

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 22918
[Redacted],)	
)	
Petitioners.)	DECISION
)	
)	
_____)	

[Redacted] (taxpayers) protested the Notice of Deficiency Determination issued by the staff of the Idaho State Tax Commission (Commission) and dated May 13, 2010, asserting additional Idaho income tax for taxable year 2009 in the total amount of \$339.

The issue in this docket is whether the taxpayers met the requirements to claim dependent exemptions for Mr. [Redacted] two children.

BACKGROUND FACTS

During the processing of income tax returns, the taxpayers' return was identified as a return on which the dependent exemptions were claimed on more than one income tax return. The Commission requested information from the taxpayers.

The taxpayers provided answers to a questionnaire regarding the two children. The taxpayers stated that Mr. [Redacted] was not the custodial parent of the children and that the children only lived with them every other weekend of taxable year 2009. Mr. [Redacted] decree of divorce shows that sole legal and physical custody was awarded to the children's mother. The taxpayers also stated that Mr. [Redacted] did not have a signed federal Form 8332 from the custodial parent. However, income tax exemptions are addressed on page 5 of the divorce decree, which states:

7. Income Tax Exemption. The state and federal dependency tax exemptions for the parties' minor children are assigned as follows:
Tax benefit for dependancy [sic] exeptions [sic] \$3900.00, \$800.00.

Tax exemption given to [Redacted].

The parent not receiving the exemptions shall sign the required Internal Revenue Service forms to release the claim to the exemptions.

LAW AND ANALYSIS

Internal Revenue Code (IRC) section 151(c) allows a taxpayer a deduction of the exemption amount for each dependent as defined in IRC section 152. A child of a taxpayer is generally a dependent of the taxpayer.

IRC section 152(e) provides a special rule for parents who are divorced or who do not live together. It states in pertinent part:

(1) In general.

Notwithstanding subsection (c)(1)(B), (c)(4), or (d)(1)(C), if—

(A) a child receives over one-half of the child's support during the calendar year from the child's parents—

(i) who are divorced or legally separated under a decree of divorce or separate maintenance,

(ii) who are separated under a written separation agreement, or

(iii) who live apart at all times during the last 6 months of the calendar year, and—

(B) such child is in the custody of 1 or both of the child's parents for more than one-half of the calendar year, such child shall be treated as being the qualifying child or qualifying relative of the noncustodial parent for a calendar year if the requirements described in paragraph (2) or (3) are met.

(2) Exception where custodial parent releases claim to exemption for the year. For purposes of paragraph (1), the requirements described in this paragraph are met with respect to any calendar year if—

(A) the **custodial parent signs a written declaration** (in such manner and form as the Secretary may by regulations prescribe) that such custodial parent will not claim such child as a dependent for any taxable year beginning in such calendar year, and

(B) the noncustodial parent attaches such written declaration to the noncustodial parent's return for the taxable year beginning during such calendar year.

[Emphasis added.]

A key requirement for a valid written declaration releasing claim to exemption is the signature of the custodial parent. The United States Tax Court explained this requirement in a 2003 case. The Tax Court explained:

Language in a divorce decree purportedly giving a taxpayer the right to an exemption deduction does not entitle the taxpayer to the deduction in the absence of the signed written declaration required by section 152(e)(2). Miller v. Commissioner, 114 T.C. 184, 2000 WL 309121 (2000), affd. on another ground sub nom. Lovejoy v. Commissioner, 293 F.3d 1208 (10th Cir.2002). To meet the requirements of section 152(e)(2), the written declaration, if not made on the official form provided by the Internal Revenue Service, "shall conform to the substance of such form." Sec. 1.152-4T(a) Q & A-3, Temporary Income Tax Regs., 49 Fed.Reg. 34459 (Aug. 31, 1984). The form provided by the Service, Form 8332, calls for the following information: The name of the child or children; the applicable tax year or years; the custodial parent's signature and the date of signature; the custodial parent's Social Security number; the noncustodial parent's name; and the noncustodial parent's Social Security number.

Boltinghouse v. Commissioner, T.C. Memo. 2003-134 (2003).

Unfortunately for the taxpayer, he cannot rely on his divorce decree to obtain the benefit of these exemptions. The U.S. Tax Court explained in a 1996 case:

Although petitioner's divorce decree provides that he is entitled to the dependency exemptions for the two 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. Thus, the Court concludes that, pursuant to section 152(e), petitioner is not entitled to claim his two children as dependents for 1992. His remedy, if any, lies in the State court for enforcement of the divorce decree.

White v. Commissioner, T.C. Memo 1996-438 (1996).

The taxpayers did not satisfy the requirements to claim exemptions for Mr. [Redacted] children in taxable year 2009. Mr. [Redacted] is the noncustodial parent of his children. Mr. [Redacted] divorce decree does not satisfy the requirements of the Internal Revenue Code because it lacks the signature of the custodial parent. Although the divorce decree orders the custodial parent to sign the required IRS form, the taxpayers have not produced an IRS Form

8332 (or a written declaration conforming to the substance of Form 8332) signed by the custodial parent. Therefore, the taxpayers did not qualify to claim dependent exemptions for Mr. [Redacted] two children for taxable year 2009. Also, because the taxpayers are not entitled to the dependent exemptions, the taxpayers cannot claim the additional grocery credit for the children per Idaho Code section 63-3024A.

CONCLUSION

WHEREFORE, the Notice of Deficiency Determination dated May 13, 2010, is hereby APPROVED, AFFIRMED, and MADE FINAL.

Because the taxpayers' 2009 refund claim was already reduced by \$339, no additional tax is owed.

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.
