

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
) DOCKET NO. 39124
[Redacted],)
)
)
) Petitioners.) DECISION
)
_____)

[Redacted] and [Redacted] (taxpayers) 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 \$533.44 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]two children. The taxpayers’ 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 taxpayers in the form of a questionnaire. The taxpayers did not respond.

Taxpayer Accounting sent the taxpayers a letter notifying them of the change in tax due as a result of removing the dependency exemption deductions. The taxpayers protested the tax computation and included the completed questionnaire sent earlier and a Decree of Dissolution of Marriage (Decree) issued by the [Redacted] District Court. There is no legible date on the Decree, however, it refers to actions to be taken beginning in 2002. The decree states that

[Redacted] may claim [Redacted] and another of her children, [Redacted], on taxable years ending in an odd number. She may claim [Redacted] and [Redacted] on taxable years ending in even numbers. On the questionnaire, the taxpayers state that the children were with them more than half the year and they are allowed to claim two children each year according to the Decree. They also state that they pay expenses for the children when the childrens' father is in [Redacted] for two to three weeks out of every month. The protest letter states that the father suggested that they claim [Redacted] and [Redacted], while the father claimed [Redacted].

Taxpayer Accounting issued a Notice of Deficiency Determination based on the tax computation change denying the deduction and forwarded the file 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. There was no response.

LAW AND ANALYSIS

The sole issue for decision is whether the taxpayers are entitled to the dependency exemption deductions for the 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 taxpayers claimed [Redacted] and [Redacted] resided with them for more than half of taxable year 2013. However, they have not provided any documentation to support this claim.

CONCLUSION

The taxpayers have not provided sufficient information to show that [Redacted] was the childrens’ custodial parent in taxable year 2013. Therefore, as the non-custodial parent, a written release on a completed Form 8332, signed by the custodial parent, must be provided in order to claim the dependency exemption deductions. Because they did not provide the required release, it is determined that the taxpayers are not entitled to the dependency exemption deductions for [Redacted] and [Redacted].

THEREFORE, the Notice of Deficiency Determination directed to [Redacted] and [Redacted] dated October 31, 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	\$514	\$28	\$542

Interest is calculated through July 31, 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 _____ 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.
