

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 38950
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

On May 15, 2014, the staff of the Revenue Operations Division of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayer) proposing additional tax and interest for taxable year 2013 in the total amount of \$358.66.

The taxpayer filed a timely appeal and petition for redetermination. The taxpayer requested a telephone conference, but did not respond to a voice mail message or reply to correspondence requesting dates and times in which she was available for the hearing. The Commission, having reviewed the file, hereby issues its decision.

The sole issue for this decision is whether the taxpayer is entitled to a dependency exemption for her daughter, [Redacted].

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.

A child of a taxpayer is generally a dependent of the taxpayer. IRC section 152(e) provides a special rule for divorced parents. 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.

The taxpayer has stated, and the Commission has no information to the contrary, that [Redacted] resided at her residence 261 days in taxable year 2013 and that she is [Redacted] custodial parent. The taxpayer also stated she had signed Form 8332 in 2010 revoking her release of the dependency exemption for 2009 and every year forward. A copy of this Form was provided.

The general instructions for Form 8332, as it pertains to the revocation of release of claim state, in relevant part: "The revocation will be effective no earlier than the tax year following the year in which the custodial parent provides the noncustodial parent with a copy of the revocation, or makes reasonable effort to provide the noncustodial parent with a copy of the revocation." The

instructions further state that the taxpayer must attach a copy of the revocation to their tax return each year the exemption is claimed as a result of the revocation. The taxpayer must also keep for their records a copy of the revocation and evidence of delivery of the notice to the noncustodial parent, or of reasonable efforts to provide actual notice.

In the present case, the copy of the revocation shows a date of January 20, 2010. The earliest tax year the revocation can be effective is taxable year 2011. However, the taxpayer did not include a copy of the revocation with her 2011 return or her 2012 return, nor did she claim a dependent exemption for [Redacted] in those years. For taxable year 2013, the revocation was also not included with the original return, but was provided by the taxpayer as part of her response to a request by Revenue Operations for more information.

The taxpayer, on March 11, 2009, executed Form 8332 releasing her claim to the dependency exemption for [Redacted] for taxable year 2008, and taxable years 2009 through 2020. A copy of Form 8332 revoking the release was apparently completed on January 10, 2010, however, the taxpayer did not include the revocation with her 2013 return, nor is it clear whether or not she notified the noncustodial parent, or even attempted to do so.

Therefore, the Commission finds that the taxpayer is not entitled to a dependency exemption deduction for [Redacted] for taxable year 2013. And since the taxpayer is not entitled to the dependency exemption, the taxpayer cannot claim the additional grocery credit for the child per Idaho Code section 63-3024A.

THEREFORE, the Notice of Deficiency Determination dated May 15, 2014, is APPROVED and MADE FINAL.

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	\$355	\$11	\$366

Interest is calculated through December 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.
