

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 25733
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

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

On February 26, 2013, the Tax Commission requested additional information from Appellant to help determine if he was entitled to the exemption. Along with the additional information, Appellant submitted a letter stating his rational for claiming the dependent exemption deduction. Appellant stated that he and Child's mother were never married; however, there is a custody dispute for Child that is in the process of being resolved by the court. Appellant stated Child and Child's mother lived with him until the end of July 2012. Appellant believes the tiebreaker rules apply in this case, and he had the higher adjusted gross income for the year.

The Tax Commission reviewed the Appellant's information and determined Appellant was not entitled to a dependency exemption. The Tax Commission adjusted Appellant's return and sent him a Notice of Deficiency Determination on April 24, 2013. Appellant appealed the determination, and his appeal was sent for administrative review.

The Tax Commission sent Appellant a hearing rights letter, outlining the alternatives available for redetermining the Notice of Deficiency Determination. Appellant chose to submit

additional information instead of attending an informal hearing. The Appellant provided a calendar of the days Child lived with him, along with a letter wherein Appellant stated that this is a situation where Child resided with both parents for an equal number of nights during the year. Appellant also discussed why he qualifies for the exemption under the tiebreaker provisions of IRC section 152(c)(4)(B) because he had a higher adjusted gross income.

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

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

Regarding a qualifying child, Appellant stated he legally adopted Child and that Child stayed with him overnight 212 days in 2012. Appellant provided a calendar showing the number of days Child stayed with him, but he did not provide documents showing Child was legally adopted. For Appellant to claim Child as a qualifying child, Appellant would need to substantiate his position as a parent of Child. Nevertheless, assuming Appellant is a legal parent of Child, the tiebreaker rules of IRC section 152(c)(4)(B) do not give Appellant the dependent exemption deduction because Child resided longer during the taxable year with Child's mother than with Appellant. IRC section 152(c)(4)(B) states,

(B) More than 1 parent claiming qualifying child.--If the parents claiming any qualifying child do not file a joint return together, such child shall be treated as the qualifying child of--

(i) The parent with whom the child resided for the longest period of time during such taxable year, or

(ii) If the child resides with both parents for the same amount of time during such taxable year, the parent with the highest adjusted gross income.

Appellant stated Child and Child's mother lived with him until the end of July. This being the case, Child resided with Appellant for nearly seven full months, but Child resided with Child's mother for the full taxable year. Therefore, Appellant is not entitled to the dependent exemption for Child as a qualifying child.

Since Child cannot be a qualifying relative for anyone because she is a qualifying child for at least one taxpayer, Appellant cannot claim Child as a qualifying relative. *See* IRC section 152(d)(1)(D).

CONCLUSION

Appellant's claim of the dependent exemption deduction for Child was predicated on the fact that Child resided with Appellant for more than half the taxable year and that Appellant's income was greater than Child's mother. However, provided that Appellant is child's legal

parent; Appellant does not get to the income tiebreaker test for determining who can claim Child as a dependent. Child resided longer with her mother than with Appellant. Therefore, Appellant is not entitled to claim Child as a dependent, and since Child is not a dependent for Appellant, Appellant cannot claim the additional grocery credit provided by Idaho Code section 63-3024.

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

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2012	\$309	\$5	\$314

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

An explanation of the Appellant'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.
