

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 22360
[Redacted],	)	
	)	
Petitioner.	)	DECISION
_____	)	

On October 10, 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 \$61.83.

The taxpayer filed a timely appeal and petition for redetermination. The taxpayer requested a telephone hearing which was held on December 18, 2009. The Tax Commission, having reviewed the file, hereby issues its decision.

The taxpayer timely filed his Idaho individual income tax return. 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. The taxpayer provided more information about the dependent claimed and the calculation of his Idaho taxable income. The taxpayer filed his Idaho income tax return on the basis of a community property split of income. Taxpayer Accounting ultimately determined the taxpayer was not entitled to claim the dependent exemption and disallowed it on the taxpayer's income tax return. Taxpayer Accounting sent the taxpayer a Notice of Deficiency Determination, which the taxpayer protested.

The taxpayer's protest centered on the argument that he was married at the end of taxable year 2008 and that a community property split of income, expenses, and deductions was appropriate. Taxpayer Accounting reviewed the information 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 telephonic hearing. During the hearing, the taxpayer restated his position that the correct accounting of income and deductions when filing as married filing separate is a community property split of income. The taxpayer stated that he was married for the entire year of 2008. He and his ex-wife did not separate until January 2009. The taxpayer stated that during the divorce proceedings, it was suggested and recommended that he and his ex-wife file married filing joint, but his ex-wife refused to cooperate. Therefore, the taxpayer had no choice but to file married filing separate with a community property split of income and deductions. Since the taxpayer had two children in his household the entire year, he claimed one of the children per the rules of community property.

In general, the community property laws of the state of Idaho require that the community property of the community (marriage) be divided equally between the husband and wife. Income earned during the marriage is community property. (Idaho Code section 32-906.) Likewise, any debts and expenses incurred during the marriage are community debts. However, dependent exemptions are neither community property nor community debts. See Idaho Code section 32-921 for the definition of property for purposes of Idaho's community property statutes.

Dependent exemptions 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).

IRC section 152(c) defines a dependent as a “qualifying child”, which is defined 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).

The term “child” means an individual who is the taxpayer’s son, daughter, stepson, stepdaughter, an adopted individual, or an eligible foster child. IRC section 152(f)(1). Since the taxpayer was married for the entire taxable year of 2008 and the child claimed as a dependent lived in the taxpayer’s household the entire year, the child qualified as a qualifying child for the taxpayer. However, since the child was also a qualifying child for the taxpayer’s ex-wife, and both parties claimed the child on their individual income tax returns, the Tax Commission must look further into the statute to determine which parent is entitled to the dependent exemption.

IRC section 152(c)(4)(B) gives guidance when more than one parent can claim a dependent as a qualifying child. However, even after applying these rules the Tax Commission did not find a definitive answer. Therefore, the Tax Commission decided this question on the principal of burden of proof.

The taxpayer in this case provided information and documentation in support of his position. The other party failed to provide any additional information in support of her position. Because the other party did not meet her burden of proof, Albertson's Inc. v. State, Dept. of Revenue, 106 Idaho 810, 814, 683 P.2d 846, 850 (1984); Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 n.2, 716 P.2d 1344, 1346-1347 n.2 (Ct. App. 1986), and the child was a qualifying child for the taxpayer, the Tax Commission finds the taxpayer is the parent entitled to the dependent exemption. And since the taxpayer is entitled to the dependent exemption, he is also allowed to claim the grocery credit for the dependent. Idaho Code section 63-3024A.

In addition to disallowing a claimed dependent exemption, Taxpayer Accounting added back educator expenses claimed as a subtraction on the taxpayer's [Redacted] income tax return. Idaho Code section 63-3022O(2) requires this add back, and the Tax Commission upholds that adjustment.

WHEREFORE, the Notice of Deficiency Determination dated October 10, 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 receive the following REFUND of tax and interest:

<u>YEAR</u>	<u>TAX(REFUND)</u>	<u>INTEREST</u>	<u>TOTAL</u>
2008	\$(290)	\$(15)	\$(305)

An explanation of the taxpayer's right to appeal this decision is enclosed.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2010.

IDAHO STATE TAX COMMISSION

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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.