

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 23543
[Redacted],)	
)	
Petitioners.)	DECISION
_____)	

[Redacted] (taxpayers) protested the Notice of Deficiency Determination dated June 15, 2010, asserting additional income tax and interest in the total amount of \$540.75 for taxable year 2009. The taxpayers disagreed with the adjustment disallowing the dependent exemption deductions for [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.

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 dependent exemption deductions [Redacted]. The Taxpayer Accounting Section (Taxpayer Accounting) requested additional information from the taxpayers in the form of a questionnaire. The taxpayers responded to Taxpayer Accounting's questionnaire and provided copies of [Redacted] school records and an Order of Modification of [Redacted] divorce decree. The order stated that [Redacted] could claim two of his three children in the odd numbered tax years.

Taxpayer Accounting reviewed the information, determined the taxpayers were not entitled to the dependent exemptions, and sent the taxpayers a Notice of Deficiency Determination. The taxpayers protested Taxpayer Accounting's determination. The taxpayers

stated they reviewed this issue with their accountant prior to the filing of their income tax returns because they knew it might become an issue. Their accountant told them they were entitled to claim both boys since the boys lived with them until June 1, 2009. The taxpayers also stated [Redacted] divorce decree provided that [Redacted] could claim two of his children this year. Taxpayer Accounting reviewed the information 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 did not respond to the Tax Commission's letter, so the Tax Commission decided the matter based upon the information available.

LAW AND ANALYSIS

[Redacted] are two of the three children [Redacted] from a previous marriage. The taxpayers stated that [Redacted] lived with them in 2009 from January 1 to June 5. The taxpayers stated as soon as the boys finished school in June 2009, they were transported to their mother [Redacted] for the rest of the calendar year. The taxpayers stated they were relying on [Redacted] divorce decree that stated [Redacted] could claim two children as dependents for [Redacted] and state tax purposes. The taxpayers do not have a signed release of the dependent exemptions from the custodial parent. They are solely relying on the language in the divorce decree and the advice of their accountant.

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, [Redacted] was not the custodial parent [Redacted]. The custodial parent is defined as the parent having custody for the greater portion of the calendar year. According to the taxpayers, [Redacted] lived with them for less than one-half the taxable year, January 1 to June 5. Therefore, for IRC section 152(e) to be applicable, the taxpayers need to provide a signed release from the children's mother. Since the taxpayers did not provide such a release and [Redacted] divorce decree falls far short of an allowable substitute as provided in the Treasury Regulations, the determination of whether the taxpayers can claim the dependent exemption reverts to IRC section 152(a).

Therefore, to claim [Redacted] as dependents, the taxpayers must show that [Redacted] are either qualifying children or qualifying relatives. As for 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. In fact, they stated exactly the opposite. [Redacted] lived with the taxpayers until June 5, 2009, less than one-half the taxable year. Consequently, [Redacted] are not qualifying children in taxable year 2009.

Regarding a qualifying relative, the taxpayers did not show that they provided over one-half of [Redacted] support for the taxable year or that [Redacted] were not qualifying children of any other taxpayer for the taxable year. Since [Redacted] live with their mother for over one-half the taxable year, the presumption is that [Redacted] were qualifying children for their mother. Therefore, [Redacted] cannot be qualifying relatives for the taxpayers.

CONCLUSION

Because [Redacted] 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 taxpayers are not entitled to the dependent exemption deductions [Redacted] for taxable year 2009. And since the taxpayers are not entitled to the dependent exemptions, the taxpayers cannot claim the additional grocery credit [Redacted] per Idaho Code section 63-3024A.

THEREFORE, the Notice of Deficiency Determination dated June 15, 2010, and directed to [Redacted] is AFFIRMED.

IT IS ORDERED that the taxpayers pay the following tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2009	\$540	\$33	\$573

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.
