

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 23190
[Redacted],)	
)	
Petitioners.)	DECISION
_____)	

[Redacted] (taxpayers) protested the Notice of Deficiency Determination dated July 30, 2010, asserting additional income tax and interest in the total amount of \$265.03 for taxable year 2008. The taxpayers disagreed with the adjustment the staff of the Taxpayer Accounting Section of the Revenue Operations Division of the Idaho State Tax Commission made to their 2008 Idaho individual income tax return disallowing the dependent exemption deduction [Redacted]. The taxpayers did not respond to the Tax Commission's hearing rights letter and have not provided any further 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 the same dependent exemption was claimed on more than one income tax return. The Taxpayer Accounting Section (Taxpayer Accounting) requested additional information from the taxpayers. The taxpayers responded to Taxpayer Accounting's questionnaire and provided a copy of a TEMPORARY ORDER OF CHILD SUPPORT issued by the Superior Court of Washington. The order states that the parents [Redacted] shall alternate the income tax exemption; the mother shall have the even years and the father the odd years.

Taxpayer Accounting reviewed the information, 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 the matter was referred 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. 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]. The taxpayers stated that [Redacted] is not the custodial parent but that the parents share custody [Redacted]. The court order the taxpayers provided supports the taxpayers' statement in that, generally, the noncustodial parent is usually the parent ordered to pay child support. [Redacted] was ordered to pay child support. The taxpayers do not have a signed release of the dependent exemption from the custodial parent. The taxpayers are solely relying on the order of the court that provides that [Redacted] shall have the income tax exemption for each of the odd years.

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.

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).

As previously stated, the taxpayers do not have a statement from the custodial parent, and the court order falls far short of an allowable substitute as provided in the Treasury Regulations. 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. Since [Redacted] was not the custodial parent in 2008, the presumption is that [Redacted] was a qualifying child of the custodial parent. Therefore, [Redacted] cannot be 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 Tax Commission finds that the taxpayers are not entitled to a dependent exemption deduction for [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.

In addition to the foregoing, the taxpayers' reliance on the court order may be misplaced. The order of the court states that [Redacted] gets the tax exemption in the odd tax years. Since 2008 is an even year, the taxpayers do not get the exemption deduction even by the language of the court order.

WHEREFORE, the Notice of Deficiency Determination dated July 30, 2010, 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	\$247	\$24	\$271

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 _____ 2011.

IDAHO STATE TAX COMMISSION

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.
