

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 25321
[Redacted],)	
)	
Petitioners.)	DECISION
_____)	

[Redacted] (Petitioners) protested the Notice of Deficiency Determination dated September 12, 2012, asserting additional income tax and interest for taxable years 2011 in the total amount of \$354.99. Petitioners disagreed with Revenue Operations’ adjustment disallowing the dependent exemption deduction for [Redacted]. The Tax Commission, having reviewed the file, hereby issues its decision.

BACKGROUND

Petitioners filed their 2011 Idaho individual income tax return claiming a dependent exemption deduction for [Redacted] son, [Redacted]. As the filing of income tax returns continued, the Petitioners’ return was identified as one of two income tax returns that claimed a dependent exemption deduction for [Redacted]. 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, he had custody of [Redacted], they provided more than half of [Redacted] total support, and that [Redacted] lived with them for 223 days in 2011. Petitioners also provided a copy of an Order modifying [Redacted] divorce decree, a mediated agreement attached as an exhibit, and documentation showing [Redacted] was included in [Redacted] health insurance plan.

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. Petitioners protested the Notice of Deficiency Determination through a third party representative claiming that [Redacted] spent the entire year with Petitioners, and they provided a majority of [Redacted] support. The representative also stated the [Redacted] reviewed this issue and allowed the dependent exemption to Petitioners; however, no documentation was provided substantiating an examination of this issue by [Redacted].

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 requested a telephone hearing in which the following additional information was provided.

In reference to [Redacted] inquiry, Petitioners stated the number of days was questioned, but nothing further was asked or received from [Redacted]. Petitioners assumed [Redacted] accepted their explanation and/or documentation since they were not asked to pay additional tax, nor was their refund reduced.

Petitioners provided a calendar of days [Redacted] stayed with them overnight. The Tax Commission also received a calendar of days from the other taxpayers claiming [Redacted] which showed the days [Redacted] stayed with them overnight. The two calendars did not fully agree with each other, so the bulk of Petitioners' hearing was spent getting information that would substantiate a conflicted day for one side or the other. By the end of the telephone hearing there were eighteen conflicted days that Petitioners had nothing specific that would identify those days for Petitioners.

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 attained 18 years of age before the end of calendar year 2011. Being eighteen, [Redacted] was considered emancipated in Idaho, and therefore not in the custody of his parents. Because [Redacted] was emancipated in 2011, the special rule of IRC section 152(e) for determining whether the custodial parent or the 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 goes back to the general provisions of IRC section 152(c) and (d) as cited above.

Petitioners' initial statement was that [Redacted] stayed with them overnight in 2011 for 223 days. This being the case, [Redacted] could be a qualifying child for Petitioners, because [Redacted] resided with them for over one-half the taxable year. (IRC section 152(c)(2).) However, Petitioners reduced that number to 204 days by their own calendar of days; still over the required one-half of the taxable year. But when compared to the calendar presented by the other taxpayers claiming [Redacted] as a dependent, Petitioners' uncontested days dropped to 136 days; well under the required one-half of the taxable year.

Because of the conflict between the two calendars, the Tax Commission asked both Petitioners and the other taxpayers to provide documentation or other information that would establish a contested day in their favor. In determining the number of days assigned to Petitioners, the Tax Commission took into account Petitioners' statements, documentation, and other information. The resulting number of days assigned to Petitioners before obtaining additional information from the other taxpayers was 180 defined or substantiated days. Not included in this number were 18 days Petitioners had no specific recollection on where [Redacted] stayed. Under this scenario, Petitioners fall short of the required one-half of the taxable year. Nevertheless, with the determination of the additional 18 days in their favor, Petitioners could be pushed over the one-half of the taxable year requirement.

Since Petitioners could not specifically document the remaining 18 contested days, the fate of the dependent exemption rested with the information provided by the other taxpayers and the Tax Commission's acceptance of that information. Of the information provided by the other taxpayers, the Tax Commission found compelling evidence the 18 contested days did not belong

to Petitioners. Petitioners stated [Redacted] moved out in the middle of July because he broke house rules. Those same rules were apparently the reason [Redacted] did not stay with Petitioners for those 18 days.

Considering all the information available and without having to decide a larger block of contested days (the last week of November and most of December), the Tax Commission found Petitioners' total days [Redacted] stayed overnight with them was 180 days. Since [Redacted] did not stay overnight with Petitioners for over one-half the taxable year, [Redacted] was not a qualifying child for Petitioners.

CONCLUSION

Petitioners' documentation/information fell short of the required number of days for [Redacted] to be considered a qualifying child for Petitioners. Consequently, [Redacted] was a qualifying child for another taxpayer. That being the case, [Redacted] could not be a qualifying relative for Petitioners. (IRC section 152(d)(1).) Since [Redacted] was neither a qualifying child nor a qualifying relative for Petitioners in 2011, Petitioners do not get the benefit of the dependent exemption deduction for [Redacted]. And because Petitioners cannot claim 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 September 12, 2012, and directed to [Redacted] is AFFIRMED.

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2011	\$349	\$15	\$364

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]

[Redacted] _____