

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 22930
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

On May 12, 2010, the Revenue Operations division of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayer) reducing the refund claimed for taxable year 2009 in the total amount of \$503.

The sole issue for the decision is whether the taxpayer is entitled to dependency exemption deductions for [Redacted], children [Redacted] from a prior relationship. As part of his appeal, the taxpayer provided a Petition to Modify Child Support issued by the First Judicial District Court of Idaho on November 19, 2004. The document states that pursuant to the Child Support Guidelines, [Redacted] should have the right to claim the tax exemption for the children.

The taxpayer responded to a letter outlining his alternatives for redetermining a protested NODD but did not request a hearing. The taxpayer provided another copy of the Petition and stated in his letter that he believed the Petition was sufficient documentation and that he did not need a Form 8332 to allow him to claim the dependent exemptions for his children. The Commission, having reviewed the file, hereby issues its decision.

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 Petition provided states it does not involve issues of custody and does not name the custodial parent. However, when a request for additional information was sent by the Commission, and the taxpayer was asked if he was the custodial parent, he stated he was not. When asked how many days the children lived with him in taxable year 2009, he responded weekends only. Therefore, according to the above code section, the taxpayer would not be considered the children's "custodial parent."

However, IRC § section 152(e) allows the noncustodial parent to claim the dependent exemption if certain conditions are met. One condition is that the custodial parent must sign a written declaration that he or she will not claim the child as a dependent. This written declaration may be on Form 8332 or another document that conforms in substance to Form 8332 and is attached to the noncustodial parents return.

A divorce decree or other agreement, if in effect between 1984 and 2008, may replace Form 8332, but it 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.
3. The years for which the noncustodial parent, rather than the custodial parent, can claim the child as a dependent.

The taxpayer provided a copy of his 2004 Petition to Modify Child Support that states he is entitled to the dependent exemptions for his minor children. However, this is where the conformity to Form 8332 ends. The Petition does not state the years the exemptions are released or that the custodial parent will not claim the children as dependents for the year.

Although the Petition provides that the taxpayer is entitled to the dependency exemptions for the children, state courts, by their decisions, cannot determine issues of Federal tax law. 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. The taxpayers remedy, if any, lies in the state court for enforcement of the Order.

For taxable year 2009, the taxpayer is not the custodial parent [Redacted]and does not have a signed release from the custodial parent. Therefore, the taxpayer is not entitled to the dependency exemptions. WHEREFORE, the Notice of Deficiency Determination [Redacted] dated May 12, 2010, is APPROVED, AFFIRMED, and MADE FINAL.

The additional tax has been paid; therefore, no DEMAND for payment is required or necessary.

An explanation of the taxpayer's right to appeal this decision is enclosed.

DATED this _____ day of _____ 2010.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2010, 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.
