

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 22091
[Redacted]	)	
Petitioners.	)	DECISION
	)	
_____	)	

On July 22, 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) proposing additional income tax and interest for the taxable year 2008 in the total amount of \$549.

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

The sole issue for this decision is whether the taxpayers are entitled to a dependency exemption for [Redacted], two of [Redacted] children from a prior marriage.

[Redacted] was previously married to [Redacted] and three children were born of that marriage; however, only the dependency exemption deduction for [Redacted] are in question. A copy of the original divorce decree dated February 26, 1993, was provided. As it pertains to the dependency exemptions, the decree refers to the three children from the marriage; however, only two were minors in 2008. The decree states that [Redacted] will be granted the dependency exemption for two children in odd numbered years and [Redacted] will be entitled to claim one. In even numbered years, the decree states that [Redacted] will be entitled to claim two children and [Redacted] one. The decree also states, however, that [Redacted] shall have the option of claiming all three children in each year if he pays [Redacted] the sum equal to the actual tax

savings benefit if she were to claim the exemptions. It further states that each party shall sign and execute any documents necessary to effectuate the waiver of such exemption. The taxpayers claimed a dependent exemption for [Redacted] two minor children on their 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 taxpayers provided a copy of the divorce decree that states [Redacted] is entitled to the dependent exemptions for his minor children and that [Redacted] shall sign any documents necessary. 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. Although the divorce decree states each party will execute documents waiving their right to the exemption, the taxpayers provided no such signed declaration, nor did they 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 taxpayers 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. 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 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 taxpayers must show they have either a qualifying child or a qualifying relative. Regarding a qualifying child, the taxpayers have not shown that [Redacted] principal place of abode was with them for more than one-half the taxable year. They have not met their burden of proving that [Redacted] was a qualifying child in 2008. As for meeting the requirements for a qualifying relative of the taxpayers, the taxpayers failed to show that they provided over one-half of [Redacted] support for the taxable year or that [Redacted] were not the qualifying children of any other taxpayer for the taxable year. The taxpayers have not carried their burden of proving [Redacted] were their qualifying relative in 2008.

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

WHEREFORE, the Notice of Deficiency Determination dated July 22, 2009, is hereby APPROVED, AFFIRMED, and MADE FINAL.

The additional tax and interest have been paid, therefore, 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.

\_\_\_\_\_