

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 23571 & 23590
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

[Redacted] (taxpayers) filed timely appeals of the Notices of Deficiency Determination (NODD) dated November 26, 2010, and September 22, 2010, but did not request a hearing. Both NODDs were issued by the Revenue Operations Division of the Idaho State Tax Commission (Commission). The NODD dated November 26, 2010, reduced the amount of refund claimed by the taxpayers for taxable year 2008 in the amount of \$289. The NODD dated September 22, 2010, proposed additional tax and interest for taxable year 2009 in the total amount of \$334.88. Because the issue is the same for both taxable year 2008 and 2009, the Commission has combined the two dockets and, having reviewed both files, will issue one decision addressing both NODDs.

The sole issue for this decision is whether the taxpayers are entitled to a dependency exemption deduction for [Redacted], daughter of [Redacted] from a prior marriage.

[Redacted] was previously married to [Redacted] and two children were born of that marriage. However, only the dependency exemption for [Redacted] is at issue. [Redacted] and [Redacted] were divorced pursuant to the Decree of Divorce entered on June 29, 2000. On April 2, 2007, a Stipulation RE: Custody, Visitation and Support (Stipulation) was filed which stated physical custody of [Redacted] would be shared equally between [Redacted]. The Stipulation also stated [Redacted] shall claim the tax exemption for both children for taxable year

2006, but for taxable year 2007 and thereafter, [Redacted] shall claim the tax exemption for [Redacted], and [Redacted] shall claim the tax exemption for [Redacted].

Taxpayers may claim dependency exemption deductions for their dependents as defined in Internal Revenue Code (IRC) section 152. Under IRC section 152(a), the term “dependent” means a qualifying child or qualifying relative. A qualifying child is defined as 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, and (4) has not provided over one-half of the individual’s own support for the taxable year. IRC section 152(c)(1)-(3).

However, the dependency exemption, as a general rule, is limited under IRC section 152(e)(1) as follows: if the child received over one-half of his support during the calendar year from his parents who live apart at all times during the last 6 months of the calendar year and the child is in the custody of one or both parents for more than one-half of the calendar year, then the child is treated as the qualifying child of the noncustodial parent if certain requirements are met. The requirements are met if (1) the custodial parent signs a written declaration (in such manner and form as the Secretary may prescribe) that the custodial parent will not claim the child as a dependent for the taxable year, and (2) the noncustodial parent attaches the written declaration to the noncustodial parent’s return for the taxable year. IRC section 152(e)(2).

The term “custodial parent” is defined in IRC section 152(e)(4)(A) as the parent having custody for the greater portion of the calendar year. In the present case, for taxable year 2008, based on information provided by the taxpayers, custody of [Redacted] was split 50/50 from January 1, 2008, through September 25, 2008, at which time [Redacted] resided exclusively with

the taxpayers. For taxable year 2009, an Order was issued modifying the visitation schedule for [Redacted] father, Mr. [Redacted], to one day a month. Therefore, for both taxable years 2008 and 2009, the taxpayers would be considered [Redacted] “custodial parent.”

An exception to the above rule is provided in IRC section 152(e)(2) in that if the parent having custody elects to release his claim to exemption for the children in his custody for the year in question and supplies a written release to that effect, and if the noncustodial parent receiving the right to claim the dependency exemption attaches such waiver to the tax return, then the waiver will be honored and the noncustodial parent may claim the dependency exemption for the child.

To meet the requirements of IRC section 152(e)(2), the written declaration, if not made on the official form provided by the Internal Revenue Service (IRS), “shall conform to the substance of such form.” Sec. 1.152-4T(a) Q & A-3, Temporary Income Tax Regs., 49 Fed.Reg. 34459 (Aug. 31, 1984). The form provided by [Redacted], Form 8332, calls for the following information: The name of the child or children; the applicable tax year or years; the custodial parent’s signature, and the date of signature; the custodial parent’s Social Security number; the noncustodial parent’s name; and the noncustodial parent’s Social Security number.

In the present case, the Commission finds that the 2007 Stipulation satisfies the requirements of the IRC and is therefore considered a release of the dependent exemption by the custodial parent. The Stipulation unconditionally entitles Mr. [Redacted] to the tax exemption for [Redacted], it indicates the allocation of the dependent exemptions was to apply to taxable year 2007 and all future years, and it contains the signature of the custodial parent. While the social security numbers of the parties do not appear on the Stipulation, the court has held that the omission of the custodial parents’ social security numbers from a completed Form 8332 does not

invalidate the release affected by that form. Bramante v. Commissioner, T.C. Memo 2002-228. Accordingly, the presence of [Redacted] social security number is not required for the Stipulation to conform to the substance of Form 8332.

Therefore, the taxpayers do not qualify for the dependent exemption for [Redacted] for taxable years 2008 and 2009. Also, because the taxpayers are not entitled to the dependent exemption for those years, the taxpayers cannot claim the additional grocery credit for [Redacted] per Idaho Code section 63-3024A.

WHEREFORE, the Notices of Deficiency Determination dated November 26, 2010, and September 22, 2010, are APPROVED, AFFIRMED, and MADE FINAL.

For taxable year 2008, the taxpayers refund was only reduced, therefore no DEMAND for payment is made or necessary. For taxable year 2009, 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	\$325	\$18.46	\$343.46

Interest is calculated through July 11, 2011.

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.
