

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 25933
[Redacted],)	
)	
Petitioners.)	DECISION
_____)	

[Redacted] and [Redacted] (Petitioners) protested the Notice of Deficiency Determination dated August 22, 2013, reducing the amount of refund claimed for taxable year 2012, in the total amount of \$351. Petitioners disagreed with Revenue Operations’ adjustment disallowing the dependent exemption deduction for [Redacted]. The Tax Commission, having reviewed the file, hereby issues its decision.

BACKGROUND

Petitioners filed their 2012 Idaho individual income tax return claiming a dependent exemption deduction for [Redacted] son, [Redacted]. As the filing of income tax returns continued, Petitioners’ return was identified 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] father and that through his divorce decree; he has a valid signed release from the custodial parent that allows him to claim the dependency exemption for [Redacted]. Petitioners also provided a copy of [Redacted] Decree of Divorce dated December 28, 2004. The decree orders [Redacted] to pay child support for his children, and states that he has the right to claim his minor children as dependents; the decree is signed by both parties and contains both parties’ social security numbers.

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, claiming that [Redacted] divorce decree met all of the requirements of [Redacted] form 8332, and even though he was not the custodial parent of [Redacted], he had the signed release from the custodial parent and was therefore entitled to the dependent exemption for taxable year 2012.

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 requested a hearing, which was held telephonically on October 25, 2013. Numerous correspondences were exchanged in the days following the hearing between [Redacted] and the tax policy specialist, and a continuance of the informal telephone conference took place on November 1, 2013.

LAW AND ANALYSIS

Deductions are a matter of legislative grace, and Petitioners 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 Petitioner 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 attained 18 years of age before the end of calendar year 2011. Being eighteen, [Redacted] was considered emancipated in Idaho, and therefore not in the custody of his parents. Because [Redacted] was emancipated in 2011, the special rule of IRC section 152(e) for determining whether the custodial parent or the non-custodial parent can claim the dependent exemption deduction is not applicable. *See* Treasury Regulation section 1.152-4(g), Example (6). Therefore, the determination of who can claim [Redacted] as a dependent goes back to the general provisions of IRC section 152(c) and (d) as cited above.

The Petitioners have at no time during the appeal process claimed, or provided any documentation to support that [Redacted] resided with them more than one-half of the taxable year, a requirement that must be met in order for [Redacted] to be a qualifying child. (IRC section 152(c)(2).) As for the requirements of a qualifying relative, the Petitioners have not shown that they provided over one-half of [Redacted] total support for taxable year 2012, or that [Redacted] was not a qualifying child of any other taxpayer for the taxable year.

The premise of the Petitioners' appeal is not that they are the custodial parent of [Redacted] for taxable year 2012, but rather that they have a court order, which they have

followed, and that court order meets the requirements of [Redacted] form 8332, Release of Claim to Exemption for Child by Custodial Parent. The Petitioners are adamant in their belief that because child support for [Redacted] was required to be paid until June of 2012, when [Redacted] graduated from high school, that the release was effective until the following taxable year, 2013.

CONCLUSION

There is no dispute that [Redacted] divorce decree is the equivalent of federal form 8332. However, IRC 152(e) is unavailable once the child reaches the age of majority. [Redacted] was born December 29, 1993 and reached the age of 18 in taxable year 2011, at that time he was not in the “custody” of either parent. Therefore, the general provisions of IRC section 152(c) and (d) govern who is entitled to the dependency exemption.

For taxable year 2012, the Petitioners have failed to show that [Redacted] met the requirements of either a qualifying child or qualifying relative. As for the requirements of a qualifying child, the Petitioners have not shown that [Redacted] had the same principal place of abode as the Petitioners for the taxable year. As for the requirements of a qualifying relative, the Petitioners have failed to show that they provided over one half of [Redacted] support for the taxable year or that [Redacted] was not a qualifying child for another taxpayer. Since [Redacted] was neither a qualifying child nor a qualifying relative for Petitioners in 2012, Petitioners do not get the benefit of the dependent exemption deduction for [Redacted]. Because Petitioners cannot claim the dependent exemption, Petitioners cannot claim the additional grocery credit for [Redacted] per Idaho Code section 63-3024A.

THEREFORE, the Notice of Deficiency Determination dated August 22 2013, and directed to [Redacted] and [Redacted] is AFFIRMED.

Since the Petitioners' refund was only reduced, no DEMAND for payment is made or necessary.

An explanation of the Petitioners' 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.
