

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],) DOCKET NO. 24050
)
)
Petitioner.) DECISION
)
_____)

[Redacted] (taxpayer) protested the change Revenue Operations made to his 2010 Idaho individual income tax return asserting additional income tax and interest in the total amount of \$323.61. The taxpayer disagreed with the adjustment disallowing the dependent exemption deduction [Redacted]. The Tax Commission, having reviewed the file, hereby issues its decision.

BACKGROUND

The taxpayer timely filed his 2010 Idaho individual income tax return. During the processing of income tax returns, the taxpayer’s return was identified as one of two income tax 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 stating that he was not the custodial parent of his son, [Redacted], that he provided more than half of [Redacted] total support, and that the number of days [Redacted] stayed with him varied. The taxpayer also stated that a federal form 8332 was not needed from the custodial parent. The taxpayer provided copies of his divorce decree, a stipulation for entry of judgment and decree of divorce, pages from Internal Revenue Service’s Publication 17, and Treasury Regulation section 1.152-4.

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 denying the dependent exemption. Taxpayer Accounting then 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 requested a hearing which was held on September 20, 2011. The taxpayer stated he was relying on the stipulation and his divorce decree as his authority to claim [Redacted] as a dependent. He stated the two documents met the requirements for a substitute of federal form 8332. When asked how long [Redacted] lived with him, the taxpayer stated that it was less than half the year. The age of the dependent was discussed as well as his status as a student.

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, 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, 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 argument centers on the fact that his divorce decree states that he can claim [Redacted] as a dependent for the even-numbered years. The taxpayer's divorce decree states that the parties' two minor children will be split between the parties for the dependent exemption deductions until the older child reaches the age of 18. At that time, the parties will alternate the dependent exemption deduction for the younger child based on whether it is an odd or even year. It is apparent from the taxpayer's divorce decree that the parties recognized the significance of a child attaining the age of majority, 18 years of age. In 2010, [Redacted] attained the age of majority. Consequently, [Redacted] is out from under the purview of the divorce decree's custody provision and out from under the provisions of IRC section 152(e) which states that the non-custodial parent must get a signed release from the custodial parent in order to claim the exemption deduction. This provision of the IRC is what the taxpayer was relying on from his divorce decree. Therefore, since [Redacted] was no longer subject to the custody of his parents, the determination of who can claim him as a dependent is bound by the general rules of IRC section 152.

As previously stated, a dependent must be either a qualifying child or a qualifying relative. The taxpayer stated [Redacted] did not live with him for over half the taxable year; therefore, [Redacted] could not be a qualifying child for the taxpayer. As for a qualifying relative, the taxpayer stated [Redacted] lived with his mother when he was not staying with the

taxpayer. This being the case, [Redacted] could be a qualifying child for his mother. Since [Redacted] could be a qualifying child for another taxpayer, [Redacted] cannot be a qualifying relative for the taxpayer.

CONCLUSION

Because [Redacted] does 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 2010. 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 May 25, 2011, 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>
2010	\$320	\$10	\$330

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.
