

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 24511 & 24512
[Redacted],	)	
	)	
Petitioner.	)	DECISION
_____	)	

[Redacted] (Petitioner) protested the Notices of Deficiency Determination dated July 26, 2011, for taxable years 2008 and 2009, asserting additional income tax, penalty, and interest in the total amounts of \$1,032.61 and \$908.88 respectively. Petitioner disagreed with the adjustments disallowing the dependent exemption deductions for his daughters [Redacted]. The Tax Commission, having reviewed the file, hereby issues its decision.

**FACTS**

Petitioner filed his 2008 and 2009 Idaho individual income tax returns on April 12, 2011. During the processing of Petitioner’s income tax returns, the Tax Commission found Petitioner claimed dependent exemption deductions [Redacted] for 2008 and [Redacted] for 2009 that were also claimed on another income tax return. The Taxpayer Accounting Section (Taxpayer Accounting) requested additional information from Petitioner in the form of questionnaires. Petitioner failed to respond to either questionnaire, so Taxpayer Accounting disallowed the dependent exemptions and sent Petitioner notices that his tax returns were changed. Petitioner protested the changes and sent in a copy of a PATERNITY AND CHILD SUPPORT JUDGEMENT AND ORDER wherein Petitioner was assigned the dependent exemptions [Redacted]. Taxpayer Accounting reviewed the information Petitioner provided 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 requested a hearing which was held on February 15, 2012. During the hearing, the Tax Commission and Petitioner discussed what was needed for Petitioner to be allowed the dependent exemptions. Petitioner stated he and his ex-wife were separated since 2005 but did not divorce until 2010. He stated [Redacted] have lived with him since January 5, 2010, but not prior to that. Petitioner stated the court gave him the right to claim the children as dependents and his ex-wife agreed to him claiming the children in their divorce decree, which she signed. Petitioner stated he would provide the Tax Commission with a copy of his divorce decree.

The Tax Commission received a copy of Petitioner's divorce decree, reviewed it, and found that it was effective December 2, 2010. The decree stated [Redacted] would live with Petitioner and [Redacted] would live with her mother. The decree was silent as to who could claim the dependent exemptions excepting that the parent not receiving the exemptions would sign the required [Redacted] form to release their claim to the exemptions. There is no mention of the children or which parent is to receive the exemptions.

### **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 dependent exemption in order for the noncustodial parent to claim the child's dependent 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).

Petitioner believed the order of the court was enough to allow him the dependent exemption deductions for his daughters. However, for the court's order to be accepted the order must meet the requirements of the Treasury Regulation for an acceptable substitute, which it does not. Furthermore, the divorce decree Petitioner provided was not in effect during 2008 and 2009; Petitioner's divorce decree was dated December 2, 2010. Therefore, the determination of whether Petitioner can claim the dependent exemptions reverts to IRC section 152(a).

A dependent is either a qualifying child or a qualifying relative. Petitioner must show that his daughters were one or the other. Petitioner stated his daughters did not live with him until January 2010; therefore, the assumption is they lived with Petitioner's ex-wife in 2008 and 2009. Since the girls did not live with Petitioner for more than half of the years 2008 and 2009, they cannot be a qualifying child for Petitioner because their principal place of abode was not with Petitioner. And because Petitioner's daughters presumably lived with their mother, they were a qualifying child for their mother and, therefore, cannot be a qualifying relative for Petitioner.

## 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 Petitioner is not entitled to the dependent exemption deductions [Redacted] for taxable years 2008 and 2009. And since Petitioner is not entitled to the dependent exemptions, Petitioner cannot claim the additional grocery credit [Redacted] as provided for in Idaho Code section 63-3024A.

Taxpayer Accounting added interest and penalty to Petitioner's Idaho tax liability. The Tax Commission reviewed those additions and found the interest and delinquency penalty appropriate and in accordance with Idaho Code sections 63-3045 and 63-3046.

THEREFORE, the Notices of Deficiency Determination dated July 26, 2011, and directed to [Redacted] are AFFIRMED.

IT IS ORDERED that the Petitioner pay the following tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2008	\$ 824	\$146	\$106	\$1,076
2009	1,032	233	106	<u>1,371</u>
			BALANCE DUE	<u>\$2,447</u>

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

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]

---