

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 25454
[Redacted],)	
)	
Petitioners.)	DECISION
_____)	

On November 28, 2012, the staff of the Revenue Operations Division of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayers) proposing additional tax and interest for the taxable years 2010 and 2011 in the total amount of \$1,290.35.

The taxpayers filed a timely appeal and petition for redetermination. The taxpayers did not request a hearing. The Commission, having reviewed the file, hereby issues its decision.

The sole issue for this decision is whether the taxpayers are entitled to dependency exemptions for two of [Redacted] children from a prior marriage, [Redacted].

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. A child of a taxpayer is generally a dependent of the taxpayer. IRC section 152(e) provides a special rule for divorced parents. 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.

The taxpayers have stated, and the Commission has no information to the contrary, that they are the custodial parents of [Redacted]. The taxpayers also included a Form 8332 dated March 11, 2011, revoking the release of claim to exemption for the children for taxable year 2010 and all future years.

The general instructions for Form 8332 as it pertains to the revocation of release of claim state, in relevant part: The revocation will be effective no earlier than the tax year following the year in which the custodial parent provides the noncustodial parent with a copy of the revocation, or make reasonable effort to provide the noncustodial parent with a copy of the revocation.

In the present case, the revocation was signed in taxable year 2011. Therefore, the earliest tax year the revocation can be effective is taxable year 2012.

[Redacted] executed Form 8332 releasing her claim to exemption for [Redacted] and her other child, [Redacted], for taxable years 2002 through 2018. In taxable year 2011, she revoked that release, but is bound by its terms until taxable year 2012.

Therefore, the Commission finds that the taxpayers are not entitled to dependency exemption deductions for [Redacted] for taxable years 2010 and 2011. And since the taxpayers are not entitled to the dependency exemptions, the taxpayers cannot claim the additional grocery credit for the children per Idaho Code section 63-3024A.

THEREFORE, the Notice of Deficiency Determination dated November 28, 2012, is APPROVED and MADE FINAL.

IT IS ORDERED taxpayers pay the following tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2010	\$540	\$45	\$585
2011	688	29	717
		TOTAL DUE	\$1,302

Interest is calculated through June 17, 2013.

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

An explanation of the taxpayer'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.
