

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],) DOCKET NO. 23193
)
)
Petitioner.) DECISION
)
_____)

On August 18, 2010, 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 income tax and interest for taxable year 2009 in the total amount of \$191.41.

The taxpayer filed a timely appeal and petition for redetermination. The taxpayer requested a telephone hearing which was held on September 24, 2010. The Tax Commission, having reviewed the file, hereby issues its decision.

The taxpayer timely filed his 2009 Idaho individual income tax return. During the processing of the taxpayer's return, the Taxpayer Accounting Section (Taxpayer Accounting) found that another taxpayer claimed dependent exemptions for the same children as the taxpayer claimed on his income tax return. Taxpayer Accounting determined the taxpayer was not entitled to the dependent exemptions, disallowed the exemptions on the taxpayer's return, and sent him a Notice of Deficiency Determination.

The taxpayer protested the determination stating he had a court order that states he was assigned the dependent exemptions for his children. The taxpayer provided a copy of the court order and documentation showing he was paying child support [Redacted]. Taxpayer Accounting reviewed the information and sent 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. During the hearing, the issue was discussed and the law explained. The taxpayer asked what he needed to do to be allowed the dependent exemptions. The Tax Commission told the taxpayer that since he was the non-custodial parent of the children, he needed to get a signed statement from the custodial parent releasing the exemptions to him. The taxpayer stated that if he did not provide the Tax Commission with the necessary release within ten days, he would agree to pay the tax deficiency. Shortly thereafter, the Tax Commission received a [Redacted] Form 8332 releasing the exemptions to the taxpayer. The Form 8332 the taxpayer provided stated the custodial parent releases the exemptions to the non-custodial parent for all future years. The form did not provide a beginning date that the exemptions would be released; however, the custodial parent did date the form, so the assumption is that the release is effective for all taxable years beginning with taxable year 2010. The form does not include taxable year 2009. The Tax Commission asked the taxpayer to provide a form for taxable year 2009, but he failed to provide one.

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(e) provides a special rule for parents that do not live with each other. 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.

Since the taxpayer did not provide a signed release from the custodial parent, the requirements of IRC section 152(e) were not met. Therefore, the determination of whether the taxpayer can claim the dependent exemptions 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, 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).

Therefore, to claim [Redacted] (children) as dependents, the taxpayer must show that the children were either qualifying children or qualifying relatives. Regarding a qualifying child, the taxpayer stated the children did not live with him. Therefore, the children's principal place of abode was not with the taxpayer for more than one-half the taxable year. Consequently, the children cannot be qualifying children for the taxpayer in taxable year 2009.

As for qualifying relative, the taxpayer did not show that he provided over one-half of the children's support for the taxable year or that the children were not qualifying children of any other taxpayer for the taxable year. Since the taxpayer was not the custodial parent in 2009, the presumption is that the children were qualifying children of the custodial parent. Therefore, the children cannot be qualifying relatives for the taxpayer.

Because the children do 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 taxpayer is not entitled to the dependent exemption deductions for the children for taxable year 2009. And since the taxpayer is not entitled to the dependent exemptions, the taxpayer cannot claim the additional grocery credits for the children per Idaho Code section 63-3024A.

WHEREFORE, the Notice of Deficiency Determination dated August 18, 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>
2009	\$187	\$10	\$197

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

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.
