

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 25489
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

[Redacted] (Petitioner) protested the Notice of Deficiency Determination dated August 16, 2012, asserting additional income tax in the total amount of \$698.70 for taxable year 2011. Petitioner disagreed with the adjustment disallowing the dependent exemption deductions claimed for [Redacted] and [Redacted]. The Tax Commission, having reviewed the file, hereby issues its decision.

FACTS

Petitioner timely filed his 2011 Idaho individual income tax return. During the processing of the 2011 income tax returns, the Taxpayer Accounting Section (Taxpayer Accounting) found that another taxpayer claimed dependent exemption deductions for [Redacted] and [Redacted]. Taxpayer Accounting sent Petitioner a letter requesting information to support the dependent exemptions claimed. Petitioner did not respond. Taxpayer Accounting ultimately determined Petitioner could not claim the dependent exemption deductions. Taxpayer Accounting sent Petitioner a letter stating its intent to correct Petitioner's Idaho income tax return, but still received no response from Petitioner.

Taxpayer Accounting corrected Petitioner's income tax return and sent the return for collection. The Tax Commission's collection department sent Petitioner a Notice of Deficiency Determination, which Petitioner protested. Petitioner stated he filed his Idaho income tax return according to the stipulations of his divorce decree. Petitioner stated the [Redacted] also

questioned the dependent exemptions and allowed them after he provided a copy of his divorce decree. Petitioner provided selected pages from a STIPULATION FOR DIVORCE to support his claim.

Collections sent the matter back to Taxpayer Accounting, who acknowledged Petitioner's protest, and referred the matter for administrative review. Petitioner sent a subsequent letter restating his position and total reliance on the court order. The Tax Commission reviewed the matter and sent Petitioner a letter that discussed the methods available for redetermining a protested Notice of Deficiency Determination. Petitioner failed to respond, 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, 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 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).

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).

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 dependency exemption in order for the noncustodial parent to claim the child's dependency 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 him the dependent exemptions. In essence, Petitioner is claiming the court document is an equivalent document to [Redacted] 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 document provided by Petitioner, in addition to not being allowed on its face, is lacking in several areas. The document does not specify the year or years, it does not state the custodial parent will not claim the dependent exemptions, and the document's sole purpose is not the release of the dependent exemptions. Consequently, the court document is not acceptable as a release of the dependent exemptions. Therefore, because Petitioner has not provided a valid

release of the dependent exemptions from the custodial parent, the determination of whether Petitioner can claim [Redacted] or [Redacted] as dependents reverts to IRC section 152(a).

Since a dependent is either a qualifying child or a qualifying relative, Petitioner must show that [Redacted] and [Redacted] were one or the other. The only information Petitioner provided was the court document. In that document it states that [Redacted] shall have primary physical custody of the minor children. The document also states that Petitioner's visitation is limited to five overnight visits per month. If Petitioner's visitation rights are being followed, it is clear [Redacted] and [Redacted] principal place of abode was not with Petitioner. As a result, neither [Redacted] nor [Redacted] are qualifying children for Petitioner. Furthermore, since [Redacted] and [Redacted] did not live with Petitioner, the presumption is that they lived with their mother, [Redacted], and were qualifying children for her. Therefore, [Redacted] and [Redacted] cannot be qualifying relatives for Petitioner (IRC section 152(d)(1)(D)). [Redacted] and [Redacted] do not meet the requirements of a dependent for Petitioner for taxable year 2011.

CONCLUSION

Because neither [Redacted] nor [Redacted] met 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 deductions for [Redacted] or [Redacted] for taxable year 2011. And, because Petitioner is not entitled to the dependent exemptions, Petitioner cannot claim the additional grocery credit as provided in Idaho Code section 63-3024A.

THEREFORE, the Notice of Deficiency Determination dated August 16, 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	\$697	\$7	\$704
		Less Credit Offset	(704)
		Balance Due	<u>\$ 0</u>

Since Petitioner's tax liability has been paid with a refund from another taxable year, a DEMAND for payment is not needed.

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.
