

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 23320
[Redacted],	)	
	)	
Petitioners.	)	DECISION
_____	)	

On August 20, 2010, the Revenue Operations division of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayers) proposing additional tax and interest for taxable year 2009 in the total amount of \$327.26.

The sole issue for this decision is whether the taxpayers are entitled to dependency exemption deduction [Redacted]. As part of their appeal, the taxpayers provided an Order of Modification issued by the Fifth Judicial District Court of Idaho on June 15, 2004. The document orders [Redacted] to pay child support and states that [Redacted] is entitled to claim the minor child as a dependent on his income tax returns. The document also states that the child’s mother will sign any document necessary to enable [Redacted] to claim such dependent.

The taxpayers responded to a letter outlining their alternatives for redetermining a protested Notice of Deficiency Determination but did not request a hearing. The taxpayers provided another copy of [Redacted] modification Order and stated that each January they provide the custodial parent with a Form 8332 for signature but she never returns them. The taxpayers therefore attached pages of the Order, along with verification of child support payments, to their return in lieu of the signed release believing it was sufficient documentation. The Tax Commission, having reviewed the file, hereby issues its decision.

Taxpayers can claim dependent exemption deductions for their dependents as defined in Internal Revenue Code (IRC) section 152. IRC section 152(a) defines the term “dependent” as

either 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, 4) has not provided over one-half of the individual's own support for the taxable year, and 5) has not filed a joint return with the individual's spouse for the taxable year. IRC section 152(c)(1) through (3).

However, the dependent exemption, as a general rule, is limited under IRC section 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 a 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 section 152(e)(2).

The term "custodial parent" is defined in IRC section 152(e)(4)(A) as the parent having custody for the greater portion of the calendar year. Taxpayer Accounting requested additional information from the taxpayers which included a question asking if [Redacted] was the custodial parent, the taxpayers stated he was not. Taxpayer Accounting also asked how many days the child lived with the taxpayers in taxable year 2009, they responded none. Therefore, by admission and definition, the taxpayers are not the child's custodial parents.

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 signs 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 second option is a divorce decree or other agreement, if in effect between 1984 and 2008, may replace Form 8332, but it must contain all of the following:

1. A statement that the noncustodial parent can claim the child as a dependent without regard to any condition, such as payment of child support.
2. A statement that the custodial parent will not claim the child as a dependent for the year.
3. Identify the years the noncustodial parent can claim the child as a dependent.

The taxpayers provided a copy of [Redacted] 2004 modification Order that states he is entitled to the dependent exemption [Redacted]. However, this is where the conformity to Form 8332 ends. The Order does not state the years the exemption is released or that the custodial parent will not claim [Redacted] as a dependent for the year.

Although the Order provides that [Redacted] is entitled to the dependent exemption [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 [Redacted] and does not have a signed release from the custodial parent. Therefore, the taxpayers are not entitled to the dependent exemption. And since the taxpayers are not entitled to the dependent exemption, the taxpayers cannot claim an additional grocery credit [Redacted] per Idaho Code section 63-

3024A.

WHEREFORE, the Notice of Deficiency Determination directed [Redacted] dated August 20, 2010, is APPROVED, AFFIRMED, and MADE FINAL.

It is ordered and this does order, the taxpayers pay the following tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2009	\$319	\$19	\$338

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 \_\_\_\_\_ 2011.

IDAHO STATE TAX COMMISSION

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COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2011, 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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