

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 22356
[REDACTED],)	
)	
Petitioner.)	DECISION
_____)	

On October 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 to [Redacted] (taxpayer) proposing additional income tax and interest for taxable year 2008 in the total amount of \$303.45.

The taxpayer filed a timely appeal and petition for redetermination. The taxpayer requested a hearing but failed to appear at the scheduled date and time. The taxpayer made no further contact with the Tax Commission and has provided nothing more for the Tax Commission to consider. The Tax Commission, having reviewed the file, hereby issues its decision.

The taxpayer timely filed his Idaho individual income tax return. The taxpayer's return was processed, and the [Redacted] seized the refund claimed by the taxpayer. As the processing of income tax returns continued, the taxpayer's 2008 return was identified as a return on which a dependent was claimed that was also claimed on another income tax return. The Taxpayer Accounting Section (Taxpayer Accounting) requested additional information from the taxpayer, but the taxpayer failed to respond. Taxpayer Accounting determined the taxpayer was not entitled to the dependent exemption, so it changed the taxpayer's return and sent him a notice of the change. The taxpayer disagreed with the change Taxpayer Accounting made and submitted a copy of his divorce decree to support his position. Taxpayer Accounting reviewed the taxpayer's

information, sent the taxpayer a Notice of Deficiency Determination, and referred the matter for administrative review.

The Tax Commission reviewed the matter and sent the taxpayer a letter discussing the options available for redetermining a protested Notice of Deficiency Determination. The taxpayer asked for a hearing. The Tax Commission scheduled a hearing for March 2, 2010, at 9:30 a.m. and sent notice to the taxpayer in a letter dated February 16, 2010. The taxpayer did not appear for the hearing and has made no further contact with the Tax Commission. Therefore, the Tax Commission decided the matter based upon the information available.

Deductions are a matter of legislative grace, and whether and to what extent deductions shall be allowed depends upon the clear provision for the particular deduction. A taxpayer seeking a deduction must be able to point to an applicable statute and show that he comes within its terms. New Colonial Ice Co., Inc. v. Helvering, 292 US. 435, 54 S. Ct. 788 (1934); INDOPCO, Inc. v. Commissioner, 503 U.S. 79, 84, 112 S. Ct. 1039, 117 L.Ed.2d 226 (1992).

Internal Revenue Code (IRC) section 151 provides for the allowance of deductions for personal exemptions and exemption deductions for dependents. IRC section 152(e) provides a special rule for divorced parents or parents that do not live together. 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's divorce decree states that the taxpayer and his ex-wife separated on April 4, 2008. Their divorce was not final until January 14, 2009. The divorce decree stated that the taxpayer's ex-wife shall have primary physical custody of their minor child, [Redacted], and that she will reside in the state [Redacted]. Based upon this information, it can be assumed that the taxpayer did not have custody [Redacted] from April 4, 2008, to December 31, 2008. Since the taxpayer was not the custodial parent, he needs a signed release from the custodial parent in order to claim [Redacted] as a dependent under the provisions of IRC section 152(e). The taxpayer has provided no such release. Consequently, the provisions of IRC section 152(e) do not apply, and the determination of the dependent exemption reverts to IRC section 152(a).

IRC section 152(a) defines a dependent as either a "qualifying child" or a "qualifying relative." A qualifying child is 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).

A qualifying relative is 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, [Redacted] to qualify as a dependent for the taxpayer, [Redacted] must be either a qualifying child or a qualifying relative. In regards to a qualifying child, the taxpayer has failed to show that [Redacted] principal place of abode was with him for over one-half the taxable year. In fact, as previously stated, the information available indicates [Redacted] resided with her mother after the taxpayer and his ex-wife separated. Since [Redacted] did not reside with the taxpayer for the required time, she cannot be a qualifying child for the taxpayer for 2008.

As for a qualifying relative, the taxpayer has not shown that he provided over one-half the total support [Redacted] for the taxable year or that [Redacted] was not a qualifying child for any other taxpayer. According to the information available, the taxpayer did not start paying child support until November 2008. This hardly qualifies as paying over half the support [Redacted] for taxable year 2008. And since [Redacted] resided with her mother for the entire 2008 taxable year, she was a qualifying child for her mother. Therefore, [Redacted] cannot be a qualifying relative for the taxpayer.

The taxpayer's argument relies wholly on the court's provision in his divorce decree granting him the dependent exemption deduction. Clearly, the divorce decree states that the taxpayer is entitled to the dependent exemption [Redacted]. However, the taxpayer's argument fails on two points. First, the taxpayer's divorce was finalized on January 14, 2009; therefore, the terms and conditions of the divorce are not effective until after January 14, 2009. Second, and more importantly, 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); therefore, if the deduction does not meet the requirements of the IRC, the deduction is not allowable.

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 a 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 filed his 2008 income tax return with a filing status of 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. The taxpayer's divorce was not final until after the close of taxable year 2008. Therefore, the taxpayer was still legally married, and the head of household status was not available to him. Additionally, the taxpayer's child's principal place of abode was not the taxpayer's home; therefore, the taxpayer had no one to qualify him for the head of household filing status. The taxpayer's correct filing status for 2008 is married filing separate.

WHEREFORE, the Notice of Deficiency Determination dated October 1, 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	\$559	\$43	\$602

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.
