

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 22371
[Redacted],	)	
	)	
Petitioners.	)	DECISION
_____	)	

On October 20, 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] (taxpayers) proposing additional income tax and interest for taxable year 2008 in the total amount of \$219.92.

The taxpayers filed a timely appeal and petition for redetermination. The taxpayers did not respond to the Tax Commission's hearing rights letter and have provided nothing further for the Tax Commission to consider. The Tax Commission, having reviewed the file, hereby issues its decision.

The taxpayers timely filed their Idaho individual income tax return. During the processing of their return, the Taxpayer Accounting Section (Taxpayer Accounting) found that the taxpayers claimed a dependent that was also claimed on another income tax return. Taxpayer Accounting inquired of the taxpayers regarding the dependent exemption and ultimately determined the taxpayers were not entitled to the exemption deduction. Taxpayer Accounting disallowed the dependent exemption on the taxpayers' income tax return and sent them a notice of the change.

The taxpayers disagreed with the change and sent a letter of protest to the Tax Commission. The taxpayers stated that [Redacted] divorce decree provided that he could claim his daughter as a dependent in the even tax years and his ex-wife could claim their daughter in

the odd tax years. The taxpayers stated that even though his daughter was past 18 years of age, the divorce decree was still active because she was a full-time college student. The taxpayers stated that, in addition to the dependent exemption, they are also entitled to Idaho's grocery credit for his daughter.

Taxpayer Accounting reviewed the information and referred the matter for administrative review. The Tax Commission reviewed the matter and sent the taxpayers a letter discussing the options available for redetermining a protested Notice of Deficiency Determination. The taxpayers did not respond, so the Tax Commission decided the matter based upon the information available.

[Redacted] is the daughter [Redacted] from a prior marriage. From the information available, it is apparent that [Redacted] was not the custodial parent. The information also shows that [Redacted] was 20 years old in 2008 and that she was a full-time student [Redacted]. The taxpayers did not provide anything to show where [Redacted] place of abode was when she was not attending college; however, the indication is that it was not with the taxpayers.

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. However, IRC section 152(e) relies on a custody determination before it is applicable, and since [Redacted] was

not a minor in Idaho in 2008, neither of her parents had custody and IRC section 152(e) is not applicable. Therefore, the determination of a 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).

The taxpayers did not show that [Redacted] principal place of abode for more than one-half the taxable year was with them. Consequently, [Redacted] cannot be a qualifying child for the taxpayers. Furthermore, the taxpayers failed to show that they provided over one-half of [Redacted] support in 2008, that [Redacted] did not have gross income in excess of the exemption amount, or that [Redacted] could not be claimed as a qualifying child by another taxpayer. The taxpayers failed to meet their burden of showing that [Redacted] was a qualifying relative.

The taxpayers' sole argument rests in the language of [Redacted] divorce decree which states that he can claim the dependent exemption deduction on the even numbered tax years. However, the Internal Revenue Code is controlling in determining matters 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), and IRC section 152 is clear in its requirements for an individual to be claimed as a dependent. The individual must be either a qualifying child or a qualifying relative.

Therefore, because the taxpayers failed to show that [Redacted] was a qualifying child or a qualifying relative, the Tax Commission finds the taxpayers cannot claim a dependent exemption [Redacted]. And since the taxpayers cannot claim the dependent exemption, they are not allowed to claim the grocery credit [Redacted]. Idaho Code section 63-3024A.

WHEREFORE, the Notice of Deficiency Determination dated October 20, 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	\$214	\$16	\$230

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.

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