

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 23591
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

[Redacted] (taxpayer) protested the Notice of Deficiency Determination dated December 3, 2010, asserting additional income tax and interest in the total amount of \$629 for taxable year 2009. The taxpayer disagreed with the adjustment disallowing the dependent exemption deductions for his children [Redacted]. The Tax Commission, having reviewed the file, hereby issues its decision.

The taxpayer filed his 2009 Idaho individual income tax return claiming two dependent exemptions. During the processing of income tax returns, the taxpayer's return was identified as one of two returns that claimed the same dependent exemptions. The Taxpayer Accounting section (Taxpayer Accounting) requested additional information from the taxpayer. The taxpayer did not respond to Taxpayer Accounting's questionnaire, but upon receiving a correction and tax computation letter, the taxpayer protested the change to his return and provided a copy of his divorce decree that stated he gets the tax exemptions for his two children. Taxpayer Accounting reviewed the information, determined the taxpayer was not entitled to the dependent exemptions, and sent the taxpayer a Notice of Deficiency Determination. Taxpayer Accounting then referred the matter for administrative review.

The Tax Commission reviewed the matter and sent the taxpayer a letter that discussed the methods available for redetermining a protested Notice of Deficiency Determination. The taxpayer asked for a telephone hearing which was held on March 14, 2011. During the hearing,

the law was discussed, and it was determined the taxpayer was the noncustodial parent of the children. The taxpayer stated his children stayed with him approximately 48 percent of the time in 2009. The taxpayer stated he would not be able to get a signed release from the custodial parent, and he had no additional information to provide. Therefore, the Tax Commission issues its decision based upon the information provided.

[Redacted] is the biological father [Redacted]. The taxpayer's divorce decree states that the primary physical custody of the children is with the mother. The taxpayer also stated he had the children only 48 percent of the time. Therefore, the taxpayer is the noncustodial parent of both [Redacted]. The taxpayer stated a signed release of the dependent exemptions from the custodial parent was not an option. The taxpayer stated he was wholly relying on the language of his divorce decree that allowed him the dependency exemptions.

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. A child of a taxpayer is generally a dependent of the taxpayer.

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 IRC section 152(e)(2) work as intended, that control must be preserved by insisting on adherence to the requirements of IRC 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 IRC section 152(e)(2)(A). Miller v. CIR, 114 T.C. 184, (2000).

As previously stated, the taxpayer was not going to provide a statement from the custodial parent, and the taxpayer's divorce decree falls far 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 taxpayer can claim the dependent exemptions reverts to IRC section 152(a).

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).

Therefore, for the taxpayer to claim [Redacted] as dependents, the taxpayer must show that [Redacted] are either qualifying children or qualifying relatives. Regarding a qualifying child, the taxpayer has not shown that either [Redacted] principal place of abode was with him for more than one-half the taxable year. In fact, the taxpayer stated the children were with him for only 48 percent of the time in 2009. Consequently, the children's principle place of abode was not with the taxpayer for more than one-half the taxable year. Therefore, [Redacted] cannot be qualifying children for the taxpayer for taxable year 2009.

As for a qualifying relative, the children did not live with the taxpayer for over one-half the taxable year; therefore, the presumption is that [Redacted] lived with their mother and were

qualifying children for the mother. As a result, [Redacted] cannot be qualifying relatives for the taxpayer.

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 taxpayer is not entitled to the dependent exemption deductions [Redacted] for taxable year 2009. And since the taxpayer is not entitled to the dependent exemptions, the taxpayer cannot claim the additional grocery credits for the children per Idaho Code section 63-3024A.

WHEREFORE, the Notice of Deficiency Determination dated December 3, 2010, is hereby APPROVED, AFFIRMED, and MADE FINAL.

The taxpayer paid the amount of the deficiency determination, so no further DEMAND for payment is needed or necessary.

An explanation of the taxpayer's 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.
