

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

In the Matter of the Protest of )  
[Redacted], ) DOCKET NO. 38977  
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 )  
Petitioner. ) DECISION  
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\_\_\_\_\_ )

[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 \$179 for taxable year 2013. The taxpayer disagreed with the adjustments disallowing the dependent exemption deduction for [Redacted], [Redacted] 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 and claimed a dependent exemption deduction for his daughter, [Redacted]. The taxpayer’s return was identified as one of two returns that claimed a dependent 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 and he was awarded his daughter’s dependency exemption deduction based on “a divorce decree modification finalized in tax year 2013”.

Taxpayer Accounting reviewed the information and issued a Notice of Deficiency Determination denying the deduction after the staff determined that the taxpayer was not entitled to the dependency exemption 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 requested an informal hearing by telephone, which was held September 4, 2014. The requirements for a noncustodial parent to claim a dependent exemption were discussed. The taxpayer did not have the Form 8332 when the dependency exemption was claimed. During the hearing he said he would ask the custodial parent to sign it and submit it by Oct. 1, 2014. The form was never received and there was no further communication from the taxpayer.

### **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 deduction 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. IRC section 152(d)(1) and (2).

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 are 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 does not claim to be the custodial parent and must follow the rules for the noncustodial parent. IRC section 152(e) gives the instruction for the noncustodial parent when claiming the dependent exemption deduction. This means that the noncustodial parent may only claim the dependency exemption deduction using a Form 8332 or an alternate method of written declaration signed by the custodial parent releasing the claim to the dependency exemption deduction. The divorce decree completed in 2013 cannot be used to release the dependency exemption deduction because it does not qualify as a written declaration according to the Treasury Regulation section 1.152-4(e)(5).

### **CONCLUSION**

According to information provided by the taxpayer, he was not [Redacted] custodial parent in 2013, and the commission agrees with the taxpayer. He did not provide the required dependency exemption deduction release form signed by the custodial parent to claim the dependency exemption deduction for his daughter. 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	\$176	\$7	\$183

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

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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.