

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 24409
[Redacted],)	
)	
Petitioners.)	DECISION
_____)	

[Redacted] (Petitioners) protested the Notice of Deficiency Determination dated August 26, 2011, asserting additional income tax and interest in the total amount of \$303.55 for taxable year 2010. Petitioners disagreed with the adjustment disallowing the dependent exemption deduction for [Redacted] daughter, [Redacted]. The Tax Commission, having reviewed the file, hereby issues its decision.

FACTS

Petitioners timely filed their 2010 Idaho individual income tax return. However, during the processing of income tax returns, Petitioners' return was identified as one of two returns that claimed a dependent exemption deduction for [Redacted]. The Taxpayer Accounting Section (Taxpayer Accounting) requested additional information from Petitioners in the form of a questionnaire. Petitioners responded to the questionnaire and provided additional documentation in support of their claim.

Taxpayer Accounting reviewed the information Petitioners provided and determined that since [Redacted] was the noncustodial parent and the [Redacted] Form 8332 was incomplete as to future years, Petitioners were not entitled to the dependent exemption deduction for [Redacted]. Taxpayer Accounting sent Petitioners a Notice of Deficiency Determination which Petitioners protested. Petitioners stated it was their right to claim [Redacted] as a dependent.

Taxpayer Accounting referred the matter for administrative review, and the Tax Commission sent Petitioners a letter that discussed the methods available for redetermining a protested Notice of Deficiency Determination. Petitioners failed to respond to the Tax Commission's letter, so 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 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). 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).

Petitioners' argument centers on [Redacted] divorce decree and a Form 8332 prepared and signed in 2005. Although the divorce decree clearly states each party should claim one of their minor children and that [Redacted] would claim [Redacted], the divorce decree falls short of an acceptable substitute for [Redacted] Form 8332. As for the Form 8332 Petitioners provided, the form is acceptable for taxable year 2004 but is incomplete for years after 2004. Therefore, because Petitioners have not provided a valid release of the dependent exemption from the custodial parent, the determination of whether Petitioners can claim [Redacted] as a dependent reverts to IRC section 152(a).

Since a dependent is either a qualifying child or a qualifying relative, Petitioners must show that [Redacted] was one or the other. Petitioners stated in their response to Taxpayer Accounting's questionnaire that [Redacted] did not stay with them in 2010. This being the case, [Redacted] cannot be a qualifying child because her principal place of abode was not with Petitioners. And since [Redacted] did not live with Petitioners, the presumption is that she lived with her mother and was a qualifying child for her mother. Consequently, [Redacted] cannot be a qualifying relative for Petitioners. [Redacted] does not meet the requirements of a dependent for Petitioners for taxable year 2010.

CONCLUSION

Because [Redacted] did not meet the requirements for either a qualifying child or a qualifying relative as defined in IRC section 152, and since Petitioners do not have a valid signed release from the custodial parent, the Tax Commission finds that Petitioners are not entitled to the dependent exemption deduction for [Redacted] for taxable year 2010. And, because Petitioners are not entitled to the dependent exemption, Petitioners cannot claim the additional grocery credit for [Redacted] per Idaho Code section 63-3024A.

THEREFORE, the Notice of Deficiency Determination dated August 26, 2011, and directed to [Redacted] is AFFIRMED.

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

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2010	\$296	\$14	\$310
		AMOUNT PAID	(150)
		BALANCE DUE	<u>\$160</u>

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

An explanation of the Petitioners' right to appeal this decision is enclosed.

DATED this _____ day of _____ 2012.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2012, 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.
