

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 38908
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

HISTORY

On April 25, 2014, the Idaho State Tax Commission’s Revenue Operations Division (RO) issued a Notice of Deficiency Determination (NODD) to [Redacted] (Taxpayer), for Idaho individual income tax for taxable years 2011 and 2012. The deficiency was due to RO disallowing the dependent exemption and grocery credit for Taxpayer’s daughter, [Redacted], on Taxpayers’ Idaho Form 40, for taxable years 2011 and 2012.

Taxpayer filed his 2011 and 2012 tax returns, late, on January 13, 2014. RO disallowed the dependent exemption and grocery credit because somebody else had already claimed [Redacted] as a dependent on another tax return. Disallowing the dependent exemption reduced Taxpayer’s refunds by a total of \$502. RO received a letter from Taxpayer on July 16, 2014, stating:

[Redacted] stayed the week at my home every other week, plus Holidays during 2011 and 2012 per the custody agreement. [Redacted] did not reside half of 2011 or 2012 at her grandmother [Redacted] home. She should not have claimed her on taxes. I would like a schedule a hearing for this matter. The custody order states that I am to claim [Redacted] for taxes. She lives with me more than half the time [*sic*].

RO forwarded Taxpayer’s file to the legal department (Legal) for review. Legal called Taxpayer on July 21, 2014, to schedule an informal hearing. During the phone call, Taxpayer changed his story slightly from the previous letter. Instead of saying he had [Redacted] every other week during 2011, as he stated in the letter, he said that from January 01, 2011, through

March 19, 2011, he had [Redacted] every night while [Redacted] mother was in rehab. He said it wasn't until March 22, 2011, that Taxpayer met [Redacted] mother every Sunday at 6PM to exchange the child. After this date they continued to exchange the child every Sunday at 6PM "like clock-work." Taxpayer also said he had [Redacted] every holiday during taxable years 2011 and 2012.

Legal held an in-person, informal hearing with Taxpayer on August 06, 2014. Taxpayer's story changed slightly again. He said that he had [Redacted] every night of taxable year 2011 through September 2012. Taxpayer said he didn't start meeting with [Redacted]mother every Sunday at 6PM until September 2012. Legal asked Taxpayer why his story changed from earlier. He explained that what he meant earlier was that the divorce decree gave the mother the right to have [Redacted]every other week starting March 22, 2011, but the mother did not exercise her right on that date.

At the informal hearing, Taxpayer provided no evidence, except for his word, that [Redacted] was with him over half the year during taxable years 2011 and 2012. Taxpayer said he could mail affidavits from his neighbors to the Tax Commission, supporting that he had [Redacted] over half the year during taxable years 2011 and 2012. He agreed to send these by August 31, 2014. Taxpayer stated neither he, nor [Redacted]mother, signed IRS Form 8332, which allows the custodial parent to release the claim of exemption to the noncustodial parent. As of today's date, no additional information has been provided by Taxpayer.

DISCUSSION

Deductions are a matter of legislative grace and taxpayers bear the burden of proving 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). IRC § 151(c) allows a taxpayer a deduction of the exemption amount for each dependent as defined in IRC § 152.

IRC § 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, and (4) has not provided over one-half of the individual’s own support for the taxable year. IRC § 152(c)(1)-(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 § 152(d)(1) – (2).

IRC § 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 ears, 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 § 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 marriage. See H. Rept. 98432 (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).

Taxpayer's argument rests on his custody agreement. The custody agreement between Taxpayer and [Redacted] mother states that Taxpayer shall be entitled to have [Redacted] every other week. However, the custody agreement falls short of an acceptable declaration by the custodial parent to release the dependent exemption. The custody agreement is not a substitute for IRS Form 8332, which allows the custodial parent to release her right to claim the exemption.

Taxpayer failed to meet his burden of proof to show that [Redacted] spent the night at his house over half the year during taxable years 2011 and 2012. Taxpayer failed to show that he provided over half of [Redacted] support during those years. There is insufficient evidence to show [Redacted] was Taxpayer's qualifying child during taxable years 2011 and 2012.

CONCLUSION

Taxpayer did not meet his burden of proof to show that [Redacted] was his qualifying child, as defined in IRC § 152, during taxable years 2011 and 2012. The Tax Commission finds that Taxpayer is not entitled to the dependent exemption deductions for [Redacted] for taxable years 2011 and 2012. Since Taxpayer is not entitled to the dependent exemption, he cannot claim the additional grocery credit for [Redacted] per Idaho Code § 63-3124A.

THEREFORE, the NODD dated April 25, 2014, and directed to [Redacted], is hereby is APPROVED and MADE FINAL.

Since Taxpayer's refunds for taxable years 2011 and 2012, were reduced by the amount of the additional tax due, no DEMAND for payment is needed or required.

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.
