

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
)
[REDACTED],) DOCKET NO. 24427
)
)
Petitioners.) DECISION
)
)
_____)

[Redacted] (Petitioners) protested the Notice of Deficiency Determination dated July 18, 2011, for the unpaid tax and asserting additional income tax and interest in the total amount of \$1,353.47 for taxable year 2010. Petitioners disagreed with the adjustment disallowing the dependent exemption deductions [Redacted]. The Tax Commission, having reviewed the file, hereby issues its decision.

BACKGROUND

Petitioners timely filed but did not pay the tax owed on their 2010 Idaho individual income tax return. During the processing of income tax returns, Petitioners' return was identified as one of three income tax returns that claimed a dependent exemption deduction [Redacted]. The Taxpayer Accounting section (Taxpayer Accounting) requested additional information from Petitioners in the form of a questionnaire. Petitioners responded to Taxpayer Accounting's questionnaire stating that both [Redacted] were [Redacted] daughters, that [Redacted] lived with him for eight months, and that a court order allowed him to claim [Redacted] as a dependent. Petitioners provided a copy of the order, an ORDER MODIFYING CHILD SUPPORT, and further stated that one of the girls, presumably [Redacted], was in college until June 2012.

Taxpayer Accounting reviewed the information and ultimately determined Petitioners were not entitled to either dependent exemption. Taxpayer Accounting sent Petitioners a Notice

of Deficiency Determination denying the dependent exemptions. Petitioners protested Taxpayer Accounting's determination stating again that a court order allows [Redacted] to claim [Redacted] and that [Redacted] lived with them while attending college through July 1, 2010. Taxpayer Accounting reviewed the information and referred the matter for administrative review.

The Tax Commission sent Petitioners a letter that discussed the methods available for redetermining a protested Notice of Deficiency Determination. Petitioners 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 dependents in question are a minor and a college student age 21. 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. From the information available, it appears [Redacted] met the requirements for a qualifying child for Petitioners in 2010. [Redacted] was a student, and she apparently lived with Petitioners over half the taxable year. Therefore, Petitioners should be able to claim [Redacted] as a dependent for taxable year 2010.

As for the minor dependent, [Redacted], IRC section 152(e) provides a special rule for divorced parents or parents living 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.

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.

Petitioners argued the court order allows [Redacted] the dependent exemption deduction [Redacted]. The court document Petitioners provided clearly shows that [Redacted] has a right to the dependent exemption [Redacted]. However, 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.)

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).

Since Petitioners' court order does not meet the requirements of IRC section 152(e)(2)(A), IRC section 152(e) does not apply and the determination of whether Petitioners can claim [Redacted] as a dependent reverts to IRC section 152(a).

As previously stated, a dependent is either a qualifying child or a qualifying relative. Petitioners must show that [Redacted] was one or the other. Petitioners gave no information on the number of days [Redacted] lived with them, but it is presumed she lived with them for less than

one-half the taxable year due to the child support [Redacted] was required to pay. Accordingly, [Redacted] cannot be a qualifying child for Petitioners because her principal place of abode was not with Petitioners. Furthermore, because [Redacted] did not live with Petitioners for over one-half the taxable year, the presumption being she lived with their mother, she was a qualifying child for her mother. As such, [Redacted] cannot be a qualifying relative for Petitioners.

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 Petitioners are not entitled to the dependent exemption deduction for [Redacted] for taxable year 2010. And since Petitioners are not entitled to the dependent exemption, Petitioners cannot claim the additional grocery credit [Redacted] per Idaho Code section 63-3024A.

However, based upon the information provided that [Redacted] lived with Petitioners for over half the taxable year and that she was a college student in 2010, the Tax Commission finds that Petitioners can claim a dependent exemption deduction [Redacted] for taxable year 2010. Likewise, Petitioners are also allowed the grocery credit [Redacted].

THEREFORE, the Notice of Deficiency Determination dated July 18, 2011, and directed to [Redacted] is AFFIRMED AS MODIFIED by this decision.

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

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2010	\$1,008	\$60	\$1,068

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.
