

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 22279
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

On September 24, 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 \$297.99.

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 and paid the tax due as shown on the return. 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 additional information from the taxpayer. The taxpayer did not respond. Taxpayer Accounting ultimately determined the taxpayer was not entitled to the dependent exemption and sent the taxpayer a Notice of Deficiency Determination.

The taxpayer protested Taxpayer Accounting's determination and provided copies of two court documents that stated the taxpayer was awarded the dependent exemption [Redacted]. The taxpayer stated he paid child support, and as of the child support order of July 1999, he has

the right to claim the dependent exemption [Redacted]. Taxpayer Accounting reviewed the information provided and 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 failed to respond, 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 taxpayer and his ex-wife divorced on July 1, 1997. In that decree, the taxpayer was ordered to pay child support, and he was deemed the noncustodial parent. On July 15, 1999, the taxpayer was back in court and received an ORDER RE MODIFICATION that stated he shall claim the dependent exemption for his minor children. However, this court order did not change his status as the noncustodial parent. Another court action, finalized on January 18, 2008, changed the amount of child support the taxpayer was to pay, but it did not change who the court awarded the dependent exemption, nor did it change the taxpayer's noncustodial parent status.

The documents the taxpayer provided clearly state that he is entitled to the dependent exemption for his minor children. 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 IRC section 152(e)(2) clearly requires that the custodial parent sign a written declaration releasing the dependency exemption in order for the noncustodial parent to claim the child's dependency exemption. The taxpayer provided no such declaration, nor did he show that his status changed from the noncustodial 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) and 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).

To claim a dependent exemption the taxpayer must show that [Redacted] is 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. The information available states the taxpayer’s ex-wife has primary physical custody of their children and the taxpayer has visitation rights. On the assumption that this has not changed, [Redacted] principal place of abode was likely with his mother. Consequently, the taxpayer has no qualifying child for 2008.

As for meeting the requirements for a qualifying relative, the taxpayer failed to show that he provided over one-half of [Redacted] support in 2008 or that [Redacted] was not a qualifying child of any other taxpayer for 2008. As previously stated, the taxpayer’s ex-wife had primary

physical custody [Redacted]. This being the case, [Redacted] is a qualifying child of another taxpayer and therefore cannot be a qualifying relative of 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 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.

Furthermore, the taxpayer reported his filing status as head of household. IRC section 2 states that an individual shall be considered a head of household if the individual is not married and he maintains as his home a household which constitutes for more than one-half the taxable year the principal place of abode of a son or daughter. Once again, [Redacted] mother had primary physical custody; therefore, [Redacted] principal place of abode was not with the taxpayer. Since [Redacted] principal place of abode was not the taxpayer's home, and the taxpayer had no one else to qualify him for the head of household filing status, the Tax Commission finds the taxpayer's filing status should be changed to single.

WHEREFORE, the Notice of Deficiency Determination dated September 24, 2009, is hereby MODIFIED, in accordance with the provisions of this decision and, as so modified, is 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	\$ 763	\$ 53	\$ 816

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.