

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 25802
[Redacted],	)	
	)	
Petitioner.	)	DECISION
_____	)	

[Redacted] (Petitioner) protested the Notice of Deficiency Determination dated June 27, 2013, proposing additional income tax for taxable year 2011 in the total amount of \$889. Petitioner disagreed that he could not claim dependent exemption deductions for his children [Redacted], [Redacted], and [Redacted]. The Tax Commission, having reviewed the file, hereby issues its decision.

**BACKGROUND**

Petitioner filed his 2011 Idaho individual income tax return on January 11, 2013. During processing, Petitioner’s return was identified as one of two Idaho individual income tax returns that claimed [Redacted], [Redacted], and [Redacted] as dependents. To determine if Petitioner could claim [Redacted], [Redacted], and [Redacted] as dependents, the Taxpayer Accounting Section (Taxpayer Accounting) requested information from Petitioner in the form of a questionnaire. Petitioner responded to Taxpayer Accounting’s questionnaire, stating that [Redacted], [Redacted], and [Redacted] were his children, he was the custodial parent, they lived with him in May 2011, he did provide over half of their support for the taxable year, and that Form 8332 was either not applicable or not available (N/A). Petitioner also provided copies of a Stipulation Modifying Decree, an Order Modifying Decree, and school records for [Redacted] and [Redacted] [Redacted].

Taxpayer Accounting reviewed the information, determined Petitioner was not entitled to the dependent exemption deductions, corrected Petitioner's 2011 Idaho income tax return, and sent Petitioner a letter that his 2011 Idaho income tax return was adjusted, disallowing the dependent exemption deductions. Petitioner protested, stating that he had a valid court order that stated he could claim his three children for 2011 and all future years. Petitioner stated he has had custody of his children since May 2011 and the court order was finalized in November 2011. Petitioner stated the court order is clear that he is allowed the dependent deductions.

Taxpayer Accounting acknowledged Petitioner's protest, sent Petitioner a Notice of Deficiency Determination, and referred the matter for administrative review. The Tax Commission reviewed the matter and sent Petitioner a letter that discussed Petitioner's options for re-determining a protested Notice of Deficiency Determination. Petitioner did not respond. Therefore, the Tax Commission decided the matter based upon the information available.

### **LAW AND ANALYSIS**

Deductions are a matter of legislative grace and taxpayers bear the burden of proving that they are entitled to the deductions claimed. INDOPCO, Inc. v. Commissioner, 503 U.S. 79, 84, (1992); New Colonial Ice Co. v. Helvering, 292 U.S. 435, 440, (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 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) through (3).

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) and (2).

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 dependent exemption in order for the noncustodial parent to claim the child's dependent 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).

Petitioner's argument centers on the modifying order wherein Petitioner took primary custody of his children and was awarded the dependent exemptions for his three children. In this case, Petitioner stated he had custody of his children since May 2011 and is therefore the custodial parent. So, any Form 8332 releasing the dependent exemptions should have been completed and signed by Petitioner.

In reviewing the information available, Petitioner claimed to have custody of his children since May 2011. The other party claiming the dependent exemptions claimed to have custody of the children for more than 215 days in 2011. Both taxpayers could not have had the children for more than half the year. Since Petitioner failed to respond to the Tax Commission's re-determination letter, the Tax Commission looked to the court documents Petitioner submitted to Taxpayer Accounting. In the court documents, Petitioner was awarded primary custody of the children. However, based upon the dates mentioned in the court order and the date the order was signed, Petitioner's primary custody was at the earliest November 1, 2011, and at the latest December 5, 2011. Although Petitioner may have had custody of his children prior to November 1, 2011, Petitioner provided no evidence or other statements to support that his children lived with him for more than one-half the taxable year.

Therefore, it is the Tax Commission's finding that Petitioner was not the custodial parent and in order for Petitioner to claim the dependent exemptions under IRC section 152(e),

Petitioner needed a signed release of the exemptions from the custodial parent. Since Petitioner did not provide a signed release from the custodial parent, the determination of whether Petitioner can claim his children as dependents reverts to IRC section 152(a).

Since a dependent is either a qualifying child or a qualifying relative, Petitioner must show that his children were one or the other. As determined above, Petitioner was not the custodial parent. This being the case, the children cannot be a qualifying child because their principal place of abode was not with Petitioner. And, since the children lived with their custodial parent, they qualified as a qualifying child for her. As a result, the children cannot be a qualifying relative for Petitioner (IRC section 152(d)(1)(D)). Petitioner's children do not meet the requirements of a dependent for Petitioner for taxable year 2011.

### **CONCLUSION**

Petitioner argued he had custody of his children for more than one-half of taxable year 2011. Petitioner did not provide adequate support for his position. The documentation/information Petitioner provided gave him primary custody of his children as of December 5, 2011. Since Petitioner was the noncustodial parent, Petitioner needed a signed release from the custodial parent to enable him to claim the dependent exemption deductions for his children.

Petitioner's reliance on the court documents stating he can claim the dependent exemption deductions is misplaced. Dependent exemption deductions are allowed as a deduction from adjusted gross income by IRC section 151. Dependents are defined in IRC section 152. Because Petitioner's children did not meet the requirements for either a qualifying child or a qualifying relative as defined in IRC section 152, and since Petitioner does not have a signed release from the custodial parent, the Tax Commission finds that Petitioner is

not entitled to the dependent exemption deductions for [Redacted], [Redacted], and [Redacted] for taxable year 2011. And, because Petitioner is not entitled to the dependent exemptions, Petitioner cannot claim the additional grocery credit for [Redacted], [Redacted], and [Redacted] per Idaho Code section 63-3024A.

THEREFORE, the Notice of Deficiency Determination dated June 27, 2013, and directed to [Redacted], is AFFIRMED.

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

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2011	\$889	\$0	\$889

Since Taxpayer Accounting reduced Petitioner's refund claimed on his Idaho individual income tax return, the additional tax has been paid in full and DEMAND for payment is unnecessary.

An explanation of the Petitioner's 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.  
  
\_\_\_\_\_