

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 38975
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

[Redacted] (taxpayer) submitted a timely protest of the Notice of Deficiency Determination issued July 23, 2014, by the Revenue Operations Division of the Idaho State Tax Commission (Commission) proposing additional tax and interest of \$260.31 for taxable year 2013. The taxpayer disagreed with the adjustment disallowing the dependency exemption deduction for [Redacted], his son 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 son, [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 Order of Child Support from the Superior Court of [Redacted] for [Redacted] County (Order) dated June 2010, which states that when there is only one dependency exemption deduction available to the parents, the taxpayer will be allowed the deduction on odd numbered years.

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. The taxpayer did not respond.

Prior to writing this decision, the tax policy specialist noted that information was provided by a paid tax preparer, but no power of attorney (POA) was provided. The preparer was contacted and a POA was requested. The POA was received by e-mail October 30, 2014. An informal hearing was held by telephone with the taxpayer's representative on November 3, 2014.

At the hearing, the procedure that is followed by the Commission to determine which divorced or separated parent may claim the dependency exemption deduction for their qualifying child, was discussed. The tax policy specialist referred the taxpayer's representative to the Internal Revenue Service (IRS) Publication 501 for more information. The representative said that the taxpayer would provide a properly completed Form 8332 by November 7, 2014. The form was not received.

LAW AND ANALYSIS

The sole issue for decision is whether the taxpayer is entitled to the dependency exemption deduction for his son, [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.

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 with whom the child resides for the greater portion of the calendar year. In the present case, the taxpayer did not claim to be the custodial parent. He claimed the Order allocated the dependency exemption deduction for [Redacted] when filing income tax returns for odd numbered years. Since the Order does not meet the requirements of a dependency exemption deduction release, the taxpayer must provide the Form 8332 properly completed to claim the deduction.

CONCLUSION

The taxpayer did not claim to be the custodial parent. The Commission agrees. The taxpayer must provide a written release on a completed Form 8332, as noncustodial parent, in order to claim the dependency exemption deduction. 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 July 23, 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	\$255	\$11	\$266

Interest is calculated through April 30, 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.