

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 24436
[Redacted],)	
)	
Petitioners.)	DECISION
_____)	

[Redacted] (Petitioners) protested the Notice of Deficiency Determination dated August 25, 2011, asserting additional income tax and interest in the total amount of \$623.13 for taxable year 2010. Petitioners disagreed with the adjustment disallowing the dependent exemption deductions for [Redacted] children, [Redacted]. The Tax Commission, having reviewed the file, hereby issues its decision.

FACTS

Petitioners timely filed their 2010 Idaho individual income tax return. During the processing of income tax returns, Petitioners' return was identified as one of two returns that claimed dependent exemption deductions [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, Petitioners were not entitled to the dependent exemption deductions [Redacted]. Taxpayer Accounting sent Petitioners a Notice of Deficiency Determination which Petitioners protested. Petitioners stated their protest is based upon the information previously provided wherein [Redacted] was awarded the dependent exemptions in his divorce and that his child support payments included compensation to the custodial parent for the exemptions.

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 requested a hearing and stated they would provide additional documentation prior to November 16, 2011. On November 17, 2011, after not receiving the additional documentation, the Tax Commission contacted Petitioners and discussed the dependent exemptions, what additional documents Petitioners were going to provide, who the custodial parent was, and where [Redacted] spent the majority of their nights in 2010. Petitioners stated [Redacted] were with their mother for over half the year; however, [Redacted] divorce decree awarded him the dependent exemptions. Petitioners stated the divorce decree was accepted [Redacted] as proof [Redacted] could claim the exemptions. Petitioners stated further [Redacted] examined their return for the same issue and made no adjustments. The Tax Commission asked Petitioners to provide a copy of the federal audit, which Petitioners provided a few days later.

The Tax Commission also discussed [Redacted] divorce decree with Petitioners and talked about what was required for a divorce decree to be accepted as a release of the dependent exemption by the custodial parent. The key missing component in [Redacted] divorce decree was the custodial parent's signature. Petitioners stated [Redacted] ex-wife did not attend the court hearing so he got a default judgment or order declaring the divorce.

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 relied on [Redacted] divorce decree as an equivalent of a signed release from the custodial parent. However, examination of [Redacted] divorce decree reveals that it falls short of an allowable substitute as provided in the Treasury Regulations. Furthermore, the divorce decree states in itself, "The parent not receiving the exemption(s) shall sign the required Internal Revenue Service form(s) to release the claim to the exemption(s)." The signed release is a condition of IRC section 152(e), and no release form or statement was provided. Therefore, the determination of whether Petitioners can claim the dependent exemptions reverts to IRC section 152(a).

A dependent is either a qualifying child or a qualifying relative. Petitioners must show that [Redacted] were one or the other. Petitioners stated in their response to Taxpayer

Accounting that [Redacted] stayed with them for 150 days in 2010. Since this was less than half the year, [Redacted] cannot be a qualifying child due to the fact their principal place of abode was not with Petitioners. And, since [Redacted] did not live with Petitioners for over one-half the taxable year, the presumption is that [Redacted] lived with their mother and they were a qualifying child for their mother. Consequently, [Redacted] cannot be a qualifying relative for Petitioners.

Petitioners argued that the [Redacted] examined the exemption deductions and allowed them to claim [Redacted]. Petitioners provided a copy of the [Redacted] audit and the no-change letter they received. The Tax Commission reviewed the [Redacted] audit and found it was for taxable year 2008. The [Redacted] initially disallowed the exemptions and child credits. The explanation for disallowing the exemptions and credits was that [Redacted] was not the custodial parent and his divorce decree fell short of being an acceptable substitute for releasing the exemptions by the custodial parent. However, shortly thereafter, the [Redacted] issued a no-change letter for taxable year 2008 with no explanation. Neither did the Petitioners have an explanation as to why the [Redacted] changed its audit findings. Nevertheless, regardless of the [Redacted] findings for taxable year 2008, taxable year 2010 stands on its own, and Petitioners must show that they are entitled to the dependent exemption deductions for taxable year 2010. Petitioners have not shown [Redacted] meet the requirements of a dependent, nor have they provided a release from the custodial parent.

CONCLUSION

Because [Redacted] do not meet the requirements for either a qualifying child or a qualifying relative as defined in IRC section 152, the Tax Commission finds Petitioners are not entitled to the dependent exemption deductions [Redacted] for taxable year 2010. And, since

Petitioners are not entitled to the dependent exemptions, Petitioners cannot claim the additional grocery credit [Redacted] as provided for in Idaho Code section 63-3024A.

THEREFORE, the Notice of Deficiency Determination dated August 20, 2010, and directed to [Redacted] is AFFIRMED.

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

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2010	\$601	\$27	\$628

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.
