

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 25452
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

[Redacted] (Petitioner) protested the Notice of Deficiency Determination dated August 15, 2012, asserting additional income tax and interest in the total amount of \$334 for taxable year 2011. Petitioner disagreed with the adjustment disallowing the dependent exemption deduction claimed for [Redacted]. The Tax Commission, having reviewed the file, hereby issues its decision.

FACTS

During the processing of taxable year 2011 Idaho individual income tax returns, the Taxpayer Accounting Section (Taxpayer Accounting) found that Petitioner’s 2011 income tax return claimed a dependent exemption deduction that was also claimed on another Idaho income tax return. Taxpayer Accounting sent Petitioner a letter requesting information to support the dependent exemption claimed. Petitioner responded with a copy of a page from Petitioner’s decree of divorce and answers to Taxpayer Accounting’s questionnaire. Petitioner stated he was the dependent’s father, he was the custodial parent, the dependent lived with him for 120 days, he provided over half of her support, and that he had a signed form 8332 from the custodial parent. Taxpayer Accounting reviewed the information and ultimately determined Petitioner was not entitled to the dependent exemption. Taxpayer Accounting disallowed the exemption and sent Petitioner a Notice of Deficiency Determination. Petitioner protested and the matter was referred for administrative review.

The Tax Commission reviewed the matter and sent Petitioner a letter that discussed the methods available for redetermining a protested Notice of Deficiency Determination. Petitioner's representative requested a telephone conference. The Tax Commission contacted Petitioner's representative and discussed the dependent exemption issue. Petitioner's representative stated she or Petitioner would contact the Tax Commission with how Petitioner wanted to proceed.

Petitioner contacted the Tax Commission and the issue was discussed. Petitioner stated he had letters from the [Redacted] ([Redacted]) that addressed the issue. The Tax Commission asked for copies of the letters, which Petitioner sent. The Tax Commission reviewed the letters and found one of the letters addressed an issue for taxable year 2009, and the other letter just asked Petitioner to verify the social security number of the dependent claimed. Petitioner was told if there was an error in claiming the dependent or in the social security number, to file an amended return. Petitioner had his representative respond to the [Redacted] with a copy of the same page from Petitioner's decree of divorce and some additional information regarding the dependent. The [Redacted] sent Petitioner a second letter thanking him for the information with the caveat that [Redacted] may contact him at a later date to verify his claim. Petitioner stated the [Redacted] has not contacted him further.

The Tax Commission discussed the [Redacted] letters with Petitioner, highlighting the fact that the [Redacted] did not fully investigate or examine the dependent exemption; consequently, the Tax Commission would continue its examination of the issue. Petitioner continued his argument that he was entitled to the dependent exemption because he was the dependent's father and he had a court order allowing him the exemption. The Tax Commission,

having reviewed all the information, issues its decision upholding the Notice of Deficiency Determination for the reasons stated below.

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).

In this case, the dependent in question resided with Petitioner from January 1, 2011, to April 14, 2011, at which time she moved in with her aunt and uncle and stayed for the remainder of the year. Petitioner does not disagree that dependent did not live with him from

April 15, 2011, through December 31, 2013. Petitioner's argument is that he is the dependent's father and the court has granted him the dependent exemption.

IRC section 152 is clear in the requirements for a taxpayer to claim an exemption for a dependent; the dependent must be a qualifying child or a qualifying relative. A qualifying child requires that the dependent live with the taxpayer for more than one-half the taxable year of the taxpayer. Petitioner admitted the dependent did not live with him for over one-half the year; therefore, the dependent cannot be a qualifying child for Petitioner. (*See* IRC 152(c)(1)(B).)

Regarding a qualifying relative, the dependent cannot be a qualifying child for any other taxpayer. (*See* IRC 152(d)(1)(D).) From the information available, the dependent was a qualifying child for her aunt and uncle. She met the relationship test by being a descendent of a brother or sister of the taxpayer. Her principle place of abode for over one-half the year was with the taxpayer. The dependent was less than 19 years of age as of the close of the calendar year. The dependent did not provide over one-half of her own support during the calendar year. And, the dependent did not file a married filing joint return with her spouse for the taxable year. The dependent met the requirements for a qualifying child for her aunt and uncle.

Petitioner also argued his divorce decree gives him the authority to claim his daughter as a dependent. This may be true as long as Petitioner and his ex-wife abide by the decree, which is enforceable between Petitioner and his ex-wife. However, it does not settle matters of [Redacted] tax law (*White v. CIR*, T.C. Memo 1996-438 (1996)) and it is not applicable in this case since Petitioner's ex-wife is not claiming their daughter as a dependent. The determination of whether Petitioner can claim [Redacted] as a dependent rests with the provisions of IRC section 152.

CONCLUSION

Because [Redacted] did not meet the requirements for either a qualifying child or a qualifying relative as defined in IRC section 152, the Tax Commission finds that Petitioner is not entitled to the dependent exemption deduction for [Redacted] for taxable year 2011. And, because Petitioner is not entitled to the dependent exemption, Petitioner cannot claim the additional grocery credit for [Redacted] per Idaho Code section 63-3024A.

THEREFORE, the Notice of Deficiency Determination dated March 25, 2013, and directed to [Redacted] is AFFIRMED.

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

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2011	\$334	\$10	\$344

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.
