

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 22038
[Redacted])	
Petitioner.)	DECISION
)	
_____)	

On June 25, 2009, the staff of the Revenue Operations Division of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayer) proposing additional tax and interest for the taxable year 2008 in the total amount of \$584.

The taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not request a hearing. The Commission, having reviewed the file, hereby issues its decision.

The sole issue for this decision is whether the taxpayer is entitled to dependency exemptions for his two children from a prior marriage, one of which, [Redacted], was born after the taxpayer divorced.

Deductions are a matter of legislative grace, and taxpayer bears 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 provided a copy of his divorce decree dated January 24, 2002. The decree states that primary residential custody of the taxpayer's son, [Redacted], will be with his ex-wife. Child support was ordered to be paid by the taxpayer, and the taxpayer was granted the dependency exemption for [Redacted].

[Redacted], the taxpayer's other child, was born [Redacted]. According to the Judgment and Order dated January 9, 2003, [Redacted] mother shall take the dependency exemption for [Redacted] and the taxpayer shall get a credit each month for his portion of the tax exemption, which shall be subtracted from his child support. The Order does not specifically mention physical custody of [Redacted], but does state that both [Redacted] and [Redacted] reside in the same household.

The divorce decree the taxpayer provided states that he is entitled to the dependent exemption for his minor child, [Redacted]. As for the dependency exemption for [Redacted], the Judgment and Order grants the exemption to the child's mother. Regardless, the IRC 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 either of his children's principal places of abode was with him for more than one-half the taxable year. Consequently, the taxpayer has 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.

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 Commission finds that the taxpayer is not entitled to dependency exemption deductions [Redacted] 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.

WHEREFORE, the Notice of Deficiency Determination dated June 25, 2009, is APPROVED, AFFIRMED, and MADE FINAL.

It is ordered and this does order, the taxpayer pays the following tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2008	\$578	\$6	\$584

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.
