

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 22367
[Redacted]	)	
	)	DECISION
Petitioner.	)	
_____	)	

On October 21, 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 \$285.16.

The taxpayer filed a timely appeal and petition for redetermination. The taxpayer contacted the Tax Commission and discussed his case with a designee of the Tax Commission. The Tax Commission told the taxpayer what information he needed to provide in order to be allowed the dependent exemption and allowed the taxpayer sufficient time to respond. The taxpayer did not provide anything further, so the Tax Commission reviewed the file and hereby issues its decision.

The taxpayer timely filed his 2008 Idaho individual income tax return. The taxpayer's 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 a dependent exemption for the same child as the taxpayer claimed on his income tax return. Taxpayer Accounting requested information from the taxpayer. The taxpayer provided a copy of a JUDGMENT initiated [Redacted]. Taxpayer Accounting ultimately determined the taxpayer was not entitled to the dependent exemption and sent the

taxpayer a Notice of Deficiency Determination. The taxpayer protested Taxpayer Accounting's determination, so Taxpayer Accounting referred the matter for administrative review.

The Tax Commission reviewed the matter and sent the taxpayer a letter that discussed the methods available for redetermining a protested Notice of Deficiency Determination. The taxpayer contacted the Tax Commission and discussed the issue. The Tax Commission explained the applicable Internal Revenue Code (IRC) sections and told the taxpayer what was needed for him to prevail. The Tax Commission did not receive anything further from the taxpayer, so the matter was decided based upon the information available.

The taxpayer was found to be the father [Redacted]. Through an action [Redacted] and by order of the Court, the taxpayer was ordered to pay child support. The taxpayer was also awarded the dependent exemption for [Redacted] pursuant to the Idaho Child Support Guidelines.

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). IRC section 151(c) allows a taxpayer a deduction of the exemption amount for each dependent as defined in IRC section 152.

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).

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

The taxpayer provided a judgment from the Court that stated he is assigned a dependent exemption [Redacted]. However, it is the Internal Revenue Code that is controlling in determining matters 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 is clear in its requirements for an individual to be claimed as a dependent. Therefore, to claim a dependent exemption, the taxpayer must show the dependent is either a qualifying child or a qualifying relative.

Regarding a qualifying child, the taxpayer has not shown that [Redacted] principal place of abode was with him for more than one-half the taxable year. In fact, the taxpayer stated that [Redacted] did not live with him. Consequently, [Redacted] cannot be a qualifying child for the taxpayer for 2008.

As for the requirements for a qualifying relative, the taxpayer failed to show that he provided over one-half of the total support [Redacted] in 2008 or that [Redacted] was not a qualifying child of any other taxpayer for the taxable year. As previously stated, [Redacted] did not live with the taxpayer. Therefore, if [Redacted] lived with his other parent, a grandparent, an

uncle, or an aunt, [Redacted] was the qualifying child of another taxpayer and could not be a qualifying relative for the taxpayer.

Because [Redacted] did not meet the requirements for either a qualifying child or a qualifying relative for the taxpayer as defined in IRC section 152, the Tax Commission finds that the taxpayer is not entitled to a dependent exemption deduction [Redacted] for taxable year 2008. And since the taxpayer is not entitled to the dependent exemption, the taxpayer cannot claim the additional grocery credit for [Redacted] per Idaho Code section 63-3024A.

Furthermore, the taxpayer reported his filing status as 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 stated his son did not live with him in 2008. Since the taxpayer had no one else to qualify him for the head of household filing status, the Tax Commission finds the taxpayer's filing status should be changed to single.

WHEREFORE, the Notice of Deficiency Determination dated October 21, 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	\$ 492	\$ 29	\$ 521

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

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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.

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