

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

In the Matter of the Protest of )  
[Redacted], ) DOCKET NO. 25940  
Petitioner. )  
DECISION  
\_\_\_\_\_ )

[Redacted] (Petitioner) protested the Notice of Deficiency Determination dated August 6, 2013, proposing additional income tax for taxable year 2012 in the total amount of \$150. Petitioner disagreed that she could not claim [Redacted] as a dependent and receive the dependent exemption deduction for her. The Tax Commission, having reviewed the file, hereby issues its decision.

**BACKGROUND**

Petitioner timely filed her 2012 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 stated she faxed the questionnaire back to Taxpayer Accounting, but it is unclear whether the fax was received by Taxpayer Accounting. Nevertheless, Taxpayer Accounting determined Petitioner was not entitled to the dependent exemption and sent Petitioner a tax correction notice. Petitioner did not respond, so the matter was transferred for collection wherein a Notice of Deficiency Determination was sent to Petitioner.

Petitioner protested, stating she responded to Taxpayer Accounting’s questionnaire and she provided a copy of her divorce decree that stated she could claim [Redacted] as a dependent. Petitioner sent another copy of her divorce decree and a copy of Taxpayer Accounting’s

questionnaire. The matter was referred back to Taxpayer Accounting, who acknowledged Petitioner's protest and further 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 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 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.

Petitioner's responses to Taxpayer Accounting's questionnaire stated that [Redacted] was Petitioner's daughter, Petitioner shared custody of [Redacted], [Redacted] did not live with Petitioner during the taxable year, Petitioner did not provide over half of [Redacted] support for the taxable year, and Petitioner did not have a signed Form 8332 releasing the dependent exemption deduction to her.

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).

Petitioner argued her divorce document allows her the dependent exemption, which, in essence, Petitioner is claiming the divorce document is equivalent to federal Form 8332 releasing the dependent exemption to her.

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 divorce decree, in addition to not being allowed on its face, is lacking in several areas. The decree 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. Consequently, Petitioner's divorce decree is not acceptable as a release of the dependent exemption. Therefore, because Petitioner has not provided a valid 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).

Since a dependent is either a qualifying child or a qualifying relative, Petitioner must show that [Redacted] was one or the other. Petitioner stated in her response to Taxpayer Accounting's questionnaire that [Redacted] did not live with her in 2012. This being the case, [Redacted] cannot be a qualifying child because her principal place of abode was not with Petitioner. And, since [Redacted] did not live with Petitioner, the presumption is that she lived with the custodial parent and was a qualifying child for him. 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 2012.

## CONCLUSION

Petitioner argued her divorce decree enabled her to claim the dependent exemption deduction for her daughter. Dependent exemption deductions are allowed as a deduction from adjusted gross income by IRC section 151, not by divorce decrees or court orders. 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 does

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 2012. 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 August 6, 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	\$150	\$9	\$159

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

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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