

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 38999
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

[Redacted] (taxpayer) submitted a timely protest of the Notice of Deficiency Determination issued July 30, 2014, by the Revenue Operations Division of the Idaho State Tax Commission (Commission) proposing additional tax and interest of \$374.80 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 custodial parent, and [Redacted] lived with him 310 days. A Marital Settlement Agreement (Agreement) signed and notarized by both parents with an effective date of November 13, 2013, states that the taxpayer “shall be entitled to claim the state and federal tax dependency exemption for the Children each year, so long as he is then current in his obligation of child support. In such event, (mother) will sign an [Redacted] form 8332 upon presentment.”

In the protest letter, the taxpayer states that his daughter left with her mother, moving to another residence on November 4, 2013. [Redacted] lived with her mother for the remainder of the year.

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 October 31, 2014. The taxpayer stated that the Agreement stated that he was allowed the dependency exemption for both children. The tax policy specialist stated that the Agreement required that the custodial parent provide him with the [Redacted] Form 8332. That was all that was required in order for the Commission to allow him the dependency exemption deduction for [Redacted], since the exemption for the other child was not contested. The taxpayer did not believe that he should be required to submit additional records. At the end of the hearing, the taxpayer requested that the Commission issue a decision.

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.

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 responded to a request for information from the Commission in which he stated he had custody of [Redacted] for 310 days. In his protest letter, the taxpayer states that both parents had custody of [Redacted] until November 4, 2013. At that time, the mother established a separate residence and [Redacted] remained in her custody.

Since both parents can count the 308 days up to November 4, 2013, the determination of which parent is considered the custodial parent would be determined by who had custody of the child the most for the remaining 57 days of the year. The taxpayer states that he only had custody of [Redacted] for 2 more days and the mother had custody for the remainder. Since the taxpayer did not have custody of [Redacted] for more of the remaining 57 days than the mother, he cannot be her custodial parent.

The Agreement states that the taxpayer may get the [Redacted] Form 8332 under certain circumstances. He has not provided the form to the Commission.

CONCLUSION

The evidence provided by the taxpayer demonstrates he was the noncustodial parent. Since he has not provided 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 July 30, 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	\$368	\$15	\$383

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.
