

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],) DOCKET NO. 39173
)
)
Petitioners.) DECISION
)
_____)

[Redacted] and [Redacted] (taxpayers) submitted a timely protest of the Notice of Deficiency Determination issued December 18, 2014, by the Revenue Operations Division of the Idaho State Tax Commission (Commission), proposing additional tax and interest of \$2,005.74 for taxable year 2013. The taxpayers disagreed with the adjustment disallowing the dependency exemption deduction for [Redacted] daughter, [Redacted]. 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 a dependency exemption deduction for [Redacted] daughter, [Redacted]. The taxpayers' return was identified as one of two returns that claimed a dependency exemption deduction for [Redacted]. The Taxpayer Accounting Section (Taxpayer Accounting) requested additional information from the taxpayers in the form of a questionnaire. When there was no response, Taxpayer Accounting sent the taxpayers a letter notifying them of the change in tax due as a result of removing the dependency exemption deduction. The taxpayers protested the change. In their response, they stated that [Redacted] should be considered their qualifying child because she stayed with them for the first five months of the year, including holidays thereafter, and they provided over half of her support. In addition, [Redacted] has an Order for Custody, Visitation (Order) issued by [Redacted] Judicial District dated June 3, 2011, which states that [Redacted] is allowed to claim

the dependency exemption deduction for [Redacted] on taxable years ending with an odd number.

Taxpayer Accounting reviewed the information, determined that the taxpayers were not entitled to the dependency exemption deduction, and issued a Notice of Deficiency Determination denying the deduction. 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. There was no response.

LAW AND ANALYSIS

The sole issue for decision is whether the taxpayers are entitled to the dependency exemption deduction for [Redacted]. Deductions are granted by legislative action, and the taxpayers bear the burden of proving they are entitled to the deduction 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 the 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 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 Madeline 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 do not claim [Redacted] is the custodial parent. Instead, they are relying on IRC 152(e)(1), claiming they have provided over half of [Redacted] support

and they have a signed, written declaration from the custodial parent. This entitles them to the dependency exemption deduction. Since [Redacted] resided with the taxpayers the first five months of the year, they may have provided over half of her support. However, the Order does not meet the requirements of a written declaration. It does not have the parties signatures. In addition, under Section 6, Income Tax Exemption, “the parent not receiving the exemption(s) shall sign the required [Redacted] form(s) to release the claim to the exemption(s).” Clearly, the intent of the Order was for the custodial parent to release the exemption to the noncustodial parent using Form 8332. The release form, not the Order, would be the noncustodial parent’s proof he could claim the dependency exemption deduction.

CONCLUSION

The taxpayers are not the custodial parents and did not provide the required release, therefore, the Notice of Deficiency Determination directed to [Redacted] and [Redacted] dated December 18, 2014, is AFFIRMED.

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

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>CREDIT</u>	<u>TOTAL</u>
2013	\$2,042	\$71	\$104	(\$160)	\$2,057

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.
