

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of) DOCKET NO. 24052
[Redacted],)
) DECISION
)
Petitioner.)
_____)

[Redacted] (taxpayer) protested the Notice of Deficiency Determination dated May 25, 2011, asserting additional income tax and interest in the total amount of \$324.62 for taxable year 2010. The taxpayer disagreed with the adjustment disallowing the dependent exemption deduction for [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 the custodial parent of his son, [Redacted], and that he provided more than half of [Redacted] total support. The taxpayer also stated that [Redacted] was a college student but did not state the number of days [Redacted] stayed at his home.

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. The taxpayer protested Taxpayer Accounting’s determination and provided a copy of his divorce decree which allows him to

claim [Redacted] as a dependent as long as he is current with his child support payments. The taxpayer stated his child support payments are current so he should get the dependent exemption deduction. Taxpayer Accounting reviewed the information and 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 failed to respond, so the Tax Commission reviewed the information available and decided the matter based upon that information.

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).

In this case, the dependent in question is a college student age 19. IRC section 152(c)(3) states that for a dependent to be considered a qualifying child, the dependent must not attain the age of 19 by the end of the calendar year in which the taxable year of the taxpayer begins. However, a special provision is available for students under the age of 24. The information provided from both taxpayers claiming [Redacted] as a dependent is that [Redacted] is a college student. Therefore, [Redacted] could be a qualifying child for one of the taxpayers.

The taxpayer's argument centers on the fact that his divorce decree states that [Redacted] is his legal tax dependent. The decree states, "[t]he Defendant shall always claim the minor child, [Redacted], born July 29, 1991, as a deduction for income tax deduction purposes." (Underlining added.) However, for taxable year 2010, the dependent [Redacted] is no longer a minor. He attained the age of majority in Idaho. Therefore, in accordance with the taxpayer's divorce decree, [Redacted] dependent exemption is no longer bound to the taxpayer. Regardless, the determination of a dependent exemption deduction is a matter to be decided by the provisions of the IRC. (See White v. CIR, T.C. Memo 1996-438 (1996); Commissioner v. Tower, 327 U.S. 280 (1946); Kenfield v. United States, 783 F.2d 966 (10th Cir.1986); Nieto v. Commissioner, T. C. Memo. 1992-296).

As previously stated, a dependent must be either a qualifying child or a qualifying relative. According to the information provided, [Redacted] did not live with the taxpayer for over half the taxable year; therefore, [Redacted] could not be a qualifying child for the taxpayer. The information provided shows [Redacted] lived with his mother from January through May and approximately 90 percent of the time from June through August. [Redacted] attended

college in [Redacted], Idaho, for the remaining part of the year returning to his mother's home during school breaks. As a result, [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 for [Redacted] for taxable year 2010. And since the taxpayer is not entitled to the dependent exemption, the taxpayer cannot claim the additional grocery credit for [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	\$321	\$9	\$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.
