

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 21895
[Redacted] ,)	
)	DECISION
Petitioners.)	
_____)	

On May 1, 2009, the Revenue Operations division of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (petitioners) proposing tax and interest in the amount of \$579.19 for taxable year 2008.

The petitioners filed a timely appeal. They did not request a hearing. The Tax Commission, having reviewed the file, hereby issues its decision based upon the information contained in the file.

The sole issue for decision is whether the petitioners are entitled to dependency exemption deductions for [Redacted], children of [Redacted] from a prior marriage.

[Redacted] was previously married to [Redacted] ([Redacted]) and two children were born of that marriage. [Redacted] were divorced in 1999. The divorce decree provided that the children’s primary residence was with [Redacted]. Child support was ordered to be paid by [Redacted], but there was no mention of which parent was to claim the dependency exemptions. In 2007, the state court issued an order modifying the divorce decree with regard to [Redacted] support obligations for the children and stated that [Redacted] would be assigned dependency exemptions. The order, however, contained no reference to the execution of any documents that might be necessary to enable [Redacted] to claim the dependency exemptions for [Redacted].

Taxpayers may claim dependency exemption deductions for their dependents as defined in Internal Revenue Code (IRC) § 152. Under IRC § 152(a), the term “dependent” means 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 not provided over one-half of the individual's own support for the taxable year. IRC § 152(c) (1)-(3).

However, the dependency exemption, as a general rule, is limited under IRC § 152(e)(1) as follows: if the child received over one-half of his support during the calendar year from his parents who live apart at all times during the last 6 months of the calendar year and the child is in the custody of one or both parents for more than one-half of the calendar year, then the child is treated as the qualifying child of the noncustodial parent if certain requirements are met. The requirements are met if (1) the custodial parent signs a written declaration (in such manner and form as the Secretary may prescribe) that the custodial parent will not claim the child as a dependent for the taxable year; and (2) the noncustodial parent attaches the written declaration to the noncustodial parent's return for the taxable year. IRC § 152(e) (2).

The term "custodial parent" is defined in IRC § 152(e) (4)(A) as the parent having custody for the greater portion of the calendar year. The divorce decree between [Redacted] declares that the primary residence of the children will be with [Redacted], therefore, according to the above code section, she is considered the children's "custodial parent".

An exception to the above rule is provided in IRC § 152(e)(2) in that if the parent having custody elects to release his claim to exemption for the children in his custody for the year in question and supplies a written release to that effect, and if the noncustodial parent receiving the right to claim the dependency exemption attaches such waiver to the tax return, then the waiver

will be honored and the noncustodial parent may claim the dependency exemption for the child. In the present case, that did not happen.

The divorce decree of [Redacted] provides that the petitioners are entitled to the dependency exemptions for [Redacted]. However, the mere fact that the State court granted the petitioner the right to claim the dependency exemption deduction is immaterial because a state court cannot determine issues of Federal tax law. Id. 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. Memo.1992-296](#).

For taxable year 2008, the petitioners are not the custodial parents of [Redacted] and do not have a signed release from the custodial parent. Therefore, the petitioners are not entitled to the dependency exemptions. WHEREFORE, the Notice of Deficiency Determination directed to [Redacted] dated May 1, 2009, is APPROVED, AFFIRMED, and MADE FINAL.

It is ordered and this does order, the petitioners pay the following tax and interest:

<u>YEAR</u>	<u>TAX</u> <u>DUE</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u> <u>DUE</u>
2008	\$578	\$0	\$1.19	\$579.19

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 _____, 2009.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2009, 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.
