

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 22481
[REDACTED],)	
)	
Petitioners.)	DECISION
_____)	

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] (taxpayers) proposing additional income tax and interest for taxable year 2008 in the total amount of \$192.84.

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

The taxpayers timely filed their 2008 Idaho individual income tax return. During the processing of income tax returns, the taxpayers' return was identified as a return on which a dependent exemption was claimed on more than one income tax return. The Taxpayer Accounting section (Taxpayer Accounting) requested information from the taxpayers. The taxpayers responded stating that [Redacted] was the primary custodial parent since 2001. The taxpayers also provided copies of pages from an ORDER OF FILIATION, CUSTODY, VISITATION AND SUPPORT, AND TERMINATION OF GUARDIANSHIP which states that [Redacted] shall claim the dependent exemption [Redacted] beginning in 2001 and each calendar year thereafter.

Taxpayer Accounting reviewed the information available, determined the taxpayers were not entitled to the dependent exemption, and sent the taxpayers a Notice of Deficiency

Determination. The taxpayers protested Taxpayer Accounting's determination and provided additional documentation to support their position. Taxpayer Accounting reviewed the information and referred the matter for administrative review.

The Tax Commission reviewed the matter and sent the taxpayers a letter that discussed the methods available for redetermining a protested Notice of Deficiency Determination. Included in the Tax Commission's letter was a request for a list of the days in 2008 that [Redacted] stayed with the taxpayers overnight. The taxpayers did not respond to the Tax Commission's letter, so the Tax Commission decided the matter based upon the information available.

[Redacted] is the biological father of [Redacted]. In a November 2000 court order, [Redacted] was granted primary custody [Redacted]. The order also provided that [Redacted] get the dependent exemption [Redacted] beginning with taxable year 2001. On June 27, 2008, [Redacted] mother petitioned for primary custody [Redacted]. On October 16, 2008, the court issued an ORDER FOR TEMPORARY ORDERS that granted [Redacted] mother primary custody. Information available to the Tax Commission shows that [Redacted] was in her mother's custody beginning in May 2008. This physical custody [Redacted] was likely the incentive for the petition for custody by [Redacted] mother. The Tax Commission asked the taxpayers to provide a listing of the days [Redacted] stayed overnight with them, but they failed to provide the information.

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 who are divorced or who 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 taxpayers provided a copy of a STIPULATION that was presented to the court which stated that [Redacted] would be the primary custodial parent beginning late in 2000. It appears that this document was approved by the court and followed by the parties until May 2008. In May 2008, there appears to be a shift in the primary custody of [Redacted] to [Redacted] mother; thus prompting a petition to modify the custody [Redacted]. Therefore, it appears that [Redacted] mother had primary physical custody [Redacted] beginning in May 2008.

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 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).

The taxpayers provided no such declaration, nor did they show that [Redacted] was the primary custodial parent in 2008. On the contrary, as previously stated, it appears [Redacted] mother was the primary custodial parent in 2008. Since the signed release is a condition of IRC section 152(e), and no release form or statement was provided, the determination of whether the taxpayers can claim the 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).

Therefore, to claim [Redacted] as a dependent, the taxpayers must show that [Redacted] is either a qualifying child or a qualifying relative. Regarding a qualifying child, the taxpayers have not shown that [Redacted] principal place of abode was with them for more than one-half the taxable year. Consequently, they have not met their burden of proof of showing that [Redacted] was a qualifying child in taxable year 2008.

As for a qualifying relative, the taxpayers did not show that they provided over one-half of [Redacted] support for the taxable year or that [Redacted] was not a qualifying child of any other taxpayer for the taxable year. The information available shows that [Redacted] lived with her mother beginning in May 2008. This being the case, [Redacted] was a qualifying child for her mother. Therefore, [Redacted] cannot be a qualifying relative for the taxpayer.

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

WHEREFORE, the Notice of Deficiency Determination dated October 21, 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	\$188	\$4.84	\$192.84
		REMITTANCE	(192.84)
		BALANCE DUE	<u>\$ 0</u>

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.
