

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of )  
[Redacted] ) DOCKET NO. 22012  
Petitioners. ) DECISION  
\_\_\_\_\_ )

On June 19, 2009, the staff of the Revenue Operations division of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayers) reducing a claimed refund for the taxable year 2008 in the total amount of \$50.

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

The sole issue for this decision is whether the taxpayers are entitled to a dependency exemption for [Redacted], [Redacted] daughter from a prior marriage.

[Redacted] was previously married, and two children were born of that marriage, however, only the dependency exemption deduction for [Redacted] is in question. A copy of the original divorce decree, dated November 8, 1993, was provided by the taxpayers. The decree states that the children’s principal residence and place of abode will be with their mother. [Redacted] was ordered to pay child support in the decree, and as it pertains to the dependents for tax purposes, the decree states the parties will alternate years, with [Redacted] claiming the children in odd numbered years. The taxpayers claimed a dependent exemption for [Redacted] daughter, [Redacted], on their 2008 income tax return.

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.

The taxpayers provided a copy of the divorce decree that states [Redacted] is entitled to the dependent exemption for his minor child. However, IRC section 152(e)(2) clearly requires that the custodial parent sign a written declaration releasing the dependency exemption in order

for the noncustodial parent to claim the child's dependency exemption. The taxpayer provided no such declaration, nor did he show that he was the custodial parent.

The control over a child's dependency exemption conferred on the custodial parent by section 152(e)(2) was intended by Congress to simplify the process of determining who is entitled to claim dependency exemptions for children of a marriage. See H. Rept. 98-432 (Part 2), at 1498 (1984). To make section 152(e)(2) work as intended, that control must be preserved by insisting on adherence to the requirements of section 152(e)(2). Simply attaching a State court order that is not signed by the custodial parent to the return of the noncustodial parent does not satisfy the express statutory requirements of section 152(e)(2)(A). Miller v. CIR, 114 T.C. 184, (2000).

Since the signed release is a requirement for IRC section 152(e) to apply, 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 or grandchild, (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 or grandchild, (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).

To claim a dependent exemption, the taxpayer must show he has either a qualifying child or a qualifying relative. Regarding a qualifying child, the taxpayers have not shown that

[Redacted] principal place of abode was with them for more than one-half the taxable year. They have not met their burden of proving that [Redacted] was a qualifying child in 2008. As for meeting the requirements for a qualifying relative of the taxpayers, the taxpayers failed to show that they provided over one-half of [Redacted] support for the taxable year or that [Redacted] was not a qualifying child of any other taxpayer for the taxable year. According to the divorce decree, [Redacted] principal residence and place of abode was with the taxpayer's ex-spouse in 2008. This being the case, [Redacted] is likely the qualifying child of another taxpayer. Regardless, the taxpayers have not carried their burden of proving [Redacted] was their qualifying relative in 2008.

Because the taxpayers have failed to establish that [Redacted] was either a qualifying child or a qualifying relative for purposes of IRC section 152, the Commission finds that the taxpayers are not entitled to a dependency exemption deduction for 2008. And since the taxpayers are not entitled to the dependency exemption, the taxpayers cannot claim an additional grocery credit for [Redacted] per Idaho Code section 63-3024A.

WHEREFORE, the Notice of Deficiency Determination dated June 19, 2009, is hereby APPROVED, AFFIRMED, and MADE FINAL.

Since the taxpayers' refund was only reduced and no additional tax is owed, no DEMAND for payment is required or necessary.

An explanation of the taxpayers' 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.

---