

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],) DOCKET NO. 22144
)
)
Petitioners.) DECISION
)
_____)

On July 10, 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 \$307.65.

The taxpayers filed a timely appeal and petition for redetermination. The taxpayers did not request a hearing but rather provided additional information in support of their position. The Tax Commission, having reviewed the file, hereby issues its decision.

ISSUE

This case concerns the deduction of a dependent exemption for a minor child that was claimed on more than one taxpayer’s Idaho individual income tax return.

FACTS AND BACKGROUND

The taxpayers’ timely filed their 2008 Idaho individual income tax return. During the processing of the taxpayers’ return, the Taxpayer Accounting Section (Taxpayer Accounting) found that the taxpayers claimed a dependent exemption deduction for a child that was claimed on a previously filed Idaho income tax return. Taxpayer Accounting requested information from the taxpayers, and the taxpayers provided a copy of [Redacted] divorce decree that states he is to receive the tax exemption [Redacted]. Taxpayer Accounting also received third-party information that changed the tax exemption to [Redacted] mother. Taxpayer Accounting

ultimately determined the taxpayers were not entitled to the dependent exemption and sent the taxpayers a notice that their Idaho return had been corrected.

The taxpayers protested Taxpayer Accounting's change to their return. The taxpayers stated that Taxpayer Accounting based its decision on a document that was not in effect in 2008. The taxpayers stated the controlling document for the tax exemption through February 10, 2009, was the divorce decree.

Taxpayer Accounting 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 contacted the Tax Commission and asked what they needed to provide to support their position. The Tax Commission asked the taxpayers to provide a list of days (nights) that [Redacted] stayed with them during 2008. It took a while, but the taxpayers did provide a calendar that showed [Redacted] stayed overnight with them 254 days in 2008. The taxpayers also provided a narrative of agreed days and how the custody of [Redacted] progressed throughout the year.

The Tax Commission also received a calendar from the other taxpayer claiming [Redacted] as a dependent. Their calendar showed [Redacted] stayed overnight with this taxpayer 208 days in 2008. The other taxpayer also provided a cover letter with documentation showing where the school considered [Redacted] home address and dates of [Redacted] dental appointments.

The Tax Commission compared the calendars by identifying the days where it was agreed that [Redacted] was with either taxpayer, by identifying the days that [Redacted] was claimed by both sides, and by identifying the days that [Redacted] was claimed by neither side. The Tax Commission then contacted both parties to get further information on the conflicting

days and the non-claimed days. After discussing the calendars with both parties, the Tax Commission put all the information together and decided who received a particular day.

LAW AND ANALYSIS

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, 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).

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.

Since, in this case, both parties claim to be the custodial parent and neither party executed a statement releasing the dependent exemption, IRC section 152(e) is not applicable, and the determination of who can claim a dependent exemption for [Redacted] reverts to IRC sections 152(c) and (d).

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). Both parties submitted court documents proving their right to claim the tax exemption. Each would like the Tax Commission to follow their court decision that permits them to claim [Redacted]. If the Tax Commission were to rule on this basis, it would hold that the taxpayers receive the dependent exemption based on the effective dates of the decisions. 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 the deduction must meet the requirements of the particular IRC

sections. Therefore, for the taxpayers to prevail, they need to establish that [Redacted] was either a qualifying child or a qualifying relative.

For the taxpayers to claim [Redacted] as a qualifying child, the key factor they need to prove or show is that [Redacted] principal place of abode for more than one-half the taxable year was with them. On the surface, [Redacted] calendar clearly shows [Redacted] lived with the taxpayers for more than one-half of 2008. However, when compared with his written narrative, [Redacted] calendar had some inaccuracies. The Tax Commission questioned [Redacted] about the conflicting information and he stated that there were several calendar revisions made by his ex-wife. He also stated his ex-wife's class schedule was on different days than what he stated in his narrative. [Redacted] did, however, agree that on four of the contested days [Redacted] was with her mother.

In analyzing the calendars provided by both parties, the Tax Commission decided the information provided in [Redacted] narrative was more accurate than what was shown on his calendar and his subsequent statements. Therefore, according to the narrative, [Redacted] was with her mother on Wednesdays and every other weekend, and [Redacted] generally had [Redacted] every Tuesday, Thursday, and the opposite weekends. Beginning with these premises, the Tax Commission began assigning agreed exceptions and days where the more contemporaneous information prevailed. The result was that [Redacted] had [Redacted] 153 days in 2008, the other party had [Redacted] 193 days, and there were 20 days that a determination could not be made. Accordingly, the taxpayers did not have [Redacted] more than one-half of taxable year 2008; therefore, [Redacted] does not meet the requirements of a qualifying child of the taxpayers.

Regarding a qualifying relative, the Tax Commission's analysis of the calendars shows that [Redacted] is a qualifying child of another taxpayer. Therefore, [Redacted] cannot be a qualifying relative of the taxpayers. (IRC section 152(d)(1)(D)).

Because [Redacted] does 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 taxpayers are not entitled to a dependency exemption deduction [Redacted] for 2008. And since the taxpayers are not entitled to the dependency exemption, the taxpayers cannot claim the additional grocery credit [Redacted] as provided for in Idaho Code section 63-3024A.

WHEREFORE, the Notice of Deficiency Determination dated July 10, 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	\$303	\$ 0	\$303
		REFUND REDUCED	<u>\$303</u>
		BALANCE DUE	<u>\$ 0</u>

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.
