

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 24410
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

[Redacted] (Petitioner) protested the Notice of Deficiency Determination dated August 26, 2011, reducing the refund claimed for taxable year 2010 in the total amount of \$335. Petitioner disagreed with Revenue Operations’ adjustment disallowing the dependent exemption deduction [Redacted]. The Tax Commission, having reviewed the file, hereby issues its decision.

BACKGROUND

Petitioner filed his 2010 Idaho individual income tax return claiming a dependent exemption deduction for his son, [Redacted]. During the processing of Petitioner’s income tax return, the Tax Commission identified Petitioner’s return as one of two income tax returns that claimed a dependent exemption deduction [Redacted]. The Taxpayer Accounting Section (Taxpayer Accounting) requested additional information from Petitioner in the form of a questionnaire. Petitioner responded to Taxpayer Accounting’s questionnaire stating that he was [Redacted] father, he had custody [Redacted], he provided more than half of [Redacted] total support, and that [Redacted] lived with him when [Redacted] was not in school.

Taxpayer Accounting reviewed the information and ultimately determined Petitioner was not entitled to the dependent exemption. Taxpayer Accounting sent Petitioner a Notice of Deficiency Determination denying the dependent exemption deduction. Petitioner protested the Notice of Deficiency Determination stating that he has claimed his son for the past 19 years and

the Tax Commission should look at the history when making its determination. Petitioner also provided a copy of his ex-wife's 2010 Idaho income tax return to show that she did not claim [Redacted]. Taxpayer Accounting reviewed the information and referred the matter for administrative review.

The Tax Commission sent Petitioner a letter that discussed the methods available for redetermining a protested Notice of Deficiency Determination. Petitioner did not respond to the Tax Commission's letter; 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 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 was 19 years of age by the end of calendar year 2010. As a result, in order [Redacted] to be a qualifying child, [Redacted] needed to be a full-time student. (IRC section 152(c)(3).) Petitioner alluded to [Redacted] student status in his statement that [Redacted] lived with him when not in school. Other information provided to the Tax Commission also shows [Redacted] likely enrolled to attend [Redacted] College in the fall of 2010. Therefore, assuming [Redacted] lived with his mother while attending high school from January to June, [Redacted], and then began college late in August, [Redacted] would have lived with Petitioner for less than half of 2010.

Generally, [Redacted] would not be considered a qualifying child for Petitioner since he did not live with Petitioner for more than half the year. However, because [Redacted] was a student, the time he spent away from his principal place of abode is considered a temporary absence from his principal place of abode. And, since it is unknown where [Redacted] principal place of abode was prior to leaving for college, it is quite possible [Redacted] could have been a qualifying child for both his parents.

Fortunately, IRC section 152(c)(4) provides a special rule for situations where two or more can claim the same qualifying child. Generally, a parent takes precedence, but in the case where both parents can claim the same qualifying child, IRC section 152(c)(4)(B) addresses this situation by granting the exemption to the parent with whom the child resided for the longest period of time during the taxable year, or if the child resided equally with both parents, to the parent with the highest adjusted gross income.

The Tax Commission's letter to Petitioner asked him to provide a list of the days [Redacted] stayed with him overnight in 2010. But since Petitioner did not respond, all the Tax Commission had to decide the matter was Petitioner's statement that [Redacted] lived with Petitioner when he was not in school. Assuming [Redacted] spent some time with his mother during the summer between high school and college in addition to living with her while in high school, the probability that [Redacted] resided a longer period of time with Petitioner in 2010 is unlikely. Therefore, the Tax Commission finds the tie breaker provision of IRC section 152(c)(4)(B) not in favor of Petitioner.

CONCLUSION

In Idaho, a State Tax Commission deficiency determination is presumed to be correct, and the burden is on the taxpayer to show that the deficiency is erroneous. Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 n.2, 716 P.2d 1344, 1346-1347 n.2 (Ct. App. 1986). Petitioner did not meet his burden. As a result, the Tax Commission's decision was based upon supposition from the information Petitioner provided and from other third party information. Based upon that information, the Tax Commission found it plausible [Redacted] was a qualifying child for both parents. Therefore, the Tax Commission looked to the tie breaking rules and found that [Redacted] stayed a longer period of time with his mother than he did with Petitioner. This being the case, Petitioner does not get to claim the dependent exemption deduction [Redacted] for taxable year 2010. And because Petitioner cannot claim the dependent exemption, Petitioner cannot claim the additional grocery credit [Redacted] per Idaho Code section 63-3024A.

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

Since Taxpayer Accounting reduced the refund claimed by Petitioner, no additional tax is owed and no demand for payment is required.

An explanation of the Petitioner's 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.
