

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

| | | |
|---------------------------------|---|------------------|
| In the Matter of the Protest of |) | |
| |) | DOCKET NO. 22034 |
| [Redacted] |) | |
| |) | DECISION |
| Petitioner. |) | |
| _____ |) | |

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] (taxpayer) proposing additional income tax and interest for taxable year 2008 in the total amount of \$425.09.

The taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not request a hearing but wanted to provide additional information for the Tax Commission to consider. The Tax Commission, having reviewed the file, hereby issues its decision.

The taxpayer timely filed her 2008 Idaho individual income tax return. The taxpayer's return was processed and the refund claimed was sent to the taxpayer. As the processing of income tax returns continued, the Taxpayer Accounting Section (Taxpayer Accounting) found that another taxpayer claimed dependent exemptions for the same children as the taxpayer claimed on her income tax return. Taxpayer Accounting determined the taxpayer was not entitled to the dependent exemptions, disallowed the exemptions on the taxpayer's return, and sent her a Notice of Deficiency Determination.

The taxpayer protested the determination by sending in a copy of a Temporary Guardianship Agreement and copies of the children's mother's incarceration record. The taxpayer stated the children lived with her for more than six months during 2008 and, therefore,

qualified as her dependents. 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 responded asking what additional information she needed to provide. The Tax Commission asked the taxpayer to provide a list of the exact number of days the children lived with the taxpayer during 2008. The taxpayer stated she would provide the number of days as well as the total amount of support she provided the children.

Several months passed without the taxpayer providing any additional information. The Tax Commission contacted the taxpayer's representative and left a message for her to contact the Tax Commission. The Tax Commission was never contacted. Therefore, the Tax Commission decided the matter based upon the information available.

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 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, (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, (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 the questioned dependent exemptions, the taxpayer must show [Redacted] are either qualifying children or qualifying relatives. As for qualifying children, the taxpayer has not shown that [Redacted] meet the relationship test. IRC section 152(c)(2) states a qualifying child is a child of the taxpayer, a descendant of a child of the taxpayer, or a brother, sister, stepbrother, or stepsister of the taxpayer or a descendent of such relative. In this case, the available information shows that [Redacted] do not have such a relationship with the taxpayer. Therefore, [Redacted] cannot be qualifying children for the taxpayer.

Regarding the requirements for a qualifying relative of the taxpayer, the taxpayer fails in at least three of the four required elements. The taxpayer does not meet the relationship test (IRC section 152(d)(2)(H)). The taxpayer did not show she provided over one-half the support [Redacted] for the taxable year (IRC section 152(d)(1)(C)). And more importantly, [Redacted] were qualifying children of another taxpayer for the taxable year (IRC section 152(d)(1)(D)). The record shows from documentation the taxpayer provided that [Redacted] mother was released from incarceration on May 3, 2008. Therefore, the children were in the custody of their mother for more than six months and were qualifying children for the mother. Consequently, the taxpayer has no qualifying relatives.

Because [Redacted] do not meet the requirements for either a qualifying child or a qualifying relative, the Tax Commission finds that the taxpayer is not entitled to the dependency

exemption deductions for them for 2008. And since the taxpayer is not entitled to the dependency exemptions, the taxpayer cannot claim the additional grocery credit for the children per Idaho Code section 63-3024A.

Furthermore, the taxpayer reported her filing status as head of household. IRC section 2 states that an individual shall be considered a head of household if the individual is not married and she maintains as her home a household which constitutes for more than one-half the taxable year the principal place of abode of a person who is a dependent of the taxpayer, if the taxpayer is entitled to a deduction for the taxable year for such person under IRC section 151. Since the taxpayer is not entitled to the dependent deduction [Redacted] and the taxpayer had no one else to qualify her for the head of household filing status, the Tax Commission finds the taxpayer's filing status should be changed to single.

WHEREFORE, the Notice of Deficiency Determination dated June 26, 2009, is hereby MODIFIED, in accordance with the provisions of this decision and, as so modified, is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax and interest (computed to April 5, 2010):

| <u>YEAR</u> | <u>TAX</u> | <u>INTEREST</u> | <u>TOTAL</u> |
|-------------|------------|-----------------|--------------|
| 2008 | \$ 619 | \$ 30 | \$ 649 |

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 _____ 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.

Copy Mailed to:

[Redacted]
