

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],) DOCKET NO. 22197
Petitioner.)
DECISION
_____)

On August 20, 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 \$259.

The taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not respond to the Tax Commission's hearing rights letter and has provided nothing further for the Tax Commission to consider. The Tax Commission, having reviewed the file, hereby issues its decision.

The taxpayer timely filed his 2008 Idaho individual income tax return. The taxpayer's return was processed, and his claim for refund was offset by a claim [Redacted]. As the processing of income tax returns continued, 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 information from the taxpayer, and the taxpayer provided a copy of his DECREE OF DIVORCE which stated he and his ex-wife would share the dependent exemption. Taxpayer Accounting ultimately determined the taxpayer was not entitled to the dependent exemption and sent him a Notice of Deficiency Determination.

The taxpayer protested Taxpayer Accounting's determination, so Taxpayer Accounting referred 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 did not respond. 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. A child of a taxpayer is generally a dependent of the taxpayer.

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 taxpayer provided a copy of his divorce decree. The decree stated that both parties shall have joint legal and physical custody of their minor child, but that the sole physical custody of the child is with his mother. The decree also provided that the taxpayer would pay child support and that the dependent exemption for the child would be shared. The decree provided that the parent not receiving the dependent exemption would sign the required [Redacted] form to release his/her claim to the exemption.

As indicated in the divorce decree and the above cited IRC section, the IRC clearly requires that the custodial parent sign a written declaration (Form 8332) releasing the dependent exemption in order for the noncustodial parent to claim the child's dependent exemption. The taxpayer provided no such declaration, and the information available shows that the taxpayer was not the custodial parent.

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).

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(c) and (d).

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).

Therefore, to claim the dependent exemption, the taxpayer must show that his son [Redacted] met the requirements for either a qualifying child or a qualifying relative. Regarding a qualifying child, the taxpayer has not shown that [Redacted] principal place of abode was with him for more than one-half the taxable year. In fact, the information available shows the child's mother as having sole physical custody. Accordingly, [Redacted] cannot be a qualifying child for the taxpayer.

As for a qualifying relative, the taxpayer did not show that he provided over one-half the total support [Redacted] for the taxable year, or that [Redacted] was not a qualifying child of any other taxpayer for the taxable year. Since [Redacted] was in the sole custody of his mother, he was a qualifying child for her. Therefore, [Redacted] cannot be a qualifying relative for the taxpayer.

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 taxpayer is not entitled to the 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 August 20, 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	\$ 259	\$ 14	\$ 273
		2009 REFUND APPLIED	(224)
		BALANCE DUE	<u>\$ 49</u>

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.