

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 22341
[Redacted])	
)	DECISION
Petitioners.)	
<hr style="width: 40%; margin-left: 0;"/>		

On October 21, 2009, the staff of the Revenue Operations Division of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayers) proposing additional tax and interest for the taxable year 2008 in the total amount of \$428.76.

The taxpayers filed a timely appeal and petition for redetermination. The taxpayers did not request a hearing. The Commission, having reviewed the file, hereby issues its decision.

The sole issue for this decision is whether the taxpayers are entitled to dependency exemptions for two of [Redacted] children from a prior marriage, [Redacted].

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] 1999 divorce decree and a subsequent modification. The taxpayers also included a note stating that it was their understanding the modification overrode the paper [Redacted] signed previously for her ex-spouse. The paper was Form 8332, Release of Claim to Exemption for Child of Divorced or Separated Parents.

[Redacted] executed Form 8332 releasing her claim to exemption for [Redacted] for taxable year 1999 and all future years. She is bound by its terms.

Therefore, the Commission finds that the taxpayers are not entitled to dependency exemption deductions [Redacted] for taxable year 2008. And since the taxpayers are not entitled to the dependency exemptions, the taxpayers cannot claim the additional grocery credit for the children per Idaho Code section 63-3024A.

WHEREFORE, the Notice of Deficiency Determination dated October 21, 2009, is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER, the taxpayer pays the following tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2008	\$418	\$23	\$441

Interest is calculated through May 15, 2010.

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.
