

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 23541
[Redacted],)	
)	
Petitioner.)	DECISION
)	
)	
_____)	

[Redacted] (taxpayers) protested the Notice of Deficiency Determination dated September 24, 2010, asserting additional income tax and interest in the total amount of \$114.39 for taxable year 2009. The taxpayers disagreed with the adjustment disallowing the dependent exemption deduction [Redacted]. The Tax Commission, having reviewed the file, hereby issues its decision.

FACTS

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 for [Redacted]. The Taxpayer Accounting Section (Taxpayer Accounting) requested additional information from the taxpayers in the form of a questionnaire. The taxpayers' response stated [Redacted] was [Redacted] father, [Redacted] was not the custodial parent, [Redacted] did not live with the taxpayers, and [Redacted] divorce decree stated he shall claim [Redacted] for federal and state tax purposes. The taxpayers provided a copy of [Redacted] modified decree of divorce to support their claim.

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 restating their position that [Redacted]

divorce decree allowed him the dependent exemption deduction [Redacted]. Taxpayer Accounting 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 did not respond, so the Tax Commission sent them a follow-up letter. Still the taxpayers failed to respond. Therefore, the Tax Commission reviewed the matter and made its decision based upon the information available.

LAW AND ANALYSIS

[Redacted] is the father [Redacted]. [Redacted] is not the custodial parent, and [Redacted] did not live with the taxpayers in 2009. [Redacted] divorce decree states that he “shall” claim [Redacted] for state and federal tax purposes. The taxpayers are wholly relying on this statement in the divorce decree.

Federal tax issues are governed by the Internal Revenue Code (IRC), and state courts by their decisions cannot make determinations of federal 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).

The taxpayers stated they did not need a signed release from the custodial parent because of [Redacted] divorce decree. However, a divorce decree, in and of itself, does not determine who can claim a dependent exemption. The divorce decree must meet certain requirements before it will be acknowledged as a 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 deduction [Redacted], the taxpayers must show that [Redacted] was either a qualifying child or a qualifying relative. Regarding a qualifying child, the taxpayers stated [Redacted] did not live with them. Consequently, [Redacted] principal place of abode was not with the taxpayers for more than one-half the taxable year. Therefore, [Redacted] cannot be a qualifying child for the taxpayers.

As for a qualifying relative, since [Redacted] did not live with the taxpayers for over one-half the taxable year, the presumption is that [Redacted] lived with his mother. Therefore,

[Redacted] was a qualifying child for his 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 September 24, 2010, and directed to [Redacted] is AFFIRMED.

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>
2009	\$111	\$8	\$119

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.
