

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 23105
[Redacted],	)	
	)	
Petitioners.	)	DECISION
_____	)	

On July 10, 2010, the staff of the Revenue Operations Division of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayers) proposing tax and interest for taxable year 2009 in the total amount of \$316.28.

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

The taxpayers timely filed their 2009 Idaho individual income tax return. During the processing of the taxpayers' return, the Taxpayer Accounting Section (Taxpayer Accounting) found that another taxpayer claimed a dependent exemption for the same child, [Redacted], as the taxpayers claimed on their income tax return. Taxpayer Accounting sent the taxpayers a letter requesting information to support the dependency exemption claim. The taxpayers responded by sending in a copy of a court Order and a letter stating that they are not the custodial parents of the dependent, that they do not have a signed federal Form 8332 from the custodial parent, and that the dependent did not live with them at all during taxable year 2009. The court Order that was submitted was an Order Modifying Child Support that required [Redacted] to pay child support for his son, [Redacted] and stated that he would be assigned the dependency exemption for [Redacted]. Taxpayer Accounting reviewed the information, determined the taxpayers were not entitled to the dependent exemption, disallowed the exemption on the

taxpayers' return, and sent them a Tax Computation Change letter that showed the tax effect of disallowing the dependent exemption and grocery credit.

The taxpayers protested the change in tax by sending in a second copy of the Order along with a statement requesting the file be sent to the legal department for a decision. Taxpayer Accounting issued an NODD to the taxpayers and sent the matter for administrative review.

The Commission reviewed the matter and sent the taxpayers a letter that discussed the methods available for redetermining a protested NODD. The taxpayers did not respond to the Commission's hearing rights letter and have failed to make further contact with the Commission. The 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.

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 taxpayers have not shown that [Redacted] principal place of abode was with them for more than one-half the taxable year. Consequently, the taxpayers have no qualifying child for 2009. As for meeting the requirements for a qualifying relative of the taxpayers, the taxpayers failed to show that they provided over one-half the support of [Redacted] for the taxable year or that [Redacted] was not a qualifying child of any other taxpayer for the taxable year.

It is presumed from the fact that [Redacted] is required to pay child support that he may have provided nearly one-half, one-half, or over one-half of [Redacted] support. However, the taxpayers did not provide any evidence to show [Redacted] total support or the amount they paid toward his support. The taxpayers have not carried their burden of proving this requirement of a qualifying relative. In addition to the support issue, [Redacted] likely qualifies as the qualifying child of his mother, another taxpayer. In either case, [Redacted] does not meet the requirements of a qualifying relative for the taxpayers.

Because [Redacted] does not meet the requirements for either a qualifying child or a qualifying relative as defined in IRC section 152, the Commission finds that the taxpayers are not entitled to a dependency exemption deduction for [Redacted] for taxable year 2009. And since the taxpayers are not entitled to the dependency exemption, the taxpayers cannot claim the additional grocery credit for the child per Idaho Code section 63-3024A.

WHEREFORE, the Notice of Deficiency Determination dated July 10, 2010, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayers pay the following tax, penalty, and interest for taxable year 2009:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2009	\$310	\$12	\$322

Interest is calculated through January 10, 2011.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

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.  
  
\_\_\_\_\_