

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 22340
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

On September 1, 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 [Redacted] proposing additional income tax and interest for taxable year 2008 in the total amount of \$288.37.

[Redacted] filed a timely appeal and petition for redetermination. [Redacted] 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.

[Redacted] timely filed a joint 2008 Idaho individual income tax return with [Redacted], hereinafter referred to as taxpayers. During the processing of the taxpayers' return, the Taxpayer Accounting Section (Taxpayer Accounting) found that the taxpayers claimed a dependent exemption that was also claimed on another income tax return. Taxpayer Accounting requested additional information from the taxpayers but failed to receive a response. Taxpayer Accounting determined the taxpayers were not entitled to the dependent exemption and sent the taxpayers a tax correction letter.

The taxpayers disagreed with Taxpayer Accounting's determination. The taxpayers provided documentation which included a copy of [Redacted] COMPLAINT for divorce to support their claim to the dependent exemption [Redacted]. [Redacted] COMPLAINT stated he

would be entitled to claim his child, [Redacted], as a dependent for tax purposes. 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 failed to respond to the Tax Commission's letter, so the Tax Commission decided the matter based upon the information available.

[Redacted] is the biological father of [Redacted]. [Redacted] was claimed as a dependent on the taxpayers' Idaho individual income tax return and on the return of another Idaho taxpayer. The taxpayers provided documentation showing that [Redacted] asked the court to grant him the tax exemption [Redacted]. The document also provided for joint legal and joint physical custody of the parties' children to be arranged between the parties. This document is the complaint filed [Redacted]; it is not an order of the court. The only orders of the court provided by the taxpayers were a JOINT TEMPORARY RESTRAINING ORDER and an ORDER TO ATTEND THURSDAY FOCUS ON CHILDREN.

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 documentation stating it was [Redacted] position that he should be entitled to the dependent exemption [Redacted] upon the divorce from his ex-wife. This documentation only states Mr. [Redacted] opinion, it has no legal or binding authority. Nevertheless, 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 provided no such declaration, nor did they show that [Redacted] was the custodial parent [Redacted]. The information available shows the parents [Redacted] would agree to an arrangement of physical custody at a later date. This later arrangement was not provided.

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).

To claim a dependent exemption [Redacted], the taxpayers must show that [Redacted] was either a qualifying child or a qualifying relative. Regarding 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. In fact, the available information shows that, due to [Redacted] occupation, he generally had his children for only 2 - 4 days per month. This being the case, [Redacted] would not be a qualifying child for the taxpayers.

As for a qualifying relative, the taxpayers failed to show that they provided over one-half of [Redacted] support for the taxable year or that [Redacted] was not a qualifying child of any other taxpayer for the taxable year. As previously stated, [Redacted] was only with [Redacted]

for 2 - 4 days per month. Since [Redacted] presumably lived with her mother the rest of the time, [Redacted] was a qualifying child for her mother. Therefore, [Redacted] cannot be a qualifying relative for the taxpayers.

Because the taxpayers failed to establish that [Redacted] was either a qualifying child or a qualifying relative for purposes of IRC section 152, the Tax Commission finds that the taxpayers are not entitled to a dependent exemption deduction [Redacted] for taxable year 2008. And since the taxpayers are not entitled to the dependent exemption, the taxpayers cannot claim an additional grocery credit [Redacted] per Idaho Code section 63-3024A.

WHEREFORE, the Notice of Deficiency Determination dated September 1, 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	\$284	\$ 21	\$305

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

An explanation of the petitioner'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.
