

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 23103
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

On July 10, 2010, the Revenue Operations Division of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayer) proposing additional tax and interest for taxable year 2009 in the total amount of \$153.04.

The taxpayer filed a timely appeal and provided one page of a copy of an Establishment Complaint for Child Support. The order required the taxpayer to pay child support and stated that a dependency exemption would be assigned to the taxpayer pursuant to the Idaho Child Support Guidelines.

The taxpayer did not request a hearing, nor did he provide any information for consideration other than the order. The Commission, having reviewed the file, hereby issues its decision.

The sole issue for this decision is whether the taxpayer is entitled to the dependency exemption deduction for his two children, [Redacted]. According to the taxpayer, he and his wife, along with their two children, lived together until sometime in June 2009, when [Redacted] then relocated with their two children. The taxpayer stated he filed for divorce in August 2009, but as of the end of the year, the action was still pending and no judgments regarding custody of the children had been issued by the court.

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.

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 (c) (4) provides a special rule relating to two or more who can claim the same qualifying child:

(B) More than 1 parent claiming qualifying child. If the parents claiming any qualifying child do not file a joint return together, such child shall be treated as the qualifying child of-

(i) the parent with whom the child resided for the longest period of time during the taxable year.

In the present matter, the taxpayer stated that [Redacted] resided with him approximately 183 days in 2009, after which time his wife and his children relocated. Assuming the children did reside with the taxpayer for 183 days, that being over one-half of the year, the children would meet the requirements to be qualifying children of the taxpayer. However, since the taxpayer’s wife had the same principal place of abode, the children would also meet the requirement to be her qualifying children. The taxpayer, through his correspondence, has stated the children resided the remainder of 2009 with their mother. Therefore, she would be the parent with whom the children resided with for the longest period of time during the taxable year.

Because [Redacted] did not reside with the taxpayer for the greater part of the year, the Commission finds that the taxpayer is not entitled to a dependency exemption deduction for

[Redacted] for 2009. And since the taxpayer is not entitled to the dependency exemption, the taxpayer cannot claim the additional grocery credit for [Redacted] per 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 the principal place of abode of a son or daughter for more than one-half the taxable year. The taxpayer does not meet either requirement for head of household status. Therefore, the Commission finds the taxpayer's filing status should be married, filing separate with a community split of income and deductions.

WHEREFORE, the Notice of Deficiency Determination dated July 10, 2010, 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, the taxpayer pays the following tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2009	\$67	\$3	\$69

Interest is calculated through January 28, 2011.

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.
