

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 39043
[Redacted],)	
)	
Petitioners.)	DECISION
_____)	

[Redacted] and [Redacted] (taxpayers) 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) proposing additional tax and interest of \$610.47 for taxable year 2013. The taxpayers disagreed with the adjustment disallowing the dependency exemption deductions for [Redacted], and [Redacted], [Redacted] children from a previous marriage. 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 dependency exemption deductions for [Redacted] children: [Redacted], and [Redacted]. The taxpayers' return was identified as one of two returns in which dependency exemption deductions for [Redacted], and [Redacted] were claimed. 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 the children's father. [Redacted] claimed status as the custodial parent and the children had spent 178 days with the taxpayers. The taxpayers provided: a page of a temporary order in which no court is identified or date is given; child support documents possibly submitted to the Third Judicial District Court

with an October 30, 2013, preparation date; and an incomplete Child Support Order Transmittal Form.

Taxpayer Accounting reviewed the information, determined that the taxpayers were not entitled to the dependency exemption deductions, and issued a Notice of Deficiency Determination denying the deductions. 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 did not respond.

LAW AND ANALYSIS

The sole issue for decision is whether the taxpayers are entitled to the dependency exemption deductions for [Redacted] children. Deductions are granted by legislative action and the taxpayers bear the burden of proving they are 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 taxpayers 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 taxpayers, (2) has the same principal place of abode as the taxpayers 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 taxpayers, (2) whose gross income for the taxable year is less than the exemption amount, (3) with respect to whom the taxpayers provide over one-half of the individual's support for the taxable year, and (4) who is not a qualifying child of such taxpayers or of any other taxpayers 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 taxpayers responded to a request for information from the Commission stating that [Redacted] is the custodial parent and that his children lived with him 178 days. The taxpayers also reference the temporary order which gives [Redacted] physical custody of his children. To qualify as a custodial parent in 2013, the custodial parent would have had the children living with them for 183 of the 365 days of the year. Since the taxpayers did not claim that the children lived with [Redacted] the required number of days, he has not met the requirement of the custodial parent. The taxpayers must obtain a release from the custodial parent in order to claim the deductions.

CONCLUSION

The evidence provided by the taxpayers demonstrates [Redacted] was the noncustodial parent. Since the taxpayers have not provided evidence that [Redacted] meets the requirements of a custodial parent, the taxpayers must provide a written release on a completed Form 8332 as noncustodial parent in order to claim the dependency exemptions. Because they did not provide the required release, it is determined that the taxpayers are not entitled to the dependency exemption deductions.

THEREFORE, the Notice of Deficiency Determination directed to [Redacted] and [Redacted] dated August 15, 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	\$595	\$27	\$622

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.