

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 25455
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

[Redacted] (Petitioner) protested the Notice of Deficiency Determination dated November 8, 2012, proposing additional income tax, penalty, and interest for taxable year 2011 in the total amount of \$342.70. Petitioner disagreed that he could not claim [Redacted] as a dependent and receive the dependent exemption deduction for her. The Tax Commission, having reviewed the file, hereby issues its decision.

BACKGROUND

Petitioner timely filed his 2011 Idaho individual income tax return. During processing, Petitioner’s return was identified as one of two Idaho individual income tax returns that claimed [Redacted] ([Redacted]) as a dependent. The Taxpayer Accounting Section (Taxpayer Accounting) requested information from Petitioner in the form of a questionnaire. Petitioner responded by providing a court document and responses to Taxpayer Accounting’s questionnaire. Petitioner stated [Redacted] was his daughter, he was not the custodial parent, [Redacted] did not live with him during the taxable year, he provided over half of [Redacted] support for the taxable year, and that the court document substituted for a Form 8332. In essence, Petitioner was relying on the court document to enable him to claim [Redacted] as a dependent for tax purposes.

Taxpayer Accounting reviewed the information, determined Petitioner was not entitled to the dependent exemption, and sent Petitioner a Notice of Deficiency Determination. Petitioner

protested the Notice of Deficiency Determination stating, again, that he had the right to claim [Redacted] by virtue of the court document and the fact that he was current on his child support. Taxpayer Accounting acknowledged Petitioner's protest and referred the matter for administrative review.

The Tax Commission reviewed the matter and sent Petitioner a letter that discussed Petitioner's options for re-determining a protested Notice of Deficiency Determination. Petitioner requested a telephone hearing wherein he provided the following information. Petitioner and [Redacted] mother were never married so there is no divorce decree. Petitioner stated that at the beginning of "tax season" the custodial parent agreed he could claim [Redacted] as a dependent. However, when the Tax Commission explained the oral agreement and the court document was not sufficient to release the dependent exemption, Petitioner asked that he be given additional time to get a signed release from the custodial parent. The Tax Commission agreed, and allowed Petitioner thirty (30) days to obtain a release of the dependent exemption. Petitioner did not provide a signed release from the custodial parent, so the Tax Commission decided the matter based upon the information available.

LAW AND ANALYSIS

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, (1992); New Colonial Ice Co. v. Helvering, 292 U.S. 435, 440, (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 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).

IRC section 152(e) provides a special rule for parents who are divorced or who do not live together. It states in pertinent part:

(1) In general.

Notwithstanding subsection (c)(1)(B), (c)(4), or (d)(1)(C), if—

(A) a child receives over one-half of the child's support during the calendar year from the child's parents—

(i) who are divorced or legally separated under a decree of divorce or separate maintenance,

(ii) who are separated under a written separation agreement, or

(iii) who live apart at all times during the last 6 months of the calendar year, and—

(B) such child is in the custody of 1 or both of the child's parents for more than one-half of the calendar year, such child shall be treated as being the qualifying child or qualifying relative of the noncustodial parent for a calendar year if the requirements described in paragraph (2) or (3) are met.

(2) Exception where custodial parent releases claim to exemption for the year. For purposes of paragraph (1), the requirements described in this paragraph are met with respect to any calendar year if—

(A) the custodial parent signs a written declaration (in such manner and form as the Secretary may by regulations prescribe) that such custodial parent will not claim such child as a dependent for any taxable year beginning in such calendar year, and

(B) the noncustodial parent attaches such written declaration to the noncustodial parent's return for the taxable year beginning during such calendar year.

IRC section 152(e)(2) clearly requires that the custodial parent sign a written declaration releasing the dependent exemption in order for the noncustodial parent to claim the child's dependent exemption.

