

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 23723
[Redacted],)	
)	
Petitioners.)	DECISION
_____)	

On November 12, 2010, the staff of the Revenue Operations Division of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayers) proposing additional tax and interest for taxable year 2009 in the total amount of \$543.20.

The taxpayers filed a timely appeal and petition for redetermination. The taxpayers did not request a hearing. The Commission, having reviewed the file, hereby issues its decision.

The sole issue for this decision is whether the taxpayers are entitled to dependency exemptions for [Redacted] children, [Redacted] and [Redacted].

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 live apart. 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.

The taxpayers provided a copy of Form 8332, Release of Claim to Exemption for Child by Custodial Parent, for both [Redacted] and [Redacted]. The forms released the exemption for each child for taxable years 2009 and 2010. The form was dated May 3, 2010, and displayed a signature from the custodial parent, [Redacted].

This same issue was addressed in a previous year. The taxpayers, at that time, also submitted a Form 8332, which released the exemption for [Redacted] for taxable year 2008. When the two forms are looked at side by side, the signature of [Redacted] is significantly dissimilar. This, along with the statement from [Redacted] claiming that she only signed the release for [Redacted] for taxable year 2008, casts some doubt as to the validity of the Form 8332 submitted for taxable year 2009.

Therefore, without a signed release, the determination of whether the taxpayers can claim the dependent exemptions reverts to IRC section 152(c) and (d).

IRC section 152(c) defines a “qualifying child” 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) through (3).

IRC section 152(d) defines a "qualifying relative" as 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).

To claim a dependent exemption, the taxpayers must show the dependents are either a qualifying child or a qualifying relative. Regarding a qualifying child, the taxpayers have not shown that either [Redacted] or [Redacted] principal place of abode was with them for more than one-half the taxable year. Consequently, the taxpayers have no qualifying child for taxable year 2009. As for meeting the requirements for a qualifying relative of the taxpayers, the taxpayers failed to show that they provided over one-half the support of [Redacted] or [Redacted] for taxable year 2009 or that [Redacted] or [Redacted] were not a qualifying child of any other taxpayer for taxable year 2009.

Because [Redacted] children do not meet the requirements for either a qualifying child or a qualifying relative as defined in IRC section 152, the Commission finds that the taxpayers are not entitled to dependency exemption deductions for [Redacted] and [Redacted] for taxable year 2009. And, since the taxpayers are not entitled to the dependency exemptions, the taxpayers cannot claim the additional grocery credit for the children per Idaho Code section 63-3024A.

WHEREFORE, the Notice of Deficiency Determination dated November 12, 2010, is APPROVED, AFFIRMED, and MADE FINAL.

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	\$523	\$29.53	\$552.53

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.
