

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],) DOCKET NO. 22028
)
)
Petitioners.) DECISION
)
_____)

On June 26, 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 income tax and interest for taxable year 2008 in the total amount of \$291.81.

On April 6, 2009, the taxpayers filed a timely appeal and petition for redetermination. The taxpayers requested a telephone hearing and provided additional information for the Tax Commission's consideration. The Tax Commission, having reviewed the file, hereby issues its decision.

The taxpayers claimed a dependent exemption that was also claimed on another income tax return. The Taxpayer Accounting section (Taxpayer Accounting) reviewed the taxpayers return and determined the taxpayers could not claim the dependent exemption [Redacted]. Taxpayer Accounting sent the taxpayers a Notice of Deficiency Determination, which the taxpayers protested.

The taxpayers stated that [Redacted] was the custodial parent and that they provided more than half the support [Redacted] during taxable year 2008. The taxpayers also provided a copy of an ORDER MODIFYING CHILD CUSTODY to show [Redacted] position as the custodial parent. Taxpayer Accounting reviewed the information and referred 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 asked for a telephone conference. During the conference, the taxpayers provided information regarding [Redacted] divorce decree and the modifying orders since the divorce decree. Internal Revenue Code (IRC) section 152 was discussed, and the taxpayers stated that [Redacted] did not sign any form releasing the dependent exemption to the non-custodial parent.

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). 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(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 stated that [Redacted] did not sign a written declaration releasing [Redacted] exemption to the non-custodial parent. However, subsequent information provided to the Tax Commission by the non-custodial parent is clearly a release of the dependent exemption [Redacted] for the taxable years 2006 through 2010. The release signed [Redacted] was signed well after the taxpayers filed their income tax return and well after the due date of the taxable year 2008 returns, but it was signed well within the statute of limitations for filing an amended return.

The Tax Commission finds that because [Redacted] signed a release of the dependent exemption to the non-custodial parent, Taxpayer Accounting's determination is correct. And, rather than waiting on the taxpayers to file an amended return to correct the exemption claimed, the Tax Commission hereby upholds the Notice of Deficiency determination thereby relieving the taxpayers of the responsibility to correct their 2008 income tax return.

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 taxpayers pay the following tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2008	\$289	\$26	\$315

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

An explanation of the taxpayers' 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.
