

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

|                                 |   |                  |
|---------------------------------|---|------------------|
| In the Matter of the Protest of | ) |                  |
|                                 | ) | DOCKET NO. 38904 |
| [Redacted],                     | ) |                  |
|                                 | ) |                  |
| Petitioner.                     | ) | DECISION         |
| _____                           | ) |                  |

[Redacted] (taxpayer) submitted a timely protest of the Notice of Deficiency Determination issued April 25, 2014, by the Revenue Operations Division of the Idaho State Tax Commission (Commission) proposing additional tax and interest of \$415 for taxable year 2013. The taxpayer disagreed with the adjustment disallowing the dependency exemption deduction for [Redacted], his daughter from a previous marriage. The Commission hereby issues its decision based upon the information contained in the file.

**BACKGROUND**

The taxpayer filed his 2013 Idaho individual income tax return claiming a dependency exemption deduction for his daughter, [Redacted]. The taxpayer's return was identified as one of two returns that claimed a dependency exemption deduction for [Redacted]. The Taxpayer Accounting Section (Taxpayer Accounting) requested additional information from the taxpayer in the form of a questionnaire. The taxpayer responded to the questionnaire, stating that he was [Redacted] father. The taxpayer provided an Answer and Counter Petition (Petition) filed February 21, 2014, with the [Redacted] Judicial District Court, stating that the dependent lived with both parties for the first six months of 2013.

Taxpayer Accounting reviewed the information, determined that the taxpayer was not entitled to the dependency exemption deduction, and issued a Notice of Deficiency Determination denying the deduction. The taxpayer filed a timely protest of the Notice of

Deficiency Determination. The file was referred to the Legal/Tax Policy Division for administrative review. The taxpayer was sent a letter explaining the methods available for redetermining a protested Notice of Deficiency Determination.

An informal hearing was held by telephone July 24, 2014. The letter confirming the hearing date was sent with a request for documentation to support the taxpayer's claim he was the custodial parent and had custody of [Redacted] for 249 days. The taxpayer provided documents submitted to the Third Judicial District Court on February 21, 2014. These documents included the first two pages of the Petition and a calendar from July 2013 to December 2013, showing the dates [Redacted] was in his custody. During the hearing, the tax policy specialist explained that since [Redacted] was in the custody of both parents until June 30, 2014 (181 days), custody would be determined based on which parent had custody of [Redacted] for the most nights for the remainder of the year. Since the taxpayer only had custody of [Redacted] 68 of the remaining 184 days of the year (according to the calendar provided), it would be unlikely that the taxpayer was the custodial parent.

The tax policy specialist suggested that the taxpayer review [Redacted] Publication 501, "Exemptions, Standard Deduction, and Filing Information", for the rules custodial and noncustodial parents must use when claiming dependency exemption deductions. He added that if the taxpayer could not be considered the custodial parent, he must provide a Form 8332 signed by the custodial parent to claim the dependency exemption deduction. The taxpayer agreed to discuss the matter with his attorney and, if required, try to obtain the Form 8332 by August 15, 2014. The taxpayer called on the due date to request an extension to August 29, 2014, which was granted. The taxpayer did not provide any additional information or contact the tax policy specialist again.

## LAW AND ANALYSIS

The sole issue for decision is whether the taxpayer is entitled to the dependency exemption deduction for his daughter, [Redacted]. Deductions are granted by legislative action, and the taxpayer bears the burden of proving he is 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). The 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 “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 such taxpayer or of any other taxpayer for the taxable year.

The dependency exemption, as a general rule, is limited under IRC section 152(e)(1) as follows: if the child received over one-half of his support during the calendar year from one or both parents who live apart at all times during the last 6 months of the calendar year and the child is in the custody of one or both parents for more than one-half of the calendar year, then the child is treated as the qualifying child of the noncustodial parent if certain requirements are met.

Under the Treasury Regulations, section 1.152-4(b)(3), the requirements for a release of claim is met if (1) the custodial parent signs a written declaration (in such manner and form as the Secretary may prescribe) identifying the taxable year or years the custodial parent will not claim the child as a dependent; and (2) the noncustodial parent attaches the written declaration to his or her return for each taxable year the exemption is being claimed.

The noncustodial parent may only claim the dependency exemption when the custodial parent provides the noncustodial parent a release of the dependency exemption on Form 8332 or other document whose sole purpose is to serve as a written declaration releasing the dependency exemption. The form must be signed and dated by the custodial parent identifying the year or years that the custodial parent will not claim the dependency exemption. The noncustodial parent receiving the right to claim the dependency exemption must attach the waiver to their tax return, then the waiver will be honored and the noncustodial parent may claim the dependency exemption for the child.

The term “custodial parent” is defined in section 1.152-4(d) as the parent having custody for the greater portion of the calendar year. In the present case, the taxpayer responded to a request for information from the Commission in which he stated he was the custodial parent and that [Redacted] had custody of [Redacted] for 249 days of the taxable year.

In his protest letter, the taxpayer claims [Redacted] lived with both parents until June 30, 2013. Afterwards, she lived with the taxpayer for 68 days for a total of 249 days. Since both parents can count the 181 days prior to July 1, 2013, the determination of which parent is considered the custodial parent would be based on who had custody of the child the most for the remaining six months of the year.

**CONCLUSION**

Rather than prove that the taxpayer was the custodial parent during the tax year, the evidence provided by the taxpayer tended to prove he was the noncustodial parent. Having provided no evidence that he meets the requirements of a custodial parent, the taxpayer must provide a written release on a completed Form 8332 as noncustodial parent in order to claim the dependency exemption. Because he has not provided the required release, it is determined that the taxpayer is not entitled to the dependency exemption deduction.

THEREFORE, the Notice of Deficiency Determination directed to [Redacted] dated April 25, 2014, is AFFIRMED.

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

| <u>YEAR</u> | <u>TAX</u> | <u>INTEREST</u> | <u>TOTAL</u> |
|-------------|------------|-----------------|--------------|
| 2013        | \$412      | \$18            | \$430        |

Interest is calculated through March 31, 2015.

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.

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