

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 24542
[Redacted],	)	
	)	
Petitioner.	)	DECISION
_____	)	

On November 3, 2011, the Revenue Operations Division of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayer) proposing additional tax and interest for taxable year 2010 in the total amount of \$243.83.

The sole issue for decision is whether the taxpayer is entitled to the dependency exemption deduction for [Redacted], [Redacted] child from a prior marriage. There are a total of three minor children as a result of the marriage, however, only the dependency exemption deduction for [Redacted] is at issue. As part of his appeal, the taxpayer provided a Judgment and Decree of Divorce issued by the [Redacted] Judicial District Court of Idaho on October 31, 2007. The document states that [Redacted] is required to pay child support and that he is entitled to claim [Redacted] as a dependent on his federal and state income tax returns.

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 Judgment provided states both parties are awarded joint physical and legal custody of the children, with actual physical custody to be shared equally. The document further states that parties shall exchange primary residential custody every two weeks. However, based on a response from the taxpayer to a request for information, it appears this part of the Judgment was not being followed. When asked how many days the child lived with him, the taxpayer responded, 90 plus weekends. The taxpayer also stated in the request for information letter that he was not the custodial parent of the child and did not provide more than half of the child's support for the year. The taxpayer is therefore, the noncustodial parent.

However, IRC § 152(e) does allow 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 parent's 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 Judgment and Decree that states he is entitled to the dependent exemptions for his minor children. However, this is where the conformity to Form 8332 ends. The Judgment 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 Judgment provides that the taxpayer is entitled to the dependency exemptions 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 Judgment.

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 Notice of Deficiency Determination directed to [Redacted] dated November 3, 2011, is AFFIRMED.

IT IS ORDERED that the taxpayer pay the following amount of tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2010	\$237	\$10.28	\$247.28

Interest is calculated through May 14, 2012.

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

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

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

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
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.  
  
\_\_\_\_\_