

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 22374
[Redacted])	
)	DECISION
Petitioner.)	
_____)	

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] (taxpayer) proposing additional income tax and interest for taxable year 2008 in the total amount of \$1,067.51.

The taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not request a hearing but did provide additional information for the Tax Commission to consider. The Tax Commission, having reviewed the file, hereby issues its decision.

The taxpayer timely filed his 2008 Idaho individual income tax return. 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 copies of specific pages from a COMPLAINT initiated by the [Redacted] that stated he could claim the dependent exemption [Redacted]. Taxpayer Accounting reviewed the documents, 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 responded with additional documentation from the District Court of Ada County. From this, it is apparent the taxpayer is wholly relying on the court documents that stated he could claim the dependent exemption. The Tax Commission reviewed the information provided and hereby upholds the Notice of Deficiency Determination based upon the following.

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 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 dependent in question, [Redacted], is the child [Redacted]. From the information available, it is apparent that [Redacted] is the custodial parent [Redacted]. Therefore, for IRC section 152(e) to apply, the taxpayer must have a signed statement from [Redacted] releasing the exemption to him.

The control over a child's dependency exemption conferred on the custodial parent by section 152(e)(2) was intended by Congress to simplify the process of determining who is entitled to claim dependency exemptions for children of a marriage. See H. Rept. 98-432 (Part 2), at 1498 (1984). To make section 152(e)(2) work as intended, that control must be preserved by insisting on adherence to the requirements of section 152(e)(2). Simply attaching a State court order that is not signed by the custodial parent to the return of the noncustodial parent does not satisfy the express statutory requirements of section 152(e)(2)(A). Miller v. CIR, 114 T.C. 184, (2000).

Since a signed release was not provided, IRC section 152(e) does not apply; therefore, the determination of whether the taxpayer can claim [Redacted] reverts to IRC section 152(c) and (d).

IRC section 152(c) defines a “qualifying child” 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 “qualifying relative” 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).

Therefore, for the taxpayer to claim [Redacted] he must show that [Redacted] is either a qualifying child or a qualifying relative. The taxpayer's argument centers on the order of the court which permits him to claim [Redacted]. However, the Internal Revenue Code is controlling in the determination 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 the deduction must meet the requirement of the particular IRC sections.

As for meeting the requirements for a qualifying child, the documentation provided states that [Redacted] shall reside primarily with his mother, with the taxpayer having specific custodial time. According to the documentation, [Redacted] principal place of abode was not with the taxpayer for more than one-half the taxable year. (IRC section 152(c)(1)(B)). Therefore, [Redacted] cannot be a qualifying child for the taxpayer for taxable year 2008.

Regarding a qualifying relative, the taxpayer did not show that [Redacted] was not a qualifying child of another taxpayer for 2008. (IRC section 152(d)(1)(D)). In fact, as the record states, [Redacted] primary residence is with his mother, not with the taxpayer. [Redacted] could be a qualifying child [Redacted]. Therefore, [Redacted] cannot be a qualifying relative for the taxpayer for taxable year 2008. In addition, the taxpayer did not show that he provided over one-half of [Redacted] support for taxable year 2008. (IRC section 152(d)(1)(C)).

Because [Redacted] does not meet the requirements for either a qualifying child or a qualifying relative as defined in IRC section 152 for the taxpayer, the Tax Commission finds that the taxpayer is not entitled to a dependency exemption deduction for [Redacted] for taxable

year 2008. And since the taxpayer is not entitled to the dependency exemption, the taxpayer cannot claim the additional grocery credit [Redacted] as provided for in 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. [Redacted] primary residence was with his mother; therefore, [Redacted] principal place of abode could not be with the taxpayer. 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 20, 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	\$ 579	\$ 30	\$ 609
		Less Payment	<u>(237)</u>
		Balance Due	<u>\$ 372</u>

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.