

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 25209
[Redacted],)	
)	
Petitioners.)	DECISION
_____)	

[Redacted] (Petitioners) protested the Notice of Deficiency Determination dated February 3, 2012, asserting income tax, penalty, and interest for taxable year 2006 in the total amount of \$421. Petitioners disagreed with the Tax Discovery Bureau’s adjustment denying the dependent exemption deduction claimed for [Redacted]. 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 Petitioners did not file a 2006 Idaho individual income tax return. The Bureau sent Petitioners a letter asking about their requirement to file a 2006 Idaho income tax return. After some time, Petitioners responded with a 2006 Idaho income tax return. The Bureau reviewed the return, accepted it, and submitted it for processing. During processing, Petitioners’ return was rejected because they claimed a dependent exemption deduction that was already claimed on another Idaho individual income tax return.

The Bureau corrected Petitioners’ return and sent them a Notice of Deficiency Determination explaining that the dependent exemption deduction claimed for [Redacted] was also claimed on another Idaho income tax return. Petitioners protested the Bureau’s determination stating that [Redacted] divorce decree allowed him to claim the dependent exemption deduction for both of his sons, [Redacted]. Petitioners provided a copy of Mr.

[Redacted] divorce decree and other documents to support their claim to the dependent exemption. Petitioners also stated that [Redacted] met the requirements of a qualifying child of Internal Revenue Code section 152(c) to give them the 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 Petitioners a letter discussing the methods available for redetermining a protested Notice of Deficiency Determination. Petitioners did not request a hearing, but chose to submit additional information and documentation to support their position. The Tax Commission received Petitioners' additional information, considered it with the other information provided, and issues its decision cancelling 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).

Petitioners' argument centers on [Redacted] divorce decree, wherein [Redacted] and [Redacted]mother agreed that [Redacted] could claim the dependent exemption deduction for [Redacted]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 deduction by the custodial parent. Therefore, the Tax Commission reverses the disallowed dependent exemption deduction for [Redacted] on Petitioners' 2006 Idaho income tax return.

CONCLUSION

Petitioners failed to file an Idaho individual income tax return for taxable year 2006. When the Tax Commission contacted Petitioners about the missing return, Petitioners submitted a return for the missing year. When Petitioners' return was rejected due to a dependent exemption deduction that was claimed on another Idaho income tax return, Petitioners provided information sufficient to show the dependent exemption deduction claimed was properly allowable to Petitioners. Therefore, the Tax Commission reverses the Bureau's adjustment.

THEREFORE, the Notice of Deficiency Determination dated February 3, 2012, and directed [Redacted] is CANCELLED.

An explanation of the Petitioners' 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.
