

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
)
 [Redacted]) DOCKET NO. 22086
)
 Petitioners.) DECISION
)
)
 _____)

On July 23, 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 refund claimed for the taxable year 2008 in the total amount of \$229.

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

The taxpayers timely filed their 2008 Idaho individual income tax return. The taxpayers' return was processed, and the refund claimed was sent to the taxpayers. As the processing of income tax returns continued, the Taxpayer Accounting Section (Taxpayer Accounting) found that another taxpayer claimed a dependent exemption for the same child as the taxpayers claimed on their income tax return. Taxpayer Accounting determined the taxpayers were not entitled to the dependent exemption, disallowed the exemption on the taxpayer's return, and sent them a Tax Computation Change letter that showed the tax effect of disallowing the dependent exemption and grocery credit.

The taxpayers protested the change in tax by sending a copy of an Order for Child Support by the Seventh Judicial District Court of Idaho dated November 6, 1998. The Order stated that a dependency exemption will be assigned to [Redacted] pursuant to the Idaho Child Support Guidelines. Taxpayer Accounting reviewed the information and still determined the

taxpayers were not entitled to the dependent exemption. Taxpayer Accounting issued a Notice of Deficiency Determination to the taxpayers and sent the matter for administrative review.

The Commission reviewed the matter and sent the taxpayers a letter that discussed the methods available for redetermining a protested Notice of Deficiency Determination. The taxpayers did not respond to the Commission's hearing rights letter and have failed to make further contact with the Commission. The Commission, having reviewed the file, hereby issues its decision.

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.

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 taxpayers have not shown that [Redacted] child's principal place of abode was with them for more than one-half the taxable year. Consequently, the taxpayers have no qualifying child for 2008. As for meeting the requirements for a qualifying relative of the taxpayers, the taxpayers failed to show that they provided over one-half the support of [Redacted] child for the taxable year or that his child was 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, or over one-half of his child's support. However, the taxpayer did not provide any evidence to show the child's total support or the amount he paid toward his support. The taxpayer has not carried his burden of proving this requirement of a qualifying relative. In addition to the support issue, [Redacted] child likely qualifies as the qualifying child of his mother, another taxpayer. In either case, [Redacted] child does not meet the requirements of a qualifying relative for the taxpayers.

Because [Redacted] child does not meet the requirements for either a qualifying child or a qualifying relative as defined in IRC section 152, the Commission finds that the taxpayers are not entitled to a dependency exemption deduction for his child for 2008. And since the taxpayers are not entitled to the dependency exemption, the taxpayers cannot claim the additional grocery credit for the child per Idaho Code section 63-3024A.

WHEREFORE, the Notice of Deficiency Determination dated July 23, 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.