

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 23327
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

On August 27, 2010, the Revenue Operations Division of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination to [Redacted] (taxpayer) proposing tax and interest in the amount of \$1,298.96 for taxable year 2009.

The taxpayer filed a timely appeal. He 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 taxpayer is entitled to dependency exemption deductions for [Redacted], [Redacted] children from a prior marriage.

The taxpayer was previously married to [Redacted] ([Redacted]) and four children were born of that marriage. However, only the dependency exemptions for [Redacted], [Redacted] and [Redacted] are at issue. The taxpayer and his wife divorced in taxable year 2008. The divorce decree provided that the children’s primary residence was to be with their mother. Child support was ordered to be paid by the taxpayer, and according to the decree, the taxpayer shall be awarded the right to claim all of the minor children as his federal and state dependency exemptions in each and every tax year.

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 the taxpayer and [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 the taxpayer and [Redacted] provides that the taxpayer is entitled to the dependency exemptions for [Redacted], [Redacted] However, the mere fact that the state court granted the taxpayer 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 2009, the taxpayer is not the custodial parent of [Redacted], [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 directed to [Redacted] dated August 27, 2010, is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2009	\$1,265	\$55	\$1,320

Interest is calculated through March 14, 2011.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

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.
