

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 22079
[Redacted])	
Petitioners.)	DECISION
)	
)	
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On May 29, 2009, the Revenue Operations division of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayers) proposing tax and interest in the amount of \$579 for taxable year 2008.

The taxpayers filed a timely appeal. An informal conference was requested by the taxpayers and held on October 1, 2009. The taxpayers were represented at the informal hearing by their representative. This matter was submitted for decision based on the documents in the file. The State Tax Commission has reviewed the file and makes its decision thereon.

The sole issue for decision is whether the taxpayers are entitled to dependency exemption deductions for [Redacted], [Redacted] children from a previous relationship.

A Judgment and Order of Filiation and Support was issued on February 18, 1999, and subsequently modified on December 26, 2002. [Redacted] was ordered by state court to pay child support and, according to the Order, allowed to claim the 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 Order does not mention the primary residence of the children, but according to the taxpayers' representative, [Redacted] is not the children's custodial parent. It is also presumed from the fact that [Redacted] is required to pay child support that [Redacted] were in the physical custody of their mother.

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 Order Modifying Child Support provides that [Redacted] is entitled to the dependency exemption for [Redacted]. However, the mere fact that the state court granted [Redacted] 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 taxpayers are not the custodial parents of [Redacted] and do not have a signed release from the custodial parent. Therefore, the taxpayers are not entitled to the dependency exemptions. WHEREFORE, the Notice of Deficiency Determination directed to [Redacted] dated May 29, 2009, is APPROVED, AFFIRMED, and MADE FINAL.

It is ordered and this does order that the taxpayers pay the following tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2008	\$576	\$3	\$579

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 _____ 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.
