BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of	)	
	)	DOCKET NO. 25794
[Redacted],	)	
	)	
Petitioner.	)	DECISION
	)	

[Redacted] (Petitioner) protested the proposed change to her 2012 Idaho individual income tax return asserting additional income tax and interest in the total amount of $243.47. 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 her 2012 Idaho individual income tax return claiming a dependent exemption deduction for her son, [Redacted]. As the processing of 2012 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 she was [Redacted] mother, she provided more than half of [Redacted] support for the year, and that her child support order awarded her the tax exemption for [Redacted].

Taxpayer Accounting reviewed the information Petitioner provided and ultimately determined Petitioner was not entitled to the dependent exemption. Taxpayer Accounting sent Petitioner a correction notice denying the dependent exemption deduction. Petitioner protested, so the matter was referred 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 respond. Therefore, 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 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 taxpayer 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, Petitioner was not the primary custodial parent. The information available to the Tax Commission showed Petitioner had normal visitation with [Redacted] until March 2012, when Petitioner decided not to force [Redacted] to stick to the visitation schedule. The

information stated [Redacted] lived with his father for the entire remainder of the year. Based upon this information, Petitioner was not the custodial parent. Therefore, for Petitioner to be able to claim the exemption for [Redacted], Petitioner needed a signed release from the custodial parent. *See* IRC section 152(e).

Petitioner stated she was awarded [Redacted] dependent exemption by order of the Court. However, for a court order to release or award a dependent exemption deduction to a non-custodial parent, the court must follow the rules and regulations of the internal revenue code. The order of the court must have all the requirements as set forth in Treasury Regulation section 1.152-4. The documentation Petitioner provided fell far short of being an acceptable release of a dependent exemption. Therefore, Petitioner did not have a release of the dependent exemption from the custodial parent, and the determination of who can claim [Redacted] as a dependent falls back on the general provisions of IRC section 152(c) and (d) as cited above.

The information available shows [Redacted] did not live with Petitioner for more than one-half of taxable year 2012, therefore, [Redacted] cannot be a qualifying child for Petitioner. As for a qualifying relative, [Redacted] was a qualifying child for another taxpayer, so he cannot be a qualifying relative for Petitioner. Since Petitioner did not provide any information to show otherwise, Petitioner cannot claim [Redacted] as a dependent on her 2012 Idaho individual income tax return.

CONCLUSION

In Idaho, a State Tax Commission deficiency determination is presumed to be correct, and the burden is on the taxpayer to show that the deficiency is erroneous. Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 n.2, 716 P.2d 1344, 1346-1347 n.2 (Ct. App.

1986). Petitioner failed to document or to provide information to support her claim of a dependent exemption deduction for [Redacted]; she did not meet her burden.

If a taxpayer is unable to provide adequate proof of any material fact upon which a deduction depends, no deduction is allowed and that taxpayer must bear his misfortune. Burnet v. Houston, 283 U.S. 223, 51 S. Ct. 413 (1931).

As a result of Petitioner's failure to provide information in support of her position, the Tax Commission based its decision upon the information available from other sources. That information showed [Redacted] was not a qualifying child for Petitioner, but rather, for someone else. That being the case, [Redacted] also was not a qualifying relative for Petitioner. (IRC section 152(d)(1).) Therefore, Petitioner cannot claim [Redacted] as a dependent for taxable year 2012. And because Petitioner cannot claim the dependent exemption, Petitioner cannot claim the additional grocery credit per Idaho Code section 63-3024A.

THEREFORE, the Notice of Deficiency Determination dated August 16, 2012, and directed to [Redacted] is AFFIRMED.

Because Taxpayer Accounting reduced the refund Petitioner claimed on her original income tax filing, no DEMAND for payment is needed.

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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