

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

|                                 |   |                  |
|---------------------------------|---|------------------|
| In the Matter of the Protest of | ) |                  |
|                                 | ) | DOCKET NO. 25541 |
| [Redacted],                     | ) |                  |
|                                 | ) |                  |
| Petitioner.                     | ) | DECISION         |
| _____                           | ) |                  |

[Redacted] (Petitioner) protested the Notice of Deficiency Determination dated February 15, 2013, proposing additional income tax for taxable year 2011 in the total amount of \$209. Petitioner disagreed that he could not claim [Redacted] as a dependent and receive the dependent exemption deduction for him. 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] 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 son, 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 he did not have a signed Form 8332 from the custodial parent. 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 tax correction notice. Petitioner protested the notice, stating he disagreed and asked to have the matter sent for a legal review. Taxpayer

Accounting sent Petitioner a Notice of Deficiency Determination, 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 contacted the Tax Commission to discuss his case. The Tax Commission informed Petitioner of the statutory requirements for claiming a dependent exemption deduction. The Tax Commission stated that for Petitioner to claim [Redacted] as a dependent he would need to get a signed release of the exemption deduction from the custodial parent. Petitioner asked that he be given additional time to get a signed release from the custodial parent. The Tax Commission agreed, and allowed Petitioner more than adequate time 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).

Since Petitioner did not provided a 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).

A dependent is either a qualifying child or a qualifying relative; therefore, 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. This being the case, [Redacted] cannot be a qualifying child because his principal place of abode was not with Petitioner. And since [Redacted] did not live with Petitioner, the presumption is that he lived with the custodial parent and was a qualifying child for her. 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 he was entitled to claim the dependent exemption deduction for his son. Petitioner relied on the language in a court document for this presumption. However, 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 did 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 February 15, 2013, 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        | \$209      | \$0             | \$209        |

Since Taxpayer Accounting reduced Petitioner's claim for refund when he filed his 2011 Idaho income tax return, a DEMAND for payment of additional tax is not necessary.

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

IDAHO STATE TAX COMMISSION

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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.

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