

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 22213
[Redacted])	
)	DECISION
Petitioners.)	
)	
)	
)	

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] (taxpayers) proposing additional income tax and interest for taxable year 2008 in the total amount of \$585.76.

The taxpayers filed a timely appeal and petition for redetermination. The taxpayers did not request a hearing, but their representative did contact the Tax Commission and discussed the matter with a designee of the Tax Commission. The representative stated she would consult with the taxpayers and possibly refer them to an attorney. The taxpayers made no further contact, so the Tax Commission reviewed the file and hereby issues its decision.

The taxpayers timely filed their 2008 Idaho individual income tax return. The taxpayers' return was processed, and they received a refund after an offset claim [Redacted]. As the processing of income tax returns continued, the Taxpayer Accounting Section (Taxpayer Accounting) found that another taxpayer claimed dependent exemptions for two of the same children as the taxpayers claimed on their income tax return. Taxpayer Accounting requested information from the taxpayers, and the taxpayers provided a copy of [Redacted] JUDGEMENT AND DECREE OF DIVORCE. Taxpayer Accounting ultimately determined the taxpayers were not entitled to the dependent exemptions and sent the taxpayers a Notice of Deficiency

Determination. The taxpayers protested Taxpayer Accounting's determination, so 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 did not respond, so the Tax Commission sent them a follow-up letter. The taxpayers' representative contacted the Tax Commission to discuss the issue. The representative did not understand why the Tax Commission would not follow the divorce decree but needed additional support for the dependent exemptions. She stated she would tell the taxpayers what was needed to support their position. The taxpayers did not provide any additional information, so 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 taxpayers provided a copy of [Redacted] divorce decree. The decree stated that the parties shall have joint legal and physical custody of their minor children, that the primary physical custody of the children is with their mother, that [Redacted] will pay child support, and that [Redacted] shall be entitled to claim the dependent exemptions of four of their six children. The divorce decree also stated that [Redacted] ex-wife shall sign a federal Form 8332 to release the exemptions to [Redacted].

The document the taxpayers provided clearly shows that [Redacted] has a right to the dependent exemptions [Redacted]. However, it is the Internal Revenue Code that is controlling in the determination of income tax deductions (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), and IRC section 152(e)(2) 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 taxpayers provided no such declaration and the evidence provided shows that [Redacted] 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 taxpayers 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 exemptions the taxpayers must show that both [Redacted] are either qualifying children or qualifying relatives. Regarding a qualifying child, the taxpayers have not shown that either [Redacted] principal place of abode was with them for more than one-half the taxable year. In fact, the information available shows the children’s mother as having primary physical custody. Accordingly, [Redacted] cannot be qualifying children for the taxpayers.

As for a qualifying relative, the taxpayers did not show that they provided over one-half the total support [Redacted] for the taxable year or that [Redacted] were not a qualifying child of any other taxpayer for the taxable year. Since [Redacted] were in the primary custody of their mother, they could be qualifying children for her. As a result, [Redacted] cannot be qualifying relatives for the taxpayers.

Because [Redacted] do 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 the dependent exemption deductions for either [Redacted] for taxable year 2008. And since the taxpayers are not entitled to the dependent exemptions, the taxpayers 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 taxpayers pay the following tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2008	\$ 578	\$ 30	\$ 608

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

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.

Copy Mailed to:

[Redacted]
