

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

In the Matter of the Protest of )  
 ) DOCKET NO. 0-849-260-544  
**[Redacted]** , )  
 )  
 Petitioners. ) DECISION  
 )  
\_\_\_\_\_ )

On November 18, 2015, the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to **[Redacted]** (taxpayers) denying the additional dependency exemption deduction and grocery credit claimed for taxable year 2014 and assessing additional tax and interest for taxable year 2014 in the total amount of \$395.32.

The taxpayers did not respond to a letter outlining their alternatives for redetermining a protested NODD, nor did they request a hearing. The Commission, having reviewed the file, hereby issues its decision.

The sole issue for this decision is whether the taxpayers are entitled to a dependency exemption deduction for **[Redacted]** son, **[Redacted]**.

As part of their appeal, the taxpayers stated that **[Redacted]** lived with them for more than 50 percent of 2014 and they provided more than 50 percent of the care for **[Redacted]** in 2014.

Taxpayers may claim dependency exemption deductions for their dependents as defined in Internal Revenue Code (IRC) § 152. IRC § 152(a), defines the term “dependent” as a qualifying child or qualifying relative. A qualifying child is defined as an individual who (1) bears a certain relationship to the taxpayer, such as the taxpayer’s child, (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 and (4) has provided over one-half of the individual’s own support for the taxable year. IRC § 152(c) (1)-(3). A qualifying relative is defined as an individual (1) who

bears a certain relationship to the taxpayer, such as the taxpayer's child or grandchild, (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).

For a dependent child whose parents are divorced or do not live together, further scrutiny beyond dependent classification is needed to determine who is entitled to the dependent exemption deduction, since the parent designated the custodial parent has the deduction for eligible children by default. IRC § 152(e); Caputi v. C.I.R., T.C.M. (RIA) 2004-283 (Tax 2004). Determining which parent is the custodial parent may be difficult, because court issued divorce decrees or agreements are not always sufficient in the eyes of federal and state tax organizations. Instead, the requirements set out in IRC § 152 and the corresponding federal regulations must be individually evaluated. IRC § 152(e)(4)(A) states that the custodial parent is the parent having custody for the greater portion of the calendar year. The term "custodial parent" is further defined in the Code of Federal Regulations (CFR) § 1.152-4(d)(1) as the parent with whom the child resides for the greater number of nights during the calendar year. CFR § 1.152-4(d)(5) provides an exception to the general overnight rule for the parent who works at night. CFR § 1.152-4(d)(5) states:

If, in a calendar year, due to a parent's nighttime work schedule, a child resides for a greater number of days but not nights with the parent who works at night, that parent is treated as the custodial parent.

In response to a request for information, the taxpayers stated <sup>[Redacted]</sup> is not the custodial parent of the child and also stated that the child spent nights with them while the other parent worked. The taxpayers stated that the child was with them more than 50 percent of the year and

that would normally allow them the exemption. However, since the other parent worked nights, the exception applies and that parent is treated as the custodial parent.

The taxpayers are not entitled to the dependency exemption for [Redacted] son, [Redacted] in taxable year 2014. Also, because the taxpayers are not entitled to the dependency exemption, the taxpayers cannot claim the additional grocery credit per Idaho Code § 63-3024A.

THEREFORE, the Notice of Deficiency Determination dated November 18, 2015, and directed to **[Redacted]** is APPROVED and MADE FINAL.

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

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2014	\$383	\$19	\$402

Interest is calculated through July 1, 2016.

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 \_\_\_\_\_ 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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