

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 0-089-870-336
[Redacted])	
)	
Petitioner.)	DECISION
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)	

[Redacted] (Petitioner) protested the Tax Computation Change letter issued by the staff of the Revenue Operations Division of the Idaho State Tax Commission dated December 12, 2014. Petitioner disagreed that he could not claim a dependent exemption deduction for his daughter **[Redacted]**. The Tax Commission, having reviewed the file, hereby issues its decision.

BACKGROUND

Petitioner filed his 2013 Idaho individual income tax return claiming a dependent exemption deduction for **[Redacted]**. During the processing of Petitioner's return the Taxpayer Accounting Section (Taxpayer Accounting) found that **[Redacted]** was claimed as a dependent on another individual's income tax return for 2013. Taxpayer Accounting requested additional information from Petitioner in the form of a questionnaire. Petitioner responded with the following information: Petitioner is **[Redacted]**'s father, Petitioner stated he was the custodial parent, **[Redacted]** lived with Petitioner for 246 days in 2013, Petitioner paid over half of **[Redacted]**'s support, and Petitioner did not have a form 8332 as it was not applicable. Petitioner also provided a copy of his divorce decree dated August 1, 2014, and a letter from his representative explaining Petitioner's filing status and the reason for claiming **[Redacted]** as a dependent.

Petitioner's representative stated when a child qualifies as a dependent of two taxpayers the custodial parent is allowed to claim the child. If the child lived with each parent an equal number of nights during the year, the custodial parent is the parent with the higher adjusted gross

income. Petitioner's representative stated Petitioner had the higher adjusted gross income for taxable year 2013.

Taxpayer Accounting reviewed the information Petitioner provided, but was not convinced Petitioner was entitled to the dependent exemption. Therefore, Taxpayer Accounting sent Petitioner a Notice of Deficiency Determination and forwarded the matter for administrative review.

The Tax Commission reviewed the matter and sent Petitioner a letter that discussed the methods available for redetermining a protested Notice of Deficiency Determination. The Tax Commission also asked that Petitioner provide a calendar of days for taxable year 2013 showing the days [Redacted] stayed with him overnight. Petitioner provided the calendar of days and a copy of a temporary custody order issued in January 2014. Petitioner also asked that if any further information was needed, a telephone conference was his preferred method. The Tax Commission reviewed the information Petitioner provided and determined the information provided in Petitioner's calendar of days was sufficient for the Tax Commission to make its decision.

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, 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). 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) 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).

Petitioner stated [Redacted] lived with him for 246 days during taxable year 2013. As such [Redacted] was a qualifying child for Petitioner. However, due to the circumstances of Petitioner's separation and ultimate divorce, [Redacted] was also a qualifying child for [Redacted]'s mother.

IRC section 152(c)(4) provides a special rule when two or more taxpayers can claim the same qualifying child, commonly called the tie-breaker rule. The rule states, in the case where two or more can claim the same qualifying child, the taxpayer who is a parent is first in line for the dependent exemption. If both taxpayers are parents, then the parent with whom the child resided the longest receives the dependent exemption. If the child resides with both parents an equal amount of time, the parent with the highest adjusted gross income gets the dependent exemption.

Petitioner's calendar showed Petitioner lived with [Redacted] and her mother until June 15, 2013, or 166 days. After June 15, 2013, Petitioner's calendar shows [Redacted] lived with Petitioner for 80 days. Petitioner's calendar also showed that [Redacted] lived with her mother for 119 days after June 15, 2013. Therefore, based upon Petitioner's calendar of days, [Redacted] lived

with Petitioner a fewer number of days in 2013 than with her other parent. Consequently, as provided by the tie-breaker rule of IRC section 152(c)(4) Petitioner is not entitled to claim the dependent exemption deduction for [Redacted] for taxable year 2013.

CONCLUSION

Petitioner claimed a dependent exemption deduction for his daughter on his 2013 Idaho individual income tax return. Petitioner provided a calendar of days to show the number of days his daughter stayed with him overnight during the calendar year. Petitioner's calendar did not show that Petitioner's daughter stayed with him for more days than the other parent. As a result, the dependent exemption is not allowed on Petitioner's 2013 individual income tax return.

Since Petitioner is not entitled to the dependent exemption, Petitioner also cannot claim an additional grocery credit for [Redacted] for taxable year 2013 per Idaho Code section 63-3024A.

THEREFORE, the Notice of Deficiency Determination dated June 18, 2015, 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>
2013	\$532	\$51	\$583

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

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

DATED this _____ day of _____ 2016.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2016, 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.
