

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 23317
[Redacted],	)	
	)	
Petitioners.	)	DECISION
	)	
	)	
_____	)	

[Redacted] (taxpayers) protested the Notice of Deficiency Determination dated August 20, 2010, asserting additional income tax in the total amount of \$286 for taxable year 2009. The taxpayers disagreed with the adjustment disallowing the dependent exemption deduction for [Redacted] child, [Redacted]. The Tax Commission, having reviewed the file, hereby issues its decision.

**BACKGROUND**

The taxpayers timely filed their 2009 Idaho individual income tax return. During the processing of income tax returns, the taxpayers' return was identified as one of two returns that claimed a dependent exemption deduction [Redacted]. The Taxpayer Accounting Section (Taxpayer Accounting) requested additional information from the taxpayers in the form of a questionnaire. The taxpayers answered one of the questions on the questionnaire and returned it to Taxpayer Accounting with a copy of [Redacted] divorce decree. Taxpayer Accounting reviewed the information, determined the taxpayers were not entitled to the dependent exemption, and sent the taxpayers a Tax Correction Notice. The taxpayers protested Taxpayer Accounting's decision. They stated the dependent exemption was legally given to [Redacted] through a court document. The taxpayers stated that the [Redacted] examined their 2008 return, on which they claimed [Redacted], and made no adjustments. The taxpayers stated nothing has changed, so [Redacted] should be allowed the dependent exemption deduction. Taxpayer

Accounting reviewed the information, sent the taxpayers a Notice of Deficiency Determination, and referred the matter 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 requested a telephone hearing which was held on December 28, 2010. During the hearing, the law was discussed and the taxpayers admitted that [Redacted] was not [Redacted] custodial parent. The taxpayers were told that since [Redacted] was the noncustodial parent, he would need to get a signed release from [Redacted] custodial parent. After considering this, the taxpayers stated it would be very unlikely that the custodial parent would sign anything for [Redacted]. The taxpayers stated they have done nothing wrong; they are following the order of the court. The taxpayers stated they provided copies of the court order and that the Tax Commission should follow that order.

### **LAW AND ANALYSIS**

[Redacted] is the biological father [Redacted]. [Redacted] divorce decree states that it is “appropriate” that [Redacted] take the tax exemption [Redacted]. However, this issue is a [Redacted] tax issue governed by the Internal Revenue Code (IRC) and state courts by their decisions cannot make determinations of [Redacted] tax matters. (White v. CIR, T.C. Memo 1996-438 (1996)).

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). 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).

As previously stated, the taxpayers did not have a signed release of the dependent exemption, and [Redacted] divorce decree falls well short of an allowable substitute as provided in the Treasury Regulations. Therefore, 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).

To be allowed the dependent exemption deductions [Redacted], the taxpayers must show that [Redacted] was either a qualifying child or a qualifying relative. Regarding a qualifying child, the taxpayers admitted that [Redacted] did not live with them. Consequently, [Redacted] principal place of abode was not with the taxpayers for more than one-half of the taxable year. Therefore, [Redacted] cannot be a qualifying child for the taxpayers.

As for a qualifying relative, [Redacted] did not live with the taxpayers for over one-half the taxable year; therefore, the presumption is that [Redacted] lived with her mother and she was

a qualifying child for the mother. As a result, [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 the dependent exemption deduction [Redacted] for taxable year 2009. And since the taxpayers are not entitled to the dependent exemption, the taxpayers cannot claim the additional grocery credit [Redacted] as provided for in Idaho Code section 63-3024A.

THEREFORE, the Notice of Deficiency Determination dated August 20, 2010, is hereby APPROVED, AFFIRMED, and MADE FINAL.

The taxpayers' refund for taxable year 2009 was reduced during processing for the additional tax due, so no further DEMAND for payment is needed or necessary.

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.  
  
\_\_\_\_\_