

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 24541& 25154
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

[Redacted] (Petitioners) protested the Notices of Deficiency Determination dated November 3, 2011, and April 5, 2012, asserting additional income tax and interest for taxable years 2010 and 2009 in the amounts of 286.43 and \$340.15, respectively. Petitioners disagreed with Revenue Operations’ adjustment disallowing the dependent exemption deduction for [Redacted] for each of the years. The Tax Commission, having reviewed the file, hereby issues its decision.

BACKGROUND

Petitioners filed both their 2009 and 2010 Idaho individual income tax returns claiming a dependent exemption deduction for [Redacted] son, [Redacted]. During the processing of Petitioners’ 2010 income tax return, the Tax Commission identified Petitioners’ 2010 return as one of two income tax 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 Taxpayer Accounting’s questionnaire stating that [Redacted] was [Redacted] mother, she had custody of [Redacted], they provided more than half of [Redacted] total support, and [Redacted] lived with them whenever he was not at college.

Taxpayer Accounting reviewed the information and ultimately determined Petitioners were not entitled to the dependent exemption. Taxpayer Accounting sent Petitioners a Notice of Deficiency Determination denying the dependent exemption deduction. Petitioners protested the Notice of Deficiency Determination stating that [Redacted] was a full-time student at the [Redacted]. Petitioners stated that [Redacted] lived with them when not attending college. Petitioners stated [Redacted] was the custodial parent prior to [Redacted] graduating from high school and that [Redacted] has continued to spend the vast majority of nights with them when he was not away at college. Petitioners stated [Redacted] primary address was their home and they provided for [Redacted] needs while he attended school in the total amount of \$3,940.

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 requested a telephone hearing, but before a hearing was scheduled, Taxpayer Accounting sent Petitioners another questionnaire requesting information on the dependent exemption claimed for [Redacted] on their 2009 Idaho income tax return because a 2009 amended return was filed by another taxpayer claiming a dependent exemption deduction for [Redacted]. Petitioners provided Taxpayer Accounting the same information they provided for taxable year 2010. Taxpayer Accounting denied the dependent exemption deduction to Petitioners and sent them a Notice of Deficiency Determination for taxable year 2009. Petitioners protested the Notice of Deficiency Determination, which Taxpayer Accounting referred for administrative review.

The Tax Commission contacted Petitioners informing them that the two Notices of Deficiency Determination would be decided together and asked Petitioners for some specific information regarding the dependent. Petitioners failed to respond, so the Tax Commission sent

Petitioners a follow-up letter to which there was also no response. 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 attained 18 years of age before the end of calendar year 2009. Being eighteen, [Redacted] was considered emancipated in Idaho and, therefore, not in the custody of his parents. Because [Redacted] was emancipated in 2009, the special rule of IRC section 152(e) for determining whether the custodial parent or non-custodial parent can

claim the dependent exemption deduction is not applicable. *See* Treasury Regulation section 1.152-4(g), Example (6). The determination of who can claim [Redacted] as a dependent falls back to the general provisions of IRC section 152(c) and (d) as cited above.

Petitioners stated [Redacted] was a full-time college student beginning in the fall of 2009. Therefore, [Redacted] could be a qualifying child for Petitioners for both 2009 and 2010 (IRC section 152(c)(3)) if Petitioners show that [Redacted] resided with them for over one-half the taxable year. (IRC section 152(c)(2).) Petitioners stated [Redacted] lived with them when he was not away at school. However, this statement was contradicted by the other taxpayer claiming [Redacted] as a dependent. Because of this contradiction, the Tax Commission asked both Petitioners and the other taxpayer to provide documentation showing the number of days [Redacted] lived with them. Petitioners failed to provide any information but the other taxpayer did provide the information and in addition provided statements from [Redacted]. The information provided stated, beginning in September 2009, [Redacted] spent most of his time with neither Petitioners nor the other taxpayer. However, even though [Redacted] did not spend over half the taxable year with either, a student's absences from a household are considered temporary due to special circumstances and do not necessarily disqualify the individual from being a qualifying child. Generally, a student's principal place of abode, the one he is temporarily absent from, is the place he was residing prior to leaving for school.

Considering all the information available, the Tax Commission finds [Redacted] principal place of abode was not with Petitioners prior to his leaving for college neither was [Redacted] principal home he returned to Petitioners' home. Therefore, [Redacted] was not a qualifying child for Petitioners for either taxable year 2009 or 2010.

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). Petitioners failed to provide documentation or information in support of their position and therefore, did not meet their burden. The Tax Commission asked Petitioners to provide some specific information with regard to [Redacted] support, living accommodations, and his comings and goings, but Petitioners did not respond. As a result, the Tax Commission’s decision was based upon the information available from third party sources. That information showed [Redacted] was not a qualifying child for Petitioners but rather for someone else. That being the case, [Redacted] could not be a qualifying relative for Petitioners. (IRC section 152(d)(1).) Since [Redacted] was neither a qualifying child nor a qualifying relative, Petitioners do not get the benefit of the dependent exemption deduction for [Redacted] for either taxable year 2009 or 2010. And because Petitioners cannot claim the dependent exemption, Petitioners cannot claim the additional grocery credit for [Redacted] per Idaho Code section 63-3024A.

THEREFORE, the Notices of Deficiency Determination dated November 3, 2011, and April 5, 2012, and directed to [Redacted] are 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>
2009	\$310	\$36	\$346
2010	284	2	<u>286</u>
		TOTAL DUE	632
		LESS PAYMENT	<u>(286)</u>
		BALANCE DUE	<u>\$346</u>

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

An explanation of 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.