

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],) DOCKET NO. 39036
)
)
Petitioner.) DECISION
)
_____)

[Redacted] (taxpayer) submitted a timely protest of the Notice of Deficiency Determination issued August 15, 2014, by the Revenue Operations Division of the Idaho State Tax Commission (Commission) reducing the taxpayer’s refund by \$539 for taxable year 2013. The taxpayer disagreed with the adjustment disallowing the dependency exemption deductions for [Redacted] and [Redacted], his children 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 dependency exemption deductions for his children. The taxpayer’s return was identified as one of two returns that claimed dependency exemption deductions for [Redacted] and [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 the father of [Redacted] and [Redacted]. The taxpayer provided a Decree Modifying Child Support (Decree) filed with the [Redacted] District Court on April 12, 2013, which assigned the dependency exemption deductions to the taxpayer.

Taxpayer Accounting reviewed the information, determined that the taxpayer was not entitled to the dependency exemption deductions, and issued a Notice of Deficiency Determination denying the deductions. 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.

In response, the taxpayer replied by mail that the dependency exemption deductions were “granted by the court.” He reiterates that this information was provided to the Commission several times and complains that, “I feel the past communications have been computer default-type responses and haven’t felt this has actually been reviewed.” The taxpayer adds, “Your attention to correcting this matter and processing my return properly is respectfully requested.” While the taxpayer does not ask for an immediate decision, based on the tone of the letter, the tax policy specialist felt that the taxpayer’s intent was to request this decision be made as expeditiously as possible.

LAW AND ANALYSIS

The sole issue for decision is whether the taxpayer is entitled to the dependency exemption deductions for his children. 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 was the noncustodial parent and that he does not have the Form 8332, but refers to the Decree as authority to claim the dependency exemption deductions. The Decree does not meet the requirements of Treasury Regulation 1.152-4(e)(1) and (e)(5) so is not in effect. See Treasury Regulation 1.152-4(e)(4).

CONCLUSION

The taxpayer claims he is the noncustodial parent. The Commission agrees. The taxpayer has not provided a properly 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 deductions.

THEREFORE, the Notice of Deficiency Determination directed to [Redacted] dated August 15, 2014, is AFFIRMED.

Since the taxpayer’s refund was reduced, no demand for payment is made or necessary.

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.
