

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],) DOCKET NO. 25208
Petitioner.)
DECISION
_____)

[Redacted] (Petitioner) protested the Notice of Deficiency Determination dated January 25, 2012, asserting income tax, penalty, and interest for taxable years 2007 through 2010 in the total amount of \$1,482. Petitioner disagreed with the Tax Discovery Bureau’s adjustments denying dependent exemption deductions claimed for each of the years. The Tax Commission, having reviewed the file, hereby issues its decision.

BACKGROUND

As part of the review of the Tax Commission’s records, the Tax Discovery Bureau (Bureau) found that Petitioner’s history of filing Idaho individual income tax returns was sporadic between 2002 and 2007, and then stopped after 2007. The Bureau sent Petitioner a letter asking about his requirement to file Idaho individual income tax returns for the missing years. Petitioner responded by sending in various returns at various times. Petitioner also filed an amended return for taxable year 2007. The Bureau reviewed the returns and submitted them for processing. During processing, Petitioner’s returns were rejected because he claimed dependent exemptions that were already claimed on other Idaho individual income tax returns.

The Bureau corrected Petitioner’s returns and sent him a Notice of Deficiency Determination explaining that some of the dependents claimed on his returns were also claimed on other Idaho income tax returns. Petitioner protested the Bureau’s determination stating that his divorce decree allowed him to claim the dependent exemption deductions for [Redacted] and

[Redacted](the boys). Petitioner provided a copy of his divorce decree and other documents to support his claim to the boys' dependent exemptions. Petitioner also stated that the boys met the requirements of a qualifying child of Internal Revenue Code section 152(c) to give him the dependent exemption deductions.

Regarding the exemption deductions claimed for [Redacted] (the girls), Petitioner agreed he was not entitled to claim them as dependents for taxable year 2008. Petitioner did not address the other taxable years, nor did he mention the adjustment for [Redacted] dependent exemption deduction.

The Bureau reviewed the information and documentation presented, and referred the matter for administrative review. The Tax Commission reviewed the matter and sent Petitioner a letter discussing the methods available for redetermining a protested Notice of Deficiency Determination. Petitioner did not request a hearing but chose to submit additional information and documentation to support his position. The Tax Commission received Petitioner's additional information, considered it along with the other information provided, and issues its decision modifying the Notice of Deficiency Determination.

LAW AND ANALYSIS

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.

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).

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).

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 dependency exemption in order for the noncustodial parent to claim the child's dependency 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 argument centers on his divorce decree wherein Petitioner and the boys' mother agreed that Petitioner could claim the dependent exemption deductions for the boys for all future years. The Tax Commission reviewed the document and found that it contained the necessary elements to be considered a release of the dependent exemption deductions by the custodial parent. Therefore, the Tax Commission reverses the disallowed dependent exemption deductions for the boys on Petitioner's returns.

However, no such document was provided for the girls, or for the dependent exemption deduction for [Redacted]. Petitioner acknowledged he was not able to claim the dependent exemption deduction for [Redacted], but he stated he could claim [Redacted] for taxable years 2007 and 2009, and he could claim [Redacted] for taxable years 2007, 2009, and 2010. Petitioner stated [Redacted] and [Redacted] met the requirements for being a qualified child for him in those taxable years.

Nevertheless, from the information provided it appears Petitioner was not and is not the custodial parent for either [Redacted]. Therefore, for Petitioner to get the exemption deductions

for [Redacted], Petitioner needs to show he was the custodial parent or provide a signed release from the custodial parent. (IRC section 152(e)) Petitioner provided neither.

Petitioner submitted an amended return for taxable year 2007, to amend his timely filed 2007 Idaho income tax return. Petitioner's amended return was filed and received after the statute of limitations had run for adjusting an individual income tax return. Idaho Code section 63-3068(h) states, "upon the expiration of the period of limitations . . . only those specific items of income, deductions, gains, losses, or credits, which were adjusted in the amended Idaho return shall be subject to adjustment for purposes of recomputing Idaho income, deductions, gains, losses, credits, . . ." Petitioner's 2007 amended return did not adjust the number or change the individuals claimed as dependents. Therefore, in accordance with Idaho Code section 63-3068(h) the Tax Commission cannot correct or adjust the dependent exemption deductions claimed on Petitioner's original filed 2007 Idaho income tax return, or Petitioner's 2007 amended Idaho income tax return.

CONCLUSION

Petitioner failed to file Idaho individual income tax returns for taxable years 2008, 2009, and 2010. The Tax Commission contacted Petitioner regarding the missing returns and Petitioner subsequently provided returns for the missing years and an amended return for taxable year 2007. When Petitioner's returns were processed it was found that some of the dependent exemption deductions had already been claimed on other Idaho individual income tax returns. Petitioner provided sufficient information to show he could claim the dependent exemption deductions for both [Redacted] for each year. However, Petitioner did not provide adequate documentation to claim the dependent exemption deductions for [Redacted]. Petitioner conceded he was not able to claim a dependent exemption deduction for [Redacted] for any of

the taxable years. Therefore, the Tax Commission upholds the dependent exemption deduction adjustments for [Redacted], but reverses the dependent exemption deduction adjustments for [Redacted]. Since Petitioner is not allowed the dependent exemptions deductions for [Redacted], Petitioner cannot claim the additional grocery credit for them. *See* Idaho Code section 63-3024A. The Tax Commission also cancels the adjustment to Petitioner’s amended income tax return for taxable year 2007, since the dependent exemption deductions were not adjusted in the amended return, and it is past the period of limitations for adjusting those deductions.

The Bureau added penalty and interest to Petitioner’s Idaho tax liability. The Tax Commission reviewed those additions and found them applicable to the tax due amounts as determined on Petitioner’s income tax returns. *See* Idaho Code sections 63-3045 and 63-3046.

THEREFORE, the Notice of Deficiency Determination dated January 25, 2012, and directed to [Redacted] is AFFIRMED AS MODIFIED by this decision.

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

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2007	\$ 0	\$ 0	\$ 0	\$ 0
2008	444	111	86	641
2009	970	243	139	1,352
2010	335	84	31	450
			TOTAL	<u>\$2,443</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 _____ 2013.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2013, 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.
