

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

In the Matter of the Protest of )  
 )  
[REDACTED], ) DOCKET NO. 0-155-078-656  
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 )  
Petitioner. ) DECISION  
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\_\_\_\_\_ )

[Redacted] (Petitioner) protested the Notice of Deficiency Determination dated September 18, 2015, proposing additional income tax for taxable year 2014 in the total amount of \$786.16. Petitioner disagreed that he could not claim his two children, [Redacted], as dependents and receive the dependent exemption deduction for them. The Tax Commission, having reviewed the file, hereby issues its decision.

**BACKGROUND**

Petitioner timely filed his 2014 Idaho individual income tax return. During processing, Petitioner’s return was identified as one of two Idaho individual income tax returns that claimed [Redacted] as dependents. The Taxpayer Accounting Section (Taxpayer Accounting) requested information from Petitioner in the form of a questionnaire. Petitioner responded to the questionnaire. Based on the information provided, Taxpayer Accounting determined he was not entitled to the dependent exemptions and Petitioner was sent a tax correction notice. The Petitioner protested the change in tax and provided a copy of several pages of his divorce decree in support of his entitlement to the dependent exemption deductions. Taxpayer Accounting acknowledged the Petitioner’s protest, a Notice of Deficiency Determination was issued, and the matter was referred for administrative review.

The Tax Commission reviewed the matter and sent Petitioner a letter that discussed Petitioner’s options for redetermining 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). [Redacted] (IRC) § 151(c) allows a taxpayer a deduction of the exemption amount for each dependent as defined in IRC § 152.

IRC § 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 § 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 § 152(d)(1) and (2).

IRC § 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.

Petitioner's responses to Taxpayer Accounting's questionnaire stated that [Redacted] were Petitioner's children, Petitioner was not the custodial parent of [Redacted], [Redacted] lived with Petitioner 90 plus days during the taxable year, Petitioner provided over half of [Redacted] support for the taxable year, and Petitioner did "not yet" have a signed federal Form 8332 releasing the dependent exemption deduction to him.

IRC § 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 argued his divorce document allows him the dependent exemption, which, in essence, Petitioner is claiming the divorce document is equivalent to federal Form 8332 releasing the dependent exemption to him.

Treasury Regulation section 1.152-4(e) states what is necessary in the written declaration of the custodial parent to release the dependent exemption to the noncustodial parent. It states:

(1) Form of declaration.

(i) In general. The written declaration under paragraph (b)(3)(i) of this section must be an unconditional release of the custodial parent's claim to the child as a dependent for the year or years for which the declaration is effective. A declaration is not unconditional if the custodial parent's release of the right to claim the child as a dependent requires the satisfaction of any condition, including the noncustodial parent's meeting of an obligation such as the payment of support. A written declaration must name the noncustodial parent to whom the exemption is released. A written declaration must specify the year or years for which it is effective. A written declaration that specifies all future years is treated as specifying the first taxable year after the taxable year of execution and all subsequent taxable years.

(ii) Form designated by IRS. A written declaration may be made on Form 8332, Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent, or successor form designated by the IRS. A written declaration not on the form designated by the IRS must conform to the substance of that form and must be a document executed for the sole purpose of serving as a written declaration under this section. A court order or decree or a separation agreement may not serve as a written declaration. (Underlining added.)

The divorce decree, or at least the pages of it provided by Petitioner, in addition to not being allowed on its face, is lacking in several areas. The decree does not specify the year or years, it does not state the custodial parent will not claim the dependent exemption and the document's sole purpose is not the release of the dependent exemption. In fact, one could easily assume the decree was never intended to serve as a release of the dependent exemption as it states, "the mother shall be required to execute any necessary IRS forms required to allow the father to claim both children as dependents for income tax purposes..." Consequently, Petitioner's divorce decree is not acceptable as a release of the dependent exemption. Therefore,

because Petitioner has not provided a valid release of the dependent exemption from the custodial parent, the determination of whether Petitioner can claim [Redacted] as dependents reverts to IRC § 152(a).

Since a dependent is either a qualifying child or a qualifying relative, Petitioner must show that [Redacted] were one or the other. Petitioner stated in his response to Taxpayer Accounting's questionnaire that [Redacted] lived with [Redacted] 90 plus days in 2014. This being the case, [Redacted] cannot be a qualifying child because their principal place of abode was not with Petitioner. And, since [Redacted] did not live with Petitioner, the presumption is that they lived with the custodial parent and was a qualifying child for her. As a result, [Redacted] cannot be a qualifying relative for Petitioner (IRC § 152(d)(1)(D)). [Redacted] do not meet the requirements of a dependent for Petitioner for taxable year 2014.

#### **CONCLUSION**

Petitioner argued his divorce decree enabled [Redacted] to claim the dependent exemption deduction for [Redacted]. Dependent exemption deductions are allowed as a deduction from adjusted gross income by IRC § 151, not by divorce decrees or court orders. Dependents are defined in IRC § 152. Because [Redacted] did not meet the requirements for either a qualifying child or a qualifying relative as defined in IRC § 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] for taxable year 2014. And, because Petitioner is not entitled to the dependent exemptions, Petitioner cannot claim the additional grocery credits for [Redacted] per Idaho Code § 63-3024A.

THEREFORE, the Notice of Deficiency Determination dated September 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>
2014	\$764	\$32	\$796

Interest is calculated through May 2, 2016.

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

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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.

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