

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 24226
[Redacted],	)	
	)	
Petitioner.	)	DECISION
_____	)	

On July 29, 2011, 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 \$289.20.

The sole issue for this decision is whether the taxpayers are entitled to a dependency exemption deduction for [Redacted], [Redacted] child from a prior relationship. As part of their appeal, the taxpayers provided an Order of Filiation and Judgment (Order) issued by the [Redacted] Judicial District Court of Idaho on August 31, 1999. The document states that [Redacted] will receive the tax exemption for the minor child.

The taxpayer responded to a letter outlining his alternatives for redetermining a protested NODD but did not request a hearing. The taxpayer provided another copy of the Order and stated in his letter he believed the Order was sufficient documentation and he did not need a Form 8332 to allow him to claim the dependent exemption for his child. 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 taxpayers were asked if they were the custodial parents, they stated they were not. When asked how many days the child lived with them in taxable year 2010, they responded, N/A. Therefore, according to the above code section, the taxpayer would not be considered [Redacted] "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 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 taxpayers provided a copy of [Redacted] 1999 Order that states he is entitled to the dependent exemption 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 the year.

Although the Order provides that [Redacted] 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 taxpayers are not the custodial parent of [Redacted] and do not have a signed release from the custodial parent. Therefore, the taxpayers are not entitled to the dependency exemption.

THEREFORE, the NODD directed to [Redacted] dated July 29, 2011, is AFFIRMED.

IT IS ORDERED that the taxpayers pay the following tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2010	\$284	\$15	\$299

Interest is calculated through July 27, 2012.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayers' right to appeal this decision is enclosed.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2012.

IDAHO STATE TAX COMMISSION

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COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2012, 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.