

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 22211
[Redacted]	)	
	)	DECISION
Petitioners.	)	
_____	)	

On July 14, 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 \$291.52.

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

The taxpayers timely filed their 2008 Idaho individual income tax return. The taxpayers' return was processed, and the tax due was paid by the taxpayers. 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 taxpayers claimed on their income tax return. Taxpayer Accounting determined the taxpayers were not entitled to the dependent exemption, disallowed the exemption on the taxpayers' return, and sent them a Notice of Deficiency Determination.

The taxpayers protested the determination by sending in a copy of an Order Modifying Child Support dated November 9, 2006, by the Seventh Judicial District Court of Idaho. The Order stated that a dependency exemption will be assigned [Redacted] pursuant to the Idaho

Child Support Guidelines. Taxpayer Accounting reviewed the information and sent 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 responded by telephone asking what additional information could be provided. They stated they were wholly relying on the court document that stated [Redacted] could claim the exemption. The Tax Commission told the taxpayers that [Redacted] needed to provide a statement or the federal Form 8332 signed by the custodial parent releasing the child exemption to the noncustodial parent. A few days later, the taxpayers called again and stated they discussed the issue with their local [Redacted] representative and they all agreed the taxpayers were entitled to the dependent exemption. The taxpayers faxed the information they received [Redacted] to the Tax Commission to support their position. The Tax Commission reviewed the information provided and hereby upholds the Notice of Deficiency Determination based upon the following.

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 that do not live together. 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.

[Redacted]. [Redacted]. Therefore, for IRC section 152(e) to apply, the taxpayers must have a signed statement [Redacted] releasing the exemption [Redacted].

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 a signed release was not provided, IRC section 152(e) does not apply; therefore, the determination of whether the taxpayers can claim [Redacted] 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, for the taxpayers to claim [Redacted] they must show she is either a qualifying child or a qualifying relative. The taxpayers argue that the Order permits [Redacted]. However, the Internal Revenue Code is controlling in the determination of income tax deductions, not the court. (See 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.) [Redacted]. However, in reviewing the questions and answers provided on the form, the Tax Commission found that the taxpayers probably did not answer at least one of the questions correctly. The taxpayers answered in the affirmative that a post 1984 agreement exists that states the noncustodial parent can claim the child with no conditions attached, that the custodial parent will not claim the child, and that identifies the years the noncustodial parent can

claim the child. If the taxpayers are relying on the court document provided to the Tax Commission, all those requirements are missing as well as the custodial parent's signature. The court document simply states, "A dependency exemption will be assigned [Redacted] pursuant to the Idaho Child Support Guidelines." This statement falls far short of the requirements needed to release the dependent exemption to the noncustodial parent.

As for meeting the requirements for a qualifying child, the taxpayers have not shown that [Redacted] principal place of abode was with them for more than one-half the taxable year. (IRC section 152(c)(1)(B).) Therefore, [Redacted] cannot be a qualifying child for the taxpayers for 2008. And regarding a qualifying relative, the taxpayers have not shown that [Redacted] was not a qualifying child of another taxpayer for 2008. (IRC section 152(d)(1)(D).) Therefore, [Redacted] cannot be a qualifying relative for the taxpayers for taxable year 2008.

Because [Redacted] does not meet the requirements for either a qualifying child or a qualifying relative as defined in IRC section 152 for the taxpayers, the Tax Commission finds that the taxpayers are not entitled to a dependency exemption deduction [Redacted] for taxable year 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 14, 2009, is hereby APPROVED, AFFIRMED, and MADE FINAL.

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

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2008	\$ 289	\$ 14	\$ 303

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

An explanation of the petitioners' 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.

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