

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],) DOCKET NO. 24610
)
)
Petitioners.) DECISION
)
_____)

[Redacted](Petitioners) protested the Notice of Deficiency Determination dated November 10, 2011, asserting additional income tax and interest for taxable year 2010 in the total amount of \$329.47. Petitioners disagreed with Revenue Operations' adjustment disallowing the dependent exemption deduction [Redacted]. The Tax Commission, having reviewed the file, hereby issues its decision.

BACKGROUND

Petitioners filed an amended 2010 Idaho individual income tax return to claim a dependent exemption deduction for [Redacted] son, [Redacted]. During the processing of Petitioners' amended return, the Tax Commission found that the dependent exemption deduction [Redacted] was claimed by someone other than Petitioners. 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] father, they were not the custodial parents [Redacted], they provided more than half of [Redacted] total support, and that [Redacted] lived with them from July through December. Petitioners also provided a copy of [Redacted] modified decree of divorce and other documentation showing the calculation of the child support [Redacted] was to pay.

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, which Petitioners protested. Petitioners stated that they did not understand why the Tax Commission was questioning the dependent exemption deduction [Redacted] when for the years after [Redacted] divorce up until 2010 the Tax Commission accepted their claim of the deduction. Petitioners stated it would be difficult for them to obtain a signed [Redacted] Form 8332 from the custodial parent due to their current relationship. Petitioners further stated that taxable year 2010 is the last year this dependent falls under the purview of [Redacted] divorce decree and that the [Redacted] accepted their 2010 filing.

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 contacted the Tax Commission and discussed the matter. Petitioners stated they had a [Redacted] Form 8332 that was completed for 1997 that also included all future years. The Tax Commission asked for a copy of the form and also for a list of the number of days the dependent stayed overnight with Petitioners.

Petitioners provided the [Redacted] form 8332 but did not provide a list of days. The Tax Commission contacted Petitioners and discussed the days dependent stayed with Petitioners. Petitioners stated they did not recall the dependent staying with them prior to June 2012. When asked about vacation days and spring break, Petitioners stated [Redacted] was probably with them January 1 through January 3 but he was not with them over spring break in 2010.

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 was 18 years of age near the beginning of calendar year 2010. Being eighteen, [Redacted] was considered emancipated, in Idaho, and therefore not in the custody of his parents. Because [Redacted] was emancipated early in 2010, 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). Therefore, 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] came to live with them in July 2010 and that he did not spend any time with them prior to June 2010. However, in a later conversation Petitioners stated

it is likely that [Redacted] stayed with them the first three days in January. Considering these statements and having nothing to the contrary, the Tax Commission is of the opinion [Redacted] stayed with Petitioners for just over one-half the taxable year. This being the case, [Redacted] met the requirements of a qualifying child for Petitioners for taxable year 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 provided information in support of their position to meet their burden. Absent information or documentation to the contrary, the Tax Commission finds that [Redacted] was a qualifying child for Petitioners and, therefore, Petitioners are allowed the dependent exemption deduction for [Redacted] for taxable year 2010. And because Petitioners can claim the dependent exemption, Petitioners also get the additional grocery credit [Redacted] per Idaho Code section 63-3024A.

THEREFORE, the Notice of Deficiency Determination dated November 10, 2011, [Redacted] is CANCELLED.

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.
