

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 25457
[Redacted],,)	
)	
Petitioner.)	DECISION
_____)	

[Redacted] (Petitioner) protested the Notice of Deficiency Determination dated November 13, 2012, proposing additional income tax, penalty, and interest for taxable years 2009 and 2010 in the total amount of \$3,365.99. Petitioner disagreed that he could not claim his children as dependents and receive the dependent exemption deduction for them. The Tax Commission, having reviewed the file, hereby issues its decision.

Petitioner timely filed his 2009 and 2010 Idaho individual income tax returns. Subsequent to Petitioner filing his income tax returns, the Tax Commission received a second pair of income tax returns claiming the same dependent exemption deductions as Petitioner. The Taxpayer Accounting Section (Taxpayer Accounting) requested information from Petitioner in the form of a questionnaire. Petitioner responded by providing court documents of a STIPULATION FOR ENTRY OF JUDGMENT and a SECOND INTERIM STIPULATION. These documents indicate that Petitioner had joint legal and physical custody of his two children, [Redacted] (the children). Petitioner stated the children lived with him for at least 130 days, and that he provided more than half of their support. Petitioner was relying on the court document provision that stated he could claim both of the children as dependents for tax purposes.

Taxpayer Accounting reviewed the information, determined Petitioner was not entitled to the dependent exemptions, and sent Petitioner a Notice of Deficiency Determination. Petitioner protested the Notice of Deficiency Determination, stating again that he had the right to claim the

children by virtue of the court documents. Taxpayer Accounting reviewed the information and referred the matter for administrative review.

The Tax Commission reviewed the matter and sent Petitioner a letter that discussed Petitioner's hearing rights, and the methods available for re-determining a protested Notice of Deficiency Determination. Petitioner requested a telephone hearing wherein he provided the following information. Petitioner explained his situation and the arrangement he and the children's mother had regarding the custody of the children. Petitioner stated that he works the graveyard shift and has custody of the children every day from 7:30 a.m. to 8:00 p.m. while the children's mother worked. Petitioner stated he was on a rotating schedule for his days off, and whenever he was not working the children were with him. Petitioner stated when his rotating schedule of days off was the same as the children's mother, the children split time between him and their mother. Petitioner stated when he took vacation days, usually fifteen (15) days per year, he has the children all day.

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, (1992); New Colonial Ice Co. v. Helvering, 292 U.S. 435, 440, (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, but additional requirements found in IRC section 152(c) and (d), must still be met to qualify the child as a dependent.

IRC section 152 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).

For a dependent child whose parents are divorced or do not live together, further scrutiny beyond dependent classification is needed to determine who is entitled to the dependent exemption deduction, since the parent designated the custodial parent has the deduction for eligible children by default. IRC section 152(e); Caputi v. C.I.R., T.C.M. (RIA) 2004-283 (Tax 2004). Determining which parent is the custodial parent may be difficult, because court issued divorce decrees or agreements are not always sufficient in the eyes of federal and state tax organizations. Instead, the requirements set out in IRC section 152 and the corresponding federal regulations must be individually evaluated. IRC section 152(e)(4)(A) states that the custodial parent is the parent having custody for the greater portion of the calendar year. In this case, Petitioner has joint legal and physical custody; however, the submitted court documents suggest that the mother is the custodial parent because she is designated to have the children five (5) days out of the week. Even so, Code of Federal Regulations (CFR) section 1.152-4(d)(5) provides an exception to the general overnight rule for the parent who works at night. CRF section 1.152-4(d)(5) states:

If, in a calendar year, due to a parent's nighttime work schedule, a child resides for a greater number of days but not nights with the parent who works at night, that parent is treated as the custodial parent.

By applying the exception found in CFR section 1.152-4(d)(5), Petitioner becomes the custodial parent, and combined with the facts that Petitioner is the children's father, the children meet the age requirement, and Petitioner provided them over half of their support, Petitioner is entitled to claim the children as his dependents. Since Petitioner is considered the custodial parent, the children by default meet the requirements of a qualifying child for Petitioner. Consequently, an analysis of the requirements for qualifying relatives is not necessary.

CONCLUSION

Petitioner argued the court documents he provided enable him to claim the dependent exemption deductions for his children [Redacted]. Petitioner's reliance on these documents is misplaced. Dependent exemption deductions are allowed as a deduction from adjusted gross income by IRC section 151. Dependents are defined in IRC section 152. Generally, the parent having a child overnight for a greater number of nights during the calendar year is the custodial parent and that parent has control over the dependent exemption deduction. However, in this case Petitioner falls within the special exception to the general rule. *See* CFR 1.152-4(d)(5). As a result, Petitioner is the custodial parent of [Redacted] and therefore, can claim them as dependents on his income tax returns for the years he was the custodial parent and did not release the exemption deduction to the non-custodial parent.

Since Petitioner was the custodial parent in both 2009 and 2010, and he did not release the exemption deductions to the non-custodial parent, the Tax Commission finds that Petitioner can claim the dependent exemption deductions for both [Redacted] for taxable years 2009 and

2010. And, because Petitioner can claim the exemption deductions, Petitioner can also claim the additional grocery credit for the children per Idaho Code section 63-3024A.

THEREFORE, the Notice of Deficiency Determination dated November 13, 2012, and directed to [Redacted] is hereby CANCELLED.

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.
