

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
)
 [REDACTED]) DOCKET NO. 0-822-317-056
)
) Petitioner.)
)
) DECISION
)
 _____)

[Redacted] (Petitioner) protested the Notice of Deficiency Determination issued by the staff of the Revenue Operations Division of the Idaho State Tax Commission dated June 24, 2015, asserting additional income tax for taxable years 2013 and 2014 in the total amount of \$290. Petitioner disagreed with the disallowance of the dependent exemption deduction claimed for [Redacted]. Petitioner failed to respond to the Tax Commission’s hearing rights letter and has provided nothing further for the Tax Commission to consider. The Tax Commission, having reviewed the file, hereby issues its decision.

BACKGROUND

Petitioner filed amended Idaho individual income tax returns for taxable years 2013 and 2014. During the processing of Petitioner’s amended returns, the Taxpayer Accounting Section (Taxpayer Accounting) found that Petitioner claimed a dependent exemption that was already claimed on another individual’s income tax returns for 2013 and 2014. Taxpayer Accounting requested additional information from Petitioner in the form of a questionnaire. Petitioner responded with the following information; Petitioner is [Redacted] father, Petitioner stated he was the custodial parent for both years, [Redacted] lived with Petitioner for 60 days in 2013 and for 196 days in 2014, Petitioner paid over half of [Redacted] support, and Petitioner did not need a form 8332, as his divorce decree awarded him the dependent exemption and it was finalized in 2001 before the form was required. Petitioner provided a copy of his divorce decree as support

for his position. Petitioner also stated he shared physical custody, 50/50, with his ex-wife, but since he was deployed to Afghanistan in 2013, he only had [Redacted] 60 days in 2013.

Taxpayer Accounting reviewed all the information pertaining to this dependent exemption and determined Petitioner was not entitled to the dependent exemption. Taxpayer Accounting corrected Petitioner's amended income tax returns and sent Petitioner a notice of tax change letter.

Petitioner disagreed with Taxpayer Accounting's determination. Petitioner stated his divorce awarded him the dependent exemption without any clause. Petitioner also stated that the [Redacted] accepted his amended returns and determined he was entitled to the dependent exemption based upon his divorce decree. Petitioner provided a copy of the [REDACTED] notice changing his original 2014 return to support his position. Taxpayer Accounting reviewed the information, sent Petitioner a Notice of Deficiency Determination, and sent 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. Petitioner failed to respond to the Tax Commission's letter and failed to respond to the follow-up letter the Tax Commission sent. 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, 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] for 60 days during taxable year 2013. Since [Redacted] did not have the same principal place of abode as Petitioner for over half the year,[Redacted] cannot be a qualifying child for Petitioner for taxable year 2013. For taxable year 2014, Petitioner stated [Redacted] him for 196 days. However, [Redacted] mother stated [Redacted] lived with her for over 200 days in 2014. Because there are only 365 days in a calendar year and Petitioner’s divorce decree states the custody is equally shared, the Tax Commission decided to look to the tie breaker rules of IRC section 152. Those rules state, in the case where two or more can claim the same qualifying child, the taxpayer who can claim the dependent exemption is first a parent, and if both are parents, then the parent with whom the child resided the longest, or if the child resided an equal amount of time, the parent with the highest adjusted gross income. Since

both individuals are parents and both claimed [Redacted] lived with them for more than half the year, the Tax Commission's assumption is that Petitioner and his ex-wife abided by their divorce decree regarding the provision that they share custody 50/50. Therefore, because both are parents and both presumably had [Redacted] an equal amount of time, the dependent exemption goes to the parent with the highest adjusted gross income. Petitioner's adjusted gross income is the lesser; consequently, Petitioner is not allowed the dependent exemption for taxable year 2014.

Petitioner argued his divorce decree entitles him to the dependent exemption deduction because his divorce, finalized in 2001, was prior to the requirement that the custodial parent give a signed release to the noncustodial parent. Petitioner's argument is misguided. In 1984, Congress amended IRC section 152(e) to provide that the custodial parent gets the exemption except where the custodial parent releases claim to the exemption by written declaration. In 2004, Congress amended IRC section 152(e) to provide that a divorce decree could stipulate and provide that a noncustodial parent receive the exemption deduction for a minor child. However, in 2005, Congress effectively repealed the 2004 amendment taking IRC section 152(e) back to its pre-2004 language. Therefore, a signed release is required from the custodial parent, and generally a divorce decree does not meet the strict requirements, as set out in Treasury Regulations, for release of the exemption. This is true of Petitioner's decree of divorce.

Petitioner also argued that the [REDACTED] accepted his amended 2013 and 2014 income tax returns allowing the dependent exemption deduction. Petitioner provided a letter from the [REDACTED] regarding his 2014 amended return in support of his contention. The Tax Commission reviewed the letter Petitioner provided and found that the letter is an acknowledgement letter of petitioner's amended return. There is no indication in the letter that

the [Redacted] examined the requested changes Petitioner made with his amended return. The letter simply states that the [REDACTED] made the changes to Petitioner's federal income tax return as he requested. This is not an approval by examination of the deduction or credits claimed. The Tax Commission finds the letter is not proof the [Redacted] examined and accepted the exemption deduction claimed.

CONCLUSION

For taxable year 2013, the record is clear Petitioner was not the custodial parent he does not have a signed release from the custodial parent allowing him to claim the dependent exemption deduction for [Redacted]. Therefore, the Tax Commission finds Petitioner is not allowed the dependent exemption deduction for taxable year 2013.

As for taxable year 2014, the record does not establish a clear custodial parent. Therefore, the Tax Commission fell back on the tie breaker rules and as a result of Petitioner having the lower adjusted gross income of the parents of [Redacted], Petitioner is not allowed the dependent exemption deduction for taxable year 2014.

Since Petitioner is not entitled to the dependent exemption, Petitioner also cannot claim an additional grocery credit for [Redacted] for taxable years 2013 and 2014 per Idaho Code section 63-3024A.

THEREFORE, the Notice of Deficiency Determination dated June 24, 2015, and directed to [Redacted] is AFFIRMED.

Since Petitioner's request for refund was reduced by the amount of the additional tax on the disallowed exemption deductions, no order for payment or refund of tax is needed.

An explanation of the Petitioner's 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.
