

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 39112
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

[Redacted] (taxpayer) submitted a timely protest of the Notice of Deficiency Determination issued October 31, 2014, by the Revenue Operations Division of the Idaho State Tax Commission (Commission) proposing additional tax and interest of \$264.89 for taxable year 2013. The taxpayer disagreed with the adjustment disallowing the dependency exemption deduction for [Redacted], [Redacted], [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 four children. The taxpayer’s return was identified as one of two returns that claimed dependency exemption deductions for the children. The Taxpayer Accounting Section (Taxpayer Accounting) requested additional information from the taxpayer in the form of a questionnaire. The taxpayer did not return the questionnaire. Taxpayer Accounting sent the taxpayer a letter notifying him of the change in tax due as a result of removing the dependency exemption deductions. The taxpayer wrote a protest letter in response, stating that according to the divorce decree he was entitled to claim the dependency exemption deductions for the children. In addition to the protest letter, the taxpayer provided page 13, which he identified as part of the divorce decree. Page 13 states that “the father should be

entitled to claim the parties' minor children as dependents for [Redacted] and state income tax purposes". From the page provided, neither the date of the decree, the parties involved, nor the father could be determined.

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 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. A hearing was requested and held December 15, 2014. The taxpayer stated in the hearing that because of the language of the divorce decree, he should be entitled to claim the dependents on his state income tax return. He did not state in the protest letter or in the hearing how many days the children stayed with him. The tax policy specialist told him that since it appears that he is not the custodial parent, as the non-custodial parent, he must obtain a release from the custodial parent according to the rules outlined in [Redacted] Publication 501. The taxpayer requested time to provide Form 8332, Release of Dependency Exemption Deduction form, but none was provided.

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 the Treasury Regulations section 1.152-4(d) as the parent having custody for the greater portion of the calendar year. In the present case, the taxpayer did not state in the protest letter or in the hearing how many days the children stayed with him. He did not claim to be the custodial parent, but argued the divorce decree allowed him to claim the dependency exemption deductions for his children. As stated above, the noncustodial parent is required by the Treasury Regulations and the Internal Revenue Code to obtain a signed release from the custodial parent. The taxpayer did not provide the required release.

CONCLUSION

The taxpayer is not the custodial parent and must provide a written release on a completed Form 8332 signed by the custodial parent in order to claim the dependency exemption deductions. Because he did not provide 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 October 31, 2014, is AFFIRMED.

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

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2013	\$257	\$12	\$269

Interest is calculated through June 1, 2015.

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

An explanation of the taxpayer'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.
