

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 22979
[Redacted],	)	
	)	
Petitioner.	)	DECISION
_____	)	

[Redacted] (taxpayer) protested the Notice of Deficiency Determination dated June 3, 2010, asserting additional income tax and interest in the total amount of \$842.45 for taxable years 2008 and 2009. The taxpayer disagreed with the adjustments disallowing the dependent exemption deduction [Redacted]. The Tax Commission, having reviewed the file, hereby issues its decision.

**BACKGROUND**

The taxpayer filed his 2008 and 2009 Idaho individual income tax returns claiming an additional dependent exemption. During the processing of income tax returns, the taxpayer was identified as one of two individuals that claimed the same dependent exemption. The Taxpayer Accounting Section (Taxpayer Accounting) requested additional information from the taxpayer in the form of a questionnaire. The taxpayer completed the questionnaire for 2009 and returned it to Taxpayer Accounting. The taxpayer did not complete and return the questionnaire for 2008. Taxpayer Accounting reviewed the information, determined the taxpayer was not entitled to the dependent exemption for either year, and sent the taxpayer a Tax Correction Notice.

The taxpayer protested Taxpayer Accounting's decision stating that he was the father [Redacted] and, by order of the court, he was entitled to claim [Redacted] as his dependent because of the shared custody and his disproportionate share of the financial burden. The taxpayer provided a copy of the ORDER OF FILLIATION and asked that his case be reviewed

by the Tax Commission's legal department. 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 requested a telephone hearing. The Tax Commission scheduled a hearing and sent the taxpayer a letter stating the date and time of the hearing. The Tax Commission also asked the taxpayer to respond back and provide a telephone number that the Tax Commission could call at the time of the hearing. The taxpayer did not respond, nor did he contact the Tax Commission on the scheduled date for the hearing. Therefore, the Tax Commission reviewed the matter and made its decision based upon the information available.

### **FACTS**

[Redacted] is the biological father [Redacted]. In the court order the taxpayer provided, custody was to be shared between the taxpayer and [Redacted] mother. The taxpayer was not ordered to pay child support, but he was ordered to pay for 75 percent of [Redacted] medical costs and work-related daycare expenses as well as provide medical insurance [Redacted]. The taxpayer is relying on the fact that within the court order the court stated he shall be entitled to claim [Redacted] as an exemption. The 2009 questionnaire the taxpayer completed stated [Redacted] lived with the taxpayer approximately six months in 2009. Other information provided to the Tax Commission states that [Redacted] lived with his mother and was only with the taxpayer on weekends. The taxpayer did not provide a signed release of the dependent exemption from the custodial parent.

## LAW AND ANALYSIS

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(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, 4) has not provided over one-half of the individual's own support for the taxable year, and 5) has not filed a joint return with the individual's spouse 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).

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.

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).

From the information available, it is not readily apparent who is the custodial parent [Redacted]. The taxpayer stated [Redacted] lived with him approximately six months in 2009, and a statement from [Redacted] mother stated [Redacted] was only with the taxpayer on most weekends. Both of these statements tend to suggest [Redacted] mother is the custodial parent. Therefore, for IRC section 152(e) to apply, the taxpayer must provide a statement from the custodial parent releasing the dependent exemption [Redacted]. Since no release was provided,

the determination of whether the taxpayer can claim the dependent exemption reverts to IRC section 152(a).

To be allowed the dependent exemption [Redacted], the taxpayer must show that he is 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 him for more than one-half the taxable year. Consequently, the taxpayer has not met his burden of proof of showing that [Redacted] was a qualifying child in either taxable year 2008 or 2009.

As for a qualifying relative, the taxpayer did not show that he provided over one-half of [Redacted] support for the taxable years or that [Redacted] was not a qualifying child of any other taxpayer for the taxable year. Since the presumption is that the taxpayer was not the custodial parent in either 2008 or 2009, [Redacted] was a qualifying child of the custodial parent. Therefore, [Redacted] cannot be a qualifying relative for the taxpayer.

### **CONCLUSION**

[Redacted] does not meet the requirements for either a qualifying child or a qualifying relative, as defined in IRC section 152, for the taxpayer. Therefore, the Tax Commission finds that the taxpayer is not entitled to a dependent exemption deduction [Redacted] for taxable years 2008 or 2009. 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 June 3, 2010, 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	\$520	\$48	\$568
2009	310	13	<u>323</u>
		TOTAL DUE	\$891
		LESS OFFSETS	<u>(593)</u>
		BALANCE DUE	<u>\$298</u>

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 \_\_\_\_\_ 2011.

IDAHO STATE TAX COMMISSION

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COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2011, 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.

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