

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 25950
[Redacted],)	
)	
Petitioners.)	DECISION
_____)	

[Redacted] and [Redacted] (Petitioners) protested the Notice of Deficiency Determination dated September 6, 2013, proposing additional income tax and interest for taxable year 2012 in the total amount of \$352.47. Petitioners disagreed that [Redacted] 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

Petitioners timely filed their 2012 Idaho individual income tax return. During processing, Petitioners' return was identified as one of two Idaho individual income tax returns that claimed [Redacted] as a dependent. To determine who can claim [Redacted] as a dependent, the Taxpayer Accounting Section (Taxpayer Accounting) requested information from Petitioners in the form of a questionnaire. Petitioners responded to Taxpayer Accounting's questionnaire, stating that [Redacted] was [Redacted] father, he was not the custodial parent, [Redacted] lived with them 160 days during the taxable year, he did provide over half of [Redacted] support for the taxable year, and Form 8332 was not applicable because of [Redacted] child custody agreement. In essence, Petitioners were relying on the child custody agreement to allow them to claim [Redacted] as a dependent for tax purposes.

Taxpayer Accounting reviewed the information, determined Petitioners were not entitled to the dependent exemption deduction, corrected Petitioners 2012 Idaho income tax return, and

sent Petitioners a Notice of Deficiency Determination. Petitioners protested, stating again that the child custody agreement between [Redacted] and [Redacted]mother gave him the right to claim [Redacted] dependent exemption deduction. 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. Petitioners 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.

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 child custody agreement, wherein [Redacted] was awarded the dependent exemption. In essence, Petitioners are claiming the child custody agreement is equivalent 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. (Underlining added.)

[Redacted] child custody agreement is lacking in several areas. The agreement 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, nor are the custodial and the noncustodial parents properly identified. Consequently, the agreement 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 in their response to Taxpayer Accounting's questionnaire that [Redacted] only lived with them for 160 days in 2012. This being the case, [Redacted] cannot be a qualifying child because her principal place of abode was not with Petitioners. And since [Redacted] did not live with Petitioners, the presumption is that she lived with her 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

Petitioners argued the child custody agreement enabled them to claim the dependent exemption deduction for [Redacted]. Petitioners' reliance on the agreement 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] 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 September 6, 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	\$351	\$1.47	\$352.47
		AMOUNT PAID	(<u>352.47</u>)
		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.
