

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 31116
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

On February 7, 2014, the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayer) proposing additional tax, penalty, and interest for taxable year 2012 in the total amount of \$422.19.

The sole issue for this decision is whether the taxpayer is entitled to a dependency exemption deduction for [Redacted], his child from a prior relationship. As part of his appeal, the taxpayer provided an Order of Filiation and Judgment issued by the [Redacted] Judicial District Court of Idaho on June 13, 1997. The document states that the taxpayer will receive the tax exemption for the minor child.

The taxpayer responded by telephone to a letter outlining his alternatives for redetermining a protested NODD but did not request a hearing. The facts of the case and the applicable law pertaining to dependency deductions were discussed with the taxpayer in the brief telephone call. The taxpayer requested additional time in which to contact [Redacted] other parent and possibly obtain a signed Form 8332. A follow-up letter was sent to the taxpayer but no response was received, and to date, no additional documentation has been submitted for the Commission's consideration. Therefore, the Commission, having reviewed the file, hereby issues its decision.

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, 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).

The taxpayer's argument centers on the court document that awarded him the dependent exemption for [Redacted]. In essence, the taxpayer is claiming the court document is an equivalent document to federal Form 8332 releasing the dependent exemption to him.

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 taxpayer provided a copy of his 1997 Order of Filiation and Judgment that states he is entitled to the dependent exemption for his minor child. However, this is where the conformity to Form 8332 ends. The Order does not specify the year or years, it does not state the custodial parent will not claim the dependent exemption, and the custodial parent is not properly identified nor did she sign the document. Consequently, the Order is not acceptable a release of the dependent exemption. Because the taxpayer has not provided a valid release of the dependent exemption from the custodial parent, the determination of whether the taxpayer can claim [Redacted] as a dependent reverts to IRC section 152(a).

Since a dependent is either a qualifying child or a qualifying relative, the taxpayer must show that [Redacted] was one or the other. The taxpayer did not respond to a questionnaire that asked how many days [Redacted] lived with him during taxable year 2012. He has provided no documentation for consideration other than the Order and a statement from his tax preparer, none of which state [Redacted] spent any days with the taxpayer in taxable year 2012. This being the case, [Redacted] would not be the taxpayer's qualifying child because his principal place of abode was not with the taxpayer. And, since [Redacted] did not live with the taxpayer, the presumption is that he lived with his mother and was a qualifying child for his mother. As a

result, [Redacted] cannot be a qualifying relative for the taxpayer (IRC section 152(d)(1)(D)). [Redacted] does not meet the requirements of a dependent for the taxpayer for taxable year 2012.

Because [Redacted] did not meet the requirements for either a qualifying child or a qualifying relative as defined in IRC section 152, and since the taxpayer does not have a signed release from the custodial parent, the Commission finds that the taxpayer is not entitled to the dependent exemption deduction for [Redacted] for taxable year 2012. And, because the taxpayer is not entitled to the dependent exemption, the taxpayer cannot claim the additional grocery credit for [Redacted] per Idaho Code section 63-3024A.

THEREFORE, the NODD directed to [Redacted] dated February 7, 2014, is AFFIRMED.

IT IS ORDERED that the taxpayer pay the following tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>CREDITS</u>	<u>TOTAL</u>
2011	\$999	\$61.08	\$20	\$(648)	\$432.08

Interest is calculated through October 31, 2014.

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

An explanation of the taxpayer's 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.
