

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 24122
[Redacted],	)	
	)	
Petitioners.	)	DECISION
_____	)	

On June 23, 2011, the staff of the Revenue Operations Division of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayers) proposing additional tax and interest for taxable year 2010 in the total amount of \$185.34.

The taxpayers filed a timely appeal and petition for redetermination. The taxpayers did not request a hearing but did provide additional information for the Commission’s consideration. The Commission, having reviewed the file, hereby issues its decision.

The sole issue for this decision is whether the taxpayers are entitled to a dependency exemption for [Redacted], [Redacted] son from a prior marriage.

The taxpayers provided a copy of an Order dated December 29, 2003. The Order states that [Redacted] ex-wife shall have primary physical custody of [Redacted]. Child support was ordered to be paid by [Redacted], and he was granted the dependency exemption for [Redacted] beginning in taxable year 2003.

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).

However, 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 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 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. In the present case, according to the Order, [Redacted] ex-wife has primary physical custody of [Redacted]. Therefore, according to the above Code section, [Redacted] ex-wife would be considered [Redacted] "custodial parent."

An exception to the above rule is provided in IRC section 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.

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 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 taxpayers, they cannot rely on [Redacted] Order 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 taxpayers did not satisfy the requirements to claim an exemption for [Redacted] in taxable year 2010. [Redacted] is not the noncustodial parent of [Redacted]. The Order does not satisfy the requirements of the Internal Revenue Code because, among other things, it lacks the signature of the custodial parent. Therefore, the taxpayers do not qualify to claim the dependent exemption for [Redacted] for taxable year 2010. Also, because the taxpayers are not entitled to

the dependent exemption, the taxpayers cannot claim the additional grocery credit for [Redacted] per Idaho Code section 63-3024A.

THEREFORE, the Notice of Deficiency Determination dated June 23, 2011, and directed to [Redacted] is AFFIRMED.

Since the taxpayers have paid the NODD in full, no DEMAND for payment is required or necessary.

An explanation of the taxpayers' 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.

---