

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 23605
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

[Redacted] (taxpayer) protested the Notice of Deficiency Determination dated September 24, 2010, asserting additional income tax and interest in the total amount of \$311.27 for taxable year 2009. The taxpayer disagreed with the adjustment disallowing the dependent exemption deduction [Redacted]. The taxpayer stated he would attempt to get the proper document signed by [Redacted] mother, but has yet to provide that document. The Tax Commission, having reviewed the file, hereby issues its decision.

BACKGROUND

The taxpayer timely filed his 2009 Idaho individual income tax return. During the processing of income tax returns, the taxpayer's return was identified as one of two returns that claimed a dependent exemption deduction [Redacted]. The Taxpayer Accounting Section (Taxpayer Accounting) requested additional information from the taxpayer in the form of a questionnaire. The taxpayer responded to Taxpayer Accounting's questionnaire and provided a copy of his divorce decree that stated he had the right to claim the dependent exemption [Redacted].

Taxpayer Accounting reviewed the information and ultimately determined the taxpayer was not entitled to the dependent exemption. Taxpayer Accounting sent the taxpayer a Notice of Deficiency Determination which the taxpayer protested. The taxpayer restated that the court modified his divorce decree and gave him the right to claim [Redacted] as his dependent.

Taxpayer Accounting reviewed the information and 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 contacted the Tax Commission and discussed the requirements of the income tax law for the allowance of a dependent exemption. The taxpayer admitted [Redacted] did not live with him for more than one-half of the 2009 calendar year. The Tax Commission informed the taxpayer that since he was not the custodial parent, he would have to get a signed release from the custodial parent before he would be allowed the dependent exemption deduction. The taxpayer stated he would try to get the release but considering his past relationship with the custodial parent, he may have to pursue legal action. The Tax Commission held the matter in abeyance awaiting additional information from the taxpayer. The taxpayer did not provide a release from the custodial parent nor did he provide any information on any legal steps he was pursuing against the custodial parent. Therefore, the Tax Commission decided the matter based upon the information available.

LAW AND ANALYSIS

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).

The taxpayer admitted [Redacted] did not live with him for more than one-half of taxable year 2009. Therefore, the taxpayer was the noncustodial parent, and in order for IRC section 152(e) to apply, he would need a signed release from the custodial parent. Since the taxpayer did not provide such a release and his modified divorce decree falls far short of an allowable substitute as provided in the Treasury Regulations, the determination of whether the taxpayer can claim the dependent exemption reverts to IRC section 152(a).

Therefore, to claim [Redacted] as a dependent, the taxpayer must show that [Redacted] was either a qualifying child or a qualifying relative. As for a qualifying child, the taxpayer has not shown that [Redacted] principal place of abode was with him for more than one-half the taxable year. In fact, he stated exactly the opposite; [Redacted] lived with him for less than one-half the taxable year. Consequently, [Redacted] was not a qualifying child in taxable year 2009.

Regarding a qualifying relative, the taxpayer did not show that he provided over one-half of [Redacted] support for the taxable year, or that [Redacted] was not a qualifying child of any other taxpayer for the taxable year. Since [Redacted] lived with her mother for the remainder of

the taxable year, the presumption is that [Redacted] was a qualifying child for her mother. Therefore, [Redacted] cannot be a qualifying relative for the taxpayer.

CONCLUSION

Because [Redacted] did 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 deduction [Redacted] for taxable year 2009. And since the taxpayer is not entitled to the dependent exemption, the taxpayer cannot claim the additional grocery credit [Redacted] per Idaho Code section 63-3024A.

THEREFORE, the Notice of Deficiency Determination dated September 24, 2010, and directed to [Redacted] is AFFIRMED.

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

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2009	\$302	\$21	\$323

DEMAND for immediate payment of the foregoing amount is hereby made and given.

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.
