

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 22032
[REDACTED])	
)	DECISION
Petitioner.)	
_____)	

On June 19, 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 \$754.56.

The taxpayer filed a timely appeal and petition for redetermination. The taxpayer requested a telephone conference which occurred on August 5, 2009. The Tax Commission, having reviewed the file, hereby issues its decision.

The taxpayer timely filed his 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 dependent exemptions for the same children as the taxpayer claimed on his income tax return. Taxpayer Accounting determined the taxpayer was not entitled to the dependent exemptions, disallowed the exemptions on the taxpayer's return, and sent him a Notice of Deficiency Determination.

The taxpayer protested the determination by sending in a copy of an Order Modifying Child Support (Order) dated December 19, 2006, by the Seventh Judicial District Court of Idaho. The Order stated that a dependency exemption will be assigned to the taxpayer pursuant to the

Idaho Child Support Guidelines. 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 responded with a request for a telephone conference and copies of excerpts of a stipulation from his original divorce decree and a stipulation to child support order modification. The Tax Commission contacted the taxpayer and found out that the children in question live with their mother, that the taxpayer's ex-wife had not signed an exemption release form, and that the taxpayer is wholly relying on the judge's Order for claiming the dependent exemption deductions.

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 taxpayer and his ex-wife divorced on September 11, 2003. In that decree, the taxpayer was ordered to pay child support and granted one dependent exemption every year and a second one every other year. On December 16, 2006, the taxpayer, through the Department of Health and Welfare, was granted an order modifying child support. In that order, the taxpayer's child support was reduced and a dependency exemption was granted to the taxpayer.

The documents the taxpayer provided clearly state that he is entitled to the dependent exemption for at least one and arguably all three of his minor children. However, the Internal Revenue Code is controlling in the determination of income tax deductions of this type (See White v. CIR, T.C. Memo 1996-438 (1996); Commissioner v. Tower, 327 U.S. 280 (1946); Kenfield v. United States, 783 F.2d 966 (10th Cir.1986); Nieto v. Commissioner, T.C. Memo. 1992-296) and 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; (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).

To claim a dependent exemption, the taxpayer must show the dependent is either a qualifying child or a qualifying relative. Regarding a qualifying child, the taxpayer has not shown that his children’s principal place of abode was with him for more than one-half the taxable year. In fact, the taxpayer stated the children lived with their mother. Consequently, the taxpayer had no qualifying child for 2008. As for meeting the requirements for a qualifying relative of the taxpayer, the taxpayer failed to show that he provided over one-half the support of

his children for the taxable year or that his children were not a qualifying child of any other taxpayer for the taxable year.

It is presumed from the fact that the taxpayer is required to pay child support that he may have provided nearly one-half, one-half, or over one-half of his children's support. However, the taxpayer did not provide any evidence to show the children's total support or the amount he paid toward their support. The taxpayer has not carried his burden of proving this requirement of a qualifying relative. In addition to the support issue, the taxpayer's children likely qualify as the qualifying child of their mother, another taxpayer. In either case, the taxpayer's children do not meet the requirements of a qualifying relative for the taxpayer.

Because the taxpayer's children do not meet the requirements for 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 dependency exemption deductions for his children for 2008. And since the taxpayer is not entitled to the dependency exemptions, the taxpayer cannot claim the additional grocery credit for the children per Idaho Code section 63-3024A.

Furthermore, the taxpayer reported his 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 he maintains as his 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 stated his children lived with their mother; therefore, the children's principal place of abode was not with the taxpayer. Since the children's principal place of abode was not the taxpayer's home, and the taxpayer had no one else to qualify him for the head of household filing status, the Tax Commission finds the taxpayer's filing status should be changed to single.

WHEREFORE, the Notice of Deficiency Determination dated June 19, 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 December 1, 2009):

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2008	\$ 965	\$ 30	\$ 995

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.
