

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],) DOCKET NO. 22564
)
)
Petitioner.) DECISION
)
_____)

On November 12, 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 for taxable year 2008 in the total amount of \$50.

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

The taxpayer timely filed her 2008 Idaho individual income tax return. The taxpayer's return was processed and the refund claimed was sent to the taxpayer. As the processing of income tax returns continued, the taxpayer's return was identified as a return on which a dependent exemption was claimed by more than one taxpayer. The Taxpayer Accounting section (Taxpayer Accounting) requested information from the taxpayer. The taxpayer responded by providing letters and court documents to show that she was entitled to the dependent exemption.

Taxpayer Accounting reviewed the information available, determined the taxpayer was not entitled to the dependent exemption, and sent the taxpayer a notice that a change was made to her 2008 Idaho income tax return. The taxpayer did not respond to Taxpayer Accounting's change letter, so a Statement of Account and a Notice of Deficiency Determination was sent to

the taxpayer. The taxpayer protested the Notice of Deficiency Determination stating again that she had the right to claim her son [Redacted] because his father was not current on his child support obligation. She provided additional copies of the court documents that stated she would get the dependent exemption if her ex-husband was not current and timely in payment of his child support obligation. Taxpayer Accounting reviewed the information and 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 stating she had provided documentation showing she was entitled to the dependent exemption. The Tax Commission sent the taxpayer another letter requesting a list of the days in 2008 that [Redacted] stayed with her overnight. The taxpayer did not respond to the Tax Commission's letter, so the Tax Commission decided the matter based upon the information available.

The taxpayer is the biological mother [Redacted]. In a November 1998 divorce decree, the taxpayer was awarded primary physical custody of [Redacted] and his three siblings. The taxpayer was awarded two dependent exemptions for two of the other children, while her ex-husband was awarded the dependent exemption for [Redacted] and another child. In March 2007 and July 2007, subsequent orders of the court were issued. The March 2007 order apparently provided for shared residential custody of the children. However, because a copy of the
the
March 2007 order was not provided, it is unknown what the shared residential custody provision provided and who had primary physical custody [Redacted]. The latest court order, dated January 21, 2009, granted "sole legal, sole physical and sole residential custody of the minor

child [Redacted] [Redacted]. This change of custody prompted the Tax Commission to ask the taxpayer to provide a list of the days [Redacted] stayed with her overnight in 2008. The taxpayer 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. 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 her divorce decree which stated that the children's primary residence was with her. This makes the taxpayer the custodial parent beginning late in 1998. In 2007, based upon the language of the AMENDED ORDER AMENDING DECREE OF DIVORCE RE: CHILD SUPPORT AND BACK CHILD SUPPORT AND JUDGEMENT FOR ARREARAGE, there appears to have been a modification to the custody [Redacted]. In that order and judgment, the court refers to the custody of the three minor children as joint physical custody and shared residential custody. This order combined with the January 2009 order leads one to believe that [Redacted] transitioned his time with his mother to that with his father. If this is the case, a shift in the primary custody [Redacted] in 2007 and 2008 changes the parental control of the dependent 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).

IRC section 152(e)(2) clearly requires that the custodial parent sign a written declaration releasing the dependent exemption in order for the noncustodial parent to claim the child's dependency exemption. The taxpayer provided no such declaration, nor did she show that she 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 taxpayer 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 taxpayer must show that [Redacted] was either a qualifying child or a qualifying relative. Regarding a qualifying child, the taxpayer has not shown that [Redacted] principal place of abode was with her for more than one-half the taxable year. Consequently, she has not met her burden of proof of showing that [Redacted] was a qualifying child in taxable year 2008.

As for a qualifying relative, the taxpayer did not show that she 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 there was a shift in custody [Redacted] beginning in March 2007. This being the case, [Redacted] could be a qualifying child for his father and, therefore, could not be a qualifying relative for the taxpayer. Regardless, the taxpayer has not met her burden in showing that [Redacted] was her qualifying relative.

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

year 2008. And since the taxpayer is not entitled to the dependent exemption, the taxpayer cannot claim the additional grocery credit [Redacted] per Idaho Code section 63-3024A.

WHEREFORE, the Notice of Deficiency Determination dated November 12, 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	\$50	\$4	\$54

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.
