

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 22322
[REDACTED],)	
)	
Petitioners.)	DECISION
)	
_____)	

On October 22, 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 \$591.01.

The taxpayers filed a timely appeal and petition for redetermination. The taxpayers did not request a hearing but instead attempted to get the necessary document which would entitle them to the dependent exemptions. The taxpayers failed to obtain the document and had nothing further to submit to the Tax Commission. 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 refund claimed was seized [Redacted]. As the processing of income tax returns continued, the Taxpayer Accounting Section (Taxpayer Accounting) found that another taxpayer claimed dependent exemptions for the same children as the taxpayers claimed on their income tax return. After making some inquires, Taxpayer Accounting determined the taxpayers were not entitled to the dependent exemptions, corrected the taxpayers' return, and sent them a correction notice.

The taxpayers protested the determination by sending in a copy of [Redacted] divorce decree, copies of his child support account [Redacted], and copies of information showing the

[Redacted] allowed the claimed deductions. The taxpayers stated [Redacted] paid more than half of the dependents' support through his child support payments. They stated that, as of December 31, 2008, [Redacted] was current on his child support.

Taxpayer Accounting reviewed the information and forwarded the matter for administrative review. The Tax Commission reviewed the case and sent the taxpayers a letter that discussed the methods available for redetermining a protested Notice of Deficiency Determination. The taxpayers contacted the Tax Commission and asked what additional information the Tax Commission needed to show that they were entitled to the dependent exemptions. The Tax Commission explained the law and told the taxpayers that since [Redacted] was not the custodial parent, he would need to provide a release of the exemptions from the custodial parent. The taxpayers did not understand why the divorce decree and court order was insufficient proof; nevertheless, they stated they would attempt to get the release from the custodial parent.

After several months passed with no success in obtaining a release from the custodial parent, the taxpayers contacted the Tax Commission and stated they would have to rely upon the information provided. Therefore, the Tax Commission issues this decision 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.

[Redacted] divorced the claimed dependents' mother on January 28, 2005. In that decree, [Redacted] was ordered to pay child support, and if he was current with his child support obligation, he could claim the dependent exemptions of his two children.

According to the documents provided, [Redacted] has a right to the dependent exemptions of his minor children. However, the Internal Revenue Code 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 releasing the dependent exemption in order for the noncustodial parent to claim the child's dependent exemption. The taxpayers were

unable to get such a release from the custodial parent, and they admitted that the children did not spend the majority of the time living with them.

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 the dependents are either a qualifying child or a qualifying relative. Regarding a qualifying child, the taxpayers readily admit that the children’s principal place of abode was with their mother for more than

one-half the taxable year. Therefore, the dependents cannot be a qualifying child for the taxpayers. As for a qualifying relative, the taxpayers did not establish that the dependents were not a qualifying child of any other taxpayer for the taxable year. In fact, the record shows that the claimed dependents lived with their mother and, therefore, could be a qualifying child for the dependents' mother. As a result, [Redacted] children cannot be qualifying relatives for the taxpayers.

Because the claimed dependents 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 [Redacted] for 2008. And since the taxpayers are not entitled to the dependent exemptions, the taxpayers cannot claim the additional grocery credit for the dependents per Idaho Code section 63-3024A.

WHEREFORE, the Notice of Deficiency Determination dated October 22, 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	\$ 16	\$ 594
		2009 REFUND APPLIED	(594)
		BALANCE DUE	<u>\$ 0</u>

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.