

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 22383
[Redacted])	
)	DECISION
Petitioner.)	
_____)	

On November 4, 2009, the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayer) reducing a claimed refund for taxable year 2008 in the amount of \$597.

The taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not request a hearing. The Commission, having reviewed the file, hereby issues its decision.

The taxpayer filed his 2008 Idaho individual income tax return. During the processing of the taxpayer's return, the Taxpayer Accounting Section (Taxpayer Accounting) found that another taxpayer claimed a dependent exemption for the same child, [Redacted], as the taxpayer claimed on his income tax return. The taxpayer also claimed a dependency exemption for [Redacted], who was claimed as a dependent on yet another taxpayer's return. Taxpayer Accounting sent the taxpayer a letter requesting information to support both dependency exemption claims. The taxpayer did not respond. Taxpayer Accounting determined the taxpayer was not entitled to either one of the dependency exemptions, disallowed the exemptions on the taxpayer's return, and sent him a Tax Computation Change letter that shows the tax effect of disallowing the dependency exemptions and grocery credits.

The taxpayer protested the change in tax by sending in a copy of his divorce decree from [Redacted] mother, along with a letter from his preparer. The divorce decree awarded physical custody of [Redacted] to the taxpayer's ex-wife. The decree ordered child support to be paid by

the taxpayer and stated he was allowed to claim a dependency exemption for [Redacted] in all even numbered years. The letter from the preparer addressed the dependency exemption for [Redacted] by simply stating the taxpayer was allowed to claim [Redacted] until he was out of college. The letter further stated that the taxpayer paid child support, medical insurance, school expenses, etc. for both children and that the taxpayer also provided a second home for [Redacted] and [Redacted]. Taxpayer Accounting reviewed the information and determined the taxpayer was not entitled to the dependent exemption. Taxpayer Accounting issued a Notice of Deficiency Determination to the taxpayer and sent 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 did not respond to the Tax Commission's hearing rights letter nor did he provide any additional information for consideration. The Tax Commission, having reviewed the file, hereby issues its decision.

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 divorced parents. 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 provided a copy of his divorce decree from [Redacted] mother dated September 29, 1993. The decree states that physical custody of the taxpayer's son, [Redacted], will be with his ex-wife. Child support was ordered to be paid by the taxpayer, and the taxpayer was granted the dependency exemption for [Redacted] in even numbered years.

The divorce decree the taxpayer provided states that he is entitled to the dependent exemption for his minor child, [Redacted], in even numbered years. However, the IRC is controlling in the determination of income tax deductions of this type (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(e)(2) clearly requires that the custodial parent sign a written declaration releasing the dependency exemption in order for the noncustodial parent to claim the child's dependency exemption. The taxpayer provided no such declaration, nor did he show that he was the custodial parent.

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 the signed release is a requirement for IRC section 152(e) to apply, the determination of whether the taxpayer can claim the dependent exemption for [Redacted] reverts to IRC section 152(c) and (d). Since a divorce decree from [Redacted] mother was not provided, it is assumed the two were not married, and therefore, the dependency exemption for [Redacted] would also be determined by 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).

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] or [Redacted] principal place of abode was with him for more than one-

half the taxable year. Consequently, the taxpayer has no qualifying child for taxable year 2008. As for meeting the requirements for a qualifying relative of the taxpayer, the taxpayer failed to show that he provided over one-half the support of [Redacted] or [Redacted] for the taxable year or that either [Redacted] or [Redacted] was not a qualifying child of any other taxpayer for the taxable year.

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

WHEREFORE, the Notice of Deficiency Determination directed to [Redacted] dated November 4, 2009, is APPROVED, AFFIRMED, and MADE FINAL.

Since the taxpayer's refund was only reduced, and no additional tax is owed, no DEMAND for payment is required or necessary.

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:

Receipt No.

[Redacted]

Copy Mailed to:

[Redacted]
