

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 24606
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

[Redacted] (Petitioner) protested the Notice of Deficiency Determination dated August 22, 2011, asserting additional income tax and interest for taxable year 2010 in the total amount of \$264.13. Petitioner disagreed with Revenue Operations’ adjustment disallowing the dependent exemption deductions [Redacted]. The Tax Commission, having reviewed the file, hereby issues its decision.

BACKGROUND

Petitioner filed his 2010 Idaho individual income tax return claiming dependent exemption deductions for his children, [Redacted] (children). 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 dependent exemption deductions for the children. 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 the children’s father, he had joint custody, he provided more than half of the children’s total support, and the children lived with him for five months of 2010. Petitioner also provided a copy of his divorce decree stating that Petitioner is allowed to claim the children for all state and [Redacted] income tax purposes.

Taxpayer Accounting reviewed the information and ultimately determined Petitioner was not entitled to the dependent exemptions. Taxpayer Accounting sent Petitioner a Notice of

Deficiency Determination denying the dependent exemption deductions. Petitioner protested the Notice of Deficiency Determination, so Taxpayer Accounting 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, Petitioner stated the dependents in question lived with him for five months. Accordingly, the children were not qualifying children for Petitioner since they did not live with him for more than half the year. Furthermore, the presumption is that since the children did not live with Petitioner for over half the year, they lived with their mother. Assuming the children lived with their mother for over half the year, they were qualifying children for their mother and, therefore, cannot be qualifying relatives for Petitioner.

Petitioner argued his divorce decree and order of the court allows him to claim the children as dependents. However, 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's divorce decree and court order clearly does not meet the requirements of an acceptable substitute for federal form 8332. Consequently, without the custodial parent's signed release of the dependent exemptions, Petitioner cannot claim [Redacted] as dependents on his 2010 income tax return.

CONCLUSION

Because the children do not meet the requirements for either a qualifying child or a qualifying relative as defined in IRC section 152, and since Petitioner does not have a signed release from the custodial parent, the Tax Commission finds that Petitioner is not entitled to the dependent exemption deductions [Redacted] for taxable year 2010. And because Petitioner is not entitled to the dependent exemptions, Petitioner cannot claim the additional grocery credit [Redacted] per Idaho Code section 63-3024A.

THEREFORE, the Notice of Deficiency Determination dated August 22, 2011, and directed to [Redacted] is AFFIRMED.

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

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2010	\$261	\$17	\$278

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]

Receipt No.
