

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 22085
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

On July 23, 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 \$206.95.

The taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not request a hearing, but he wanted the opportunity to obtain the needed documentation that would allow him to claim the dependent exemption. The Tax Commission, having reviewed the file, hereby issues its decision.

The taxpayer timely filed his 2008 Idaho individual income tax return. During the processing of the taxpayer's return, the Taxpayer Accounting Section (Taxpayer Accounting) found that another taxpayer claimed a dependent exemption for the same child as the taxpayer claimed on his income tax return. Taxpayer Accounting requested additional information from the taxpayer, but the taxpayer failed to respond. Taxpayer Accounting determined the taxpayer was not entitled to the dependent exemption, disallowed the exemption on the taxpayer's return, and sent him a notice of the change.

The taxpayer disagreed with the change Taxpayer Accounting made and submitted a copy of an AMENDED JUDGEMENT AND ORDER OF FILIATION. Taxpayer Accounting

reviewed the information provided, sent the taxpayer a Notice of Deficiency Determination, and referred the matter for administrative review.

The Tax Commission reviewed the matter and determined the taxpayer did not have a perfected appeal. The Tax Commission gave the taxpayer the opportunity to perfect his appeal, which he did in a letter to the Tax Commission dated September 23, 2009. The taxpayer stated that, per the court order he previously provided, he was entitled to claim a dependent exemption for his son, [Redacted]. The taxpayer stated that his son's mother tried to claim [Redacted] in past years but the exemption was always given to him.

The Tax Commission sent the taxpayer a hearing rights letter that discussed the methods available for redetermining a protested Notice of Deficiency Determination. The taxpayer contacted the Tax Commission and discussed the issue of the dependent exemption. The Tax Commission told the taxpayer that he needed to show that he was [Redacted] custodial parent or he needed to provide the Tax Commission with a statement from the custodial parent releasing the exemption to him. The taxpayer stated he would try to get the release from [Redacted] mother but he needed additional time to track her down. The Tax Commission allowed the taxpayer a substantial amount of time to get the release from the custodial parent; however, he failed to provide a release to the Tax Commission. Therefore, the Tax Commission, seeing that the taxpayer had ample time to provide the necessary documentation, 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.

A child of a taxpayer is generally a dependent of the taxpayer.

IRC section 152(e) provides a special rule for parents who 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 taxpayer is the father [Redacted]. The taxpayer was ordered to pay child support through an action initiated [Redacted]. The Order also provided that the taxpayer can take the dependent exemption for state and federal income tax purposes so long as he was current with his child support. The taxpayer was wholly relying on the court's order for claiming the dependent exemption deduction.

The document the taxpayer provided clearly states that he is entitled to the dependent exemption [Redacted]. However, the Internal Revenue Code is controlling in the determination

of income tax deductions (“State courts, by their decisions, cannot determine issues of Federal tax law.” 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 dependent exemption in order for the noncustodial parent to claim the child’s dependent 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).

The taxpayer stated he was not the custodial parent, and he failed to provide a signed release from the custodial parent. Since the signed release is a requirement for IRC section 152(e) to apply, the determination of whether the taxpayer can claim the dependent exemption reverts to IRC section 152(a).

IRC section 152(a) defines a dependent as either a “qualifying child” or a “qualifying relative.” A qualifying child is 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).

A qualifying relative is 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 [Redacted] as a dependent the taxpayer must show that [Redacted] is either a qualifying child or a qualifying relative. Regarding a qualifying child, the taxpayer stated that [Redacted] did not live with him for more than half the year in 2008. Consequently, [Redacted] cannot be a qualifying child for the taxpayer for 2008. As for a qualifying relative, the taxpayer did not show that he 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.

The information available shows that [Redacted] lived with his mother. This being the case, [Redacted] was a qualifying child for his mother. Therefore, [Redacted] cannot be a qualifying relative for the taxpayer.

Because [Redacted] did not meet the requirements for either a qualifying child or a qualifying relative as defined in IRC section 152, the Tax Commission finds that the taxpayer is not entitled to a dependent exemption deduction [Redacted] for taxable year 2008. And since the taxpayer is not entitled to the dependent exemption, the taxpayer cannot claim the additional grocery credit [Redacted] per Idaho Code section 63-3024A.

WHEREFORE, the Notice of Deficiency Determination dated July 23, 2009, is hereby APPROVED, AFFIRMED, and MADE FINAL.

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

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2008	\$ 202	\$ 17	\$ 219

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

An explanation of the taxpayer'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.