

54 S. Ct. 788, 78 L.Ed. 1348 (1934). 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 a “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. IRC section 152(c)(1).

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 the taxpayer or of any other taxpayer for the taxable year. IRC section 152(d)(1).

IRC section 152(e) provides a special rule for parents who are divorced or who do not live together. It states in pertinent part:

(1) In general.

Notwithstanding subsection (c)(1)(B), (c)(4), or (d)(1)(C), if—

(A) a child receives over one-half of the child's support during the calendar year from the child's parents—

(i) who are divorced or legally separated under a decree of divorce or separate maintenance,

(ii) who are separated under a written separation agreement, or

(iii) who live apart at all times during the last 6 months of the calendar year, and—

(B) such child is in the custody of 1 or both of the child's parents for more than one-half of the calendar year, such child shall be treated as being the qualifying child or qualifying relative of the noncustodial parent for a calendar year if the requirements described in paragraph (2) or (3) are met.

(2) Exception where custodial parent releases claim to exemption for the year. For purposes of paragraph (1), the requirements described in this paragraph are met with respect to any calendar year if—

(A) the custodial parent signs a written declaration (in such manner and form as the Secretary may by regulations prescribe) that such custodial parent will not claim such child as a dependent for any taxable year beginning in such calendar year, and

(B) the noncustodial parent attaches such written declaration to the noncustodial parent's return for the taxable year beginning during such calendar year.

IRC section 152(e)(2) clearly requires that the custodial parent sign a written declaration releasing the dependency exemption in order for the noncustodial parent to claim the child's dependency exemption.

The control over a child's dependency exemption conferred on the custodial parent by section 152(e)(2) was intended by Congress to simplify the process of determining who is entitled to claim dependency exemptions for children of a marriage. See H. Rept. 98-432 (Part 2), at 1498 (1984). To make section 152(e)(2) work as intended, that control must be preserved by insisting on adherence to the requirements of section 152(e)(2). Simply attaching a State court order that is not signed by the custodial parent to the return of the noncustodial parent does not satisfy the express statutory requirements of section 152(e)(2)(A). Miller v. CIR, 114 T.C. 184, (2000).

The petitioners' argument centers on the court document that awarded [Redacted] the dependent exemption for [Redacted]. In essence, the petitioners are claiming that the court Order is a document equivalent to federal Form 8332 releasing the dependent exemption to them.

Treasury Regulation section 1.152-4(e) states what is necessary in the written declaration of the custodial parent to release the dependent exemption to the noncustodial parent. It states,

(1) Form of declaration.

(i) In general. The written declaration under paragraph (b)(3)(i) of this section must be an unconditional release of the custodial parent's claim to the child as a dependent for the year or years for which the declaration is effective. A declaration is not unconditional if the custodial parent's release of the right to claim the child as a dependent requires the satisfaction of any condition, including the noncustodial parent's meeting of an obligation such as the payment of support. A written declaration must name the noncustodial parent to whom the exemption is released. A

written declaration must specify the year or years for which it is effective. A written declaration that specifies all future years is treated as specifying the first taxable year after the taxable year of execution and all subsequent taxable years.

(ii) Form designated by IRS. A written declaration may be made on Form 8332, Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent, or successor form designated by the IRS. A written declaration not on the form designated by the IRS must conform to the substance of that form and must be a document executed for the sole purpose of serving as a written declaration under this section. A court order or decree or a separation agreement may not serve as a written declaration. (Underlining added.)

The Order provided by the petitioners' states that [Redacted] is entitled to the dependent exemptions for his minor child. However, it does not conform to Form 8332 and one could easily assume that it was never intended to as the Order also references the execution of Form 8332. Because the petitioners have not provided a valid release of the dependent exemption from the custodial parent, the determination of whether the petitioners can claim [Redacted] as dependents reverts to IRC section 152(a).

Since a dependent is either a qualifying child or a qualifying relative, the petitioners must show that [Redacted] were one or the other. In a response to a questionnaire that asked, among other things, how many days the minor children lived with them during taxable year 2014, the petitioners left the question blank. When petitioner was asked if he was the custodial parent, no was written first, then crossed out and a yes response was entered. The petitioners have provided no documentation for consideration other than the Order and a statement from their tax preparer, none of which state [Redacted] spent any days with the petitioners in taxable year 2014. This being the case, [Redacted] would not be the petitioners' qualifying children because their principal place of abode was not with the petitioners. And, since [Redacted] did not live with the petitioners, the presumption is that they lived with their mother and were qualifying children for

their mother. As a result, [Redacted] cannot be qualifying relatives for the petitioners (IRC section 152(d)(1)(D)). [Redacted] do not meet the requirements of a dependent for the petitioners for taxable year 2014.

Because [Redacted] did not meet the requirements for either a qualifying child or a qualifying relative as defined in IRC section 152, and since the petitioners do not have a signed release from the custodial parent, the Commission finds that the petitioners are not entitled to the dependent exemption deductions for [Redacted] for taxable year 2014. And, because the petitioners are not entitled to the dependent exemptions, the petitioners cannot claim the additional grocery credit for [Redacted] per Idaho Code section 63-3024A.

THEREFORE, the NODD directed to [Redacted], dated August 17, 2015, is AFFIRMED.

The petitioners' refund was reduced; therefore, no demand for payment is made or necessary.

An explanation of the petitioners' right to appeal this decision is enclosed.

DATED this _____ day of _____ 2015.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2015, 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.