The control over a child's dependency exemption conferred on the custodial parent by section 152(e)(2) was intended by Congress to simplify the process of determining who is entitled to claim dependency exemptions for children of a marriage. See H. Rept. 98-432 (Part 2), at 1498 (1984). To make section 152(e)(2) work as intended, that control must be preserved by insisting on adherence to the requirements of section 152(e)(2). Simply attaching a State court order that is not signed by the custodial parent to the return of the noncustodial parent does not satisfy the express statutory requirements of section 152(e)(2)(A). Miller v. CIR, 114 T.C. 184, (2000).

Petitioner's argument centers on the court document that awarded Petitioner the dependent exemption. In essence, Petitioner is claiming the court document is an equivalent document to federal Form 8332 releasing the dependent exemption to him.

Treasury Regulation section 1.152-4(e) states what is necessary in the written declaration of the custodial parent to release the dependent exemption to the noncustodial parent. It states,

(1) Form of declaration.

(i) In general. The written declaration under paragraph (b)(3)(i) of this section must be an unconditional release of the custodial parent's claim to the child as a dependent for the year or years for which the declaration is effective. A declaration is not unconditional if the custodial parent's release of the right to claim the child as a dependent requires the satisfaction of any condition, including the noncustodial parent's meeting of an obligation such as the payment of support. A written declaration must name the noncustodial parent to whom the exemption is released. A written declaration must specify the year or years for which it is effective. A written declaration that specifies all future years is treated as specifying the first taxable year after the taxable year of execution and all subsequent taxable years.

(ii) Form designated by IRS. A written declaration may be made on Form 8332, Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent, or successor form designated by the IRS. A written declaration not on the form designated by the IRS must conform to the substance of that form and must be a document executed for the sole purpose of serving as a written declaration under this section. A court order or decree or a separation agreement may not serve as a written declaration. (Underlining added.)

The court order, in addition to not being allowed on its face, is lacking in several areas. The order does not specify the year or years the dependent exemption can be claimed, it does not state the custodial parent will not claim the dependent exemption, the document's sole purpose is not the release of the dependent exemption, the custodial parent is not properly identified, nor did the custodial parent sign the document. Consequently, the court order is not acceptable as a release of the dependent exemption. Therefore, because Petitioner has not provided a valid release of the dependent exemption from the custodial parent, the determination of whether Petitioner can claim [Redacted] as a dependent reverts to IRC section 152(a).

Since a dependent is either a qualifying child or a qualifying relative, Petitioner must show that [Redacted] was one or the other. Petitioner stated, in his response to Taxpayer Accounting's questionnaire, that [Redacted] did not live with him in 2011. That being the case, [Redacted] cannot be a qualifying child because her principal place of abode was not with Petitioner. And, since [Redacted] did not live with Petitioner, the presumption is that she lived with her mother and therefore a qualifying child for her mother. As a result, [Redacted] cannot be a qualifying relative for Petitioner (IRC section 152(d)(1)(D)). [Redacted] does not meet the requirements of a dependent for Petitioner for taxable year 2011.

CONCLUSION

Petitioner argued the court document he provided enabled him to claim the dependent exemption deduction for his daughter. Petitioner's reliance on this document is misplaced. Dependent exemption deductions are allowed as a deduction from adjusted gross income by IRC section 151. Dependents are defined in IRC section 152. Because [Redacted] did not meet the requirements for either a qualifying child or a qualifying relative, as defined in IRC section 152, and since Petitioner does not have a signed release from the custodial parent, the Tax

Commission finds that Petitioner is not entitled to the dependent exemption deduction for [Redacted] for taxable year 2011. And, because Petitioner is not entitled to 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 November 8, 2012, and directed to [Redacted] is AFFIRMED.

It is ORDERED that Petitioner pay the following tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2011	\$333	\$9.70	\$342.70
		AMOUNT PAID	<u>\$342.70</u>
		BALANCE DUE	<u>\$ 0</u>

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 _____ 2014.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2014, 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.
