

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted]) DOCKET NO. 22051
Petitioner.) DECISION
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On July 2, 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 \$270.83.

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 his 2008 Idaho individual income tax return. During the processing of the taxpayer's return, the Taxpayer Accounting section (Taxpayer Accounting) found that the taxpayer claimed a dependent exemption that was also claimed on another income tax return. Taxpayer Accounting requested additional information from the taxpayer but did not receive a response until after a tax correction letter was sent. The taxpayer stated in his letter that he provided financial support to his sister in the amount of \$150 to \$350 per month. He stated the father of the questioned dependent was not around and did not help his sister. He stated his sister, the custodial parent, suggested he claim his niece as a dependent. The taxpayer stated that, if it was not for his help, the power and gas would have been turned off and his sister's children would have gone without. The taxpayer stated he deserved to be able to claim

his niece as his dependent. Taxpayer Accounting also received a letter from the taxpayer's sister stating that she allowed the taxpayer to claim her daughter as a dependent because he gave her money to help with her children and her bills. 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 failed to respond to the Tax Commission's letter, so the Tax Commission decided the matter based upon the information available.

The taxpayer is the brother of the claimed dependent's mother. The taxpayer claimed a dependent exemption [Redacted] on his 2008 income tax return. [Redacted] was also claimed on another individual's Idaho 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.

The taxpayer stated he provided support for his sister and her children and is deserving of the dependent exemption [Redacted]. IRC section 152 defines a dependent as either a "qualifying child" or a "qualifying relative." IRC section 152(c) defines a "qualifying child" as an individual who: (1) bears a certain relationship to the taxpayer, such as the descendant of a brother or sister; (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. See 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 son or daughter of a brother or sister of the taxpayer; (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. See IRC section 152(d)(1) and (2).

Therefore, to claim a dependent exemption, the taxpayer must show he 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 him for more than one-half of the taxable year. In fact, the information available suggests [Redacted] lived with her mother in a different city to which the taxpayer sent money. Consequently, [Redacted] is not a qualifying child for the taxpayer. As for meeting the requirements for a qualifying relative of the taxpayer, the taxpayer failed to show that he provided over one-half of [Redacted] support for the taxable year or [Redacted] was not a qualifying child of any other taxpayer for the taxable year. It is presumed from the fact that [Redacted] is in the physical custody of the taxpayer’s sister that she is a qualifying child of the taxpayer’s sister. In addition, according to the information available to the Tax Commission, [Redacted] is receiving child support payments from her father. Regardless, the taxpayer has not shown that he provided over one-half the support [Redacted].

The taxpayer’s sister stated that she gave the taxpayer permission to claim [Redacted] as his dependent. However, permission by a parent or some other individual does not entitle a taxpayer to a dependent exemption. The dependent exemption deduction is allowed as a matter of legislative grace, New Colonial Ice Co. v. Helvering, supra; therefore, the taxpayer must show

that the dependent is either a qualifying child or a qualifying relative as defined in IRC section 152. Absent that showing, the taxpayer is not entitled to the dependent exemption deduction.

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

WHEREFORE, the Notice of Deficiency Determination dated July 2, 2009, is hereby 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	\$268	\$ 8	\$276

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.
