

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 23658
[Redacted],	)	
	)	
Petitioner.	)	DECISION
_____	)	

On December 9, 2010, the Revenue Operations Division of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayer) reducing the amount of refund claimed for taxable year 2009 in the total amount of \$562.

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 a dependency exemption deduction for his children from a previous marriage, [Redacted] and [Redacted].

Taxpayers may claim dependency exemption deductions for their dependents as defined in Internal Revenue Code (IRC) § 152. IRC § 152(a) defines the term “dependent” as 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 provided over one-half of the individual’s own support for the taxable year. IRC § 152(c)(1)-(3). A qualifying relative is defined as an individual (1) who bears a certain relationship to the taxpayer, such as the taxpayer’s child or grandchild, (2) whose gross income for the taxable year is less than the exemption amount, (3) with respect to whom

the taxpayer provides over one-half of the individual's support for the taxable year, and (4) who is not a qualifying child of the taxpayer or of any other taxpayer for the taxable year. IRC § 152(d)(1) and (2).

To claim a dependent exemption under IRC § 152(a), the taxpayer must show he has either a qualifying child or qualifying relative. Regarding a qualifying child, the taxpayer did not show that either [Redacted] or [Redacted] principal place of abode was with him for more than one-half of taxable year 2009. As for meeting the requirements for a qualifying relative of the taxpayer, the taxpayer failed to show that they provided more than one-half of [Redacted] or [Redacted] support for taxable year 2009 or that they are not the qualifying child of another taxpayer for the taxable year.

As a part of his appeal letter, the taxpayer provided a copy of page 4 of his Child Support Provisions Order that states he shall claim both of the minor children as dependents commencing with taxable year 2003. 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. In addition, the Order contains language and makes provisions for "minor" children. While the Order does not specifically state that he cannot claim [Redacted] or [Redacted] once they turn 18, generally once a child reaches the age of majority, they are no longer under the provisions of a child support order. [Redacted] turned 18 on December 20, 2004, and [Redacted] turned 18 on January 12, 2008.

The taxpayer has failed to establish that either [Redacted] or [Redacted] was a qualifying child or qualifying relative for the purpose of IRC § 152, therefore, the Commission finds that

the taxpayer is not entitled to a dependency exemption deduction for [Redacted] or [Redacted] for taxable year 2009. And since the taxpayer is not entitled to the dependency exemptions, he cannot claim an additional grocery credit for [Redacted] or [Redacted] per Idaho Code § 63-3024A.

THEREFORE, the Notice of Deficiency Determination directed to [Redacted] dated December 9, 2010, is APPROVED, AFFIRMED, and MADE FINAL.

Since the taxpayer's refund was only reduced and no additional tax is owed, no DEMAND for payment is required or necessary.

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.  
  
\_\_\_\_\_