

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 23315
[Redacted],	)	
	)	
Petitioners.	)	DECISION
_____	)	

On August 19, 2010, the Revenue Operations Division of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination to [Redacted] (taxpayers) reducing the amount of refund claimed in the amount of \$310 for taxable year 2009.

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

The sole issue for this decision is whether the taxpayers are entitled to a dependency exemption deduction for [Redacted], Mr. [Redacted] son from a prior marriage.

[Redacted] was previously married and two children were born of that marriage, however, only the dependency exemption for [Redacted] is at issue. The taxpayers did not provide a copy of [Redacted] divorce decree, but instead provided a copy of a Stipulated Modification Order which included a parenting plan. The parenting plan stated the children's mother would be the primary custodial parent. The Order addressed income tax exemptions stating that [Redacted] would be assigned the tax exemption for [Redacted], and the dependency exemption for [Redacted] other child would be assigned to the mother. The Order also stated that the parent not receiving the exemption should sign the required Internal Revenue Service form to release the claim to the exemption.

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. In addition to the Order, the taxpayers responded to a request for information, and when asked how many days the dependent lived with them in taxable year 2009, the taxpayers answered approximately 55 days. Therefore, [Redacted] would not have lived with the taxpayer the greater portion of the calendar year and he would not be considered [Redacted] “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 the 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.

[Redacted] Modification Order provides that he is entitled to the dependency exemptions for [Redacted]. However, the mere fact that the 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. The taxpayers remedy, if any, lies in the court for enforcement of the Order.

For taxable year 2009, the taxpayers are not the custodial parent of [Redacted] and do not have a signed release from the custodial parent. Therefore, the taxpayers are not entitled to the dependency exemption.

WHEREFORE, the Notice of Deficiency Determination directed to [Redacted] dated August 19, 2010, is APPROVED, AFFIRMED, and MADE FINAL.

Since the taxpayers' refund was reduced, no additional tax is due and, therefore, no demand for payment is necessary.

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2010.

IDAHO STATE TAX COMMISSION

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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.

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