

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],) DOCKET NO. 24213
)
)
Petitioner.) DECISION
)
_____)

On July 21, 2011, the Revenue Operations Division of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayer) reducing a claimed refund for taxable year 2010 in the total amount of \$531.

The sole issue for this decision is whether the taxpayer is entitled to dependency exemption deductions for [Redacted] and [Redacted], his children from a prior marriage. As part of his appeal, the taxpayer provided a copy of his 2003 Complaint for Divorce along with an Order of Modification of Decree of Divorce, apparently issued sometime in June 2008. The Order was not dated and showed no signatures. The Complaint stated that the children’s mother will be primary custodian and the taxpayer should be allowed to claim the minor children as dependent exemptions. The Order does not mention dependency exemptions but clearly identifies the taxpayer’s on-duty parenting time. The Order states the taxpayer will have the children every other weekend and Wednesdays from after school until 8 p.m. The major holidays, along with birthdays, appear to be split evenly between the parents and rotate between odd and even years.

The taxpayer did not respond to a letter outlining his alternatives for redetermining a protested NODD and did not request a hearing. The Commission, having reviewed the file, hereby issues its decision.

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

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

The term “custodial parent” is defined in IRC § 152(e)(4)(A) as the parent having custody for the greater portion of the calendar year. When a request for additional information was sent by the Commission and the taxpayer was asked if he was the custodial parent, he replied, joint custody. When asked how many days the child lived with him in taxable year 2010, he responded, half of the year. However, based on the on-duty parenting plan, every other weekend and half of the major Holidays and an extra week during the summer and during

Christmas break would not equal more than 182 days or half of the year. The taxpayer would not be considered the children's "custodial parent."

However, IRC § 152(e) allows the noncustodial parent to claim the dependent exemption if certain conditions are met. One condition is that the custodial parent must sign 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 attached to the noncustodial parents return.

A divorce decree or other agreement, if in effect between 1984 and 2008, may replace Form 8332, but it must state all of the following:

1. The noncustodial parent can claim the child as a dependent without regard to any condition, such as payment of child support.
2. The custodial parent will not claim the child as a dependent for the year.
3. The years for which the noncustodial parent, rather than the custodial parent, can claim the child as a dependent.

The taxpayer provided a copy of his 2003 Complaint for Divorce that states he is entitled to the dependent exemptions for his minor children. However, this is where the conformity to Form 8332 ends. The Order does not state the years the exemptions are released or that the custodial parent will not claim the children as dependents for the year.

Although the Order provides that the taxpayer is entitled to the dependency exemption for the 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. The taxpayer's remedy, if any, lies in the state court for enforcement of the Order.

For taxable year 2010, the taxpayer is not the custodial parent of [Redacted] and [Redacted] and does not have a signed release from the custodial parent. Therefore, the taxpayer is not entitled to the dependency exemptions.

THEREFORE, the Notice of Deficiency Determination directed to [Redacted] dated July 21, 2011, is AFFIRMED.

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.
