

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 25628
[Redacted],	)	
	)	
Petitioners.	)	DECISION
	)	
	)	
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[Redacted] and [Redacted] (Petitioners) protested the Notice of Deficiency Determination dated March 28, 2013, proposing additional income tax, penalty, and interest for taxable year 2011 in the total amount of \$395.32. Petitioners disagreed that [Redacted] could not claim [Redacted] and [Redacted] as dependents and receive the dependent exemption deductions for them. The Tax Commission, having reviewed the file, hereby issues its decision.

**BACKGROUND**

Petitioners filed their 2011 Idaho individual income tax return after the extension date for filing Idaho individual income tax returns. During processing, Petitioners' return was identified as one of two Idaho individual income tax returns that claimed [Redacted] and [Redacted] as dependents. The Taxpayer Accounting Section (Taxpayer Accounting) requested information from Petitioners in the form of a questionnaire. Petitioners responded to Taxpayer Accounting's questionnaire, stating [Redacted] was [Redacted] and [Redacted] father, he was not the custodial parent, [Redacted] and [Redacted] did not live with them during the taxable year, he did not provide over half of [Redacted] and [Redacted] support for the taxable year, and he did not have a signed form 8332 from the custodial parent, but he did have a court order. In essence, Petitioners were relying on the court document to allow them to claim [Redacted] and [Redacted] as dependents for tax purposes.

Taxpayer Accounting reviewed the information, determined Petitioners were not entitled to the dependent exemptions, corrected Petitioners 2011 Idaho income tax return, and sent Petitioners a notice of the correction. Petitioners did not respond, so Taxpayer Accounting sent the matter for collection. A Notice of Deficiency Determination was sent to Petitioners, which they protested. Petitioners stated they disagreed with the determination and again cited and provided copies of the court documents giving them the authority to claim [Redacted] and [Redacted] as dependents. Taxpayer Accounting acknowledged Petitioners' protest and referred the matter for administrative review.

The Tax Commission reviewed the matter and sent Petitioners a letter that discussed Petitioners' options for re-determining a protested Notice of Deficiency Determination. [Redacted] contacted the Tax Commission, stating she and [Redacted] are now divorced, but that [Redacted] had a letter from the [Redacted] stating he was allowed the dependent exemptions for [Redacted] and [Redacted]. [Redacted] said she would send the Tax Commission a copy of the letter, but the Tax Commission never received it. Petitioners made no further contact and provided no additional information. Seeing that Petitioners have had ample time to provide additional documentation, 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).

Petitioners' argument centers on the court documents that award [Redacted] the dependent exemptions. In essence, Petitioners are claiming the court documents are equivalent to [Redacted] Form 8332, releasing the dependent exemptions 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, it does not state the custodial parent will not claim the dependent exemptions, the document's sole purpose is not the release of the dependent exemptions, nor is the custodial parent properly identified. Consequently, the court order is not acceptable as a release of the dependent exemptions. Therefore, because Petitioners have not provided a valid release of the dependent exemptions from the custodial parent, the determination of whether Petitioners can claim [Redacted] and [Redacted] as dependents reverts to IRC section 152(a).

Since a dependent is either a qualifying child or a qualifying relative, Petitioners must show that [Redacted] and [Redacted] were one or the other. Petitioners stated in their response to Taxpayer Accounting's questionnaire that [Redacted] and [Redacted] did not live with them in 2011. This being the case, neither [Redacted] nor [Redacted] can be a qualifying child because their principal place of abode was not with Petitioners. And since neither [Redacted] nor [Redacted] lived with Petitioners, the presumption is that they lived with their mother and were a qualifying child for her. As a result, [Redacted] and [Redacted] cannot be a qualifying relative for Petitioners (IRC section 152(d)(1)(D)). [Redacted] and [Redacted] do not meet the requirements of a dependent for Petitioners for taxable year 2011.

### **CONCLUSION**

Petitioners argued the court documents they provided enabled them to claim the dependent exemption deductions for [Redacted] children. Petitioners' reliance on these documents 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] and [Redacted] did not meet the requirements for either a qualifying child or a qualifying relative, as defined in IRC section 152, and since Petitioners do not have a signed release from the custodial parent, the Tax Commission finds that Petitioners are not entitled to the dependent exemption deduction for either [Redacted] or [Redacted] for taxable year 2011. And, because Petitioners are not entitled to the dependent exemptions, Petitioners cannot claim the additional grocery credit for [Redacted] and [Redacted] per Idaho Code section 63-3024A.

THEREFORE, the Notice of Deficiency Determination dated March 28, 2013, and directed to [Redacted] and [Redacted] is AFFIRMED.

IT IS ORDERED that Petitioners pay the following tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2011	\$373	\$18	\$37	\$428

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

An explanation of the Petitioners' 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.  
  
\_\_\_\_\_