 2 states that an individual shall be considered a head of household if the individual is not married and she maintains as her home a household which constitutes for more than one-half the taxable year the principal place of abode of a son or daughter. The taxpayer did not establish that her son's principal place of abode was with her. Therefore, the taxpayer had no one to qualify her for the head of household filing status, and the Tax Commission finds the taxpayer's filing status should be changed to single.

WHEREFORE, the Notice of Deficiency Determination dated May 8, 2009, is hereby MODIFIED, in accordance with the provisions of this decision and, as so modified, is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax and interest (computed to March 1, 2010):

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2008	\$110	\$5	\$115

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the petitioner's right to appeal this decision is enclosed.

DATED this _____ day of _____ 2009.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2009, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]

Receipt No.
