BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of	)	
	)	DOCKET NO. 25859
[Redacted],	)	
	)	
Petitioners.	)	DECISION
	)	

[Redacted] (Petitioners) protested the Notice of Deficiency Determination dated June 26, 2013, proposing additional tax and interest for taxable year 2012, in the total amount of $354.35. Petitioners disagreed with Revenue Operations' adjustment disallowing the dependent exemption deduction for [Redacted] ([Redacted]). The Tax Commission, having reviewed the file, hereby issues its decision.

Petitioners filed their 2012 Idaho individual income tax return claiming a dependent exemption deduction for [Redacted] son, [Redacted]. During the processing of Petitioners' income tax return, the Tax Commission identified Petitioners' return as one of two income tax returns that claimed a dependent exemption deduction for [Redacted]. The Taxpayer Accounting Section (Taxpayer Accounting) requested additional information from Petitioners in the form of a questionnaire. Petitioners responded to Taxpayer Accounting's questionnaire stating that [Redacted] was [Redacted] mother, they had joint custody of [Redacted], they provided more than half of [Redacted] total support, and that [Redacted] lived with them one-half of taxable year 2012.

Taxpayer Accounting reviewed the information and ultimately determined Petitioners were not entitled to the dependent exemption for [Redacted]. Taxpayer Accounting sent Petitioners a Notice of Deficiency Determination denying the dependent exemption deduction. Petitioners protested the Notice of Deficiency Determination, stating that [Redacted] and

[Redacted] father have joint custody of [Redacted] and that he splits time equally between the two households. Taxpayer Accounting reviewed the information and referred the matter for administrative review.

The Tax Commission sent Petitioners a letter that discussed the methods available for redetermining a protested Notice of Deficiency Determination. Petitioners responded to the Tax Commission's letter; and [Redacted] appeared for an informal conference which was held on September 10, 2013. The Tax Commission, having reviewed the file, hereby issues its decision.

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.

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, 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).

In this case, the dependent in question, according to all information available, appears to have resided equally with both parents. A 50-50 split of a taxable year would generally still result in one party having the child one additional night as 365 is not equally devisable by two. However, for taxable year 2012, a leap year, it is feasible and quite possible, that [Redacted] resided the same amount of days with each parent. [Redacted] most likely is a qualifying child for both his parents.

Fortunately, IRC section 152(c)(4) provides a special rule for situations where two or more individuals can claim the same qualifying child. Generally, a parent takes precedence, but in the case where both parents can claim the same qualifying child, IRC section 152(c)(4)(B) addresses this situation by granting the exemption to the parent with whom the child resided for the longest period of time during the taxable year, or if the child resided equally with both parents, to the parent with the highest adjusted gross income.

In the present case, [Redacted] resided equally with both parents so the Tax Commssion looked at the second provision of the tie breaker rule, the parent with the highest adjusted gross income, and finds this factor not in favor of the Petitioners.

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

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

YEAR	TAX	INTEREST	TOTAL
2012	$351	$9	$360

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

An explanation of the Petitioners' right to appeal this decision is enclosed.

DATED this ________ day of ____________________ 2013.

IDAHO STATE TAX COMMISSION

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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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