

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 24999
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

[Redacted] (petitioner) protests the Notice of Deficiency Determination issued by the auditor for the Idaho State Tax Commission (Commission) dated March 29, 2012, asserting an additional liability for Idaho income tax, penalty, and interest in the total amount of \$290 for 2008.

The petitioner filed his 2008 Idaho income tax return claiming three personal exemptions and adjusting the grocery credit accordingly. The auditor issued the Notice of Deficiency Determination (NODD) to the petitioner denying one of these claimed exemptions. The petitioner filed a timely appeal and petition for redetermination. The petitioner did not respond to the Tax Commission’s hearing rights letter and has provided nothing further for the Tax Commission to consider. The Commission, having reviewed the file, hereby issues its decision.

The petitioner disagreed with the NODD. He provided a copy of a STIPULATION, ORDER OF FILIATION AND JUDGMENT which stated, in part:

- 3. That the Defendant, [Redacted] . . . shall take the dependency exemption for state and federal purposes for the minor child, provided he is current on his support beginning January 1998, and the Defendant shall pay an additional \$29.08 per month for the [sic] [Redacted] . . . for her [sic] portion of the tax exemption, which shall be added to his child support.

The Tax Commission reviewed the matter and sent the petitioner a letter that discussed the methods available for redetermining a protested NODD. The petitioner failed to respond to

the Commission's letter, so the Commission decides the matter based upon the information available.

The petitioner is the biological father [Redacted]. [Redacted] was claimed as a dependent on the petitioner's Idaho individual income tax return and on the return of another Idaho taxpayer. The petitioner contends that he was current on his child support and that he had the right to claim [Redacted] as a dependent if he was current with his child support payments.

Deductions are a matter of legislative grace, and taxpayers bear the burden of proving that 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.

A child of a taxpayer is generally a dependent of the taxpayer.

IRC section 152(e) provides a special rule for divorced parents. 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.

The petitioner provided a copy of an order from the court stating that, if his child support was current, he was entitled to the dependent exemption for [Redacted]. However, IRC section 152(e)(2) clearly requires that the custodial parent sign a written declaration (usually Form 8332) releasing the dependent exemption in order for the noncustodial parent to claim the child's dependent exemption. The petitioner provided no such declaration, nor did he show that he was the custodial parent. The U.S. Tax Court addressed the matter, in part, as follows:

One of the essential elements for conforming to the form and substance of Form 8332 is the custodial parent's signature on the release of the dependency exemption to the noncustodial parent. See Miller v. Commissioner, 114 T.C. 184, 190, 2000 WL 309121 (2000) (stating that "Satisfying the signature requirement is critical to the successful release of the dependency exemption"). The signature of another party, including the presiding judge or the parties' attorneys, is insufficient. Neal v. Commissioner, T.C. Memo.1999-97 (stating that "Section 152(e)(2) and the corresponding regulations require, unequivocally, that the signature of the custodial parent be attached to the return of a noncustodial parent claiming a dependency exemption"); see also Miller v. Commissioner, supra at 192-194. Only the custodial parent's signature will suffice. Miller v. Commissioner, supra at 195-196.

The stipulation and the judgment petitioner submitted do not conform to the form and substance of Form 8332. Petitioner failed to procure Ms. [Redacted] signature on either the stipulation or the judgment. When petitioner later attempted to procure Ms. [Redacted] signature on Form 8332, Ms. [Redacted] refused. The signatures of the judge and the clerk from the divorce proceeding are not adequate substitutes for Ms. [Redacted] signature. Thus, without her signature on a form that releases her claim to the dependency exemption deduction, petitioner failed to satisfy section 152(e)(2)(A) and may not claim [Redacted] for the purpose of receiving the exemption.

Petitioner also fails to satisfy section 152(e)(2)(B), which provides that the written declaration must be attached to the return for that taxable year. Petitioner admits he did not attach Form 8332 or any other document to his 2007 return.

Accordingly, [REDACTED] is not treated as petitioner's qualifying child or qualifying relative under section 152(e)(1).

Konrad v. Commissioner, T. C. Memo 2010-179.

Since the signed release is a requirement for IRC section 152(e) to apply, the determination of whether the petitioner is entitled to claim the dependent exemption reverts to IRC section 152(c) and (d).

IRC section 152(c) defines a “qualifying child” as 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, and 4) has not provided over one-half of the individual’s own support for the taxable year. IRC section 152(c)(1) through (3).

IRC section 152(d) defines a “qualifying relative” as 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).

To be entitled to claim the dependent exemption, the petitioner must show that [Redacted] was either a qualifying child or a qualifying relative. Regarding a qualifying child, the petitioner has not shown that the child [Redacted] principal place of abode was with him for more than one-half of the taxable year. Therefore, [Redacted] cannot be a qualifying child for the petitioner.

As for a qualifying relative, the petitioner failed to show that they provided over one-half of the support for [Redacted] or that [Redacted] was not a qualifying child of any other taxpayer for the taxable year.

Because the petitioner has failed to establish that [Redacted] was either a qualifying child or a qualifying relative for purposes of IRC section 152, the Commission finds that the petitioner is not entitled to a dependent exemption deduction [Redacted] for taxable year 2008. Since the petitioner is not entitled to the dependent exemption, the petitioner cannot claim an additional grocery credit for [Redacted] per Idaho Code section 63-3024A.

THEREFORE, the NODD dated March 29, 2012, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioner pay the following tax, penalty, and interest (calculated to November 15, 2012):

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2008	\$243	\$12	\$39	\$294

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.
