

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],) DOCKET NO. 25999
Petitioner.)
DECISION
_____)

[Redacted] (Petitioner) protested the Notice of Deficiency Determination dated August 8, 2013, asserting additional income tax and interest for taxable year 2012 in the total amount of \$356.16. Petitioner disagreed with Revenue Operations’ adjustment disallowing the dependent exemption deduction for [Redacted]. The Tax Commission, having reviewed the file, hereby issues its decision.

BACKGROUND

Petitioner filed his 2012 Idaho individual income tax return claiming a dependent exemption deduction for his daughter, [Redacted]. As the filing of income tax returns continued, Petitioner’s 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 Petitioner in the form of a questionnaire. Petitioner responded to Taxpayer Accounting’s questionnaire stating that he was [Redacted] father, he had custody of [Redacted], he provided more than half of [Redacted] total support, and that [Redacted] lived with him for 204 plus 112 days in 2012. Petitioner also provided a copy of the front page of his Decree of Divorce, circling the effective date of August 20, 2012, documentation showing [Redacted] was included in his insurance plan, and documentation showing amounts paid for [Redacted]college expenses.

Taxpayer Accounting reviewed the information and ultimately determined Petitioner was not entitled to the dependent exemption. Taxpayer Accounting sent Petitioner a Notice of Deficiency Determination denying the dependent exemption deduction. Petitioner protested the Notice of Deficiency Determination, claiming that [Redacted] resided with both parents until July 23, 2012, (a total of 204 days) when he moved out of the family home. [Redacted] was attending school out of state and her time away at school was from January 11 to May 11, and from August 23 to December 13. Petitioner stated he was considering himself the custodial parent of [Redacted] by including the time [Redacted] was away at college for the fall semester, 112 days, plus the time prior to the separation. Petitioner counts days away at school as days living under his care, because he provided for all of [Redacted] financial needs.

Taxpayer Accounting reviewed the information and referred the matter for administrative review. The Tax Commission sent Petitioner a letter that discussed the methods available for redetermining a protested Notice of Deficiency Determination. Petitioner did not request a hearing, but did respond to the letter. The Petitioner stated he was comfortable that the documentation provided in previous correspondence adequately stated his position and that the Commission has all the necessary information to make a determination.

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 2012. Being eighteen, [Redacted] was considered emancipated in Idaho, and therefore not in the custody of her parents. Because [Redacted] was emancipated in 2012, 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.

Petitioner stated [Redacted] lived with him a total of 316 days in 2012, 204 of which were in the family home. This being the case, [Redacted] could be a qualifying child for Petitioner, because [Redacted] resided with him for over one-half of the taxable year. (IRC section 152(c)(2).) However, [Redacted] also resided with the other taxpayer those same 204 days. Therefore, both the Petitioner and the other taxpayer would be able to consider those days

as days [Redacted] lived with them. The question then is once Petitioner acquired separate living accommodations, with whom did [Redacted] reside with a greater portion of the time remaining in taxable year 2012?

The Petitioner states that he is counting the days [Redacted] was away at school for the fall semester, 112 days, as days spent with him because he provided for [Redacted] financial needs. While this may be the case, information provided from a third party states [Redacted] resided with the other taxpayer every day in taxable year 2012 except for the days away at school.

Considering all the information available, the Tax Commission found Petitioner's total days [Redacted] stayed overnight with him was 204 days, but these same 204 days are also spent with the other taxpayer. Since [Redacted] did not spend any nights with Petitioner once he acquired a separate residence, she did not reside with Petitioner more nights than the other taxpayer, so [Redacted] was not a qualifying child for Petitioner.

CONCLUSION

In taxable year 2012, [Redacted] did not reside with Petitioner a greater number of days than with the other taxpayer and is, therefore, not a qualifying child for Petitioner. Consequently, [Redacted] was a qualifying child for another taxpayer. That being the case, [Redacted] could not be a qualifying relative for Petitioner. (IRC section 152(d)(1).) Since [Redacted] was neither a qualifying child nor a qualifying relative for Petitioner in 2012, Petitioner does not get the benefit of the dependent exemption deduction for [Redacted]. And because Petitioner cannot claim the dependent exemption, Petitioner cannot claim the additional grocery credit for [Redacted] per Idaho Code section 63-3024A.

THEREFORE, the Notice of Deficiency Determination dated August 8, 2013, and directed to [Redacted] is AFFIRMED.

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2012	\$351	\$11	\$357

Interest is calculated through March 21, 2014.

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

An explanation of the petitioner'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.
