

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 22420
[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 \$290.89.

The taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not respond to the Tax Commission's hearing rights letter and has not provided anything further for the Tax Commission to consider. The Tax Commission, having reviewed the file, hereby issues its decision.

The taxpayer timely filed her 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 copies of her two divorce decrees; one from her most recent marriage and the other from the claimed dependent's biological father. 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 also adjusted the taxpayer's income to reflect a community property split of income. A Notice of Deficiency Determination was sent to the taxpayer, which the taxpayer protested.

The taxpayer stated the child claimed on the two returns was her child and not the child of [Redacted], the taxpayer's last husband. Therefore, she should be awarded the right to claim her as a dependent. 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 did not respond. Therefore, the Tax Commission reviewed the available information and upholds the Notice of Deficiency Determination based upon the following.

The information available shows the taxpayer was married through the end of taxable year 2008. The taxpayer separated from [Redacted] in January 2009. The taxpayer filed her Idaho income tax return as married filing separate. She reported only the income she earned in 2008, and she claimed her two children as dependents.

Idaho is a community property state and the community property laws 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. Therefore, half of the taxpayer's income is attributed to [Redacted], and half of [Redacted] income is attributed to the taxpayer. [Redacted].

IRC section 66(a) provides for non-recognition of community property laws when spouses live apart if:

- (1) 2 individuals are married to each other at any time during a calendar year;
- (2) such individuals—
 - (A) live apart at all times during the calendar year, and
 - (B) do not file a joint return under section 6013 with each other for a taxable year beginning or ending in the calendar year;

- (3) one or both of such individuals have earned income for the calendar year which is community income; and
- (4) no portion of such earned income is transferred (directly or indirectly) between such individuals before the close of the calendar year, then, for purposes of this title, any community income of such individuals for the calendar year shall be treated in accordance with the rules provided by section 879(a).

Since the taxpayer did not separate from [Redacted] until the beginning of 2009, the provisions of IRC section 66(a) cannot relieve the taxpayer of the requirement to report her share of the community income. Therefore, the adjustment for the community income was appropriate.

As for the dependent exemption, deductions are a matter of legislative grace and whether and to what extent deductions shall be allowed depends upon the clear provision in the law 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 U.S. 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). In Idaho, a State Tax Commission deficiency determination is presumed to be correct, and the burden is on the taxpayer to show that the deficiency is erroneous. Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 n.2, 716 P.2d 1344, 1346-1347 n.2 (Ct. App. 1986); Albertson's Inc. v. State, Dept. of Revenue, 106 Idaho 810, 814, 683 P.2d 846, 850 (1984). The taxpayer failed to provide support for her position; consequently, she failed to meet her burden of proof. Since the taxpayer has not shown that she is entitled to the dependent exemption as provided in the IRC, the deduction is not allowed. Furthermore, since the exemption deduction is not allowed, the taxpayer cannot claim the grocery credit for the dependent as provided for in Idaho Code section 63-3024A.

WHEREFORE, the Notice of Deficiency Determination dated October 10, 2009, is hereby 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	\$282	\$17	\$299

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.