

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 25678
[Redacted],)	
)	
Petitioners.)	DECISION
_____)	

SUMMARY

During the processing of the Appellants’ 2012 Idaho individual income tax return, the Idaho State Tax Commission (Tax Commission) discovered that [Redacted] (Appellants) claimed an additional dependent exemption that was also claimed on another individual’s income tax return.

On February 20, 2013, the Tax Commission requested additional information from Appellants to help determine if they are entitled to the exemption. Along with the additional information, Appellants submitted a Stipulation and Order for Paternity, Support, and Reimbursement; an agreement between Mr. [Redacted] and Department of Health and Welfare. From Appellants’ responses, the Tax Commission determined Appellants were not entitled to the dependency exemption. The Tax Commission adjusted Appellants’ return and sent them a Notice of Deficiency Determination (NODD) on April 24, 2013. Appellants appealed the determination, and their appeal was sent for administrative review.

After the Tax Commission issued a hearing rights letter outlining Appellants’ alternatives for redetermining the NODD, they chose to have an informal hearing. That hearing was held on June 19, 2013. During the hearing, Appellants reiterated their position that the Stipulation and Order for Paternity, Support, and Reimbursement was sufficient documentation and that they did not need IRS Form 8332 to allow them to claim the dependent exemption for [Redacted] (Child).

However, that document is an agreement between Department of Health and Welfare and Appellant, Mr. [Redacted], and it does not have the signature of the custodial parent as required by IRC § 152(e)(2).

The Tax Commission, having reviewed the file, hereby issues its decision.

DISCUSSION

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) § 151(c) allows a taxpayer a deduction of the exemption amount for each dependent as defined in IRC §152.

To claim a dependent exemption, Appellants must show Child is either a qualifying child or qualifying relative under IRC §152. 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 § 152(d)(1) and (2).

Regarding a qualifying child, Appellants failed to show that Child's principal place of abode was with Appellants for more than one-half of the taxable year. In Appellants' response

to the Tax Commission's request for additional information they stated that Child was in their custody for zero (0) days during the 2012 taxable year. Therefore, Child cannot be a qualifying child for Appellants during taxable year 2012.

Appellants also failed to show that Child was a qualifying relative. Appellants could not prove that Child was not a qualifying child of any other taxpayer for the taxable year, as required by IRC § 152(d)(1)(D).

IRC § 152(e)(1) provides special rules for divorced parents. If the child received over one-half of his support during the calendar year from his parents and child's parents live apart at all times during the last six (6) months of the calendar year, then the child may be treated as the qualifying child of the noncustodial parent if certain requirements are met. The requirements are met if: (1) the custodial parent signs a written declaration that the custodial parent will not claim the child as a dependent for the taxable year, and (2) the noncustodial parent attaches the written declaration to the noncustodial parent's return for the taxable year. IRC § 152(e)(2).

The custodial parent is defined in IRC § 152(e)(4)(A) as the parent having custody for the greater portion of the year. In Appellants' reply to the Tax Commission's request for information, they indicated that they did not have Child in their custody during the taxable year in question, let alone more than Child's mother. Therefore, Appellants are the noncustodial parents, and as such, are only able to claim Child for a dependency deduction if the IRC § 152(e) requirements mentioned above are met.

Again, the first requirement is that the custodial parent must sign a written declaration releasing their right to the dependency exemption. This is further defined in Treasury Regulation § 1.152(b)(4), which states that the custodial parent must sign a Form 8332, or similar written declaration. A divorce decree or legal separation agreement can replace Form

8332 if three other requirements, prescribed in IRS Publication 17, are met:

- 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.
- *These must be attached to the noncustodial parent's income tax return.

Appellants failed to meet the requirements of IRC § 152(e) by not attaching a completed Form 8332, or attaching a valid divorce decree or separation agreement to their tax return. Instead, Appellants subsequently supplemented their return with a Stipulation and Order for Paternity, Support, and Reimbursement agreement, between Mr. [Redacted] and the Department of Health and Welfare. This is insufficient for two (2) reasons. First, even if the Stipulation and Order for Paternity, Support, and Reimbursement was attached to Appellants' tax return, it is insufficient documentation, because it is between Appellant and the Idaho Department of Health and Welfare, and it was not signed by the custodial parent. Secondly, even if the Stipulation and Order for Paternity, Support, and Reimbursement could qualify as a substitute for Form 8332, it would only be effective against the custodial parent.

CONCLUSION

In Idaho, the Tax Commission's Notice of Deficiency Determination is presumed to be correct, and the burden is on the taxpayer to show that the deficiency is erroneous. Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 n.2, 716 P.2d 1344, 1346-1347 n.2 (Ct. App. 1986). Appellants failed to provide documentation or information in support of their position and therefore, did not meet their burden. If a taxpayer is unable to provide adequate proof of any material fact upon which a deduction depends, no deduction is allowed and that taxpayer must bear his misfortune. Burnet v. Houston, 283 U.S. 223, 51 S. Ct. 413 (1931). As a

result of Appellants' failure to provide information in support of their position, the Tax Commission based its decision upon the information available from other sources. That information showed Child was not a qualifying child for Appellants, but rather for someone else. That being the case, Child could not be a qualifying relative for Appellant. IRC § 152(d)(1). Furthermore, Appellants failed to meet the requirements of IRC §152(e) by not producing sufficient documentation releasing the exemption signed by the custodial parent, or attaching it to their individual income tax return.

Therefore, Appellants cannot claim Child as a dependent for taxable year 2012. As a result, Appellants cannot claim the additional grocery credit per Idaho Code § 63-3024(A).

THEREFORE, the Notice of Deficiency Determination dated April 24, 2013, and directed to [Redacted] is AFFIRMED.

Since Appellants' 2012 refund was reduced by the amount of the additional tax due, no ORDER for payment is needed or required.

An explanation of the Appellants' 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.
