

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 25301
[Redacted],	)	
	)	
Petitioners.	)	DECISION
_____	)	

[Redacted] (Petitioners) protested the Notice of Deficiency Determination dated July 16, 2012, asserting additional income tax in the total amount of \$322.78 for taxable year 2011. Petitioners disagreed with the adjustment disallowing the dependent exemption deduction claimed for [Redacted]. The Tax Commission, having reviewed the file, hereby issues its decision.

**FACTS**

Petitioners timely filed their 2011 Idaho individual income tax return. During the processing of Petitioners' return, the Taxpayer Accounting Section (Taxpayer Accounting) found that another taxpayer claimed a dependent exemption for [Redacted]. Taxpayer Accounting sent Petitioners a questionnaire requesting information to support the dependent exemption claimed. Petitioners responded with a copy of a court Order and responses stating they were not the custodial parents, they do not have a signed federal Form 8332 from the custodial parent, and that [Redacted] did not live with them during taxable year 2011. The court Order Petitioners submitted was an Order Modifying Child Support that required [Redacted] to pay child support for his son, [Redacted], and assigned him the dependency exemption. Taxpayer Accounting reviewed the information, and ultimately determined Petitioners were not entitled to the dependent exemption. Taxpayer Accounting disallowed the exemption and sent Petitioners a

Notice of Deficiency Determination. Petitioners protested and the matter was referred for administrative review.

The Tax Commission reviewed the matter and sent Petitioners a letter that discussed the methods available for redetermining a protested Notice of Deficiency Determination. Petitioners contacted the Tax Commission and explained their dilemma. Petitioners stated they were following the order of the court when they claimed the dependent exemption for [Redacted]. Petitioners stated [Redacted] child support payments include an amount for the pro-rata share of the dependent exemption. Petitioners stated they have dealt with this issue before but have never been able to get the custodial parent to sign a release form. Petitioners stated they don't even know where the child and the custodial parent are. Petitioners stated they are in the right, and should be allowed the dependent exemption.

#### **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 the court document that awarded [Redacted] the dependent exemption. In essence, Petitioners are claiming the court order is an equivalent document to federal Form 8332 releasing the dependent exemption to them.

Treasury Regulation section 1.152-4(e) states what is necessary in the written declaration of the custodial parent to release the dependent exemption to the noncustodial parent. It states,

(1) Form of declaration.

(i) In general. The written declaration under paragraph (b)(3)(i) of this section must be an unconditional release of the custodial parent's claim to the child as a dependent for the year or years for which the declaration is effective. A declaration is not unconditional if the custodial parent's release of the right to claim the child as a dependent requires the satisfaction of any condition, including the noncustodial parent's meeting of an obligation such as the payment of support. A written declaration must name the noncustodial parent to whom the exemption is released. A written declaration must specify the year or years for which it is effective. A written declaration that specifies all future years is treated as specifying the first taxable year after the taxable year of execution and all subsequent taxable years.

(ii) Form designated by IRS. A written declaration may be made on Form 8332, Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent, or successor form designated by the IRS. A written declaration not on the form designated by the IRS must conform to the substance of that form and must be a document executed for the sole purpose of serving as a written declaration under this section. A court order or decree or a separation agreement may not serve as a written declaration. (Underlining added.)

The court order, in addition to not being allowed on its face, is lacking in several areas. The order does not specify the year or years, it does not state the custodial parent will not claim the dependent exemption, the document's sole purpose is not the release of the dependent

exemption, and the custodial parent is not properly identified, nor did she sign the document. Consequently, the court order is not acceptable as a release of the dependent exemption. Therefore, because Petitioners have not provided a valid release of the dependent exemption from the custodial parent, the determination of whether Petitioners can claim [Redacted] as a dependent reverts to IRC section 152(a).

Since a dependent is either a qualifying child or a qualifying relative, Petitioners must show that [Redacted] was one or the other. Petitioners stated in their response to Taxpayer Accounting's questionnaire that [Redacted] did not live with them in 2011. This being the case, [Redacted] cannot be a qualifying child because his principal place of abode was not with Petitioners. And, since [Redacted] did not live with Petitioners, the presumption is that he lived with his mother and was a qualifying child for his mother. As a result, [Redacted] cannot be a qualifying relative for Petitioners (IRC section 152(d)(1)(D)). [Redacted] does not meet the requirements of a dependent for Petitioners for taxable year 2011.

### **CONCLUSION**

Because [Redacted] did not meet the requirements for either a qualifying child or a qualifying relative as defined in IRC section 152, and since Petitioners do not have a signed release from the custodial parent, the Tax Commission finds that Petitioners are not entitled to the dependent exemption deduction for [Redacted] for taxable year 2011. And, because Petitioners are not entitled to the dependent exemption, Petitioners cannot claim the additional grocery credit for [Redacted] per Idaho Code section 63-3024A.

THEREFORE, the Notice of Deficiency Determination dated July 16, 2012, and directed to [Redacted] is AFFIRMED.

It is ORDERED that Petitioners pay the following tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2011	\$320	\$14	\$334

DEMAND for immediate payment of the foregoing amount is hereby made and given.

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.  
  
\_\_\_\_\_