

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 24054
[Redacted],	)	
	)	
Petitioner.	)	DECISION
_____	)	

On May 25, 2011, 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 requested for taxable year 2010 in the total amount of \$314.

The sole issue for this decision is whether the taxpayer is entitled to a dependency exemption deduction for [Redacted], his son from a prior marriage. As part of his appeal, the taxpayer provided pages one and two of an Order of Child Support based on the Stipulation issued by the [Redacted] Judicial District Court of Idaho on January 31, 2007. The Stipulation orders the taxpayer to pay child support and states that pursuant to the Child Support Guidelines, the taxpayer shall have the right to claim the tax exemption for [Redacted], commencing with taxable year 2007.

The taxpayer did not respond to a letter outlining his alternatives for redetermining a protested NODD nor did he 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. The two pages of the Order does not name the custodial parent, but in response to a request for additional information that asked if he was the custodial parent, the taxpayer stated he was not. Additionally, when asked how many days the child lived with him during the tax year, the taxpayer responded, none. Therefore, the taxpayer is not the custodial parent of [Redacted] for taxable year 2010.

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 is 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 2007 Order that states he is entitled to the dependent exemptions for his minor child. 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 the child as a dependent for taxable year 2007.

Although the Order provides that the taxpayer is entitled to the dependency exemption for the child, 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 2010, the taxpayer is not the custodial parent of [Redacted] and does not have a signed release from the custodial parent. Therefore, the taxpayer is not entitled to the dependency exemption.

THEREFORE, the NODD directed to [Redacted] and dated May 25, 2011, is AFFIRMED.

Since the taxpayer's refund was reduced no DEMAND for payment is made or necessary.

An explanation of the taxpayer's 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.