

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 23550
[Redacted],	)	
	)	
Petitioner.	)	DECISION
_____	)	

[Redacted] (taxpayer) protested the Notice of Deficiency Determination issued by the Taxpayer Accounting Section of the Idaho State Tax Commission dated November 17, 2010, asserting additional Idaho income tax and interest for taxable year 2009 in the total amount of \$83.05.

The issue in this docket is the filing status of the taxpayer. The taxpayer filed her 2009 Idaho income tax return as a qualifying widow. The Taxpayer Accounting Section (Taxpayer Accounting) changed the taxpayer’s status to single because the dependent claimed, which qualified the taxpayer as a qualifying widow, was over 50 years old and had income of his own. The taxpayer requested a telephone hearing which was held on January 31, 2011. The Tax Commission, having reviewed the file, hereby issues its decision.

The taxpayer timely filed her 2009 Idaho income tax return. During the processing of the taxpayer’s return, Taxpayer Accounting changed the taxpayer’s filing status from qualifying widow to single. Taxpayer Accounting sent a letter to the taxpayer stating the change that was made to her return. The taxpayer disagreed with Taxpayer Accounting’s change. The taxpayer stated her filing status was correct because her husband died in 2008. She stated one of her children lived with her for the entire year and she provided more than one-half his support. Accordingly, her filing status as a qualifying widow was correct.

Taxpayer Accounting reviewed the information and referred the matter for administrative review. The Tax Commission sent the taxpayer a letter that discussed the methods available for redetermining a protested Notice of Deficiency Determination. The taxpayer chose to provide additional information followed by a telephone hearing. The taxpayer provided information showing that she provided over one-half the support of her adult son. She provided information on housing, utilities, food, medical, education, and transportation that were attributed to the household and her son. During the telephone hearing, the taxpayer's son confirmed the taxpayer's statements that more than half of his support came from the taxpayer.

Internal Revenue Code (IRC) section 2(a)(1) states:

For purposes of section 1, the term “surviving spouse” means a taxpayer—

(A) whose spouse died during either of his two taxable years immediately preceding the taxable year, and

(B) who maintains as his home a household which constitutes for the taxable year the principal place of abode (as a member of such household) of a dependent (i) who (within the meaning of section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) is a son, stepson, daughter, or stepdaughter of the taxpayer, and (ii) with respect to whom the taxpayer is entitled to a deduction for the taxable year under section 151 .

For purposes of this paragraph, an individual shall be considered as maintaining a household only if over half of the cost of maintaining the household during the taxable year is furnished by such individual.

Clearly, from the information available, the taxpayer meets the requirements of having a spouse who dies within two years of taxable year and providing over half the cost of maintaining the household for herself and her son. Therefore, the remaining determination is whether the taxpayer's son was a dependent of the taxpayer.

IRC section 152 defines a dependent as either a “qualifying child” or a “qualifying relative.” To be a qualifying child the dependent must be 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. IRC section 152(c)(1) through (3).

To be a qualifying relative, the dependent must be 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).

The taxpayer's son received gross income in excess of the exemption amount as evidenced by the income tax return he filed for 2009. Therefore, the taxpayer's son cannot be a qualifying relative of the taxpayer for purposes of being a dependent. As a result, in order for the taxpayer to be a qualifying widow the taxpayer's son must be a qualifying child.

On the surface, the taxpayer's son easily met the relationship test, the principal place of abode test, and the not filing a joint return test. The remaining tests of age and support are not so readily determined.

IRC section 152(c)(3) defines the age requirements for a qualifying child. The significant part of that section as it relates to this matter is subpart (B) which states:

Special rule for disabled. In the case of an individual who is permanently and totally disabled (as defined in section 22(e)(3) ) at any time during such calendar year, the requirements of subparagraph (A) shall be treated as met with respect to such individual.

Among the information the taxpayer provided was a letter from the taxpayer's son's doctor. The doctor stated that the taxpayer's son is "permanently and totally disabled" as the term is defined in the IRC. The doctor stated the son's condition is expected to last for a number of years and that he will not be able to engage in any substantial gainful activity because of his

physical and mental medical conditions. Since the Tax Commission is not in the business of determining the mental and physical conditions of dependents and the physician's statement conforms to the requirements of the IRC, the Tax Commission finds the taxpayer's son meets the age requirement for a dependent.

The remaining test, the individual not providing over one-half of their own support, is clarified by the court case of Carter v. CIR, 55 T.C. 109 (1970). In that case, the petitioner claimed his grandmother that lived with him as a dependent. The grandmother had income that exceeded the amount the petitioner paid toward her support. The grandmother did not use all her income to support herself. The Court concluded:

However the test to be applied, for purposes of determining entitlement to an exemption under Federal income tax laws, is one of actual support. Emily Marx, 13 T.C. 1099, 1105 (1949). . . Thus the manner in which the recipient spends the old-age assistance payments is critical. So here we have found for the petitioner because his grandmother did not spend all the payments she received on her own support, and the support expenditures she made did not exceed those made by petitioner who was her only other source of support.

The taxpayer's son had income sources that could have been used to contribute to his support. However, based upon the documentation provided, the taxpayer's son contributed less than 20 percent of his own support. This being the case, the taxpayer met the support test to claim her son as a dependent.

Therefore, considering the foregoing, the Tax Commission finds the taxpayer met the requirements for the filing status of qualifying widow for taxable year 2009.

WHEREFORE, the Notice of Deficiency Determination dated November 17, 2010, is hereby CANCELLED.

IT IS ORDERED and THIS DOES ORDER that the taxpayer receive the following refund:

<u>YEAR</u>	<u>REFUND</u>	<u>INTEREST</u>	<u>TOTAL</u>
2009	\$820	\$42	\$862

An explanation of the taxpayer's right to appeal this decision is enclosed.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2011.

IDAHO STATE TAX COMMISSION

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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.

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