

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 25792
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

On June 26, 2013, the Revenue Operations Division of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination to [Redacted] (taxpayer) proposing additional tax and interest in the amount of \$226.50 for taxable year 2012.

The taxpayer filed a timely appeal. He did not request a hearing. The Commission, having reviewed the file, hereby issues its decision based upon the information contained in the file.

The sole issue for the decision is whether the taxpayer is entitled to a dependency exemption deduction for [Redacted], his daughter from a previous marriage.

The taxpayer provided a copy of pages 1, 8, 10, and 11 of his Order Modifying Judgment and Decree of Divorce dated December 3, 2012. Item number 19, which the taxpayer has underlined, states that he shall be awarded the right to claim his minor children as his state and [Redacted] tax dependency exemptions.

Taxpayers may claim dependency exemption deductions for their dependents as defined in Internal Revenue Code (IRC) § 152. IRC § 152(a) defines the term “dependent” as a qualifying child or qualifying relative. A qualifying child is defined as 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, and (4) has not provided over one-half of the individual’s own support

for the taxable year, and (5) who has not filed a joint return (other than only for a claim of refund) with the individual's spouse for the taxable year. IRC § 152(c) (1)(3). A qualifying relative is defined as an individual (1) who bears a certain relationship to the taxpayer, such as the taxpayer's child or grandchild, (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).

However, in the case of divorced or separated parents, the dependency exemption is determined under IRC section 152(e)(1) as follows: if the child received over one-half of his support during the calendar year from his parents who live apart at all times during the last 6 months of the calendar year and the child is in the custody of one or both parents for more than one-half of the calendar year, then the child is 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 (in such manner and form as the Secretary may prescribe) 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 section 152(e)(2).

The term "custodial parent" is defined in IRC section 152(e)(4)(A) as the parent having custody for the greater portion of the calendar year. In the present case, when asked if he was the custodial parent of [Redacted] in taxable year 2012, the taxpayer responded, "yes, as of November 13, 2012." When asked how many days [Redacted] lived with him in taxable year 2012, the taxpayer responded 224 +/- 5 to 10 days. The letter that accompanied the request for information letter sent by the taxpayer referenced the court order which stated he had the right to

claim the dependency exemptions for the children. The taxpayer's letter also stated that if he wasn't allowed to claim the children, his child support payments would be substantially larger.

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).

The taxpayer did not provide sufficient information to show he is entitled to claim a dependent exemption for [Redacted] as a qualifying child. The taxpayer has not shown that [Redacted] principal place of abode was with him for more than one-half of the taxable year, or that [Redacted] was not the qualifying child of another taxpayer. The taxpayer's court order assigns the state and [Redacted] dependency tax exemptions for both [Redacted] and her brother to him. Although the court order provides that the taxpayer is entitled to the dependency exemption for [Redacted], the taxpayer still must prove he is entitled to the dependent exemption. The taxpayer has not met his burden of proof that he is entitled to a dependent exemption as defined in IRC section 152.

THEREFORE, the Notice of Deficiency Determination directed to [Redacted], dated June 26, 2013, is APPROVED and MADE FINAL.

IT IS ORDERED that the taxpayer pay the following amount of tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2012	\$224	\$7	\$231

Interest is calculated through March 14, 2014.

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.
