

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 39012
[REDACTED],	)	
	)	
Petitioners.	)	DECISION
_____	)	

On August 1, 2014, Taxpayer Accounting of the Idaho State Tax Commission (the Commission) issued a Notice of Deficiency Determination to [Redacted] (Petitioners) proposing income taxes and interest for taxable year 2013, in the total amount of \$235.03. The Commission hereby issues its decision and approves this Notice of Deficiency Determination as set forth herein.

**BACKGROUND**

On May 28, 2014, Taxpayer Accounting sent Petitioners a letter indicating that their 2013 Idaho individual income tax return could not be processed without additional information. Specifically, Taxpayer Accounting requested information pertaining to a claimed dependent (the Child), an adult who Petitioner claimed as a dependent and who also was claimed as a dependent by another taxpayer.

In response to the Commission’s request for additional information, Petitioners provided information asserting that Petitioners provided \$4,933.55 of support to the Child and alleged that Petitioners were justified in claiming that Child. Petitioners provided the Commission with several documents related to their asserted financial relationship to the Child. Petitioners also provided a copy of a divorce decree that described how the parties to the decree were to stagger their claim to the Child.

On June 20, 2014, Taxpayer Accounting sent a letter to Petitioners informing them that amounts on their 2013 Income Tax Return had been changed and also indicating that the assertions made and materials provided by Petitioners did not provide sufficient information to support Petitioner's claim. Taxpayer Accounting again requested that Petitioners provide materials to support their claim. The Commission received no additional information from Petitioners related to their claim. The Commission's August 1, 2014, Notice followed thereafter. The taxpayers did not respond to a September 23, 2014, letter outlining the alternatives for redetermining a protested Notice of Deficiency Determination nor did they request a hearing.

### **ANALYSIS**

The sole issue for decision is whether the Petitioners are entitled to the dependency exemption deduction and other associated tax benefits related to claiming the Child as a dependent. Deductions and credits are a matter of legislative grace; taxpayers bear the burden of proving their entitlement to deductions allowed by the Internal Revenue Code (IRC) and substantiating the amounts 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).

The IRC and Idaho statutes allow taxpayers to receive certain tax benefits associated with claiming another person as a dependent. In order to receive such benefits, the Petitioners must establish that they have a statutorily defined relationship to the claimed individual. Specifically, the individual claimed as a dependent must be a "qualifying child" as defined in the IRC. 26 U.S.C. § 152.

To be a qualifying child, among other requirements, typically the child must reside in the taxpayer's abode for more than half of the year. 26 U.S.C. § 152(c)(1)(B). However, if the claimed child's parents are no longer residing together, are separated, or are divorced, and if that child lives with at least one of his parents for more than one-half of the taxable year, the parents may stipulate which parent may claim that child. 26 U.S.C. § 152(e). In such circumstances, the parent the child lived with for greater than one-half of the taxable year is described by the IRC as the "custodial parent" while the other parent is described as the "non-custodial parent." 26 U.S.C. § 152 (e)(4)(A)

A non-custodial parent may only claim a child as a qualifying child if he or she can provide sufficient documentation to establish that the custodial parent agrees to the non-custodial parent's claim. To be sufficient, the non-custodial parent must attach to his or her tax return a written declaration from the custodial parent stating that the "custodial parent will not claim [the] child as a dependent for" the same taxable year. 26 U.S.C. § 152 (e)(2)(A). This written declaration may be on Form 8332 or on another document that conforms in substance to Form 8332.

A divorce decree may replace Form 8332, but the decree must have gone into effect between 1984 and 2008 and must state all of the following:

1. The noncustodial parent can claim the child as a dependent without regard to any condition, such as payment of child support;
2. The custodial parent will not claim the child as a dependent for the year; and
3. The years for which the noncustodial parent, rather than the custodial parent, can claim the child as a dependent.

If a noncustodial parent fails to produce Form 8332, fails to produce a document that conforms in substance to Form 8332, or fails to provide a pre-2008 divorce decree to a tax return, then that parent is not entitled to claim a child as a qualifying child.

In the present matter, the Petitioners have provided insufficient information to conclude that that the Child lived in their abode for more than half of the year. When provided with an opportunity to describe how long the Child lived with them, Petitioners stated “N/A.” Additionally, the only information of residency that the Petitioners provided indicated that the Child lived apart from the Petitioners in an apartment. Therefore, Petitioners have provided insufficient information to evidence that they are the custodial parent of the Child.

Furthermore, the divorce decree the Petitioners presented does not permit them to claim the Child as non-custodial parents. The Petitioners have provided a pre-2008 divorce decree, however such decree is not sufficient as the decree only entitles the noncustodial parent to claim his or her minor child. The Child reached the age of majority prior to 2013, the tax year at issue, and, therefore, the decree no longer defines the custodial and noncustodial parent’s right to claim the Child. As such, the divorce decree is not grounds for allowing Petitioners to claim the Child as non-custodial parents.

Therefore, because the Petitioners have not established the residency of the Child and have not provided sufficient consent from the custodial parent to permit Petitioners to claim the Child as noncustodial parents, the Petitioners may not claim the Child as a dependent.

THEREFORE, the Notice of Deficiency Determination dated August 1, 2014, 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>
2013	\$229	\$17	<u>\$246</u>
		TOTAL DUE	<u>\$246</u>

Interest is calculated through March 31, 2016.

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

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.  
  
\_\_\_\_\_