

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
[Redacted])	DOCKET NO. 0-782-067-712
)	
Petitioners.)	DECISION
_____)	

[Redacted] (Petitioners) protested the change Revenue Operations made to their 2016 Idaho individual income tax return asserting additional income tax in the total amount of \$799. Petitioners disagreed with the adjustment disallowing the dependent exemption deductions for [Redacted]. The Tax Commission, having reviewed the file, upholds the change to Petitioners' 2016 Idaho income tax return.

BACKGROUND

Petitioners filed their 2016 Idaho individual income tax return then subsequently filed an amended return. During the processing of Petitioners' amended return, Revenue Operations identified Petitioners' amended return as one of two income tax returns that claimed dependent exemption deductions for [Redacted]. The Taxpayer Accounting section (Taxpayer Accounting) requested additional information from Petitioners in the form of a questionnaire. Petitioners responded to the questionnaire stating; [Redacted] father, he was not the custodial parent, [Redacted] lived with them 50 percent of the time, they provided over half of [Redacted] support, and they did not have a federal Form 8332. Petitioners provided a copy of [Redacted] decree of divorce in lieu of the Form 8332.

Taxpayer Accounting reviewed the information and determined Petitioners were not entitled to the exemption deductions. Taxpayer Accounting sent Petitioners a letter stating their amended return was not accepted. Petitioners protested Taxpayer Accounting's determination denying the dependent exemptions. Petitioners stated that since [Redacted] divorce was post 1984

and pre 2009, they could provide certain pages from the decree as a substitute for Form 8332. Taxpayer Accounting acknowledged Petitioners' protest and referred the matter to the Tax Commission's Appeals Unit (Appeals).

Appeals reviewed the matter and sent Petitioners a letter that discussed the methods available for redetermining Taxpayer Accounting's determination. Petitioners requested a meeting with the Appeals staff. At the meeting, Petitioners provided a full copy of his divorce decree. The divorce decree was only signed by the magistrate judge. Petitioners stated that since [Redacted] ex-wife's attorney drafted the order, it should be as good as her signature.

The other party provided a calendar of days that [Redacted] stayed with them. Petitioners quickly reviewed the calendar and claimed that it was not accurate. Petitioners stated there are several days they know the kids were with them that are not shown as their days. Petitioners gave some examples and stated they believe the number of days to be closer to 50/50. Petitioners were given the opportunity to provide a calendar of their own, but they declined saying anything they would come up with would not be accurate and they did not want to conjure up something that was not truthful.

Appeals told Petitioners that it would be meeting with the other party to get specifics about the number of days [Redacted] stayed with them. Appeals told Petitioners they would have another opportunity to refute the days claimed by the other party.

After meeting with the other party, Appeals contacted Petitioners to discuss the matter further. Petitioners provided the following information. Petitioners stated they had [Redacted]

every other weekend for the first half of the year. The time Petitioners had them corresponded with [Redacted] work schedule where he had every other Monday off work. Petitioners stated [Redacted] stayed with them Friday through Sunday until [Redacted] took them to school Monday morning. Petitioners stated in January 2016 they purchased a house large enough that

each of their kids could have a bedroom of their own. Petitioners stated [Redacted] were always excited to stay with them because they had their own bedroom; not the case when they lived with their mother. Petitioners stated during the summer months [Redacted] stayed with them about every other week. The summer was split 50/50 with the other party.

Petitioners stated by the end of summer [Redacted] had her driver's license. This allowed [Redacted] to spend more time with Petitioners. [Redacted] entered high school in the fall of 2016. They attended different high schools and at the beginning of the year rode the school bus to get to school. The school bus picked them up near their mother's house. About a month into the school year, Petitioners bought [Redacted] a car. Since she had a car, she could spend even more time with Petitioners. [Redacted] was able to drive herself and her brother to school. Petitioners stated from October through December [Redacted] stayed with them far more than they did with the other party.

Appeals noted all the information Petitioners provided, compiled it with all the other information gathered, and decided the matter based on the following.

LAW AND ANALYSIS

Internal Revenue Code (I.R.C.) § 151(c) allows taxpayers a deduction of the exemption amount for each dependent as defined in I.R.C. § 152. I.R.C. § 152 defines a dependent as either a "qualifying child" or a "qualifying relative." I.R.C. § 152(e) provides a special rule relating to divorced parents. The primary requisite of I.R.C. § 152(e) is that there is a custodial parent and that parent releases the exemption deduction to the noncustodial parent. Therefore, a determination must be made as to who is the custodial parent.

I.R.C. § 152(e)(4) defines custodial parent as the parent having custody for the greater portion of the calendar year. [Redacted] divorce decree states that [Redacted] ex-wife has primary physical and residential custody. So, looking solely at the divorce decree, [Redacted] ex-wife is the

custodial parent. However, the Tax Commission is aware that as time goes by and children get older, the parent they stay with can change.

Custody is determined by the number of days a child stays with a parent. Days are determined by the number of nights the child stays with a parent. *See* Prop. Treasury Reg. § 1.152-4(c)(3)(ii). Therefore, to determine the custodial parent the Tax Commission looked to a calendar of days the children stayed with each parent. In this case neither parent kept a contemporaneous calendar of the days [Redacted] were with them. Consequently, the Tax Commission created a calendar based on the information by the two parties.

The Tax Commission's calendar was determined as follows: Petitioners had [Redacted]

Friday through Sunday every other week from January 1 through June 1. Petitioners were given at least half the days for spring break. Beginning in June, Petitioners had [Redacted] every other week plus some additional days. Beginning in October, after [Redacted] got her car, Petitioners were allocated every other week plus multiple additional days. The Tax Commission's calendar resulted in Petitioners having [Redacted] 156 days, the other party having them 194 days, and they were with their aunt [Redacted] 16 days. Petitioners were not the custodial parent.

Petitioners stated that even if they are not considered the custodial parent, [Redacted] divorce decree awarded him the exemption deductions. Petitioners stated the divorce decree should be considered equivalent to a Form 8332 because it was finalized before 2009.

Treasury Reg. § 1.152-4(d) provides that a written declaration signed by the custodial parent will release the exemption to the non-custodial parent. It states that a written declaration must be unconditional, identify the years it is effective, identify the parties involved, identify the dependent(s), its sole purpose is the release of the exemption deduction, and it must be signed by the custodial parent. The Tax Commission reviewed [Redacted] divorce decree and found that it falls short of being a release by the custodial parent. In addition to not being the sole purpose of

the document, [Redacted] divorce decree does not state his ex-wife will not claim the dependent exemptions nor is it signed by either party. Even though the divorce decree binds the parties to the matters it addresses, it does not decide issues of Federal tax law. *See Commissioner v. Tower*, 327 U.S. 280 (1946); *Kenfield v. United States*, 783 F.2d 966 (10th Cir.1986); *Nieto v. Commissioner*, T.C.M. 1992-296. The document is not a signed written declaration from the custodial parent.

CONCLUSION

Petitioners were not the custodial parent of [Redacted]. Petitioners did not have a signed written release of the dependent exemptions from the custodial parent. Consequently, Petitioners are not entitled to the dependent exemption deductions for [Redacted] for taxable year 2016. And since Petitioners are not entitled to the dependent exemptions, Petitioners cannot claim the additional grocery credit for [Redacted] per Idaho Code § 63-3024A.

THEREFORE, Revenue Operations' notice of change dated January 26, 2018, directed to [Redacted] is AFFIRMED.

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

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2016	\$799	\$49	\$848

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

An explanation of Petitioners' right to appeal this decision is enclosed.

DATED this _____ day of _____ 2018.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2018,
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.
