

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[REDACTED],) DOCKET NO. 0-662-196-224
Petitioner.) DECISION
_____)

[Redacted] (Petitioner) protested the Notice of Deficiency Determination’s issued to him for taxable years 2012, and 2013, both of which resulted from an adjustment disallowing the dependent exemption for his son, [Redacted]. The 2012 Notice of Deficiency Determination (NODD) reduced the amount of refund claimed by the Petitioner in the amount of \$233. The NODD for taxable year 2013 proposed additional tax, penalty and interest in the total amount of \$115.51. The Petitioner has not requested an informal hearing and has not provided any additional information for consideration. The Tax Commission, having reviewed the file, hereby issues its decision.

BACKGROUND

Petitioner filed his 2012 and 2013 Idaho individual income tax returns claiming a dependent exemption deduction for [Redacted]. During the processing of these income tax returns, the Petitioner’s returns were identified as one of two income tax returns that claimed a dependent exemption deduction for [Redacted]. The Taxpayer Accounting Section (Taxpayer Accounting) requested additional information from Petitioner in the form of questionnaires, one for taxable year 2012 and one for taxable year 2013. Petitioner’s response to the questionnaires was the same, that he was [Redacted] father, that he was not [Redacted] custodial parent, that [Redacted] spent 65 days with him during each tax year and that he did not provide over half of [Redacted] support. The Petitioner also included a 2002 Stipulation in Re Child Custody,

Visitation and Child Support (Order) which states that Petitioner will claim the dependent exemption for [Redacted] every year. The Order does not contain both parties' social security numbers, but it is signed by both parties.

Taxpayer Accounting reviewed the information and ultimately determined Petitioner was not entitled to the dependent exemption for [Redacted]. Taxpayer Accounting sent Petitioner a Notice of Deficiency Determination denying the dependent exemption deduction. Petitioner protested the Notice of Deficiency Determination claiming that his court Order entitled him to the dependent exemption deduction.

Taxpayer Accounting referred the matter for administrative review. The Tax Commission sent Petitioner a letter that discussed the methods available for redetermining a protested NODD but Petitioner did not respond.

LAW AND ANALYSIS

Deductions are a matter of legislative grace, and taxpayers bear the burden of proving 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).

In this case, the dependent in question attained 18 years of age before the end of calendar year 2012. Being 18, [Redacted] was considered emancipated in Idaho, and therefore not in the custody of his parents. Therefore, any 'custody agreement' would not be relevant for taxable year 2012 or 2013. The determination of who can claim [Redacted] as a dependent goes back to the general provisions of IRC section 152(c) and (d) as cited above.

The Petitioner has at no time during the appeal process claimed, or provided any documentation to support that [Redacted] resided with them more than one-half of either taxable year, a requirement that must be met in order for [Redacted] to be a qualifying child. (IRC section 152(c)(2).) As for the requirements of a qualifying relative, the Petitioner has stated that he did not provide over one-half of [Redacted] total support for taxable years 2012 and 2013, or that [Redacted] was not a qualifying child of any other taxpayer for the taxable years.

The premise of the Petitioner's appeal is not that he is the custodial parent of [Redacted] for taxable years 2012 and 2013, but rather that he has a court order, which he has followed, and that court order is sufficient to allow him the dependent exemption deduction.

CONCLUSION

The Petitioner's Order, in this case, may very well be considered a release of the dependent exemption by the custodial parent to the noncustodial parent. However, once a child reaches the age of majority, the issue of who is the custodial parent and who is the noncustodial

parent is a moot point. [Redacted] was born July 28, 1994 and reached the age of eighteen in taxable year 2012, at that time he was not in the “custody” of either parent. Therefore, the general provisions of IRC section 152(c) and (d) govern who is entitled to the dependency exemption.

For taxable years 2012 and 2013, the Petitioner has failed to show that [Redacted] met the requirements of either a qualifying child or qualifying relative. As for the requirements of a qualifying child, the Petitioner has not shown that [Redacted] had the same principal place of abode as the Petitioner for the taxable years. As for the requirements of a qualifying relative, the Petitioner has failed to show that he provided over one-half of [Redacted] support for the taxable years or that [Redacted] was not a qualifying child for another taxpayer. Since [Redacted] was neither a qualifying child nor a qualifying relative for Petitioner in 2012 or 2013, Petitioner does not get the benefit of the dependent exemption deduction for [Redacted]. And because Petitioner cannot claim the dependent exemption, Petitioner cannot claim the additional grocery credit for [Redacted] per Idaho Code section 63-3024A.

THEREFORE, the Notice of Deficiency Determination’s dated June 4, 2015, and October 22, 2015, and directed to [Redacted] are AFFIRMED.

The Petitioner was due a refund for taxable year 2012. A portion of this refund was applied to the 2013 liability and the remainder was sent to the Petitioner. Therefore, no DEMAND for payment is made or necessary.

An explanation of the Petitioners’ 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.
