

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 21899
[Redacted])	
)	DECISION
Petitioners.)	
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On May 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] (taxpayers) proposing additional income tax and interest for taxable year 2008 in the total amount of \$159.35.

The taxpayers filed a timely appeal and petition for redetermination. The taxpayers did not request a hearing but stated they would provide whatever additional information the Tax Commission required. The Tax Commission, having reviewed the file, hereby issues its decision.

The taxpayers timely filed their 2008 Idaho individual income tax return. Subsequently, the taxpayers filed an amended 2008 return to claim an additional dependent exemption. During the processing of the taxpayers' amended return, the Taxpayer Accounting Section (Taxpayer Accounting) found that another taxpayer claimed the same dependent the taxpayers were adding to their income tax return. Taxpayer Accounting determined the taxpayers were not entitled to the dependent exemption, disallowed the exemption on the taxpayers' return, and sent them a Notice of Deficiency Determination.

The taxpayers protested the determination by sending in a copy of a Judgment and Order from the Third Judicial District Court of Idaho. The Judgment and Order stated that [Redacted] shall be allowed to claim [Redacted] as an exemption in accordance with the Idaho Child

Support Guidelines. Taxpayer Accounting reviewed the information and sent the matter for administrative review.

The Tax 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 responded by telephone stating that the Internal Revenue Service accepted, as support for their position, a copy of the Judgment and Order with a statement that the custodial parent refused to sign a release of the exemption form. The Tax Commission reviewed the matter and asked the taxpayers to provide information showing [Redacted] accepted the documentation to support the exemption deduction. The taxpayers did not provide the requested information.

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 parents that live apart from each other. 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 did not provide a form or statement releasing the exemption to the noncustodial parent nor did they provide anything to show that [Redacted] was the custodial parent. The document the taxpayers did provide clearly states that [Redacted] shall be allowed to claim [Redacted] as a dependent. However, it is the Internal Revenue Code that is controlling in the determination of income tax deductions (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 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 and one was not provided, 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, (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).

Therefore, to claim a dependent exemption the taxpayers must show the dependent is 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. In fact, the information available shows [Redacted] lived with his mother. Consequently, [Redacted] cannot be a qualifying child for the taxpayers for taxable year 2008. As for [Redacted] being a qualifying relative, the taxpayers failed to show that they 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. Since [Redacted] lived with his mother, he was a qualifying child for her, and therefore [Redacted] cannot be a qualifying relative for the taxpayers.

Because [Redacted] did not meet the requirements for either a qualifying child or a qualifying relative as defined in IRC section 152 for the taxpayers, the Tax Commission finds that the taxpayers are not entitled to a dependent exemption deduction [Redacted] for taxable

year 2008. And since the taxpayers are not entitled to the dependent exemption, the taxpayers cannot claim the additional grocery credit [Redacted] per Idaho Code section 63-3024A.

WHEREFORE, the Notice of Deficiency Determination dated May 2, 2009, is hereby APPROVED, AFFIRMED, and MADE FINAL.

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

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2008	\$159	\$8	\$167

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

An explanation of the petitioners' right to appeal this decision is enclosed.

DATED this _____ day of _____ 2010.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2010, 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.
