BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of	)	
	)	DOCKET NO. 25797
[Redacted],	)	
	)	
Petitioners.	)	DECISION
	)	

[Redacted] and [Redacted] (Petitioners) protested the Notice of Deficiency Determination issued by the staff of the Revenue Operations Division of the Idaho State Tax Commission dated June 26, 2013, wherein Petitioners' refund was reduced by the total amount of $351. Petitioners disagreed they could not claim the dependent exemption deduction claimed for [Redacted]. Petitioners failed to respond to the Tax Commission's hearing rights letter and have provided nothing further for the Tax Commission to consider. The Tax Commission, having reviewed the file, hereby issues its decision.

BACKGROUND

Petitioners timely filed their 2012 Idaho individual income tax return claiming a dependent exemption deduction for [Redacted]. During the processing of Petitioners' return, the Taxpayer Accounting Section (Taxpayer Accounting) found that [Redacted] was claimed as a dependent on another income tax return. Taxpayer Accounting requested additional information from Petitioners in the form of a questionnaire. Petitioners responded with the following information: [Redacted] is [Redacted] father, [Redacted] is the custodial parent, Petitioners provided over half of [Redacted] support, and [Redacted] lived with Petitioners per [Redacted] divorce decree except for a "temporary displacement." Petitioners also provided a copy of [Redacted] divorce decree. Taxpayer Accounting reviewed the information available and determined Petitioners were not entitled to the dependent exemption.

Taxpayer Accounting sent Petitioners a tax correction letter, which Petitioners protested. Petitioners stated [Redacted] has a legal right to [Redacted] dependent exemption. Petitioners stated [Redacted] did not sign any waiver that would allow [Redacted] mother to claim [Redacted]. Petitioners provided another copy of [Redacted] Modifying Decree of Divorce and Subsequent Orders in support of their position.

Taxpayer Accounting reviewed the information and sent the matter for administrative review. The Tax Commission reviewed the matter and sent Petitioners a letter that discussed the methods available for redetermining a protested Notice of Deficiency Determination. Petitioners failed to respond to the Tax Commission's letter, 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 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, and 4) has not provided over one-half of the individual's own support 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).

To claim a dependent exemption for [Redacted], Petitioners must show that [Redacted]was either a qualifying child or a qualifying relative. Petitioners stated [Redacted]lived with them in accordance with [Redacted] divorce decree, except for a "temporary displacement." Information provided by the other individual claiming [Redacted] as a dependent shows that the temporary displacement was a restraining or protection order placed upon [Redacted] in regards to [Redacted]. The protection orders began in January 2012 and ran through March 15, 2012. During this time, and subsequent to it, the other individual claims to have had full custody of [Redacted].

Petitioners' basis for claiming [Redacted] as a dependent relies solely upon the language of [Redacted] divorce decree. However, Petitioners failed to provide any additional information or documentation to show [Redacted] lived with them for over half the taxable year. Even though [Redacted] was named as the parent having primary residential custody in the 2006 Order Modifying Decree of Divorce, situations change, as evidenced by the protection orders, which can cause a change in who is the custodial parent. Since Petitioners failed to show that [Redacted] was still the custodial parent in 2012, the Tax Commission is not inclined to recognize [Redacted] as the custodial parent in 2012 based upon the evidence available. Therefore, [Redacted] cannot be a qualifying child for Petitioners because Petitioners have not shown that [Redacted] principal place of abode was with them for more than one-half the taxable year. IRC section 152(c)(1)(B).

Since Petitioners were not found to be the custodial parent, it is assumed [Redacted] lived with his mother and therefore was a qualifying child for her. This being the case, [Redacted] could not be a qualifying relative for Petitioners for 2012. IRC section 152(d)(1)(D). In addition, Petitioners did not show that they provided over one-half of [Redacted] support for the taxable year. IRC section (d)(1)(C).

CONCLUSION

Petitioners failed to establish that [Redacted] was either a qualifying child or a qualifying relative for purposes of IRC section 152. Therefore, the Tax Commission finds that Petitioners are not entitled to a dependent exemption deduction for [Redacted] for taxable year 2012. And, since Petitioners are not entitled to the dependent exemption, Petitioners cannot claim an additional grocery credit for [Redacted]per Idaho Code section 63-3024A.

THEREFORE, the Notice of Deficiency Determination dated June 26, 2013, and directed to [Redacted] and [Redacted] is hereby APPROVED.

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

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.

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