BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of	)	
	)	DOCKET NO. 22043
[REDACTED]	)	
	)	DECISION
Petitioner.	)	
	)	

On June 26, 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 income tax and interest for the taxable year 2008 in the total amount of $274.65.

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

The taxpayer was previously married, and out of that marriage, a child was born. A decree of divorce was entered on July 10, 2003. The decree was modified on January 12, 2005, and the taxpayer was ordered to pay child support. The taxpayer claimed a dependent exemption for her son, [Redacted], on her 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 taxpayer provided a copy of her order modifying decree of divorce, but it does not state who is entitled to the dependent exemption for the minor child or who the child resides with. 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 she show that she 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. 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 she has either a qualifying child or a qualifying relative. Regarding a qualifying child, the taxpayer has not shown that [Redacted] principal place of abode was with her for more than one-half the taxable year. In fact, the taxpayer stated in her protest letter, "I have my son [Redacted] a little less than one half of the time…" She has not met her burden of proving that [Redacted] was a qualifying child in 2008. As for meeting the requirements for a qualifying relative of the taxpayer, the taxpayer failed to show that she 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. While the documents provided do not specifically state who has primary physical custody, it is presumed,

from the fact that the taxpayer is required to pay child support, that [Redacted] was in the physical custody of the taxpayer's ex-spouse in 2008. This being the case, [Redacted] is likely the qualifying child of another taxpayer. Regardless, the taxpayer has not carried her burden of proving that [Redacted] was her qualifying relative in 2008.

Because the taxpayer has 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 taxpayer is not entitled to a dependency exemption deduction for 2008. And since the taxpayer is not entitled to the dependency exemption, the taxpayer cannot claim an additional grocery credit for [Redacted] per Idaho Code § 63-3024A.

WHEREFORE, the Notice of Deficiency Determination dated June 26, 2009, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax and interest:

YEAR	TAX	INTEREST	TOTAL
2008	$272	$9.72	$281.72

Interest is calculated through December 31, 2009.

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

An explanation of the taxpayer'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.

_____