

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
) DOCKET NO. 23524
[Redacted],)
)
)
Petitioner.) DECISION
)
_____)

[Redacted] (taxpayer) filed a timely appeal of the Notice of Deficiency Determination (NODD) dated June 28, 2010. The NODD was issued by the Compliance Division of the Idaho State Tax Commission (Commission) for taxable year 2009 in the total amount of \$100.70.

The taxpayer requested an informal hearing which was held on January 26, 2011. Present at the hearing were Commissioner [Redacted], Tax Policy Specialist [Redacted], the taxpayer and his fiancé. 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 a dependency exemption deduction for his daughter [Redacted]. The taxpayer readily admits that he is not the custodial parent of [Redacted] but believes he is entitled to the deduction based on a Judgment issued September 25, 2000.

Taxpayers may claim dependency exemption deductions for their dependents as defined in Internal Revenue Code (IRC) section 152. Under IRC section 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 section 152(c)(1)-(3).

The dependency 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 lived 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 section 152(e)(2).

In the present case, the taxpayer is relying on IRC section 152(e)(1) and Treasury Regulation 1.152-4(e)(5) to support his entitlement to the dependency exemption.

Treasury Regulation 1.152-4(e)(5) states:

Written declaration executed in a taxable year beginning on or before July 2, 2008. A written declaration executed in a taxable year beginning on or before July 2, 2008, that satisfies the requirements for the form of a written declaration in effect at the time the written declaration is executed, will be treated as meeting the requirements of paragraph (e)(1) of this section.

The taxpayer's Judgment was issued in taxable year 2000, therefore, his reasoning is that if the requirements for a written declaration in effect in taxable year 2000 are met by his Judgment, it would entitle him to the dependency exemption.

The[Redacted] has made changes over the years as to IRC section 152, however, the language as it pertains to the requirements of a written declaration are essentially the same today as they were in 2000. A written declaration, if not the form designated by [Redacted], form 8332, must conform to the substance of that form.

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

The U.S. 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 the taxpayer cannot rely on his Judgment to obtain the benefit of this exemption. 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 taxpayer did not satisfy the requirements to claim an exemption for [Redacted] in taxable year 2009. The taxpayer is the noncustodial parent of [Redacted]. The taxpayer's Judgment does not satisfy the requirements of the Internal Revenue Code because, among other things, it lacks the signature of the custodial parent. Therefore, the taxpayer does not qualify to claim the dependent exemption for [Redacted] for taxable year 2009. Also, because the taxpayer

is not entitled to the dependent exemption, the taxpayer cannot claim the additional grocery credit for [Redacted] per Idaho Code section 63-3024A.

WHEREFORE, the Notice of Deficiency Determination dated June 28, 2010, is APPROVED, AFFIRMED, and MADE FINAL.

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

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2009	\$100	\$5.43	\$105.43

Interest is calculated through June 10, 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 _____ 2011.

IDAHO STATE TAX COMMISSION

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.
