

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 25799
[Redacted],)	
)	
Petitioners.)	DECISION
_____)	

[Redacted] and [Redacted] (Petitioners) protested the Notice of Deficiency Determination dated June 27, 2013, asserting additional income tax in the total amount of \$328.66 for taxable year 2012. Petitioners disagreed with the adjustment disallowing the dependent exemption deduction claimed for [Redacted]. The Tax Commission, having reviewed the file, hereby issues its decision.

FACTS

Petitioners timely filed their 2012 Idaho individual income tax return. During the processing of Petitioners' return, the Taxpayer Accounting Section (Taxpayer Accounting) found that another taxpayer claimed a dependent exemption deduction for [Redacted]. Taxpayer Accounting sent Petitioners a letter requesting information to support the dependent exemption claimed. Petitioners did not respond, so Taxpayer Accounting sent Petitioners a letter explaining that a change had been made to their 2012 Idaho individual income tax return. Petitioners responded that they disagreed and provided a copy of [Redacted] PETITION TO MODIFY CHILD SUPPORT dated October 18, 2007. Petitioners stated this document proves they are entitled to claim the dependent exemption deduction for [Redacted].

Taxpayer Accounting reviewed Petitioners' documentation, but was not persuaded that Petitioners were entitled to the dependent exemption deduction. Taxpayer Accounting sent

Petitioners a Notice of Deficiency Determination and referred 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 requested a telephone hearing which was held on November 5, 2013. In the hearing, Petitioners stated [Redacted] generally lived with them all summer, up to one week before school started. Petitioners also stated [Redacted] stayed with them every other holiday. When it was explained that [Redacted] petition to modify child support was not an acceptable substitute for a Form 8332 - Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent, Petitioners stated they had a Form 8332. Petitioners stated that on two separate occasions they got signed Forms 8332 from the custodial parent. The last Form 8332 was for all future years. The Tax Commission asked Petitioners to send in a copy of the Form 8332 releasing all future years. Petitioners stated they would send the form in the next couple of days.

Petitioners failed to provide the requested form, so the Tax Commission reviewed the matter and issued its decision 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).

Petitioners' argument centers on a petition to modify [Redacted] child support, which awarded him the dependent exemptions for [Redacted] and [Redacted]. In essence Petitioners are claiming this document is an equivalent document to federal Form 8332 releasing the dependent exemption to them.

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.

[Redacted] petition is lacking in several areas. The petition does not specify the year or years, it does not state the custodial parent will not claim the dependent exemption, the document's sole purpose is not the release of the dependent exemption, and the custodial parent is not properly identified, nor did she sign the document. Consequently, the petition is not acceptable as a release of the dependent exemption. Therefore, because Petitioners have not provided a valid release of the dependent exemption from the custodial parent, the determination of whether Petitioners can claim [Redacted] as a dependent reverts to IRC section 152(a).

Since a dependent is either a qualifying child or a qualifying relative, Petitioners must show that [Redacted] was one or the other. Petitioners stated [Redacted] only lived with them during the summer and every other holiday. This being the case, [Redacted] cannot be a qualifying child because [Redacted] principal place of abode was not with Petitioners. And since [Redacted] did not live with Petitioners for more than one-half the taxable year, the presumption is that [Redacted] lived with his mother and was a qualifying child for her. As a result, [Redacted] cannot be a qualifying relative for Petitioners (IRC section 152(d)(1)(D)). [Redacted] does not meet the requirements of a dependent for Petitioners for taxable year 2012.

CONCLUSION

Because [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 [Redacted] for taxable year 2012. And, because Petitioners are not entitled to the dependent exemption, Petitioners cannot claim the additional grocery credit for [Redacted] per Idaho Code section 63-3024A.

THEREFORE, the Notice of Deficiency Determination dated June 27, 2013, and directed to [Redacted] and [Redacted] is AFFIRMED.

It is ORDERED that Petitioners pay the following tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2012	\$325.00	\$8.22	\$333.22
		LESS REFUND OFFSET	(\$333.22)
		BALANCE DUE	<u>\$ 0</u>

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.
