

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],) DOCKET NO. 39001
)
)
Petitioners.) DECISION
)
_____)

[Redacted] and [Redacted] (taxpayers) 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 \$377.32 for taxable year 2013. The taxpayers disagreed with the adjustment disallowing the dependency exemption deduction for [Redacted], [Redacted] son. The Commission hereby issues its decision based upon the information contained in the file.

BACKGROUND

The taxpayers filed their 2013 Idaho individual income tax return claiming a dependency exemption deduction for [Redacted]son. The taxpayers’ 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 taxpayers in the form of a questionnaire. The taxpayers responded to the questionnaire, stating that [Redacted] was [Redacted]father, that his son did not spend any days with the taxpayers, but the taxpayers did have an [Redacted] Form 8332, “Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent”. The taxpayers also assert that they are allowed to claim the dependency exemption deduction for [Redacted] because it is assigned to [Redacted] by the Order Modifying Child Support (Order) issued by the [Redacted] Judicial District on December 10, 2008.

Taxpayer Accounting issued a Notice of Deficiency Determination denying the deduction after reviewing the information in the file and determining that the taxpayers were not entitled to the dependency exemption deduction. The taxpayers filed a timely protest of the Notice of Deficiency Determination. The file was referred to the Legal/Tax Policy Division for administrative review. The taxpayers were sent a letter explaining the methods available for redetermining a protested Notice of Deficiency Determination. The taxpayers responded and a hearing was held December 19, 2014. [Redacted] confirmed he was not the custodial parent. He did not have a Form 8332, but felt that the Order gave him the right to claim the dependency exemption for his son.

LAW AND ANALYSIS

The sole issue for decision is whether the taxpayers are entitled to the dependency exemption deduction for [Redacted] son. Deductions are granted by legislative action and the taxpayers bear the burden of proving they are 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 taxpayers a deduction of the exemption amount for each dependent as defined in IRC section 152.

A dependent is defined as either “a qualifying child” or “qualifying relative” in IRC section 152(a). 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 (in other words, the dependent has not provided more than half of his own support), 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 taxpayers,
- (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 release 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. When the noncustodial parent attaches the release to his tax return, then 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, [Redacted] does not

claim to be the custodial parent. The taxpayers claim to have the Form 8332 in their possession, but have not provided it to the Commission.

CONCLUSION

The taxpayers did not claim that [Redacted] was the custodial parent. The Commission agrees. The taxpayers must provide a written release on a completed Form 8332 as noncustodial parent in order to claim the dependency exemption. Because the taxpayers have not provided the required release, it is determined that the taxpayers are not entitled to the dependency exemption deduction.

THEREFORE, the Notice of Deficiency Determination directed to [Redacted] and [Redacted] dated July 30, 2014, is AFFIRMED.

IT IS ORDERED that the taxpayers pay the following tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2013	\$377	\$15	\$392

Interest is calculated through April 30, 2015.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayers' 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.
