

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 22160
[Redacted],	)	
	)	
Petitioners.	)	DECISION
_____	)	

On August 7, 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 \$310.32.

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

The taxpayers timely filed their Idaho individual income tax return. During the processing of their return, it was found that the taxpayers claimed a dependent that was also claimed on another income tax return. The Taxpayer Accounting Section (Taxpayer Accounting) determined the taxpayers were not entitled to claim the dependent exemption and disallowed it on the taxpayers' income tax return. Taxpayer Accounting sent the taxpayers a letter regarding the change to their Idaho income tax return. The taxpayers disagreed with the change and sent a letter of protest to the Tax Commission.

The taxpayers' protest stated that they provided much more than half the support of the dependent claimed. They also stated that [Redacted] was awarded the dependent exemption through an ORDER MODIFYING CHILD SUPPORT issued by the [Redacted] County District

Court. Taxpayer Accounting reviewed the information and referred the matter for administrative review.

The Tax Commission reviewed the matter and sent the taxpayers a letter discussing the options available for redetermining a protested Notice of Deficiency Determination. The Tax Commission did not receive a response from the taxpayers' representative, so a follow-up letter was sent directly to the taxpayers. The taxpayers contacted the Tax Commission and discussed the issue. From that discussion, it was decided that the taxpayers would provide additional information showing the support the taxpayers provided for the questioned dependent. A few days later, the taxpayers provided the information for the Tax Commission's consideration.

Deductions are a matter of legislative grace, and whether and to what extent deductions shall be allowed depends upon the clear provision for the particular deduction. A taxpayer seeking a deduction must be able to point to an applicable statute and show that he comes within its terms. New Colonial Ice Co., Inc. v. Helvering, 292 US. 435, 54 S.Ct. 788 (1934); INDOPCO, Inc. v. Commissioner, 503 U.S. 79, 84, 112 S.Ct. 1039, 117 L.Ed.2d 226 (1992).

Internal Revenue Code (IRC) section 151 provides for the allowance of deductions for personal exemptions and exemption deductions for dependents. In this case, the taxpayers claimed a dependent exemption for a child that filed and claimed a personal exemption for herself. IRC section 151(d)(2) disallows the exemption amount in the case of certain dependents. It states that, in the case of an individual with respect to whom an exemption deduction is allowable to another taxpayer in the same taxable year, the exemption amount for such individual shall be zero. In other words, a personal exemption will not be allowed on an individual's income tax return if that individual can be claim as a dependent by another taxpayer.

IRC section 152 defines a dependent as either a “qualifying child” or a “qualifying relative.” To be a qualifying child the dependent must be 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).

To be a qualifying relative, the dependent must be 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).

Prior to 2005, a parent could claim a child, under the age of 19, as a dependent regardless of the amount of earned income the child had for the calendar year. However, for taxable years beginning after January 1, 2005, the child could not have provided over one-half their own support (qualifying child) or could not have gross income over the exemption amount (qualifying relative) to be a dependent of another taxpayer. In this case, the claimed dependent had gross income over the exemption amount, and while it is unclear whether she provided over one-half of her own support, she stated that she did not live with the taxpayers. Consequently, the dependent claimed was neither a qualifying child nor a qualifying relative for the taxpayers.

The taxpayers are also relying, to some extent, on an order of the [Redacted] Judicial District Court of [Redacted] County which assigned a dependent exemption to [Redacted] for his daughter, [Redacted]. [Redacted]. This order does nothing for the matter at hand other than to show that [Redacted] was paying child support and providing medical insurance [Redacted].

Therefore, this document's only value is to document the support the taxpayers were providing [Redacted].

The taxpayers provided other information to show the total amount of support they provided [Redacted]. However, when compared to the total support [Redacted], the taxpayers' portion was less than 40 percent of the total. Regardless of the total amount of support the taxpayers provided, [Redacted] income was greater than the exemption amount for 2008, and as such, she could not be claimed as a dependent under the qualifying relative rules.

Therefore, because [Redacted] was not a qualifying child or a qualifying relative for the taxpayers, the Tax Commission finds the taxpayers cannot claim the dependent exemption. And since the taxpayers cannot claim the dependent exemption, they are not allowed to claim the grocery credit for [Redacted]. Idaho Code section 63-3024A.

WHEREFORE, the Notice of Deficiency Determination dated August 7, 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	\$19	\$322

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

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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.