

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

In the Matter of the Protest of )  
[Redacted], ) DOCKET NO. 25468  
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 )  
Petitioner. ) DECISION  
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\_\_\_\_\_ )

On December 7, 2012, the staff of the Taxpayer Accounting Section of the Revenue Operations Division of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (Petitioner) denying a refund claim for taxable year 2011 in the total amount of \$334.

Petitioner filed a timely appeal and petition for re-determination. Petitioner did not request a hearing, but provided additional information. The Tax Commission, having reviewed the file, hereby issues its decision.

Petitioner timely filed his 2011 Idaho individual income tax return. During the processing of income tax returns, Petitioner's return was identified as a return on which a dependent exemption deduction was claimed on more than one income tax return. The Taxpayer Accounting Section (Taxpayer Accounting) requested information from Petitioner. Petitioner responded stating that he was not the custodial parent of the dependent in question, [Redacted] he only had visitation rights, he provided over half of [Redacted] support, and the custodial parent refuses to sign a release for the exemption. Petitioner also provided a court document, an AMENDED ORDER OF CHILD SUPPORT, which states that Petitioner shall claim the dependent deduction for [Redacted] every year unless the mother can show that she would receive a financial benefit from claiming [Redacted] as a dependent. The AMENDED ORDER OF CHILD SUPPORT further states that once the mother can show her financial benefit,

Petitioner and the mother will alternate years for claiming [Redacted] as a dependent. Petitioner stated in his protest that due to the lack of communication between he and [Redacted]mother, Petitioner has only claimed the deduction “every other year” and has done so “consistently for numerous years.”

Taxpayer Accounting reviewed the information available, determined Petitioner was not entitled to the dependent exemption, and sent Petitioner a Notice of Deficiency Determination. Petitioner protested the Notice of Deficiency Determination stating again that he had the right to claim his son, [Redacted], because of the AMENDED ORDER OF CHILD SUPPORT. 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 did not respond to the Tax Commission’s letter, so the Tax Commission decided the matter based upon the information available.

Deductions are a matter of legislative grace, and Petitioners 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.

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) 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 § 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 § 152(e)(2) work as intended, that control must be preserved by insisting on adherence to the requirements of § 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 § 152(e)(2)(A). Miller v. CIR, 114 T.C. 184, (2000).

The written declaration referenced in IRC section 152(e)(2)(A) and the additional case law, is satisfied by [Redacted] Form 8332: Release of Claim to Exemption for Child by Custodial Parent (Form 8332). Adequate completion of Form 8332 by the custodial parent, stating the name of the dependent and which tax year they are releasing their claim to the dependent deduction, is necessary for the non-custodial parent to receive the dependent

deduction. Found in the flush language of Form 8332 there is an exception in the event the divorce decree or separation agreement went into effect after 1984 or before 2009. This exception allows the admittance of the agreement as a substitute for Form 8332 if:

- a) the cover page includes the other parent's Social Security Number,
- b) the pages include the following information;
  - 1) the non-custodial parent can claim the child as a dependent without regard to any condition,
  - 2) the other parent will not claim the child as a dependent, and
  - 3) the years for which the claim is released.
- c) and includes a signature page with the other parent's signature and date of agreement.

Petitioner failed to submit Form 8332. Furthermore, the additional information submitted in the AMENDED ORDER OF CHILD SUPPORT, does not meet the [Redacted] requirements to be considered a valid substitute of Form 8332. Since the signed release is a condition of IRC section 152(e) and no release form or statement was provided, the determination of whether Petitioner can claim the dependent exemption reverts to IRC section 152(a).

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, such as the taxpayer's child, 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).

Therefore, to claim [Redacted] as a dependent, Petitioner must show that [Redacted] was either a qualifying child or a qualifying relative. Regarding a qualifying child classification, Petitioner has not shown that [Redacted] principal place of abode was with him for more than one-half of the taxable year. Consequently, he has not met the burden of proof of showing that [Redacted] was a qualifying child in taxable year 2011.

As for a qualifying relative classification, Petitioner did not show that [Redacted] was not a qualifying child of any other taxpayer for the taxable year. In fact, the information available shows that [Redacted] lived with his mother in the same principle place of abode all of 2011. This being the case, [Redacted] was the qualifying child for his mother. Therefore, [Redacted] cannot be a qualifying relative for Petitioner.

Because [Redacted] does 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 a dependent deduction for [Redacted] for taxable year 2011. And, since 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 May 30, 2013, and directed to [Redacted] is hereby AFFIRMED.

Since Petitioner filed an amended 2011 individual income tax return to claim the additional dependent exemption for [Redacted] and Taxpayer Accounting denied the claimed refund, no DEMAND for payment is needed or necessary.

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.  
  
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