

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 23265
[Redacted],)	
)	
Petitioners.)	DECISION
_____)	

On August 20, 2010, the Revenue Operations Division of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayers) proposing additional tax and interest for taxable year 2009 in the total amount of \$318.03.

The sole issue for this decision is whether the taxpayers are entitled to a dependency exemption deduction for [Redacted], [Redacted] daughter from a prior relationship. As part of their appeal, the taxpayers provided a copy of a Judgment issued June 7, 2000, and an Order Modifying Child Support issued on January 27, 2005. Both documents were issued by the Fifth Judicial District Court of Idaho. The Judgment names [Redacted] as [Redacted] father and allows him to claim the minor child on his income tax returns. The Order modifies the amount of child support [Redacted] is required to pay and states that, pursuant to the Idaho Child Support Guidelines, [Redacted] shall be assigned the dependency exemption for [Redacted].

The taxpayers responded to a letter outlining their alternatives for redetermining a protested NODD but did not request a hearing. The taxpayers stated in their correspondence with the Commission that they believe the court Order and Judgment were sufficient documentation and that they did not need a Form 8332 to allow them to claim the dependency exemption for [Redacted] daughter. 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 Child Support Order 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 taxpayers were asked if [Redacted] was the custodial parent, they stated he was not. When asked how many days [Redacted] lived with them in taxable year 2009, they responded, none. Therefore, according to

the above Idaho Code section, [Redacted] would not be considered [Redacted] “custodial parent.”

However, IRC § 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 taxable years 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 taxpayers provided a copy of [Redacted] 2000 Judgment and 2005 Order Modifying Child Support that both state [Redacted] is entitled to the dependency exemption for [Redacted]. However, this is where the conformity to Form 8332 ends. Neither the Judgment nor the Order state the years the exemption is released or that the custodial parent will not claim [Redacted] as a dependent for the year.

Although both the Judgment and the Order provide that [Redacted] is entitled to the dependency exemption for [Redacted], 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, [Redacted] is not the custodial parent of [Redacted] and does not have a signed release from the custodial parent. Therefore, the taxpayers are not entitled to the dependency exemption. WHEREFORE, the NODD directed to [Redacted] dated August 20, 2010, 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>
2009	\$310	\$13	\$323

Interest is calculated through February 22, 2011.

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 _____ 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.
